

**ENSURING THE RIGHTS OF “LITTLE ANGELS”:
IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS OF CHILDREN
WITH DISABILITIES IN ETHIOPIA**

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At the School of Law, Addis Ababa University

17 December 2012

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**A Dissertation Submitted in Partial Fulfilment of the Requirements for the
Degree of Master of Laws (LLM in Human Rights Law) to the School of
Law of Addis Ababa University**

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**At the School of Law, Addis Ababa University
17 December 2012**

Declaration

I, Fikire Tinsae Birhane, hereby declare that this dissertation is original and has never been submitted before for any degree or examination in any other institution. I also declare that all the sources I have used or quoted have been indicated and duly acknowledged as complete references.

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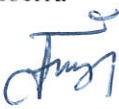
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List of abbreviations

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
CCI	Council of Constitutional Inquiry
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
CWD	Children with Disabilities
DPOs	Disabled Persons Organizations
ECOSOC	United Nations Economic and Social Council
ESDP	Education Sector Development Program
HoF	House of Federation
HSDP	Health Sector Development Program
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
MoE	Ministry of Education
MoH	Ministry of Health
MoLSA	Ministry of Labour and Social Affairs
NGOs	Non Governmental Organizations
OHCHR	Office of the High Commissioner for Human Rights

PWD	Persons with Disabilities
Standard Rules	Standard Rules on the Equalization of Opportunities for Persons with Disabilities
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organization

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Abstract

Recent reports evidence the existence of substantial number of children with disabilities across the globe, the majority of which live in the developing world. Such children have been marginalized section of the society in all places mainly in socio-economic areas. During the past four decades there have been developments in the recognition of such facts at the UN, regional and national levels. Accordingly, various conventions and declarations aimed at promotion and protection of their rights, including the 2006 Convention on the Rights of Persons with Disabilities are adopted. The treaties provide for a range of socio-economic rights by mainstreaming their issues and designed various measures of implementation for effective realization of the rights. As a State Party to many of the treaties, this paper analyses the issue of implementation of socio-economic rights of children with disabilities in Ethiopia by evaluating the Ethiopian experience vis-à-vis international standards set under the ratified treaties. The core assertion of the paper is that even if Ethiopia has ratified many of the treaties much has yet to be done to effectively realize socio-economic rights of children with disabilities in the country.

CHAPTER ONE

INTRODUCTION

1.1 Background of the study

According to World Health Organization's (WHO) report, over a billion, corresponding to about 15%, of the world's population comprise of persons with disabilities (PWD);¹ amongst which 80% exist in the developing world. Reports show that children with disabilities (CWD), whom some prefer to call - "little angels",² constitute 200 million out of the total number.³ Children who live with a physical, sensory, intellectual or mental health disability are amongst the most stigmatized and marginalized of all the world's children.⁴ Sending such children to school, including them in social interactions or preparing them for participation in the adult world, seems unnecessary to many. Families of adolescents and youth with disability often anticipate their early deaths than their possible survival.⁵ This widespread stigma and discrimination against CWD makes impossible for them to live a life of dignity on equal basis with others.

Discrimination on such children can manifest itself in various ways: through cultural prejudices, socio-economic, legislative or administrative measures, as well as environments that are inaccessible to them. Discrimination particularly persists in areas of education, employment, recreation and access to public services.⁶ Cultural prejudices often reflect guilt, shame or even fear associated with the birth of a child with a disability. It is reported by Save the Children that where there is a cultural reverence for bloodlines, babies born with physical or intellectual impairments are often hidden away or abandoned because they are considered

¹ World Health Organization, World Report on Disability (2011) [hereinafter WHO], p. 261.

² In many countries, a child with a disability is referred to as a 'little angel'. See UNICEF, Inter-Divisional Working Group on Young People, An overview of young people living with disabilities: Their needs and rights (1999), p. 1.

³ UN Secretary General's Study on Violence against Children; Thematic Group on Violence against Children with Disabilities Summary report, Violence against children with disabilities (2005), p. 4.

⁴ Ibid.

⁵ UNICEF, cited above at note 2; see also R. Joseph, Human Rights and the Unborn Child (2009); G. Lansdown, It's Our World Too! A Report on the Lives of Disabled Children, Disability Awareness in Action (2001), pp. 24-26 cited in G. Quinn and T. Degener, The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability (2002), p. 194

⁶ A.M. Smith, 'Persons with disabilities as a social and economic underclass', Kansas Journal of Law and Public policy, vol. 12(2003), p. 15.

to be a sign of impurity.⁷ Cultural attitudes are also influenced by negative or stereotyped depictions of children (persons) with disabilities in folklore, books, films or television programmes.⁸

Of the 200 million children reported living with disabilities, few of those living in developing countries have effective access to health and rehabilitation or support services.⁹ Moreover, 98% of CWD in developing countries do not attend school.¹⁰ While some CWD will wish to continue with secondary and higher education on leaving primary school, others may welcome the opportunity to prepare for the working world. Very few young PWD succeed in finding work in any country. Even if they do, it is likely to be of lower status, less secure and more poorly paid than that of their peers without disabilities. Many more CWD enter the informal economy. Inside the home this may involve performing domestic tasks, assisting with home based work or tending animals, while outside the home it is likely to mean performing menial tasks or even begging.¹¹

Over four decades, the United Nations has made strong commitment to the human rights of PWD. This commitment has been reflected in major human rights instruments as well as within specific measures and initiatives, which began with the 1971 Declaration on the Rights of Persons with Mental Retardation and now has culminated in the 2006 Convention on the Rights of Persons with Disabilities (CRPD).¹² Other examples of disability-focused initiatives include the International Decades of Disabled Persons, the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the 1994 Salamanca Statement and Framework for Action for Special Needs Education. The Convention on the Rights of the Child (CRC) is exemplar for its kind by coming up with explicit reference to 'disability' as a ground for discrimination and by dedicating a specific provision for CWD. The African Charter on the Rights and Welfare of the Child (ACRWC) followed the trend of

⁷ H. Jones, *Disabled Children's Rights: A Practical Guide* (2001), Save the Children: Sweden.

⁸ UNICEF, *Promoting the Rights of Children with Disabilities* (2007), p. 17.

⁹ Id, p. 15.

¹⁰ United Nations Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, *From exclusion to equality: Realizing the Rights of Persons with Disabilities* (2007), p.1.

¹¹ Id, p. 21.

¹² Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. Doc. A/RES/61/106 (Dec. 13, 2006) [hereinafter CRPD].

the CRC in raising the concerns of CWD and the enjoyment of their rights in an express manner.

Some five to eight million women and men in Ethiopia, or 7 to 10% of the population, are believed to have Disabilities.¹³ A vast majority of PWD, about 85%, live in rural areas where access to basic services is limited.¹⁴ Though there exists no comprehensive data, CWD comprise substantial number.¹⁵ Despite their substantial number, the enjoyment of socio-economic rights by these children is far from reality. As a state party to various human rights treaties, including the CRC, ACRWC and the CRPD that specifically provide for the protection and promotion of the rights of CWD, Ethiopia has a lot to do to ensure effective realization of their human rights in general and their socio-economic rights in particular.

1.2 Significance of the study

This study will have contribution in addressing the rights of the long marginalized group in the society, i.e. CWD, in Ethiopia. The compatibility of laws and policies with the standards set by human rights instruments and the practical measures being taken to ensure the realization of such rights will be analyzed. As the concept of the rights of PWD is still young especially in the context of Ethiopia, the research is believed to serve as a resource base for academics and other stake holders in formulating policies, taking measures to implement the rights and adjudicate-possible disputes in relation to rights of CWD. In the mean time, it will play a role in the realization of the rights of CWD.

¹³ UNICEF Fact Sheet, "Ethiopia Disability Programme", available at http://www.unicef.org/ethiopia/ET_Disability_fact_sheet_Nov_06.pdf, (last accessed on 23 October, 2011).

¹⁴ Ministry of Labour and Social Affairs, Developmental Social Welfare Policy, 1996, p. 60; International Labor Organization Fact sheet, "Inclusion of people living with disabilities in Ethiopia" (July 2009), p.1. Available at <http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@ifp_skills/documents/publication/wcms_112299.pdf> (last accessed on 17 February, 2012).

¹⁵ According to the 2007 National Census, the share of children with disabilities out of the total number of persons with disabilities is close to 33%. See Central Statistics Agency (CSA), The 2007 Population and Housing Census of Ethiopia: Statistical Report at Country Level, pp. 169-237. There is a belief that the data is flawed and it is difficult to take it as comprehensive one. For detail discussion on this see chapter four, section 4.3.1 below.

1.3 Research question

The research mainly asks the question: ‘how can it be possible to ensure effective realization of socio-economic rights of CWD in Ethiopia as provided in various international human rights instruments and national laws?’ Specific questions related with the main question are:

- Is there legal basis for socio-economic rights of CWD in Ethiopia?
- What measures are taken to incorporate and harmonize the international norms into domestic laws and policies, and is there consistency of the laws and policies with international standards?
- What practical measures are being taken to realize these rights? What are the opportunities and challenges to effectively implement the rights?
- How can the challenges be addressed and what possible ways of implementing the rights shall be taken?
- Moreover, the challenge posed by ‘progressive realization’ formulation of socio-economic rights and possible ways of remedying violations including the issue of justiciability will be scrutinized.

1.4 Methodology

The research shall primarily be library based where secondary sources like books, articles, documented facts and reports, web and other documents of relevance shall be assessed. Data shall also be gathered from concerned organs’ available documents and through interviews. International human rights instruments, including but not limited to, the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC) will be given due emphasis to analyse data acquired.

1.5 Hypothesis

The research is based on the assumption that even if Ethiopia has ratified the CRC, ACRWC, CRPD and other international human rights instruments, and domestically adopted laws and policies that deal with rights of CWD, effective realization of socio-economic rights of CWD is far from reality due to lack of or improper application of various implementation mechanisms.

1.6 Limitation of the study

Due to limitation of time and resource for the research, the scope of the research is limited to analysis of the main issues relating to implementation of socio-economic rights of CWD in Ethiopia with measures carried out at the federal level. Considering the interrelatedness and indivisibility of Human Rights, issues relating to civil and political rights that give rise to issues of socio-economic rights may incidentally be under the scope of the study. Nonetheless, rights of children or rights of PWD *in toto* are not the main focus of the paper.

1.7 Literature review

Dr. Eilinoir Flynn is one of the notable scholars who demonstrated the rights of PWD and implementation of their rights in accordance with the Convention on the Rights of Persons with Disabilities.¹⁶ World Health Organization's report on disability is a useful resource that summarizes an estimate of about 200 million children across the world live with disabilities and presents with barriers they face in enjoying their socio-economic rights in an equal manner with other members of the society.¹⁷ UNICEF's Inter-Divisional Working Group on Young People report examines the failure to implement the rights of CWD and how their issues are largely overlooked and underserved.¹⁸ Other scholars that have written on socio-economic rights of CWD and implementation of these rights include Luke Clements and Janet Read¹⁹, Gerard Quinn and Theresia Degener²⁰, Mairian Corker and John Davis²¹, Melinda Jones and Lee Marks²², and Suzy Braye²³. However, a little has been written on the socio-economic rights of CWD and implementation of these rights from the perspective of Ethiopia, to which this research is aimed at.

¹⁶ E. Flynn, From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities (2011).

¹⁷ WHO, cited above at note 1.

¹⁸ UNICEF, cited above at note 2.

¹⁹ L. Clements and J. Read, Disabled People and European Human Rights: A Review of the Implications of the 1998 Human Rights Act for Disabled Children and Adults in the UK, (2003).

²⁰ G. Quinn and T. Degener, The current use and future potential of United Nations human rights instruments in the context of disability (2002).

²¹ M. Corker and J.M. Davis, 'Disabled children: (Still) invisible under the law' in J. Cooper (ed.), Law, Rights and Disability (2000).

²² M. Jones and L. Marks, 'Beyond the Convention on the Rights of the Child: The rights of children with disabilities in international law', International Journal of Children's Rights, vol. 5 (1997).

²³ S. Braye, 'Disabled children and social care' in J. Cooper (ed.), Law, Rights and Disability (2000).

1.8 Overview of the chapters:

The paper consists of five chapters. Chapter one introduces the reader to the contents in which the research is set. The international legal framework on socio-economic rights of CWD is discussed in Chapter two; while doing so, the study focussed on treaties that are relevant in the Ethiopian context. Chapter three analyzes various measures for the implementation of socio-economic rights of CWD basing the treaties and discussion in the second chapter as a background. Though Ethiopia has ratified a number of treaties that recognized socio-economic rights of CWD and provided direction as to measures to be taken for their effective implementation, much has not been done yet. In this regard, the Fourth Chapter critically reflects on the Ethiopian experience in the implementation of socio-economic rights of CWD from multiple perspectives. The last chapter, which is Chapter five, draws conclusion and provides recommendations of the research as the way forward.

CHAPTER TWO

INTERNATIONAL LEGAL FRAMEWORK ON SOCIO-ECONOMIC RIGHTS OF CHILDREN WITH DISABILITIES

2.1 Introduction

PWD are a marginalized social and economic underclass often viewed by the public as unwanted, dependent persons in need of charity and pity, which impacts on them by perpetuating their marginalized status.²⁴ Reports show that even in countries with a relatively high standard of living, people with disabilities are disenfranchised citizens, often denied the opportunity to enjoy the full range of economic, social, and cultural rights.²⁵ Children with disabilities (CWD) are among the most marginalized sections of the society to enjoy socio-economic rights.²⁶ Discrimination on them, particularly, persists in areas of education, employment, recreation and access to public services.²⁷ Even from such children, those living in the developing world are victims of serious denial of socio-economic rights.²⁸

Over the past three decades, the rights of PWD have been given growing attention. This was possible through the actions of PWD and their advocates from national and international non-governmental organizations (NGOs).²⁹ It was also due to the increasing attention in the framework of human rights at the United Nations that reflected its commitment to the rights of PWD in core human rights instruments, as well as various measures and initiatives.³⁰ Regional human rights systems have also expressed a growing concern to the rights of such persons.

²⁴ Smith, cited above at note 6, p. 13.

²⁵ P. Blanck, M. Adya and M.V. Reina, 'Defining double discrimination', *Georgetown Journal of International Affairs*, vol. 8(2007), pp. 99-100; see also Smith, cited above at note 6.

²⁶ R. de Alwis, 'Mining the intersections: Advancing the rights of women and children with disabilities within an integrated web of human rights', *Pacific Rim Law and Policy Journal*, vol. 18(2009), p. 293.

²⁷ Smith, cited above at note 6, p. 15.

²⁸ For example, the African Commission on Human and Peoples' Rights in *Purohit and Moore v The Gambia* stated that millions of people in Africa are not enjoying the right to health maximally because of poverty, which incapacitated the countries to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of this right. This fact can highly implicate on the enjoyment of this right by CWD. See *Purohit and Moore v The Gambia*, Communication No. 241/2001 (2003), para. 84.

²⁹ Y. Lee, 'Expanding human rights to persons with disabilities: Laying the groundwork for a twenty-first century movement', *Pacific Rim Law and Policy Journal*, Vol. 18 No. 1(2009), p. 284.

³⁰ Such initiatives of giving attention to the rights of persons with disabilities are discussed in successive sub sections.

The laws that deal with the rights of PWD, especially the socio-economic rights of CWD, in the international arena encompass general human rights instruments as well as child and PWD specific instruments. These laws include the United Nations Standard Rules on the Equalization of Opportunities for persons with disabilities,³¹ the International Covenant on Economic, Social, and Cultural Rights³², the Convention on the Rights of the Child³³, the African Charter on Human and Peoples Rights,³⁴ the African Charter on the Rights and Welfare of the Child³⁵ and the Convention on the Rights of Persons with Disabilities.³⁶ The following sections discuss socio-economic rights of CWD as provided in these instruments.

2.2 International Covenant on Economic, Social, and Cultural Rights

As members of the society, socio-economic rights of CWD are protected by general human rights instruments. Among such instruments the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which was concluded in 1966 and entered into force in 1976, is one.³⁷ It has been widely ratified and has set out various socio-economic rights. Its implementation in States Parties is monitored by the Committee on Economic, Social and Cultural Rights (ICESCR Committee).³⁸ The Committee adopts general comments to assist State parties in fulfilling their treaty obligations.³⁹ Its General Comment No. 5 remains a significant document within the United Nations human rights treaty system in the context of disability.⁴⁰

³¹ United Nations General Assembly Resolution 48/96, adopted at the 48th session of the General Assembly on 20 December 1993.[hereinafter Standard Rules].

³² International Covenant on Economic, Social, and Cultural Rights, General Assembly resolution 2200A (XXI) of 16 December 1996, entered into force on 3 January 1976.[hereinafter ICESCR].

³³ Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989 [hereinafter CRC], art. 2.

³⁴ African [Banjul] Charter on Human and Peoples' Rights adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, (1982).[hereinafter ACHPR].

³⁵ African Charter on the Rights and Welfare of the Child, OAU Doc.CAB/LEG/24.9/49 (adopted 1990), (entered into force 29 November 1999)[hereinafter ACRWC]

³⁶ Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. Doc. A/RES/61/106 (Dec. 13, 2006) [hereinafter CRPD].

³⁷ D.M. Chirwa, 'Combating child poverty: The role of economic, social and cultural rights', in J. Sloth-Nielsen (ed.), *Children's rights in Africa: A legal perspective* (2008), p. 93.

³⁸ Unlike other United Nations treaty monitoring bodies, the ICESCR Committee was not established pursuant to a provision of the ICESCR treaty but derives its existence from a resolution of the Economic and Social Council (ECOSOC Resolution 1985/17 of 28 May 1985). It began work in 1987.

³⁹ As of March 2012 the Committee on ESCR has adopted 21 general comments.

⁴⁰ G. Quinn and T. Degener, *The current use and future potential of United Nations human rights instruments in the context of disability* (2002), p. 131.

Article 2 of the ICESCR provides a right to non-discrimination, which plays an overarching role in ensuring the equal and effective enjoyment of all socio-economic rights in the Covenant by CWD.⁴¹ The relevance of the prohibition of discrimination is particularly apparent in case of CWD since they face double discrimination, i.e. first as children and second as PWD, and sometimes even triple discrimination in cases such as where the child with disability is a girl. Yet, a non-discrimination norm may not be sufficient to guarantee the equal rights of CWD since under international human rights law one person may be treated less favourably than another 'if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate'.⁴² Consequently, CWD may need differential treatment (special assistance) that enables them to enjoy all the rights in an equal manner as children without disabilities.⁴³

Lack of adequate education is a key risk factor for poverty and social exclusion of children in general.⁴⁴ CWD existing in developing countries that lack education are almost certain to live in long term poverty.⁴⁵ The right to education, which allows CWD to lead inclusive and participatory life,⁴⁶ is provided by the ICESCR.⁴⁷ This right encompasses elements of availability, accessibility, acceptability and adaptability. Accessibility in itself has three dimensions: non-discrimination, physical accessibility and economic accessibility.⁴⁸ As per General Comment No.13, eliminating legal and *de facto* discrimination in the field of education is an obligation of immediate effect⁴⁹ and failure to do so amounts to violation of the right to education. Consequently, the 'minimum core obligation' of the right to education

⁴¹ See also Committee on Economic, Social and Cultural Rights General Comment No. 5, Persons with disabilities, HRI/GEN/1/Rev.9 (Vol. I) [hereinafter CESCR General Comment No. 5], para. 5. The non-discrimination norm has also been included under art. 2 of the International Covenant on Civil and Political Rights since it is one of the core principles that guarantee equal enjoyment of rights by all persons alike.

⁴² Human Rights Committee, General Comment No 18, Non-Discrimination, HRI/GEN/1/Rev.9 (Vol. I), p. 195, para 1.

⁴³ ICESCR, art. 10 (3).

⁴⁴ V.T. Hernandez, 'Making good on the promise of international law: the Convention on the Rights of Persons with Disabilities and inclusive education in China and India', *Pacific Rim Law and Policy Journal*, vol. 17(2008), p. 498.

⁴⁵ World Bank, 'Education, Poverty, and Disability in Developing Countries', Technical Note for the Poverty Reduction Sourcebook, p. 1 (June 21 2001) (prepared by T. Jonson & R. Wiman) cited in Hernandez, *ibid*; see also African Child Policy Forum, *Educating Children with Disabilities in Africa: Towards a Policy of Inclusion* (2011) (written by Shimelis Tsegaye Tesemma).

⁴⁶ Quinn and Degener, cited above at note 40, p. 90.

⁴⁷ ICESCR, art. 13.

⁴⁸ Committee on Economic, Social and Cultural Rights General Comment No. 13. The right to education (art. 13), HRI/GEN/1/Rev.9 (Vol. I) [hereinafter CESCR General Comment No. 13], p. 63, paras. 36 and 16(e).

⁴⁹ CESCR General Comment 13, para. 43.

includes the right of access to public educational institutions and programmes on a non-discriminatory basis.⁵⁰ Education curriculum should also be adapted to particular needs of CWD. Furthermore, measures designed to bring about substantive equality for CWD in the area of education shall not be regarded as discriminatory.⁵¹

General Comment No. 5 of the ICESCR recognizes the best desirability of inclusive education to CWD unless in some special circumstances separate educational systems or institutions are required by the best interest of the child with disability. It is noted that:

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in *integrated [inclusive] settings*.⁵² [emphasis added]

Implementation of such integrated (inclusive) approach requires of States Parties the provision of necessary equipment and support, like recognition of sign language as a separate language to which children should have access and whose importance should be acknowledged in their overall social environment, in order to bring CWD up to the same level of education as their non-disabled peers.⁵³ This, further, necessitates having trained teachers equipped with expertise knowledge and skill to educate CWD and availability of the necessary equipment and support materials.⁵⁴

According to article 14 of the ICESCR State parties are obliged to cater for CWD in their plan of action for primary education, which is compulsory and free of charge, in an equal manner with other children.⁵⁵ The State has obligation of immediate effect in this regard.⁵⁶ Such measure is especially important because 'the lack of educational opportunities for CWD often reinforces their subjection to various other human rights violations.'⁵⁷ Consequently, failure to introduce free and compulsory primary education that takes into account particular

⁵⁰ Id, para. 57.

⁵¹ Id, para. 32.

⁵² CESCR General Comment No. 5, para. 35; Standard Rules, Rule 6.

⁵³ CESCR General Comment No. 5, Ibid.

⁵⁴ Ibid.

⁵⁵ CESCR General Comment No. 13, para. 57.

⁵⁶ M. Verheyde, A Commentary on the United Nations Convention on the Rights of the Child: Article 28: The Right to Education (2006), paras. 7, 14 and 42, pp. 10, 21, 54-55. The ICESCR creates obligation of immediate effect with regard to realization of the right to enjoy free and compulsory education. See ICESCR, art. 13 (2(a)).

⁵⁷ Committee on Economic, Social and Cultural Rights General Comment No. 11, Plans of action for primary education (art. 14), HRI/GEN/1/Rev.9 (Vol. I) [hereinafter CESCR General Comment No. 11], p. 52, para. 4.

needs of CWD is an example of violation of the right to education.⁵⁸ The compulsory nature of primary education would ensure that CWD, who are generally kept indoors by parents that may consider their education as optional or fear stereotypes from the society, get access to education; while its free nature serves as an incentive to parents or guardians of CWD, who may also be under poverty, to send them to school.⁵⁹

The right to enjoy the highest attainable standard of health is another right recognized in the ICESCR.⁶⁰ According to General Comment No. 14 of the ICESCR Committee, the core obligations of State parties with regard to this right include adoption and implementation of national health strategy and plan of action, which is devised in a way that gives particular attention, *inter alia*, to CWD.⁶¹ Even in times of severe resource constraints, such children must be protected by the adoption of relatively low-cost targeted programmes.⁶²

This right is a manifestation of the indivisibility and interdependence of all human rights as noted by the ICESCR Committee that:

[t]he rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement ... address integral components of the right to health.⁶³

Therefore, failure to realize the right to health of CWD has implication on, virtually, all of their human rights.⁶⁴ Thus, States have to give due emphasis in ensuring this right. This, however, does not suggest that the right to health is superior to other rights or implementation of other rights shall necessarily follow the realization of this right.

⁵⁸ Id, para. 59. In fact the Covenant requires of State parties to work for the achievement of compulsory education free of charge for all levels of education though primary education is given priority and expected to be implemented immediately. See ICESCR, art. 14.

⁵⁹ CESCR General Comment No. 11, p. 53, paras. 6 and 7.

⁶⁰ ICESCR, art. 12.

⁶¹ Committee on Economic, Social and Cultural Rights General Comment No. 14, The right to the highest attainable standard of health, HRI/GEN/1/Rev.9 (Vol. I) [hereinafter CESCR General Comment No. 14], p. 78, para. 43 (f).

⁶² Id, para. 18; Committee on Economic, Social and Cultural Rights General Comment No. 3, The nature of State Party obligations (art. 2, para. 1, of the Covenant), HRI/GEN/1/Rev.9 (Vol. I) [hereinafter CESCR General Comment No. 3], p. 7, para. 3.

⁶³ CESCR General Comment No. 14, para. 3.

⁶⁴ A. Eide and W.B. Eide, A Commentary on the United Nations Convention on the Rights of the Child: Article 24: The Right to Health (2006), para. 9, p. 4.

State parties have special duty to provide necessary health insurance and health care facilities for CWD or their families if they are indigent.⁶⁵ They shall be provided with the same level of medical care within the same system as other members of society.⁶⁶ CWD's right to health encompasses 'adequate access to 'buildings' as its inherent part⁶⁷ and such shall be ensured. Moreover, States Parties are obliged to ensure that 'private providers of health services and facilities comply with the principle of non-discrimination in relation to CWD'⁶⁸ since the principle lays obligation of immediate effect, which 'can be pursued with minimum resource implication through adoption, modification or abrogation of legislation or dissemination of information'.⁶⁹ Failure to observe the principle amounts to failure to implement the core content of the Covenant and hence, *prima facie*, a violation.⁷⁰

Measures taken to ensure this right shall aim at tackling the stereotype that PWD are asexual. They have to also be effected by developing youth friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services because CWD should be given the opportunity to enjoy a fulfilling and decent life and to participate in their community.⁷¹ Measures include abolishing of harmful traditional practices like female genital cutting.⁷² With regard to mental health care, 'coercive medical treatments' are only to be applied in 'exceptional cases that are subject to specific and restrictive conditions, respecting best practices and applicable international standards'.⁷³

While some CWD continue with secondary education on leaving primary school, others may be expected to prepare for the working world. The UN General Assembly Special Session on Children (UNGASS) identified creation of employment opportunities one of the main means to tackle chronic poverty, which is the biggest barrier to meeting the needs, protecting and promoting the rights of children, including CWD.⁷⁴ The ICESCR recognized the right to

⁶⁵ Id. para. 14, p. 5; CESCR General Comment No. 14, para. 19.

⁶⁶ CESCR General Comment No. 5, para. 34.

⁶⁷ CESCR General Comment No. 14, para. 12 (b).

⁶⁸ Id. para. 26.

⁶⁹ CESCR General Comment No. 14, para. 18.

⁷⁰ Id. paras. 30, 43, 47.

⁷¹ Id. paras. 22 and 23.

⁷² Eide and Eide, cited above at note 64, para. 20, p. 7.

⁷³ Id. para. 19, p. 7; CESCR General Comment No. 14, para. 34.

⁷⁴ A World Fit for Children, the outcome of the UN General Assembly Special Session on Children 8-10 October 2002, adopted by the General Assembly, UN Doc. A/RES/S-27/2, 2002, para. 18.

work in the mainstream⁷⁵ employment sector of such children and the right to just and favourable conditions of work and freedom of association.⁷⁶ Since they enter the labor market with little education and few or no skills, CWD face difficulty of competing with their non-disabled peers, which puts them at higher risk of unemployment.⁷⁷ To guarantee equal and effective access to work, workplaces have to often be adjusted to reasonably accommodate such workers.⁷⁸

The right to work in ICESCR in context of disability mainly focus on non-discrimination of adolescents with disabilities, necessity of reasonable accommodation, a strong preference to mainstream employment in the open labor market and adequate protections for those in sheltered employment.⁷⁹ States have to ensure the realization of these rights as employers and shall encourage and monitor other non state employers' compliance with such requirements. In case where CWD have been denied opportunity for employment owing to their disability, the State should provide adequate income support.⁸⁰

Ensuring CWD their work related rights, States are required to protect them from child labor. The ICESCR Committee noted that CWD should be protected from all forms of work that may interfere with their development or health and from economic exploitation.⁸¹ Realizing the full respect of prohibition of child labor is an obligation of State parties.⁸² Since most CWD are highly prone to child labor and mostly are engaged in informal business, such as household and agricultural activities, as well as menial tasks as begging, States should observe their obligation related to child labor in a strict manner.

The ICESCR has also recognized the right of CWD to an adequate standard of living that includes adequate food, housing and clothing.⁸³ Even where the state faces severe resource

⁷⁵ Sheltered employment that aims at employment in the open labor market may be suitable for some adolescents with disabilities. See CESCR General Comment No. 5, para. 21.

⁷⁶ ICESCR, arts. 6, 7 and 8.

⁷⁷ UNICEF, cited above at note 2, p. 9

⁷⁸ Degener and Quinn, cited above at note 40, p. 99.

⁷⁹ Ibid.

⁸⁰ CESCR General Comment No. 5, para. 28.

⁸¹ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The right to work (art. 6), 35th session, 2005, [hereinafter CESCR General Comment No. 18], paras. 15 and 21, HRI/GEN/1/Rev.9 (Vol. I), page. 143.

⁸² Ibid; see also ILO Convention on the Worst Forms of Child Labour, art. 2, para. 7, and CESCR General Comment No. 13.

⁸³ ICESCR, art. 11; CESCR General Comment No. 5, para. 33.

constraints, measures must be taken to ensure the right to adequate food of CWD.⁸⁴ Measures of ensuring housing and clothing must also take into account the special need required by the disability of a child.⁸⁵

The right to cultural participation as provided in article 15 is of particular importance to CWD. According to the Committee, this provision applies to places for recreation, sports and tourism.⁸⁶ States are expected to raise public awareness that CWD have equal rights to use such places and to dispel prejudice against them. Additionally, eliminating communication barriers by diverse means⁸⁷ to enable them to equally participate in cultural life is necessary.

Participation in leisure and recreation is one of the paramount needs of all children and it is particularly important to CWD since it will enable them to influence the way they are portrayed in the society and that it would reinforce their right to participation in social life. Sport is especially important for CWD because developing vital social skills early on ensures their successful and active participation in society.⁸⁸ It also offers them opportunities for healthy living, recreational participation, or elite competition.⁸⁹ Therefore, making venues for such participation accessible in way that reasonably accommodates them is an obligation the State has to make sure of its realization.

2.3 The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities

The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules) is a body of rules developed by the UN Commission for Social Development under authority of ECOSOC specifically to ensure PWD, as members of their societies, may exercise the same rights and obligations as others. The Standard Rules lay

⁸⁴ CESCR General Comment No.12, para. 28.

⁸⁵ Ibid; CESCR General Comment No. 4, para. 8(e).

⁸⁶ CESCR General Comment No. 5, para. 36.

⁸⁷ The use of talking books, papers written in simple language and with clear format and colours for persons with mental disability, and adapted television and theatre for deaf persons are some of the means.

⁸⁸ E.C. Roy, 'Aiming for inclusive sport: the legal and practical implications of the United Nations' disability convention for sport, recreation and leisure for people with disabilities', *Entertainment and Sports Law Journal*, vol. 5(2007), p. 8.

⁸⁹ M.A. Hums, A.M. Moorman and E.A. Wolff, 'Emerging disability rights in sport: Sport as a human right for persons with disabilities and the 2006 UN Convention on the Rights of Persons with Disabilities', *Cambrian Law Review*, vol. 40(2009), p. 48.

down preconditions for participation that include societal awareness raising, multidisciplinary medical care, adequate rehabilitation and social support; identify target areas that include accessibility, education, employment, social security, family life and personal integrity, and sport and recreation; and provide various implementation measures.

Even if the Standard Rules themselves make it explicit that they are nonbinding, it is also true to say that they can play valuable role in the protection of the rights of CWD. They incorporate a more significant monitoring programme with respect to the rights of CWD.⁹⁰ They respond to the fact that CWD have long been the victims of the politics of difference⁹¹ and incorporate the principle of inclusion and confirm that '[children] with disabilities are citizens with the same rights and obligations as others'.⁹² The importance of the Rules is evidenced by the extensive use of them to interpret binding international instruments, including the ICESCR and CRC.⁹³

2.4 Convention on the Rights of the Child

In addition to general human rights instruments, CWD are protected by child rights specific instruments that directly address them, amongst which the Convention on the Rights of the Child (CRC) is the main one. Adopted on 20 November 1989 and came into force on 2 September 1990 by the UN General Assembly, the CRC is the most widely ratified human rights treaty ever.⁹⁴ Providing a full range of rights including civil, political, economic, social and cultural rights in a single document, the CRC apparently champions the interdependence and indivisibility of all human rights.⁹⁵

⁹⁰ M. Jones and L.A.B. Marks, 'Beyond the Convention on the Rights of the Child: The rights of children with disabilities in international law', *The International Journal of Children's Rights*, Vol. 5(1997), p. 182.
⁹¹ *Id.*, p. 191.

⁹² Standard Rules, introduction, para 6.

⁹³ For example, the Committee on ESCR has extensively relied upon the Standard Rules in its General Comment No. 5 relating to persons with disabilities. The CRPD has also recognized the importance of the Rules in its preamble, para. (f).

⁹⁴ Virtually all States of the world have ratified the CRC with exception of USA, Somalia and South Sudan.

⁹⁵ D. Fotrell, 'One step forward or two steps sideways? Assessing the first decade of the United Nations Convention on the Rights of the Child', in D. Fotrell (ed.), *Revisiting children's rights: 10 years of the UN Convention on the Rights of the Child* (2000), p.4; M. Rishmawi, *A Commentary on the United Nations Convention on the Rights of the Child: Article 4: The Nature of States Parties' Obligations* (2006), paras. 6 and 40-43, pp. 3 and 16-17.

The CRC was the first Convention to mention disability and to enshrine the rights of CWD explicitly.⁹⁶ In addition to recognizing the non-discrimination principle under article 2, it specifically provides for various socio-economic rights of CWD under article 23.⁹⁷ The Convention's rights have been elaborated in General Comments of the Committee on the Rights of the Child, which is its treaty monitoring body. General Comment No. 9⁹⁸ of the Committee particularly deals with CWD, acknowledging their special vulnerability to multiple forms of discrimination based on a combination of factors, and notes the need for particular attention to the girl child with disabilities and CWD living in rural areas.⁹⁹

It is argued that the CRC afforded lower standard to CWD because article 23, except recognizing the rights of CWD to special care, failed to specify how this right is to be secured.¹⁰⁰ However, article 4 of the Convention sets for basic obligations of States Parties under entire Convention, which includes the rights of CWD under article 23. Lack of any reservation to article 23 also evidences the commitment States Parties assumed for the realization of socio-economic rights of CWD, not affording them lower standards.

2.4.1 General principles of the CRC and children with disabilities

The Committee on the Rights of the Child has identified four general principles that should guide the implementation of all Convention rights, govern and determine its true meaning and the way it is to function.¹⁰¹ These are non-discrimination; best interests of the child; right to

⁹⁶ See CRC, arts. 2 and 23.

⁹⁷ The rights include education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities: see CRC, art. 23(3).

⁹⁸ Committee on the Rights of the Child General Comment No. 9 (2006), The rights of children with disabilities, CRC/C/GC/9, 27 February 2007, [hereinafter CRC General Comment No. 9].

⁹⁹ For example, in many developing countries there is a lesser concentration of health services in rural areas compared to urban areas. This implicates on accessibility of health services to CWD living in rural areas. Eide and Eide, cited above at note 64, para. 35, p. 12; similarly, children living in rural areas have difficulties in exercising their right to education owing to many factors. Verheyde, cited above at note 56, para. 34, p. 41; the CRC Committee has noted on several occasions the disparity in the implementation of the CRC in rural and urban areas. See for example CRC Committee, Concluding Observations: Romania, UN Doc. CRC/C/15/Add.199, 2003, para. 13; Spain, UN Doc. CRC/C/15/Add.185, 2002, para. 18 (a).

¹⁰⁰ Quinn and Degener, cited above at note 40, p. 193.

¹⁰¹ E.G. Mendez, 'A comparative study of the impact of the Convention on the Rights of the Child: Law reform in selected civil law countries' in UNICEF, Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems (2007), p. 108; M. Verheyde and G. Goedertier, A Commentary on the United Nations Convention on the Rights of the Child: Article 43-45: The UN Committee on the Rights of the Child (2006), p. 19.

life, survival and development; and right to be heard and to participate.¹⁰² The principles are very crucial in the realization of the rights of CWD, including their socio-economic rights.

2.4.1.1 Non-discrimination

The prohibition of discrimination under article 2 is very indispensable as it reinforces the right of CWD to enjoy the Convention rights in an equal manner with other children and sends a message that the rights of CWD are not limited to those provided under article 23. It obliges States Parties to respect and ensure the Convention's rights 'without discrimination of any kind, irrespective of the child's ... disability'.¹⁰³ This principle, however, should be understood in the sense that CWD may not be limited to receive identical treatment with other children in all cases, but they may also get special treatment required by their disability whenever needed.¹⁰⁴

2.4.1.2 Best interests of the child

Primary consideration of the best interests of CWD in decision making concerning them as provided in article 3 helps to tackle systematic discrimination against them, provide them services that conform to standards and regulations, and enables them to live a life of dignity equally with other members of the society.¹⁰⁵ The principle also demands the allocation of resource for implementation of the rights of such children in the overall budget,¹⁰⁶ which is a vital factor to realize their rights. It, in short, means the full realization of the child's rights.¹⁰⁷

¹⁰² See Committee on the Rights of the Child, General Guidelines Regarding the Form and Content of initial Reports to be Submitted by States Parties under Article 44, Paragraph 1(a), of the Convention, para. 13, U.N. Doc. CRC/C/5 (October 30 1991), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.5.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.5.En?Opendocument).

¹⁰³ CRPD, art. 2, para. 1.

¹⁰⁴ A.G. Mower, The Convention on the Rights of the Child: International Law Support for Children (1997), p. 25.

¹⁰⁵ Committee on Economic Social and Cultural Rights, General Comment No. 9: The domestic application of the Covenant, Nineteenth session (1998), E/1999/22[hereinafter CESCR General Comment No. 9], para. 30; For general and detailed analysis of 'the best interests of the child' principle see M. Freeman, A Commentary on the United Nations Convention on the Rights of the Child: Article 3: The Best Interests of the Child (2007).

¹⁰⁶ See CRC, art. 4.

¹⁰⁷ Mendez, cited above at note 101, p. 108.

2.4.1.3 Right to life, survival and development

This principle is directly related to socio-economic rights of CWD.¹⁰⁸ It is of particular importance to CWD whose mortality rate is consistently higher,¹⁰⁹ whose quality of life is perceived to be diminished by disability, whose neglect can cause death or institutionalization resulting in poor quality of life,¹¹⁰ whose death is anticipated than possible survival and who are considered as less equal compared to non disabled children. It is regarded as an umbrella right from which a range of key children's socio-economic rights can be derived.¹¹¹ The principle, in addition to health care necessary for physical survival, entitles the rights to social security; a standard of living that meets the needs for food, clothing, and shelter; and rest, leisure, and travel.¹¹² The right to development also presupposes fulfilment of right to education, health and a number of rights relevant to the child's participation in the social and cultural life.¹¹³

2.4.1.4 Right to be heard and to participate

This principle reinforces the right of CWD who are more marginalized than children in general, and whose participation is impeded by various factors.¹¹⁴ It recognizes their right to participate in various activities including at school, leisure centres and cultural venues.¹¹⁵ Representation of CWD in various bodies like parliament, committees and other forums where they may voice their views and participate in decision making that affects children in

¹⁰⁸ M. Nowak, A Commentary on the United Nations Convention on the Rights of the Child: Article 6: The Right to Life, Survival and Development (2005), para. 12, p. 8. For example see the rights under art. 23 (3); arts. 24 and 25; arts. 28 and 29; art. 31; art. 27; art. 32, which are all directly linked to the principle of right to life, survival and development.

¹⁰⁹ Indeed in some countries 90% of CWD do not survive beyond the age of 20; see CRC/C/SR.418, para. 2.

¹¹⁰ For example, babies or young CWD may not receive the medical or other treatment accorded to a child without disabilities and attempts may be made to withhold care and food from severely disabled children. They may also be denied of mainstream education. See Lansdown, cited above at note 5, p. 194; see also Joseph, cited above at note 5.

¹¹¹ Chirwa, cited above at note 37, p. 93.

¹¹² Mower, cited above at note 104, p. 31; see also the CRC.

¹¹³ Ibid; A.B. Andrews and N.H. Kaufman, Implementing the U.N. Convention on the Rights of the Child: A Standard of Living Adequate for Development (1999).

¹¹⁴ For example failure to provide sign language interpreters for deaf children makes it difficult for them to use hospitals, libraries and other public places. The right to express their views are also impeded. G. Lansdown, 'The realisation of children's participation rights' in B. Percy-Smith and N. Thomas (eds.), A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice (2010), p. 12.

¹¹⁵ Though the child's social development begins in the family, it needs positive involvement in groups such as in schools and with peers. Such positive involvement will enable CWD to develop socially responsible behaviour thereby participate and positively contribute to the society. Andrews and Kaufman, cited above at note 113, p. xix.

general and CWD in particular is a pre-requisite for the principle to be respected.¹¹⁶ The principle also requires provision of various mode of communication that CWD may need to express their views.¹¹⁷ It also calls for attention to be given for spiritual, emotional and cultural development and well-being of CWD.¹¹⁸

2.4.2 Socio-economic rights in the CRC and children with disabilities

Acknowledging the primary responsibility of parents in the upbringing of children, the CRC clearly grants CWD a range of socio-economic rights claimable directly against the State. These include the right to education, the right to health, the right to social security and the rights of disabled children to a full and decent life.¹¹⁹

The CRC recognizes the right of CWD to a standard of living adequate for their physical, mental, spiritual, moral and social development, including the right to social security.¹²⁰ Though the primary obligation to ensure this is on the parents and those responsible to the child,¹²¹ States are required to assist them by providing material assistance and support programmes especially with regard to nutrition, clothing and housing directly to the children or indirectly through parents.¹²²

Article 24 provides for the right to enjoyment of highest standard of health and to facilities for the treatment of illness and rehabilitation services of CWD; yet, inexistence or inaccessibility of health institutions to CWD is a challenge to enjoy the right.¹²³ Poor, inaccessible or expensive transport or inaccessible building may also make physical access to health care facilities a problem.¹²⁴ Access to rehabilitation services such as speech therapy and physiotherapy may be restricted due to resources or other factors.¹²⁵

¹¹⁶ CESCR General Comment No. 9, para. 32.

¹¹⁷ Ibid.

¹¹⁸ Id, para. 33.

¹¹⁹ Chirwa, cited above at note 37, 94.

¹²⁰ CRC, arts. 26 and 27.

¹²¹ CRC, art. 27, para. 2; Mower, cited above at note 104, p. 61.

¹²² CRC, art. 27, para. 3; CRC General Comment No. 9, para. 12.

¹²³ Even if health institution and child friendly health services are existent in some countries, such are not sufficiently accessible to CWD. Eide and Eide, cited above at note 64, para. 67, p. 24.

¹²⁴ CRC General Comment No. 9, paras. 39 and 40.

¹²⁵ See M. Schneider and G. Saloojee, 'Monitoring childhood disability' in A. Dawes, R. Bray and A. Van Der Merwe (eds.), Monitoring Child Well-Being: South African Rights-Based Approach (2007), p. 197.

The CRC Committee noted that CWD shall be treated in the mainstream health system by health professionals trained to work with them.¹²⁶ ‘Early identification and intervention, including treatment and rehabilitation¹²⁷ providing all necessary devices that enable CWD to achieve full functional capacity in terms of mobility, hearing aids, visual aids, and prosthetics among others’ is needed to be included in health policies and be implemented effectively.¹²⁸

Since CWD are highly exposed to violence and abuse, including rape and other forms of sexual abuse, which may increase their risk of becoming HIV infected, the State has the obligation to protect them from all forms of violence and abuse, whether at home, in school or other institutions, or in the community.¹²⁹ It has the obligation to adopt special measures to ensure physical, sexual and mental integrity of adolescents with disabilities.¹³⁰

The right to education is both the most important right for CWD and the right most frequently denied¹³¹ owing to many factors.¹³² Articles 28 and 29 contain provisions on education. The Convention reiterates that primary education shall be compulsory and available free for all, including CWD.¹³³ It requires modification of school practices and avoiding physical and communication barriers, training of regular teachers to fit with the needs of CWD, and provision of personal assistance based on the needs of children with diverse disabilities.¹³⁴

¹²⁶ Health services provided for CWD shall conform to the standards established by competent authorities and States have general obligation to ensure that. Eide and Eide, cited above at note 64, para. 11, p. 5.

¹²⁷ Rehabilitation services include physiotherapy, occupational therapy, speech therapy, audiology and/or psychological services. Such services, if provided at an early age, they are crucial for the development of CWD and their participation in the society. Schneider and Saloojee, cited above at note 125, p. 197.

¹²⁸ CRC General Comment No.9, paras. 51-57; Eide and Eide, cited above at note 64, para. 13, p. 5.

¹²⁹ CRC General Comment No. 3: HIV/AIDS and the rights of the child, CRC/GC/2003/3, 17 March 2003, paras. 33-34; V. Muntarhorn, *A Commentary on the United Nations Convention on the Rights of the Child: Article 34: Sexual Exploitation and Sexual Abuse of Children* (2007), para. 59, pp. 37-38.

¹³⁰ CRC Committee, General Comment No. 4: Adolescent Health and Development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, 1 July 2003, paras. 8, 33; Muntarhorn, *ibid.*

¹³¹ Verheyde, cited above at note 56, para. 34, p. 44.; Mower, cited above at note 104, pp. 34-35; Quinn and Degener, cited above at note 40, p. 198.

¹³² UNICEF, cited above at note 2, p. 9: In many countries, CWD are considered to be incapable of learning, no matter what their disability. There is also little perception by their families or their society that they will need any education. Moreover, they are usually considered to be embarrassment (evidence of bad blood, incest or divine disfavour) and should not be seen regularly in public. Such kind of factors facilitated denial of education to such children.

¹³³ CRC, art. 28 (a).

¹³⁴ CRC General Comment No.9, paras. 62 and 65; Verheyde, cited above at note 56, para. 34, p. 45; see also CESCR General Comment No. 5, para. 35.

The CRC Committee asserts that 'inclusive education' should be the goal of educating CWD¹³⁵ because they are often segregated from mainstream education under the guise of 'special education' where they frequently lack same range of academic and leisure activities as children in the mainstream schools and restricted from expressing themselves as having recognized identity and belonging to the community of learners, peers and citizens. It has noted, however, that:

Inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs...The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system.¹³⁶

The education offered to such children must aim at, *inter alia*, preparing the child for responsible life and effective participation in the society and must be that from which CWD can draw some benefit.¹³⁷ This right is particularly important in the developing world where failure to ensure the right of access to education for CWD¹³⁸ condemns them to a life in which they lack the knowledge and skills to rise out of poverty¹³⁹ and live an independent life on an equal basis with others. Therefore, including career education and vocational training in the school curriculum¹⁴⁰ that prepares CWD to future employment is indispensable.

The Convention laying obligation to protect children from economic exploitation and performing hazardous work that may interfere with their education, health or development under article 32, made implied recognition of the right to work and employment of children. States must take serious measures in this regard since CWD are highly prone and easy targets to exploitation due to their age and disability. Thus, apart from provision of minimum age for

¹³⁵ CRC General Comment No.9, para. 66.

¹³⁶ Id, paras. 66-67.

¹³⁷ CRC, art. 29, para. 1 (d).

¹³⁸ Only 2 percent of disabled children in developing countries have access to an education system. See CRC/C/SR.418, para. 2. Available at <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/c3e39ba2b29df55c80256689004c8f82?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/c3e39ba2b29df55c80256689004c8f82?Opendocument)> (last accessed March 14 2012).

¹³⁹ Lansdown, cited above at note 114, p 27.

¹⁴⁰ CRC, General Comment No. 9, paras. 68-69; Verheyde, cited above at note 56, para. 23, p. 32.

employment, appropriate regulation of working hours and condition, and penalties or other sanction, creating opportunities of work for CWD is required.¹⁴¹

The right to recreation and cultural activities appropriate to the mental, psychological and physical ages and capabilities of children, including CWD, is stipulated under article 31. The opportunity for leisure and play, which are best source of learning various skills including social skills, should be provided to CWD whenever possible in an integrated manner with non disabled children.¹⁴²

The right to play is often nick named the 'forgotten right' arguably because adults consider it as luxury rather than a necessity of life while children always find a way and means to play even in dreadful situations.¹⁴³ However, play, recreation and leisure have crucial role in the development of children, including CWD; those who are not able to enjoy these rights, for whatever reason, would eventually lack important social and personal skills.¹⁴⁴ Additionally, it contributes greatly to physical and psychological health of CWD.¹⁴⁵ Thus, States must ensure that mainstream play and sport activities are available to CWD and, whenever necessary, provide disability specific sports activities.

2.5 African Charter on Human and Peoples Rights

The African Charter on Human and Peoples Rights (ACHPR), adopted in 27 June 1981 and entered into force on 21 October 1986, is an instrument that binds the whole catalogue of rights in a single document with a truly indivisible and interdependent normative framework.¹⁴⁶ It lays duty on State to respect, protect, promote, and fulfil all rights, including

¹⁴¹ Mower, cited above at note 104, pp. 43-44.

¹⁴² CRC, General Comment No. 9, paras. 70-71.

¹⁴³ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, (3rd ed., 2007) (prepared by R. Hodgkin and P. Newell), p. 469. The Committee on the Rights of the Child also noted that '... insufficient attention has been given by States Parties and others to the implementation of the [right to play, leisure, recreation and sports]' (emphasis added). Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 34.

¹⁴⁴ Ibid.

¹⁴⁵ Id, p. 472.

¹⁴⁶ 'D. Olowu, 'The regional system of protection of human rights in Africa', in J. Sloth-Nielsen (ed.), *Children's rights in Africa: A legal perspective* (2008), p.17; C.A. Odinkalu, 'Analysis of paralysis or paralysis by analysis? Implementing economic, social, and cultural rights under the African Charter on Human and Peoples' Rights', *Human Rights Quarterly*, Vol.23 No.2 (2001), p. 340.

socio-economic rights.¹⁴⁷ Considering the African reality, it affirmed that the realization of socio-economic rights is a guarantee for the realization of other rights in Africa.¹⁴⁸ It is one of the general human rights instruments through which African CWD claim socio-economic rights.

Among other rights, the Charter provided for the right to enjoy the best attainable state of physical and mental health,¹⁴⁹ the right to work under 'equitable and satisfactory conditions' and to equal pay for equal work,¹⁵⁰ the right to education and to participation in cultural life,¹⁵¹ which are very crucial to CWD. Additionally, the right to special measures of protection for CWD is recognized.¹⁵² Furthermore, the Charter, in a unique and interesting vein, obliges State parties to protect the rights of the child, including CWD, as per international standards stipulated under various declarations and conventions.¹⁵³ Therefore, socio-economic rights provided in international human rights documents, such as ICESCR, CRC, CRPD and the Standard Rules have direct application for African CWD and the Charter rights can be interpreted according to such standards.¹⁵⁴

The Charter is criticized of including only scant provisions on socio-economic rights because it failed to expressly mention some prominent socio-economic rights, such as the right to food and water (or nutrition), social security, and housing.¹⁵⁵ Nonetheless, as observed in the famous decision of the African Commission on Human and Peoples' Rights: *SERAC v. Nigeria*, the Commission held that the internationally recognised socio-economic rights that are not explicitly recognised in the Charter should be regarded as implicitly included.¹⁵⁶

¹⁴⁷ Communication No. 155/96, *Social and Economic Rights Action Centre (SERAC) & Another v. Nigeria* (2001) (so called Ogoni case), AHRLR 60 (ACHPR 2001), para. 45. The Commission held that 'all rights, both civil/political and social/economic, generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights.'

¹⁴⁸ ACHPR preamble, para. 7.

¹⁴⁹ ACHPR, art. 16.

¹⁵⁰ ACHPR, art. 15.

¹⁵¹ ACHPR, art. 17.

¹⁵² ACHPR, art. 18(4).

¹⁵³ ACHPR, art. 18(3).

¹⁵⁴ For example, in *SERAC* case, the African Commission relied extensively on General Comments Nos. 3, 4, 7 and 14 of the ICESCR Committee to hold that the Federal Government of Nigeria had violated the rights to housing, food and health. See Olowu, cited above at note 146, p. 21.

¹⁵⁵ C. Heyns, 'The African regional human rights system: the African Charter', *Penn State Law Review*, vol. 108(2004), p. 5.

¹⁵⁶ See Communication 155/96, *Social and Economic Rights Action Centre (SERAC) & Another v. Nigeria* (2001), AHRLR 60 (ACHPR 2001), paras. 60 & 65: the Commission held that the presence of an implicit right

One of the salient features of the African Charter is that socio-economic rights it recognised are not explicitly made subject to the usual internal qualifiers that apply to such rights in most international instruments, such as the 'progressive realisation' formulation.¹⁵⁷ This is the reaffirmation of particular emphasis on the realization of socio-economic rights in Africa as a condition to effectively enjoy all other human rights.¹⁵⁸ It also enables African CWD to claim their rights without conditions attached.

The Charter established the African Commission on Human and Peoples' Rights¹⁵⁹ with two mandates of promotion and protection of human rights in Africa.¹⁶⁰ It set up two main types of communication procedures before the Commission: the inter-state communications and individual communications procedures.¹⁶¹ Under the individual complaint mechanisms CWD can lodge complaint to the Commission for alleged violation of rights directly or through representatives.¹⁶² This implies justiciability of the socio-economic rights entrenched in the Charter, at least, before the Commission since it is established as quasi judicial body.¹⁶³

2.6 African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC), adopted on 11 July 1990 and entered into force on 29 November 1999, is Africa's recognition of a unique and privileged position the child occupies in African society.¹⁶⁴ Modelled after the CRC and similar to its predecessor, the ACHPR, the ACRWC incorporates civil, political, economic,

to 'housing or shelter' in the Charter has to be deduced from the explicit provisions on health, property and family life in the Charter. Similarly, a right to 'food' has to be read into the right to dignity and other rights.

¹⁵⁷ Heyns, cited above at note 155.

¹⁵⁸ The African Charter expressly provided the importance of realization of socio-economic rights as a guarantee to enjoy all other rights and clearly recognized universality, indivisibility and interdependence of human rights. ACHPR, preamble, para. 7.

¹⁵⁹ ACHPR, art. 30.

¹⁶⁰ Interpretation of the Charter and performing tasks entrusted by Assembly of Heads of State and Government of the African Union are also mandated to the Commission in terms of articles 45(3) and (4) as complementary tasks in the promotion and protection mandate of the Commission.

¹⁶¹ The ACHPR does not use the term 'individual communications', opting rather for 'other communications' in article 55, to distinguish these from inter-State communications. The term 'individual communication', as it is used here, includes communications by single or multiple individuals, groups and NGOs.

¹⁶² For example, in *Purohit and Moore v The Gambia*, the African Commission entertained an issue related with health (mental illness) and found the Government of The Gambia in violation of article 16 of the ACHPR, which is on the right to enjoy the highest attainable state of physical and mental health, thereby making socio-economic rights justiciable. See *Purohit and Moore v The Gambia*, Communication No. 241/2001 (2003).

¹⁶³ F. Viljoen, 'Communications under the African Charter: Procedure and admissibility' in M. Evans and R. Murray, *The African Charter on Human and Peoples' Rights* (2008), p. 77.

¹⁶⁴ A. Lloyd, 'The African regional system for the protection of children's rights', in J. Sloth-Nielsen (ed.), *Children's rights in Africa: A legal perspective* (2008), p.35.

social and cultural rights of the child in a single instrument.¹⁶⁵ Olowu noted that this Charter emerged out of the feeling and as a response that the CRC ignored vital socio-economic and cultural realities of the African experience.¹⁶⁶

Unlike the CRC, the ACRWC adopts straight 18 position to define the child.¹⁶⁷ It, thereby, ensured all children under the age of 18 to be beneficiaries of all rights belonging to children. This indeed requires existence of effective birth registration system which is prevalently lacking in Africa.

In addition to recognizing socio-economic rights of children, including CWD, the ACRWC has specifically dealt with the rights of CWD and the special measures needed to be undertaken to realize their rights under article 13 albeit it used offensive terminology to describe them.¹⁶⁸ It acknowledges critical situations such children face in Africa due to various factors including socio-economic, cultural, traditional and developmental circumstances that necessitate special safeguard and care.¹⁶⁹

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), the treaty monitoring body of the ACRWC, affirmed the four general principles identified by the CRC Committee¹⁷⁰ to be 'core principles' that underpin, inform and guide all provisions of the ACRWC.¹⁷¹ Thus, implementation of socio-economic rights of CWD in Africa shall conform to these principles thereby securing at most safeguard to the rights of these vulnerable children.

¹⁶⁵ G.J. Naldi, 'Future trends in human rights in Africa: the increased role of the OAU?' in M. Evans and R. Murray, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000* (2002), p. 14.

¹⁶⁶ Olowu, cited above at note 146, p. 23; see also D. Olowu, 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child', *The International Journal of Children's Rights*, vol. 10(2002) p. 128. The CRC is sometimes understood by African States, as well as by some scholars of the West, as a Convention originated in the West (perhaps because there was obvious absence of participation from other regions in the early stages of the drafting of the CRC) and articulated the legal norms and values on children that had evolved in the West. P. Alston (ed.), *The Best Interests of the Child* (1994); N. Lewis, 'Human Rights, Law and Democracy in an Unfree World', in T. Evans (ed.) *Human Rights Fifty Years On: A Re-appraisal*, (1998), p. 77 cited in UNICEF, cited above at note 101, pp. 1-2, 7-8; R. Murray, *Human Rights in Africa: From the OAU to the African Union* (2004), p. 166.

¹⁶⁷ Though the CRC provides that every person under the age of 18 is considered a child, it leaves a margin of appreciation to States to decrease or increase the minimum age of being considered as a child. See CRC, art. 1.

¹⁶⁸ The ACRWC uses the now considered derogatory terminology, 'handicapped children', to refer to CWD.

¹⁶⁹ Lloyd, cited above at note 164.

¹⁷⁰ See section 2.4.

¹⁷¹ The Guidelines for Initial Reports of States Parties, adopted at the second session of the ACERWC, Nairobi, Kenya, 17-21 February 2003. Cmttee/ACRWC/2 II.Rev 2. Available at < http://www.africa-union.org/child/Guidelines%20for%20Initial%20reports%20_%20English.pdf > (last accessed March 5 2012).

Though article 13 is silent about education of CWD, the right to education is provided under article 11 of the ACRWC in a detailed manner. Similar with other treaties, it provides for free and compulsory basic education.¹⁷² The provision obliges States to take affirmative action and measures to realize this right with regard to vulnerable children, *inter alia*, CWD.¹⁷³ As per article 13(1), such children shall be provided with special measures that allow them to receive education that enables them to enjoy a full and decent life, obliging States to take the financial burden.¹⁷⁴ States are also obliged to provide mobility and access to public institutions and facilities including educational institutions.¹⁷⁵

Similar with the right to education, article 13 is silent about health care services and rehabilitation services for CWD. However, article 14 provided for the right to health and health services that these children also have legitimate claim to. The ACRWC does not contain the right of children to an adequate standard of living for the child's development or the right of parents to social security necessary for maintaining the standard of living of the child. Yet, article 14 encompasses rights to adequate standard of living by providing for the right to adequate nutrition and safe drinking water.¹⁷⁶

The Children's Charter has impliedly recognized the right to work and employment of children under article 15 even if it emphasised on protection of the children from child labor. The emphasis on child labor seems logical since most CWD in Africa engage in labor activities, often in the informal economy and house hold tasks, including menial tasks like begging. The State is obliged to protect them from exploitation and performing hazardous works that may interfere with their overall development.¹⁷⁷

The ACRWC has also recognized the right to leisure, recreation and participation in cultural and artistic activities of CWD.¹⁷⁸ In this regard States are obliged to encourage the provision of appropriate and equal opportunities for all children including CWD who are at high risk of

¹⁷² 'Basic education' as mentioned in ACRWC can be understood to mean 'primary education' since the provision is designed after the CRC and the provision of the ICESCR on education. Subsequent provisions under article 11 (3) also justify such assertion.

¹⁷³ ACRWC, art. 11(e).

¹⁷⁴ Lloyd, cited above at note 164, p. 39.

¹⁷⁵ ACRWC, art. 13(3).

¹⁷⁶ ACRWC, art. 14(c).

¹⁷⁷ ACRWC, art. 15 (2).

¹⁷⁸ ACRWC, art. 12.

being excluded from such participation owing to various factors. The Charter also provides for protection against harmful social and cultural practices that affect children's life or dignity, health or their normal development (the normal development of the child involves access to education, adequate standard of living, etc...) or that result in discrimination of children on the ground of disability.¹⁷⁹

Article 13 (3) of the ACRWC is notable for its provision of the right to physical accessibility. It guaranteed CWD with the right to mobility and access to public institutions and facilities. Such institutions and facilities could be related to public buildings for education, health, work, recreation and others, and services in these diverse areas.

2.7 Convention on the Rights of Persons with Disabilities

At the heart of the rights of PWD is the Convention on the Rights of Persons with Disabilities (CRPD) that was adopted on 13 December 2006 and entered into force on 3 May 2008, which is the first international human rights treaty of the 21st century. Since the Convention was intended to clarify, consolidate and strengthen the already recognized rights by previous human rights instruments in light of PWD and not provide new rights *per se*, it includes provisions on all facets of life, such as, education, health, employment, and accessibility.¹⁸⁰

The Convention is meant to respond to the invisibility of PWD within the existing human rights instruments that left them to be perceived as objects of charity rather than subjects of rights, which resulted in placing high emphasis on the impairment in approaching their issues and viewing them as sick and in need of cure (medical model).¹⁸¹ By considering them as holders of rights and acknowledging environmental barriers as causes of disability, it recognized the human rights of PWD in a recent, specialized and comprehensive instrument. In doing so, the Convention enshrines the 'social model' of disability.¹⁸²

¹⁷⁹ ACRWC, art. 21.

¹⁸⁰ See D. MacKay, 'The United Nations Convention on the Rights of Persons with Disabilities', Syracuse Journal of International Law and Commerce, vol. 34(2007), p. 323 & 328.

¹⁸¹ M. Schulze, A Handbook on the human rights of persons with disabilities: Understanding the UN Convention on the Rights of Persons with Disabilities (2010), p. 16.

¹⁸² Office of the High Commissioner for Human Rights (OHCHR), Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors (2010), p. 13.

2.7.1 General principles of the Convention

Article 3 of the CRPD provides for a set of overarching and foundational principles.¹⁸³ These principles guide the interpretation and implementation of the whole Convention, cutting across all issues.¹⁸⁴ They serve as a base for understanding and interpreting the rights of PWD, providing benchmarks against which each right is evaluated; and they are vital to monitoring the rights of PWD, including CWD.¹⁸⁵ In addition to being an interpretation threshold for other substantive rights in the Convention, some principles are reiterated as rights by themselves. The eight principles identified in the CRPD are discussed below.

2.7.1.1 Dignity

The principle under article 3 (a) revolves around dignity, encompassing about three interrelated elements, i.e. respect for inherent dignity, individual autonomy and independence of children (persons) with disabilities. ‘Inherent dignity’ refers to the worth of every person. It asserts the idea that irrespective of their disability, CWD shall be valued as worthy beings and their ideas and opinions shall be as worthy of consideration as those without disability. It requires that CWD shall be able to form and express their experiences and opinions without fear of physical, psychological or emotional harm. CWD are subject to violations of dignity when they are subjected to violence, prejudice, or disrespect because of their disability.¹⁸⁶

‘Individual autonomy’, though not defined in the Convention, means to be in charge of one’s own life and to have the freedom to make one’s own choices. It is an alternative term for self-determination.¹⁸⁷ It refers to the ability of CWD/PWD to do things on their own without the assistance of others and is linked to the right to be “free to make one’s own choices” which is highlighted in the preamble as being of “importance” to PWD.¹⁸⁸ Respect for the individual autonomy of CWD means that CWD have, on an equal basis with others, reasonable life

¹⁸³ Id, p. 17.

¹⁸⁴ OHCHR, cited above at note 182, p.14.

¹⁸⁵ Id, pp. 17 and 23.

¹⁸⁶ WHO, cited above at note 1, p. 9.

¹⁸⁷ Schulze, cited above at note 181, p. 45.

¹⁸⁸ CRPD, preamble (a). -

choices, are subject to minimum interference in their private life and can make their own decisions, with adequate support where required.¹⁸⁹

‘Independence of persons’ refers to the right of children (persons) with disabilities to be given the opportunity to actively participate freely in decision making process in matters that affect them, including those that indirectly concern them. It has conspicuous link with individual autonomy and respect of privacy and opinion.

2.7.1.2 Non-Discrimination

The principle of non-discrimination is a legal corner-stone of the CRPD as it is for all human rights treaties.¹⁹⁰ It guarantees that CWD/PWD enjoy all rights on an equal basis with others without any distinction, exclusion, or restriction based on their disability. It encompasses all forms of discrimination, direct or indirect, and the denial of reasonable accommodation. CWD might experience multiple forms of discrimination on the basis of age as well as disability; and the principle underlines the need to consider such mishaps to CWD. The principle of non-discrimination is reiterated in a standalone provision in the CRPD.¹⁹¹

2.7.1.3 Full and effective participation and inclusion in society

The principle of full and effective participation and inclusion in society guarantees that children (persons) with disabilities shall be recognized and valued as equal participants in their society. It recognizes that their issues have to be taken as integral part of the general issues of the society but not as special. Full inclusion of CWD can only be achieved where there is accessible, barrier free physical and social environment. Linked to the principle is universal design of products, environments, programmes and services, which recognized that the design phase should consider the needs of all members of society, to ensure that special adaptations are not required later on.¹⁹²

¹⁸⁹ OHCHR, cited above at note 182, p. 19.

¹⁹⁰ Schulze, cited above at note 181, p. 45.

¹⁹¹ See CRPD, art. 5.

¹⁹² See CRPD, art. 2.

2.7.1.4 Respect for difference

Respect for difference and acceptance of PWD as part of human diversity and humanity is a principle that calls for mutual understanding. It incorporates the idea that CWD, despite their difference from persons without disabilities, they enjoy same rights and dignity.¹⁹³ This is particularly important in African countries where CWD are considered to be less human deserving pity rather than rights; and that disability is believed to be curse on the children or their families. It guarantees inclusion of CWD in society without fear of stereotypes that are prevalent across many nations and allows them to claim and enjoy their socio-economic rights in an equal basis with others.

2.7.1.5 Equality of opportunity

The principle of equality of opportunity is a reminder of the opening paragraph of the Universal Declaration of Human Rights (UDHR), which provides that ‘all human beings are born free and equal in dignity and rights.’¹⁹⁴ It also reinforces the Standard Rules, which stress that the needs of each and every individual are of equal importance, that those needs must be made the basis for planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation, including CWD.¹⁹⁵ The principle calls for societal conditions that respect difference, address disadvantages and ensure that CWD fully participate in society in an equal basis with others. To achieve full equality of CWD, the principle requires provision of additional measures of assistance to support them in making decisions and exercising their rights.¹⁹⁶ It has a direct link to article 5 of the CRPD on equality and non-discrimination.

2.7.1.6 Accessibility

The principle of accessibility, requiring the removal of social/attitudinal, physical, communication, institutional, economic, and intellectual barriers to children (persons) with disabilities, encompasses various dimensions of accessibility and has the potential of being

¹⁹³ OHCHR, cited above at note 182, p. 22.

¹⁹⁴ Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, art. 1.

¹⁹⁵ For detail discussion of the Standard Rules, see section 2.3 above.

¹⁹⁶ See CRPD, art. 2; OHCHR, cited above at note 182, p. 19.

one of the core human rights principles.¹⁹⁷ It stresses that societal stigma against CWD must be removed; alternative means and mode of communications shall be provided to CWD; the physical environment has to be made accessible; and that CWD shall get various socio-economic services at an affordable cost. It also requires that institutional activities and practices should not contribute to the exclusion and discrimination of CWD.¹⁹⁸

2.7.1.7 Equality between men and women

The principle of equality between men and women addresses the issue of equality from gender perspective. Seeing it from the perspective of disability, all CWD, both boys and girls, should get an equal chance to enjoy their rights. In addition to disability and age, girl CWD may face additional discrimination due to gender. Consequently, the principle requires realization of both *de facto* and *de jure* equality of boy and girl CWD in the enjoyment of human rights, including socio-economic rights.¹⁹⁹

2.7.1.8 Respect for the evolving capacities of children with disabilities and their right to preserve their identities

This principle has a close link to the stand-alone provision on CWD in the CRPD.²⁰⁰ Without this principle, children would be excluded from protection because they do not have legal capacity, and thus autonomy, until a certain age.²⁰¹ According to this principle, CWD shall be able to participate and their views shall be respected and taken into consideration in accordance with their evolving capacities. It further recognizes the right of CWD to preserve their nationality, name, family relations and such other identities they may have.²⁰²

¹⁹⁷ Schulze, cited above at note 181, pp. 46-47.

¹⁹⁸ Ibid.

¹⁹⁹ CESCR General Comment No. 16, para. 7: *De jure* (or formal) equality and *de facto* (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.

²⁰⁰ See CRPD, art. 7.

²⁰¹ Schulze, cited above at note 181, p. 49.

²⁰² See CRC, art. 8 on identities.

2.7.2 Socio-economic rights of children with disabilities and the CRPD

In addition to putting a stand-alone provision for CWD under its article 7 by considering their particular vulnerability, the CRPD also emphasised the necessity of ensuring equal enjoyment of rights by such children and reaffirmed the obligations undertaken by States Parties to the CRC in this regard.²⁰³ Thus, socio-economic rights that the CRC and other core human rights instruments have recognized can be used to fill any gap that the CRPD may leave open, thereby ensure CWD a much stronger protection of their rights.²⁰⁴

All of the provisions in the Convention apply to CWD as well as to adults. The provisions are supposed to be read in conjunction with the general principles listed under article 3. By containing economic, social and cultural rights and civil and political in a single document, the CRPD has also reaffirmed the indivisibility and interdependence of all human rights.²⁰⁵ The realization of socio-economic rights recognized therein require States to incorporate approaches of incorporating disability sensitive measures into mainstream service delivery and ensuring the provision of necessary specialist services and special measures in a manner that facilitates the inclusion and participation of CWD within the general community.²⁰⁶

Articles 24 to 28 and article 30 of the CRPD deal with socio-economic rights.²⁰⁷ The right to education under article 24 is one of the socio-economic rights with particular implication for CWD. It requires primary education to be compulsory and available free to all; and secondary education to be available and accessible, with the provision of financial assistance when needed to secure lifelong learning opportunities.²⁰⁸ This should be seen critically since majority of CWD and mainly those with moderate, severe and profound impairments are far from enjoying access to any kind of school, let alone to regular education.²⁰⁹

²⁰³ CRPD, preamble(r): even if the preamble is not binding like the substantive provisions in the body of the Convention, the importance and gap filling role of international human rights instruments like the CRC is also provided under art. 4(4) of the CRPD.

²⁰⁴ The CRPD recalled the Core UN human rights instruments under its preamble (d).

²⁰⁵ The Preamble of the Convention has specifically provided for indivisibility, interdependence and interrelatedness of all human rights under paragraph C.

²⁰⁶ R. Kayess and P. French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities', *Human Rights Law Review* vol. 8 (2008) p. 31.

²⁰⁷ Id, p. 30.

²⁰⁸ CRPD, arts. 24 (2) (a), (b), (d) and (e).

²⁰⁹ UNICEF, cited above at note 8, p. 16.

Recognizing the right of CWD to education does not in itself guarantee that they receive it.²¹⁰ Even if general school system is open to them too, their attendance may be affected by rigid curricula, inaccessible buildings, lack of assistive devices, untrained teachers and many other factors.²¹¹ Due to such concern the CRPD provided for a requirement of reasonable accommodation of such children in the school milieu.²¹² Advancing the direction established in earlier documents such as the CRC and the Salamanca Declaration,²¹³ the CRPD reflects clear commitment to the principle of inclusive education to deal with the hindrances.

Experience in many countries has shown that many children who would previously have been automatically referred to special schools can be satisfactorily educated in mainstream schools, given support tailored to their individual needs, often through an individual educational programme.²¹⁴ The CRPD obliges States to ensure inclusive education system.²¹⁵ Inclusive education, in addition to the education, allows CWD to socialize themselves with other children and helps those that have no disability to understand that disability is just a different identity, not something that prohibits ones' normal functioning. Yet, designing effective mechanisms including early intervention programmes that guarantee to the child an early start, accessible educational system, and targeted funding, is necessary to achieve successful inclusive education. In particular, employment of qualified teachers and training of school staff in disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support CWD is invaluable.²¹⁶

²¹⁰ In Tunisia, for example, there is a national programme of inclusive education for CWD. However, the CRPD Committee noted its deep concern that, in practice, the inclusive strategy is not equally implemented in schools; rules relating to the number of children in mainstream schools and to the management of inclusive classes are commonly breached; schools are not equitably distributed between regions of the same governorate; many integrated schools are not equipped to receive CWD; and the training of teachers and administrators with regard to disabilities remains unsatisfactory. See Committee on the Rights of Persons with Disabilities, Consideration of reports submitted by States Parties under article 35 of the Convention, Concluding observations: Tunisia, CRPD/C/TUN/CO/1, 13 May 2011, paras. 30-31.

²¹¹ H. Jones, 'Disabled Children's Rights and the UN Convention on the Rights of the Child', *Disability Studies Quarterly*, Vol.20 (2000), pp. 1-3.

²¹² CRPD, art. 24 (2) (c).

²¹³ The Salamanca Statement and Framework for Action on special needs education, adopted by the world Conference on special needs education, 7-10 June 1994. Available at <http://www.unesco.org/education/pdf/SALAMA_E.PDF> (last accessed on March 11, 2012).

²¹⁴ Ibid.

²¹⁵ CRPD, art. 24 (1).

²¹⁶ CRPD, art. 24 (4).

The Convention, however, does not imply that CWD can never benefit from special education. It instead appears to recognize that students in 'special' schools are often segregated and marginalized, failing to enjoy lots of academic and recreational opportunities available to students in mainstream schools.²¹⁷ Therefore, if general education does not adequately satisfy the needs of individual child with disability, the child is not obliged to attend, i.e. can and must be able to attend special education. Yet, the CRPD obliges States to ensure effective individualized support measures to such children in environments that maximize academic and social development, consistent with the goal of full inclusion.²¹⁸

Article 25 provides for the right to health that is particularly directed towards ensuring non discriminatory access to comprehensive general and specialist health services in the local communities in which children (persons) with disabilities live in.²¹⁹ In addition to public health services, the State has the obligation to take measures to ensure that private service providers provide equal access to health care and health related services to CWD.²²⁰

Particular attention is needed to be given for CWD since many medical decisions made around the globe, both in developing and developed countries, have come to convey that the life of a child with a disability is considered to be worthless than that of a child who has no disability.²²¹ This violates their fundamental right to life and dignity of person. States are also obliged to take early identification and intervention measures and to prevent/minimize further disabilities of CWD and to provide special health services required by particular disabilities of the children.²²² The services given shall reach the whole territory of the State since most of the time such services are limited to urban areas due to which those CWD living in the rural areas are left unattended.²²³

²¹⁷ Hernandez, cited above at note 44, p. 505.

²¹⁸ CRPD, art. 24 (2)(c).

²¹⁹ Kayess and French, cited above at note 206, p. 30; Eide and Eide, cited above at note 64, para. 40, p. 13.

²²⁰ The State has the obligation to ensure that doctors and nurses have appropriate training, and that hospitals and other health institutions are available throughout the country. It has also the obligation to ensure privatization does not create a threat to the availability, accessibility, acceptability and quality of health services, facilities and goods to all children including CWD. Id, paras. 20 and 21, pp. 7-8.

²²¹ UNICEF, cited above at note 8, p. 15.

²²² CRPD, art. 25 (b).

²²³ Eide and Eide, cited above at note 64, para. 35, p. 12; The CRPD Committee raised its concern about the ignorance by a State of the existence of high risk of suffering multiple discrimination by CWD that live in rural areas and lack of data on their number and situation. Committee on the Rights of Persons with Disabilities, Initial report submitted by States Parties under article 35 of the Covenant: Peru, CRPD/C/PER/CO/1, 16 May

The State has the obligation to ensure that medical practitioners and other professionals meet appropriate standards of education, skill and ethical codes of conduct.²²⁴ The CRPD provides that basic and continuing education and training of doctors and health professionals should always include up-to-date information on childhood disability.²²⁵ Proper implementation of the right to health includes not subjecting CWD to clinical and pharmacological interventions that would be considered unacceptable if carried out on children without disabilities, and prevention of involuntary and/or harmful medical experiments.²²⁶

Article 26 made an extension of the traditional rights to health, work, education and social security to the right to habilitation and rehabilitation, which features for the first time in a core UN human rights treaty.²²⁷ Habilitation covers all efforts aimed at increasing the self-determination of a person born with a disability, whereas rehabilitation refers to such efforts in relation to disabilities/impairments acquired later in life.²²⁸

This right is directed to ensuring that CWD have access to developmental learning and rehabilitation programmes that will enable them to develop or maintain their maximum potential. Implementation of the right shall start at the earliest possible stage of the child with disability considering specific needs of the child.²²⁹ The State is obliged to promote the availability, knowledge and use of assistive devices and technologies designed for PWD.²³⁰

For CWD who choose to work, the right to work and employment is recognized under article 27. The right extends to inclusion in and accessibility of the work environment. It obliges

2012. [hereinafter CRPD, Peru, CRPD/C/PER/CO/1], para. 12; The CRC Committee also noted its concern that children living in rural areas suffer from discrimination, especially with regard to access to adequate social and health services and educational facilities. See Committee on the Rights of Child, Lebanon, CRC/C/LBN/CO/3, paras. 27 and 28. Out of such concern, the CRC Committee specifically requests States Parties to provide information on the distribution of general and primary health care services in the rural as well as the urban areas. CRC Committee, General Guidelines for Periodic Reports, UN Doc. CRC/C/S8, 1996, para.95.

²²⁴ Eide and Eide, cited above at note 64, para. 20, p. 7. The obligation further goes to the need to control by State the marketing of medical equipments such as hearing aids and other prosthetics by public or private bodies.

²²⁵ See CRPD, art. 26 (2).

²²⁶ According to art. 7 of the International Covenant on Civil and Political Rights, involuntary medical experimentation amounts to torture. The fact that torture is prohibited under all circumstances implies that subjecting CWD to medical experimentation without their free consent is also prohibited under all circumstances.

²²⁷ Kayess and French, cited above at note 206, p. 30.

²²⁸ Schulze, cited above at note 181, p. 145.

²²⁹ CRPD, art. 26(1)(a).

²³⁰ CRPD, art. 26(3).

States to take all appropriate measures to protect and promote enjoyment of this right in public as well as private working environment. Once again, this provision emphasises on inclusion and non-discrimination of CWD in all rights emanating from work and employment right. As per article 5(4) of the CRPD such children may be given preferential treatment to achieve *de facto* equality in employment without considering such treatment discrimination on the non disabled workers. This is in harmony with ILO Convention 159.²³¹

The CRPD provided for the right to an adequate standard of living and social protection under article 28.²³² The concept of social protection is arguably significantly broader than the traditional right to social security as provided in previous human rights instruments.²³³ The provision incorporates obligations in relation to poverty reduction, the provision of specialist disability services, and assistance with the extra costs of disability. The inclusion of obligation with regard to poverty is a critical one as there is clear indication that PWD are more likely to be caught in a vicious cycle of poverty and disability,²³⁴ each of which is both a cause and consequence of the other.²³⁵

One of the socio-economic rights that has particular importance to CWD is the right to cultural life, recreation, leisure and sports, which is recognized under article 30 of the CRPD. The provision primarily emphasised on accessibility of cultural and leisure materials and facilities and realization of equal participation of CWD in cultural and leisure programmes and events with other children, supported by accommodations and other positive measures

²³¹ Article 4 of ILO Convention 159 on Rehabilitation and Vocational Training of Persons with Disabilities of 1983 states: "special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers."

²³² Article 26 of the CRC has also provided for the right of the child to benefit from social security, including social insurance. This right is of particular importance to ensure that CWD should not suffer excessively from poverty of the parents, which is mostly the case with parents of CWD. Eide and Eide, cited above at note 64, para. 14, p. 5.

²³³ Kayess and French, cited above at note 206, p. 30.

²³⁴ Poverty may lead to disability, through malnutrition, poor health care, and dangerous working or living conditions. Disability may lead to poverty through lost earnings, due to lack of employment or underemployment, and through the additional costs of living with disability, such as extra medical, housing, and transport costs. WHO, cited above at note 1, p. 263.

²³⁵ K. Guernsey, M. Nicoli and A. Ninio, 'Convention on the Rights of Persons with Disabilities: Its implementation and relevance for the World Bank' (2007) p. 9, para. 4.29, available at <<http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0712.pdf>> (last accessed on March 7 2012).

necessary for them to effectively realise these rights. In addition to integrative participation with all members of the society, their specific cultural and linguistic identity is recognized.²³⁶

The CRPD emphasised on access to participation in play, recreation and leisure and sporting activities of CWD.²³⁷ It provided two different realms, i.e. 'mainstream' and 'disability-specific' realms, in which they participate in such activities.²³⁸ States must make sure that public as well as private service providers are accessible for CWD and that as much as possible the involvement of CWD in various activities, including those in the school system, are in the mainstream to ensure their effective integration and participation. Emphasis on sports is invaluable as it offers them opportunities for healthy living, social interaction, recreational participation, or elite competition.²³⁹

2.8 Conclusion

It is evident from the previous discussion on international human rights instruments that, in the past decades the world has taken measures to recognize socio-economic rights of CWD in general human rights instruments as well as instruments specific to the rights of the child and/or the rights of PWD. The instruments recognized particular vulnerability of CWD and the need to realize their socio-economic rights as a means to achieving their enjoyment of all human rights equally with other members of the society and thereby lead a life of dignity. However, empirical evidences show that actual realization of their rights is far from reality.

Effective realisation of the socio-economic rights of CWD needs more than just ratification of the human rights instruments. States must put forward various implementation mechanisms that could able them to achieve the purported goals of the instruments. The instruments discussed above have laid down different implementation measures that States have to take to ensure CWD a life of dignity. The next chapter analyzes the various implementation and monitoring measures that State Parties need to take to realize socio-economic rights of CWD as provided in the instruments.

²³⁶ CRPD, art. 30(4).

²³⁷ CRPD, art. 30(5)(d).

²³⁸ Roy, cited above at note 88, p. 6.

²³⁹ Hums, Moorman and Wolff, cited above at note 89, p. 48.

CHAPTER THREE

MEASURES FOR THE IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS OF CHILDREN WITH DISABILITIES UNDER INTERNATIONAL HUMAN RIGHTS FRAMEWORK

3.1 Introduction

As noted in chapter two, international legal framework that encompasses various human rights treaties to which Ethiopia is State party to, recognized diverse socio-economic rights of CWD. What measures of implementation the State needs to take to effectively realize the rights as dictated in the treaties is going to be the main focus of this chapter.

International law has recognized that civil and political rights and economic, social and cultural rights are universal, indivisible and interrelated.²⁴⁰ This attribute implies that one category of rights will have impact on the other category of rights. Thus, socio-economic rights may be implicit in, or constitute the basis for, realization of civil and political rights and vice versa. Moreover, violation of socio-economic rights will have negative implication for the enjoyment of civil and political rights.²⁴¹

Comparative analysis, however, shows that the effects of disability-based discrimination have been particularly severe with regard to socio-economic rights than civil and political rights, i.e. in the fields of education, employment, housing, transport, cultural life, and access to public places and services.²⁴² Consequently, giving due emphasis to implementation of socio-economic rights of CWD is of paramount importance to guarantee that their whole rights (economic, social and cultural rights as well as civil and political rights) are ensured.

²⁴⁰ Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 23 June 1993 UN Doc. A/Conf. 157/23 Part I para 5; J. Mapulanga-Hulston, 'Examining the justiciability of economic, social and cultural rights', *The International Journal of Human Rights*, Vol. 6(2002), p. 32.

²⁴¹ For example, when the right to health of a child with disabilities is violated, it will have conspicuous implication on his/her right to life.

²⁴² CESCR General Comment No. 5, para. 15.

When a State ratifies a treaty, it takes obligations under international law to implement it.²⁴³ Yet ratifying treaties by itself does not secure realization of the rights unless effective implementation measures are taken. The various human rights instruments that are concerned with the rights of CWD established diverse measures of implementation that are to be taken to achieve the purported goals of the instruments. This chapter make a descriptive analysis of implementation measures that need to be taken by State Parties to such treaties in legislative, administrative, judicial and other areas to realize socio-economic rights of CWD.

3.2 Measures to implement socio-economic rights of children with disabilities

Article 4 of the CRPD laid 'general obligations that State Parties need to undertake in the implementation of the Convention, which is affirmed by other treaties too: taking appropriate legislative, administrative and other measures are put as the main means through which the purpose of the Convention is achieved.²⁴⁴ The preamble obliges State Parties to undertake specific measures to ensure CWD enjoy their rights in an equal basis with others.²⁴⁵ Furthermore, the instruments provide for the implementation and monitoring aspects of the rights in specific provisions.²⁴⁶ The basic obligation of the State, thus, is the obligation to 'respect, promote, protect and fulfil' rights by both refraining from infringing rights and taking positive actions to implement rights acting in partnership with various other actors.²⁴⁷

3.2.1 Legislative measures

It is a basic principle of international law that a State party to an international treaty must ensure that its own domestic law and practice are consistent with what is required by the treaty. In some cases, the treaty may give general guidance on the measures to be taken. In

²⁴³ Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5, 27 November 2003 [hereinafter CRC, General Comment No. 5], para. 1.

²⁴⁴ CRC, art. 4; ACRWC, art. 1; ACHPR, art. 1; ICESCR, art. 2(1) laid similar obligation on State Parties; see also The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights of 6 June 1986, UN Doc. E/CN.4/1987/17, 1987, *Human Rights Quarterly*, vol. 9 (1987), principles 17, 18 and 19, pp. 122–135.

²⁴⁵ CRPD, Preamble para. (r); see also Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5, 27 November 2003, [hereinafter CRC General Comment No. 5] and CRC General Comment No. 9.

²⁴⁶ See CRPD, arts. 31–40; CRC, arts. 42–45; ACRWC, arts. 14(2), 42 iii (b), 43–45.

²⁴⁷ S. Goonesekere, 'Law reform and children's rights in plural legal systems: Some experiences in Sub-Saharan Africa' in UNICEF, cited above at note 101, p. 213.

others, the treaty includes specific stipulations. The legislature in the State party, thus, has a critical role in ensuring that the legislative measures required by the treaty are adopted.²⁴⁸ When a state concerned has a federal structure, it has to make sure that the legislative measures are taken and implemented at both federal and state level.²⁴⁹

It is widely agreed that the human rights of PWD must be ensured through general, as well as specially designed, laws, policies, and programmes.²⁵⁰ Particularly, CWD are vulnerable to exploitation, abuse and neglect and need special protection through legislative backup.²⁵¹ Doing so could be achieved in various ways, including through incorporation of the CRPD, CRC, ACRWC and other relevant treaties into domestic laws, harmonization of the laws with the Conventions, adoption of implementing legislations to the principal legislation accompanied by appropriate policies and programs and, giving due emphasis and providing provisions for the implementation of the rights of CWD in the national budgetary legislations.

3.2.1.1 Incorporation and Harmonization

Ratification is a means through which a state expresses its consent to be bound by the treaty obligation it has agreed to.²⁵² In some countries ratified treaties may automatically form part of national law and the rights entrenched therein would be directly enforceable by national courts and other implementing authorities²⁵³ while in others further legislative measure is needed to make them enforceable at the domestic level.²⁵⁴ However, ratification *per se* would

²⁴⁸ UN handbook for parliamentarians, cited above at note 10, p. 51.

²⁴⁹ CRPD, article 4(5). The reason behind this requirement is that in states that have federal structure the regions that constitute the federation enjoy some autonomy over legislative, administrative and judicial matters. Since international treaties are negotiated and ratified by the federal government, the federal government needs to make sure that the regions observe the treaties and oversee implementation of same in their legislative, administrative and judicial areas.

²⁵⁰ CESCR General Comment No. 5, para. 6.

²⁵¹ *Id.*, para. 32.

²⁵² Art. 2.1(b) cum art. 11 of Vienna Convention on the Law of Treaties, Done at Vienna on 23 May 1969, entered into force on 27 January 1980.

²⁵³ UN handbook for parliamentarians, cited above at note 10, p. 53. See also M.N. Shaw, *International law* (2008), pp. 131-133; V. Leary, *International Labour Conventions and National Law: the Effectiveness of the Automatic Incorporation in National Legal Systems* (1982).

²⁵⁴ Regarding application of provisions of international treaties at domestic level and the relationship of national and international law, there are two widely accepted but waning theories, i.e. monist and dualist theories. Monists argue that international law and domestic law together form a unified legal system, often characterized by the primacy of international norms in the unlikely event of conflict between the two. They also argue that municipal courts shall apply international law directly without the need for any act of adoption by the courts or transformation by the legislature. On the other hand, dualists argue that national and international legal systems regulate entirely different and parallel subject matters and have no room for conflict. They assert that

not guarantee effective implementation of treaty obligations. The application of international instruments at national level, mainly by judicial bodies, reckons the doctrine of incorporation as a beginning since it is, in principle, relevant to all sources of binding international law.²⁵⁵ This conforms to the principle that international law is subsidiary to national law²⁵⁶ and ensuring rights can best be served at the national level within the state's domestic machinery.

The instruments that recognize socio-economic rights of CWD require State Parties to take appropriate legislative measure as one of the means to realize the rights.²⁵⁷ Article 4 (1) (b) of the CRPD obliges States "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against [CWD]." This requires comprehensive review of all existing laws and related regulations,²⁵⁸ including customary laws,²⁵⁹ to determine the extent they are consistent with international treaties; harmonizing them with the treaties, and calls for reconsideration of customs and practices²⁶⁰ that are detrimental to the rights of CWD. The harmonization should be both external and internal.²⁶¹

international law is a horizontal regime for regulation of inter-state relations while national law is a vertical regime governing the relationship between the state and its inhabitants. Hence, domestic law prevails in matters of domestic nature and domestic jurisdiction may apply international law merely as an exercise of the authority of domestic law that adopted/transformed the rules of international law. For more on the monist-dualist divide See R. Higgins, *Problems and Process: International Law and How We Use It* (1995), p. 205; I. Brownlie, *Principles of Public International Law* (2008), pp. 31-33; UNICEF, cited above at note 101, p. 6.

²⁵⁵ C. Thomas, M. Oelz and X. Beaudonnet, 'The use of international labour law in domestic courts: Theory, recent jurisprudence, and practical implications', p. 257 available at <http://training.itsilo.org/ils/ils_judges/training_materials/english/Article%20Beaudonnet,%20Oelz,%20Thomas.pdf> (last accessed on April 9 2012) Citing R. Higgins, *Problems and process: International law and how we use it* (1993); I. Brownlie, *Principles of Public International Law* (1995), p. 32.

²⁵⁶ Viljoen, cited above at 163, p. 111.

²⁵⁷ CRPD, article 4(1)(b); CRC, article 4; ACRWC, article 1.

²⁵⁸ CRC General Comment No. 9, para. 17; Rishmawi, cited above at note 95, para. 64, p. 24.

²⁵⁹ See Burkina Faso, CRC/C/15/Add.193, para. 4.

²⁶⁰ ACRWC, art. 21(1); A.S. Kanter, 'The promise and challenge of the United Nations Convention on the Rights of Persons with Disabilities', *Syracuse Journal of International Law and Commerce*, vol. 34 (2006-2007), p. 314.

²⁶¹ External harmonization is the harmonization of existing domestic laws with international laws, treaties, standards and so on; while internal harmonization is the harmonization of domestic laws amongst themselves to avoid possible inconsistencies, contradictions or gaps. It includes harmonization of provisions of customary and religious laws with the provisions of national laws. The African Child Policy Forum, *In the Best Interests of the Child: Harmonisation of National Laws with the Convention on the Rights of the Child: Some Observations and Suggestions* (2007), (written by J. Doek), p. 2.

Basically a state party will have to amend or repeal existing laws or introduce new laws²⁶² in order to put the treaties into practice unless national laws already conform fully to the requirements of the conventions, which is a rare case. Such amended or new laws should be comprehensive and specifically address socio-economic rights of CWD.²⁶³ It is noted that harmonization must be an ongoing process beginning with revision of existing laws and continuing with the systematic checking of compatibility of any proposed legislation with the CRPD, CRC, ACRWC and other relevant instruments.²⁶⁴

To ensure the best legal protection and recognition to CWD it is critically important that their rights be enshrined in the supreme law of the state in consideration, i.e. in the national constitution or in basic laws.²⁶⁵ This can be done by making disability as a ground for non-discrimination and/or through explicit provision on CWD and their respective rights.

In case of incorporating the entire treaty into domestic law, it is useful to indicate in the relevant law that the provisions of the treaty are self executing, i.e. directly enforceable.²⁶⁶ However, even where a treaty is incorporated into domestic law in its entirety, this will not normally be sufficient to give full effect to its provisions; implementing legislation will still be required, including detailed legislation in specific areas, such as a law prohibiting discrimination against CWD in accessing basic services, including health care, education, leisure and cultural activities, and access to justice.²⁶⁷

²⁶² Ibid; according to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights failure to reform or repeal existing legislation that create barrier for the enjoyment of socio-economic rights amounts to violation through omission. Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, UN Doc. E/C.12/2000/13, 2000, *Human Rights Quarterly*, vol. 20 (1998), Guideline 15 (b), pp. 691–705.

²⁶³ Studies show that socio-economic rights are neglected and there is over-focus on using law in traditional areas that concern protecting children, including CWD, from exploitation and abuse. Socio-economic rights in regard to basic needs such as health, education, food, security and shelter continue to be perceived as discretionary and distinct administrative initiatives that fall into the realm of social policy rather than enforceable law. UNICEF, cited above at note 101, p. 5.

²⁶⁴ J. Sloth-Nielsen, 'Domestication of children's rights in national legal systems in African context: Progress and prospects' in J. Sloth-Nielsen (ed.), *Children's Rights in Africa: A Legal Perspective* (2008), p. 54; UNICEF, cited above at note 143, p. 53; CRC General Comment No. 5, para. 18.

²⁶⁵ ACRWC, article 1(1); UN handbook for parliamentarians, cited above at note 10, p. 54; CRC Committee, General Guidelines Regarding the Form and Content of Periodic Reports, UN Doc. CRC/C/58, 1996, para. 13.

²⁶⁶ The CRC Committee suggested that even where the CRC is allegedly 'self executing', national law must ensure justiciability of the provisions of the Convention, including socio-economic right, before courts and national authorities. CRC General Comment No. 5, paras. 6, 20 and 25.

²⁶⁷ UN handbook for parliamentarians, cited above at note 10, p. 54; CRC General Comment No. 5, para. 20.

Domestic legislations have to be inspired by the general principles of the CRPD that include the principles of respect for the evolving capacities of CWD²⁶⁸ and the right of CWD to preserve their identities.²⁶⁹ Furthermore, all legislations and sectoral laws (on education, health, and so on) shall be based on the four general principles of the CRC²⁷⁰ and ACRWC.

National laws that incorporate the CRPD and other instruments shall recognize socio-economic rights of CWD in an equal manner with civil and political rights²⁷¹ since the treaties recognized the interdependence and indivisibility of all rights than technical distinctions between the two categories of rights.²⁷² The legislations shall also be cautious about language used to refer to CWD/PWD since terminology used²⁷³ might affect the psychology of CWD and impact on their integration with the society and their self esteem.

The domestic legislations have to recognize heterogeneity of disabilities as provided in the CRPD so as to include all CWD under their protection.²⁷⁴ They must also be formulated in way they give due regard to special protection needed by them. In this regard the Committee on Economic Social and Cultural Rights noted that:

Children with disabilities are especially vulnerable to exploitation, abuse and neglect and are, in accordance with article 10 (3) of the Covenant (reinforced by the corresponding provisions of the Convention on the Rights of the Child), entitled to special protection.²⁷⁵

Adoption of a comprehensive Children's Act that has a separate section on CWD and their particular issues is an effective way of incorporating and harmonizing provisions related to the rights of CWD, including their socio-economic rights, that exist in a fragmented manner in various international treaties and national laws into an all-encompassing single statute.²⁷⁶

²⁶⁸ The language on the evolving capacities of CWD is derived from articles 5 and 14 of the CRC signalling in the absence of such a principle, children would be excluded from protection because they do not have legal capacity, and thus autonomy, until a certain age.

²⁶⁹ See CRPD, art. 3.

²⁷⁰ CRC General Comment No. 5, para. 22.

²⁷¹ A. Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (2008), p. 28.

²⁷² R. Kayess and P. French, cited above at note 206; UNICEF, cited above at note 143, cited above at note 22, p. 54.

²⁷³ Common terminologies that have long been used to describe persons with disabilities such as 'handicapped' and 'crippled' are now believed to be derogatory and degrading and such terminologies have to be eliminated.

²⁷⁴ CRPD, article 1.

²⁷⁵ CESCR General Comment No. 5, para 32.

²⁷⁶ The African Child Policy Forum, cited above at note 261, p. 15; in Tunisia, for example, there is a Child Protection Code that includes provisions on the rights of CWD, which provides that in addition to the other recognized rights of children, children with physical or mental disabilities shall have the right to medical care

This has advantages in availing easy reference to laws relating to the rights of CWD and for simple ongoing incorporation and harmonization of developments related to their rights.

The involvement of CWD, PWD and DPOs in the drafting of national legislations and policies is of paramount importance, just the way they were actively engaged in drafting the CRPD.²⁷⁷ They are believed to raise particular concerns of CWD in a stronger way than other drafters who may not have experiences relating to disability.

3.2.1.2 Adoption of appropriate policies and programmes

It will not always be possible or appropriate for the main legislature to set out in detail the rules required to ensure equal enjoyment of specific rights by CWD. The State has to adopt policy and regulatory initiatives, to comply with the many provisions requiring “appropriate measures” in areas such as physical accessibility, service delivery or information and communications technologies that assist daily lives of CWD. The policies and programmes shall target the whole territory of the State party, because it is observed that mostly reforms are implemented only in large urban areas.²⁷⁸ Yet, it might be appropriate to request the policies and programmes be presented to the legislature for information and/or approval.²⁷⁹

The CRPD Committee recommended that such policies and programmes shall ensure the right of CWD to express their own view.²⁸⁰ This reinforces one of the general principles in the CRC and ACRWC, i.e. respect for the views of the child.²⁸¹ Accordingly, CWD shall be given the opportunity to participate in the formulation and implementation of policies and

and treatment, and to sufficient education and habilitation to ensure their self-sufficiency and facilitate their active participation in society. See Committee on the Rights of Persons with Disabilities, Initial report submitted by States Parties under article 35 of the Covenant: Tunisia, CRPD/C/TUN/1, 14 July 2010 [hereinafter CRPD, Tunisia, CRPD/C/TUN/1], para. 60. The CRC Committee has also recommended States to consider adopting a comprehensive single law or code for children. See for example, CRC Committee, Concluding Observations: Libya, UN Doc. CRC/C/15/Add.209, 2000, para. 8 (a); Burkina Faso, UN Doc. CRC/C/15/Add.193, 2002, para. 8 (b).

²⁷⁷ See K.R. Rutherford, ‘The transnational effort for disability rights: The marriage of disability rights to human rights’ in N. Shawki and M. Cox (eds.), *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics* (2009) about participatory role of NGOs in the drafting of the CRPD.

²⁷⁸ Sloth-Nielsen, cited above at note 264, p. 69.

²⁷⁹ UN handbook for parliamentarians, cited above at note 10, p. 55.

²⁸⁰ Committee on the Rights of Persons with Disabilities, Concluding observation of the Committee on the report submitted by Spain, CRPD/ESP/CO/1 19–23 September 2011 para 24(b).

²⁸¹ Committee on the Rights of the Child, General Comment No. 12, CRC/C/GC/12, 20 July 2009 [hereinafter CRC General Comment No. 12], para 2; Quinn and Degener, cited above at note 40, pp. 193-194. See also section 2.4.1.4 above.

programmes taking into account their respective maturity. This would enable to inculcate issues that affect the interest of CWD from their own perspective.

3.2.1.3 Budgeting for children with disabilities

Children and their specific issues in the political agenda tend to be overlooked mainly in budgets and public spending.²⁸² The UN General Assembly Special Session on Children called for establishment of national goals for children incorporating targets for reducing disparities, including those between children with and without disabilities. This requires clear budget allocations that permit these policies to be implemented effectively and promote equity at all levels.²⁸³ Therefore, budgetary legislation of a state party should mainstream CWD so as to enable effective implementation of their rights.²⁸⁴ The specific mention of them in the CRPD, CRC as well as the ACRWC can imply the need for taking such action.

Depending on available resources, this may be progressive allocation, a gradually increasing budget shall reach the level required for full implementation of the rights of CWD in the short run.²⁸⁵ This does not mean limitation of resources can serve as justification not to budget for implementation of the rights of CWD at a given budget year.²⁸⁶ Progressive allocation is only to mean relative allocation of the available budget while budgeting for various activities and that the amount increases as more resources are availed until an amount necessary for full implementation of the rights of CWD is allocated.

The reference to 'maximum available resources' create obligation of immediate effect to start taking measures that are within the means of the State, and to progressively advance to full realization of the rights when additional resources become available.²⁸⁷ On the other hand, as vulnerable groups, the needs of CWD must be given priority during structural adjustment

²⁸² Mendez, cited above at note 101, p. 116.

²⁸³ UNICEF, cited above at note 8, p. 34.

²⁸⁴ The allocation of resources and budgeting is essential not only to deliver services, but also for promulgation and implementation of laws, policies and plans. Rishmawi, cited above at note 95, para. 65, p. 25.

²⁸⁵ The African Child Policy Forum, cited above at note 261, p. 6.

²⁸⁶ Rishmawi, cited above at note 95, para. 70, p. 27.

²⁸⁷ Eide and Eide, cited above at note 64, para. 42, p. 15. States have specific and continuing obligation to move as expeditiously and effectively as possible towards full realization of the rights, including socio-economic rights of CWD.

programs and spending cuts, and the State has to minimize the negative impacts of such measures on their interests, particularly their socio-economic rights.²⁸⁸

Considering the obvious problem that most government departments have no idea what proportion of their budget is spent on children or what impact their expenditure has on children, the CRC Committee noted that:

No state can tell whether it is fulfilling children's economic, social and cultural rights 'to the maximum extent of ... available resources' ... unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly... Budgetary decisions shall be made with ... that children, including in particular *marginalized and disadvantaged groups of children*, are protected from the adverse effects of economic policies or financial downturns.²⁸⁹ [Emphasis added]

The fulfilment of basic rights entails costs and, children's rights and welfare, especially in Africa, is intrinsically linked to public budgets. Yet many African governments are not living up to their commitments.²⁹⁰ Thus, this trend has to be improved and a system where effective and efficient utilization of the budget, that mainstreams CWD shall be established.

One thing worth noting is certain duties of States with regard to socio-economic rights, such as non-discrimination of CWD, create duties of immediate effect, i.e. they do not depend on the availability or scarcity of resources and hence not subject to progressive realization realm.²⁹¹ The duties may include taking appropriate legislative, judicial, administrative, financial, educational and social measures.²⁹² Accordingly, any state action that discriminates

²⁸⁸ CRC General Comment No. 5, para. 52; UNICEF, cited above at note 143, p. 63; Rishmawi, cited above at note 95, para. 82, p. 31.

²⁸⁹ CRC General Comment No. 5, para. 51.

²⁹⁰ The African Child Policy Forum, *The African Report on Child Wellbeing: Budgeting for Children* (2011), p. 1.

²⁹¹ Rishmawi, cited above at note 95, paras. 87-88, p. 33-34. In addition to obligations that are immediate, jurisprudential development on socio-economic rights reflects that progressive realization itself does not allow for retrogressiveness, stand-still, or indefinite postponement of implementation.

²⁹² The CESCR Committee noted that resource scarcity does not relieve states of minimum obligations in respect of implementation of socio-economic rights. Therefore, it is apparent that notwithstanding the relative wealth of a given state, all States have accepted the duty that under all circumstances to observe minimum core obligations. In many cases, minimum core obligations can be subject to compliance without the utilisation of major resource diversions. This implies that essentially cost-free measures can be undertaken by States resulting in the enjoyment of certain socio-economic rights. This could easily enable one to distinguish between the State's inability and unwillingness to comply with its legal obligations. See CESCR General Comment No. 3, paras. 3, 4, 5 and 7; Maastricht Guidelines on violations of Economic, Social and Cultural Rights 26 January 1997, guidelines 9 and 10; V. Dankwa, C. Flinterman and S. Leckie, 'Commentary on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights guidelines', *Human Rights Quarterly*, vol. 20 (1998), pp. 9-10.

CWD or deliberate exercise of barriers against their enjoyment of socio-economic rights or failure to take actions to realize socio-economic rights of CWD would result in violation of the duties of immediate effect.

3.2.2 Administrative measures

The various treaties on socio-economic rights of CWD established ‘administrative measures’ as one of the ways through which State Parties realize the rights within their respective jurisdictions. The measures can be carried out in numerous forms.

3.2.2.1 Establishing focal points tasked with implementation of the rights of children with disabilities

Implementing rights does not only require appropriate legislation and policies; it also requires financial resources and institutions that have the capacity to both implement and monitor those laws and policies. In fact, article 33 of the CRPD requires States Parties to establish specific mechanisms to strengthen implementation and monitoring of, *inter alia*, socio-economic rights of CWD at the national level.²⁹³ This requires setting up new institutions or departments within the already existing institutions that are mandated to specifically deal with such issues concerning CWD.

The rights of CWD are often most effectively promoted when disability issues do not come under the responsibility of a single ministry²⁹⁴ though a ministry that coordinates the activities of different ministries is required. Mainstreaming of disability issues into existing programmes and throughout established sectors, such as health, education and social welfare ministries, might still involve establishing within them focal points for disability to ensure that CWD are included in all programmes.²⁹⁵ Without this, disability issues in general and the issues of CWD in particular are in danger of being submerged and overlooked.

²⁹³ UN handbook for parliamentarians, cited above at note 10, p. 93.

²⁹⁴ Human Rights Council, ‘Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities’, (2009) A/HRC/13/29 p. 9 cited in E. Flynn, *From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities* (2011), p. 68.

²⁹⁵ UNICEF, cited above at note 8, p. 32.

Focal points could be a section or a person within a ministry or cluster of ministries; it could be an institution, such as a disability commission, or a particular ministry, such as a ministry for human rights or a ministry for PWD, or a combination of the three.²⁹⁶ For example, a focal point could be established in a ministry of health to oversee health related issues of CWD, in a ministry of education to oversee education related issues of CWD and the like. Even within the focal points that generally deal with the rights of PWD, particular emphasis has to be given for CWD, like by assigning a desk exclusively mandated to oversee implementation of the rights of CWD, including socio-economic rights.

3.2.2.2 Establishing independent national human rights institutions

For effective implementation of treaty obligations, establishing strong national human rights institutions (NHRI) that are tasked with the follow up of the implementation towards a goal of mainstreaming the promotion and protection of the rights of the child,²⁹⁷ and specific departments within these institutions that exclusively deal with the rights of CWD is invaluable.²⁹⁸ Albeit it remains unclear what duties a given State party will allocate to the NHRI, they are crucial actors in domestic implementation of the treaties.²⁹⁹

Irrespective of the degree of commitment of national governments to ensuring the rights of CWD, it is important that national developments are promoted and monitored through NHRIs such as commissioners or a children's ombudsperson.³⁰⁰ Procedures must also be in place to assess human rights violations and access remedy.³⁰¹ These institutions may be effectively supported by active involvement of organizations of PWD (DPOs).

²⁹⁶ UN handbook for parliamentarians, cited above at note 10, p. 92.

²⁹⁷ Committee on the Rights of the Child, General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November 2002 [hereinafter CRC General Comment No. 2], para 7.

²⁹⁸ See Paris Principles, General Assembly resolution 48/134 of 20 December 1993. Available at <http://www2.ohchr.org/english/law/parisprinciples.htm> (last accessed January 30 2012). For detailed discussion on the role of national human rights institutions see S. Cardenas, 'Sovereignty transformed? The role of national human rights institutions' in Shawki and Cox, cited above at note 277; J.E. Lord 'NGO participation in human rights law and process: Latest developments in the effort to develop an international treaty on the rights of people with disabilities', *ILSA Journal of International and Comparative Law*, vol. 10(2003-2004).

²⁹⁹ J.E. Lord and M.A. Stein, 'The domestic incorporation of human rights law and the UN Convention on the Rights of Persons with Disabilities', *Washington Law Review*, vol. 83 (2008), p. 464.

³⁰⁰ CRC General Comment No. 2, para. 1.

³⁰¹ *Id.*, paras. 13-14.

Yet the effectiveness of NHRI depends on the level of independence and pluralism they are guaranteed.³⁰² Additionally, a clear and broad mandate they are assigned with in relation to promotion and protection of human rights, the infrastructure, in particular adequate funding, they are provided with and their ability to provide remedies in addition to investigation and monitoring of possible violations of rights define the extent to which they are efficient.³⁰³ To assure this, they need to apply for accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to be assessed for their compliance with the Paris Principles.³⁰⁴

The situation of CWD is now being monitored through a variety of mechanisms as can be observed from States Parties reports on progress regarding the rights of CWD in reporting to the Committee on the Rights of the Child, and these issues are addressed in the comments made by the Committee on those reports.³⁰⁵ Taking lessons from the State reports and, concluding observations, recommendations and comments of the CRC Committee, and other bodies provides priceless opportunity for other states to learn measures they need to take to ensure socio-economic rights of CWD in accordance with their treaty obligations.

3.2.2.3 Administrative remedies

The right to an effective remedy for violations of rights is an indispensable tool to ensure that CWD enjoy a life of dignity in an equal basis with others. The issue of remedy, however, should not always be limited to judicial remedy since administrative remedies can serve the same, if not better, remedy by reducing various costs and litigation procedures of judicial organs when they are properly administered. The ICESCR Committee noted that:

The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Convention in

³⁰² Paris Principles on national institutions for the promotion and protection of human rights requires guarantees of independence and pluralism in composition of NHRIs and requires from government departments an advisory role only. See Principle 4, Paris Principles, General Assembly resolution 48/134 of 20 December 1993.

³⁰³ Paris Principles, *ibid*.

³⁰⁴ The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is a representative body of national human rights institutions from all parts of the globe. <<http://www.hrc.co.nz/international-human-rights-new/national-human-rights-institutions/organisation-of-nhris>> (last accessed on October 15 2012).

³⁰⁵ UNICEF, cited above at note 143, p. 35.

their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective.³⁰⁶

There should, however, be the right to judicial appeal from administrative decisions in case where full effective remedy cannot be effected without the involvement of the judiciary, or where judicial remedies are inevitably required.³⁰⁷ Some issues, like those concerning non-discrimination may need the involvement of judiciary as indispensable, in which case, they should be referred to judicial procedures rather than being handled by administrative bodies.

3.2.2.4 Adjusting accessibility of various services

Accessibility is an overarching principle and a right in itself in the CRPD.³⁰⁸ It is a prerequisite to ensure the inclusiveness of all human rights, which is the number one goal of the Convention. The issue of accessibility is directly related to reasonable accommodation, and limitation in accessibility amounts to discrimination, hence violation of rights.³⁰⁹ Its direct linkage to the provisions of discrimination, which are viewed as civil and political rights, makes it an obligation of immediate effect though, practically speaking, some aspects of it will only be realized progressively. The CRC Committee addressed the issue of accessibility from the perspective of CWD as:

The physical inaccessibility to public transportation and other facilities including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of CWD as well as markedly compromising their access to services, including health and education. And although this provision is mostly realized in developed countries, it remains largely un-addressed in the developing world.³¹⁰

The Committee, thus, urged all States Parties to set out appropriate policies and procedures that make public transportation safe, easily accessible and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child with disability.³¹¹ Similar measures shall also be taken with regard to education, health and other

³⁰⁶ CESCR General Comment No. 9, para. 9.

³⁰⁷ Office of the United Nations High Commissioner for Human Rights And Reports of the Office of the High Commissioner and the Secretary-General, 'Thematic Study: Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities', A/HRC/10/48, 10th Sess., Jan. 26, 2009 57; see also CESCR General Comment No. 9, para. 9.

³⁰⁸ See CRPD, article 3(f) and article 9.

³⁰⁹ Schulze, cited above at note 181, p. 76.

³¹⁰ CRC General Comment No. 9, para. 39.

³¹¹ Ibid.

social services. Public buildings³¹² should also comply with international specification for access of CWD.³¹² African states, in particular, need to give due emphasis on this area as most of them have not addressed it yet.³¹³

Adjustments must aim at integrating CWD with the society.³¹⁴ Emphasis of Article 23 of the CRC on welfare rather than rights is open to be used by those who wish to promote segregation over inclusion.³¹⁵ State Parties, hence, shall ensure that CWD are included in the community and not institutionalized unless the best interest of the child requires so, which can mean at one stage special protection and at another respect for the child's autonomy and integration.³¹⁶ The CRC Committee noted that:

Early childhood is the period during which disabilities are usually identified and the impact on children's well-being and development recognized. Young children should never be institutionalized solely on the grounds of disability. It is a priority to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realization of their rights. Young disabled children are entitled to appropriate specialist assistance, including support for their parents (or other caregivers)... and be treated with dignity.³¹⁷

Rule 5 of the Standard Rules on Accessibility³¹⁸ requires of states introduction of programmes of action to make the physical environment accessible and undertaking measures to provide access to information and communication. This measure encompasses a range of areas that CWD shall be able to access to enjoy their rights, including socio-economic rights.

³¹² Ibid.

³¹³ Most African states, including Ethiopia, are developing states and they need to work more to realize socio-economic rights of CWD. CRC General Comment No. 9, para. 39.

³¹⁴ CRC, article 23(1).

³¹⁵ Jones and Marks, cited above at note 90, p. 184. Though the CRC emphasised on welfare of CWD, they should get the welfare while they are still included in the community, not in a segregated manner. The reason for emphasis on welfare could be that non-discrimination principle is not enough in itself to provide for equality of CWD and anti-discrimination measures have done little to alleviate structural disadvantage. See M. Thornton, *The Liberal Promise* (1990), cited in Jones and Marks, cited above at note 90, p. 184. Note that art. 23 (1) of the CRC is clear on the need to inclusion.

³¹⁶ M. Corker and J.M. Davis, 'Disabled children: (Still) invisible under the law' in J. Cooper (ed.), *Law, Rights and Disability* (2000), p. 221.

³¹⁷ Committee on the Rights of the Child, General Comment No. 7: Implementing rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006[hereinafter CRC General Comment No. 7], Para. 36.

³¹⁸ For detailed discussion on the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the status of the instrument, see section 2.3 above.

3.2.3 Judicial protection of socio-economic rights of children with disabilities

One of the measures States need to undertake to effectively realize the rights of CWD is through availing effective judicial protection and remedies for violation of rights enunciated in various Conventions, in national laws and/or other relevant legislations.³¹⁹

To this end, the judicial system must first be accessible for CWD and their representatives.³²⁰ Article 12 of the CRC recognizes that the judicial process has to include CWD as active participant in the whole procedure. As children, the State needs to ensure the availability of effective and child friendly procedures.³²¹ It is important that they utilize free legal aid in all type of cases, civil or criminal, because usually they cannot afford service of a lawyer due to poverty,³²² which is linked with disability in a vicious cycle.³²³

Challenges might be posed regarding justiciability of socio-economic rights³²⁴ as many human rights instruments put the qualification that they shall be implemented 'progressively', 'to the maximum extent of available resources' and the like.³²⁵ Yet treaties like the CRC,

³¹⁹ Across many nations, the aspect of children's access to justice and implementing agencies, including the courts, through the development of legal assistance programmes, accessible complaints mechanisms and child-friendly court procedures has not received adequate attention. UNICEF, cited above at note 101, p. 29; Rishmawi, cited above at note 95, paras. 125 and 127, pp. 49 and 50.

³²⁰ CRPD, article 13.

³²¹ CRC General Comment No. 5, para. 24.

³²² S. Ortoleva, 'Inaccessible justice: Human rights, persons with disabilities and the legal system', *ILSA Journal of International and Comparative Law*, vol. 17(2011), pp. 300-301; L. Clements and J. Read, *Disabled People and European Human Rights: A Review of the Implications of the 1998 Human Rights Act for Disabled Children and Adults in the UK* (2003), p. 32.

³²³ In *Purohit and Moore v The Gambia* the African Commission on Human and Peoples' Rights found the Government of The Gambia in violation of articles 2 and 3 of the ACHPR, which are on the standards of non-discrimination and equal protection of the law, since the Government limited legal aid to persons charged with Capital Offences and failed to provide legal aid for persons from poor background such as mentally ill. See *Purohit and Moore v The Gambia*, Communication No. 241/2001 (2003), paras. 35, 37, 38, 52, 85.

³²⁴ There has been a continued debate among scholars regarding justiciability of socio-economic rights over years. This paper will not join that debate. For further reading on the issue see C. Courtis, 'Standards to make ESC rights justiciable: A-Summary Exploration', *Erasmus Law Review*, vol. 2 (2009); C. Courtis, 'The Right to Food as Justiciable Right: Challenges and Strategies', *Max Planck Yearbook of United Nations Law*, vol. 11 (2007); K. Henrard, 'Introduction: The Justiciability of ESC Rights and the Interdependence of all Fundamental Rights', *Erasmus Law Review*, vol. 2 (2009); P. Hunt, *Reclaiming social rights: International and Comparative Perspectives* (1996); S. Leckie, 'Another Step towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights', *Human Rights Quarterly*, vol. 20 (1998); A. Eide and A. Rosas, 'Economic, social and cultural rights: a universal challenge' in A. Eide et al. (eds.), *Economic, Social and Cultural Rights: A Textbook* (2nd ed. 2000); A. Eide 'Economic, Social and Cultural Rights as Human Rights' available at <<http://www.wcl.american.edu/humright/hracademy/documents/EideClass1EconomicandSocialRightsAsHumanRights-AsbjornEide.pdf?rd=>1>> (last accessed on 16 November 2011).

³²⁵ The ICESCR Committee has warned about potential misinterpretation of the 'progressive realization' formulation. It noted such formulation is a necessary flexibility device, reflecting the realities of the real world

which put same kind of qualifications, contain provisions that are not strictly delineated as civil and political rights on the one hand and economic, social and cultural rights on the other. It is clear that almost all articles include elements which amount to civil or political rights.³²⁶ In fact, the CRC Committee underlined that socio-economic rights must be justiciable and to enable remedies for non-compliance with such rights to be effective, domestic laws must set out entitlements in sufficient detail.³²⁷ The African human rights system further established justiciable socio-economic rights within the African states.³²⁸

Effective protection of rights requires strong judicial activism as it is quite necessary in laying firm bases for the implementation of socio-economic rights by various stakeholders.³²⁹ Of course, such activism is only possible where judicial protection of the rights is provided

and the difficulties involved for any country in ensuring full realization of socio-economic rights and shall be read in light of the *raison d'être* of the Covenant, which is to establish clear obligations for States Parties in respect of the full realization of the rights. It thus, imposes an obligation to move as expeditiously and effectively as possible towards that goal: see CESCR General Comment No. 3, para. 11.

³²⁶ Rishmawi, cited above at note 95, paras. 40-43, pp. 16-17; UNICEF, cited above at note 143, pp. 47 and 54.

³²⁷ CRC General Comment No. 5, paras. 6, 24 and 25.

³²⁸ The ACHPR brought a new, and often seems to be difficult, normative framework in the enforcement of ESCRs providing them without 'claw back clauses' and obligations not subject to 'progressive realization' requirement, which obliges State Parties to assume obligations of immediate effect: See S. Ibe, 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria', *African Human Rights Law Journal*, vol. 7 (2007), p. 229. ACHPR, art. 45: the African Charter specifically provides for justiciability of ESCRs before the African Commission on Human and Peoples' Rights; in *SERAC & Another v. Nigeria* the African Commission found Nigeria in violation of several socio-economic rights and reaffirmed indivisibility and interdependence of human rights. In this case the Commission held that:

'... all rights – both civil and political rights and social and economic rights – generate at least four levels of duties for a State ... , namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts.'

see *Social and Economic Rights Action Centre (SERAC) & Another v. Nigeria* (2001), *African Human Rights Law Review*, (ACHPR 2001), p. 60. In *Purohit and Moore v. The Gambia* the African Commission found the government of The Gambia in violation of article 16 of the ACHPR, which is on the right to health, see *Purohit and Moore v. The Gambia*, Communication No. 241/2001 (2003), para. 85. The ACRWC has also contained socio-economic rights provisions that are put in equal footing with civil and political rights that are justiciable.

³²⁹ In this regard it is possible to evaluate the jurisprudence of the Indian Supreme Court where it applied the integration approach of civil and political rights with economic, social and cultural rights and treated socio-economic rights as justiciable rights. For example, in *Paschim Banga Khet Majoor Samity and others v. State of West Bengal and another*, the Indian Supreme Court ruling on the basis of the constitutional right to life, decided that it encompasses access to primary health care, at least in cases of emergency. Similarly, the court in numerous cases interpreted the ESCRs, such as right to education and right to food, as stemming from the fundamental right to life as provided under article 21 of the Indian Constitution. See Supreme Court of India, *Paschim Banga Khet Majoor Samity and others v. State of West Bengal and another* (1996) 4 SCC 37, AIR 1996 Supreme Court 2426, June 5, 1996; Supreme Court of India, *Unni Krishnan JP v. State of Andhra Pradesh*, 1 SCC (1993), 645; Supreme Court of India, *Peoples Union for Civil Liberties (PUCL) v. Union of India and Others*, WP (Civil) No 196/2001 cited in Ibe, cited above at note 328, p. 234. Similarly, the South African Constitutional Court applied the test of reasonableness to find the Government of South Africa in violation of the right to housing, hence making it a justiciable right. See Constitutional Court of South Africa, *The Government of the Republic of South Africa and others v. Irene Grootboom and others*, 2001 (1) SA 46 (CC), October 4, 2000.

by legislation. Such legislation, however, should not only provide CWD with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable CWD to live an integrated, self-determined and independent life.³³⁰

Judicial protection of the rights of CWD could not be realized if those who are working in the field of administration of justice, including judges and lawyers, and other staffs do not have the knowhow to handle CWD and their issues.³³¹ This obliges states to provide them appropriate trainings on how to approach and deal with protection of the rights of CWD.

3.2.4 Monitoring the treaties and nature and scope of problems within the state

All legally-binding international human rights treaties have a monitoring component, the procedures of which promote constructive dialogue with States to ensure that the treaties' provisions are implemented effectively. The CRPD provides for monitoring at both national and international levels.³³²

At national level the State party has to strengthen focal points that handle matters relating to PWD and desks that assume matters of CWD. In this regard it is recommended that everything possible be done to facilitate establishment of national coordinating committees, or similar bodies, to serve as a national focal point on disability matters in all ministries and at different administrative levels to ensure inter-sectoral coordination.³³³ In doing so, Governments should take account of the 1990 Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies.³³⁴ Organizations of disabled persons (DPOs) should always be fully represented on an equal basis³³⁵ and raise the voice and interests of CWD in addition to their general contributions. Strengthening independent NHRI, further promotes the monitoring activities. Moreover,

³³⁰ CESCR General Comment No. 5, para 16.

³³¹ CRPD, art. 13(2); de Alwis, cited above at note 26, p. 310. Including a course on the rights of person with disabilities in law school curriculum is also a good tool to have lawyers that have comprehensive expertise on this area.

³³² CRPD, arts. 33-37; see also CRC, arts. 43-45 for implementations mechanisms and procedures at international level.

³³³ CESCR General Comment No. 5, para 14; UNICEF, cited above at note 143, p. 33.

³³⁴ CESCR General Comment No. 5, para 14.

³³⁵ CRPD, article 33(3).

parliament, NGOs and civil society organizations (CSOs) shall also be involved in monitoring implementation.³³⁶

National Laws that require government departments and even private organizations to report annually on the steps they have taken to promote the rights of CWD might be designed.³³⁷ Reporting requirements might cover a range of issues, including: the steps taken to ensure that the rights of CWD are being guaranteed in practice; success in raising the percentage of CWD in inclusive education; or success in improving various social services to CWD who might have special needs. Parliaments play major role in monitoring by evaluating reports on implementation measures and consideration of recommendations of treaty bodies.³³⁸

Gathering data and statistics to ensure an accurate assessment of the conditions of CWD and design effective implementation mechanisms is of paramount importance.³³⁹ Accordingly, disaggregated nationwide statistical data on CWD should be collected. To ensure confidentiality and dependability of information collected the process of gathering and maintaining the information need to comply with legally established safeguards and internationally accepted norms. In such a process, there is a need to consider the UN Fundamental Principles of Official Statistics³⁴⁰, the Standard Rules and the recommendations of the CRC Committee's day of general discussion on CWD held on 6 October 1997.³⁴¹ The data, then, has to be made accessible to CWD and others.³⁴²

Monitoring also implies the right of individuals to complain and seek a remedy. Monitoring mechanisms foster accountability and, over the long term, strengthen the capacity of States

³³⁶ Rishmawi, cited above at note 95, para 123, p. 48.

³³⁷ UN handbook for parliamentarians, cited above at note 10, p. 68.

³³⁸ For example, in South Africa, all national reports to international monitoring bodies have to be debated in parliament, and parliament must ensure that the reports contain a wide variety of views, including those of civil society. Parliament thus holds debates and public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens' groups. In South Africa, members of parliament are included in the national delegations that participate in the proceedings for treaty bodies, thus, ensuring that they have a good understanding of the subsequent recommendations. Parliament also plays a leading role in making sure that those recommendations are put into effect at the national level. See Inter-Parliamentary Union, Parliament and Democracy in the Twenty-first Century: A Guide to Good Practice (2006).

³³⁹ The CRPD put a clear obligation on States Parties to collect statistics and data on CWD. CRPD, art. 31.

³⁴⁰ The United Nations Statistical Commission, Special Session of 11-15 April 1994 accessible at <http://unstats.un.org/unsd/methods/statorg/FP-English.htm>.

³⁴¹ Committee on the Rights of the Child, Forty-third session, Concluding observations: Ethiopia, CRC/C/ETH/CO/3, 1 November 2006, para. 63.

³⁴² CRPD, art. 31.

Parties to fulfil their commitments and obligations.³⁴³ Therefore, continuous and strong monitoring mechanism that covers the wide range of issues of PWD, giving due emphasis on socio-economic rights of CWD is one of the main forms of realizing their rights.

Implementation of treaty obligations primarily resides on State Parties, as it must be, given global society in which effective power resides in sovereign states. However, it is not, and should not be, left exclusively to national political systems.³⁴⁴ This is due to the fact, as noted by David A. Balton, that:

A sober assessment of the human rights situation throughout the world would reveal the ritual failure of States Parties to comply with standards established in instruments such as the Convention on the Rights of the Child.³⁴⁵

In response to this, the CRPD as well as other instruments provide for monitoring at the international level, through Committees that review reports submitted by State Parties periodically. On the basis of these reports, the Committees work with the States Parties concerned and make concluding observations and recommendations to the States Parties.³⁴⁶ States Parties shall provide detailed and comprehensive reports to the Committees, including explicit paragraphs on socio-economic rights of CWD. For these monitoring systems to be effective the reports should be timely and of good quality, i.e. they should not be incomplete and superficial so as to enable the Committees get the amount and kind of information to fulfil their monitoring task.³⁴⁷ States shall also engage with the Committees in a cooperative and constructive dialogue so as to sort out strengths and weaknesses within the state, which will provide incalculable lesson for future protection and promotion of the rights of CWD.

Assessing the reports of other State Parties and concluding observation and recommendations thereof is of paramount source of experience gaining. Regular participation in the Conference

³⁴³ UN handbook for parliamentarians, cited above at note 10, p. 25.

³⁴⁴ Mower, cited above at note 104, p. 61.

³⁴⁵ D.A. Balton, 'The Convention on the Rights of the Child: Prospects for International Enforcement,' Human Rights Quarterly vol. 12 No.1 (1990), p. 129.

³⁴⁶ See CRPD, arts. 34-37; CRC, arts. 44 and 45 (d); ACRWC, arts. 42-45; ICESCR, ECOSOC Resolution 1985/17 of 28 May 1985.

³⁴⁷ Verheyde and Goedertier, cited above at note 101, para. 16, p. 16.

of State Parties, which considers the implementation of the CRPD,³⁴⁸ is also a vital means of experience sharing for identification of best ways of realization of the rights of CWD.

International monitoring could also be carried out through individual complaints mechanism as provided by various treaties or optional protocols to the treaties.³⁴⁹ For example, Optional Protocol to the CRPD, if ratified by a State, enables the CRPD Committee to undertake two additional forms of monitoring: an individual communications procedure, through which the Committee receives communications (complaints) from an individual claiming that the State violated his/her rights under the CRPD; and an inquiry procedure, through which the Committee investigates gross or systematic violations of the CRPD and, with the agreement of the State party concerned, undertakes field missions to deepen the inquiry.³⁵⁰ Accordingly, states need to show their commitment to implement socio-economic rights of CWD by ratifying the optional protocols and putting into effect the recommendations of treaty bodies.

3.2.5 Awareness Raising

Article 8 of the CRPD stresses the need to undertake awareness raising measures throughout the society to eliminate stereotypes, prejudices and harmful practices relating to CWD. This measure is of particular importance in the case of Africa as CWD in most African societies have been vulnerable to superstitious beliefs and discriminatory practices. The UN Special Rapporteur on Disability has been a critical advocate in favour of the rights of PWD, and has asserted that changing attitudes towards disability require ridding society of prejudice and discrimination and breaking down walls of superstition and ignorance. The media are one of the most powerful tools to effect this change and have been successful in changing public attitudes in many countries and regions.³⁵¹ Public media has to engage in this task actively and private media too should be encouraged to play its part. School clubs are another means through which awareness raising can be carried out. Therefore, school management has to

³⁴⁸ CRPD, article 40.

³⁴⁹ The CRPD, CRC, and ICESCR all have optional protocols that established individual complaint procedures for alleged violations of rights. Under the ACHPR and ACRWC, individuals can bring complaints without a need to additional protocols once the State in question has ratified the instruments.

³⁵⁰ See Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted in 13 December 2006 (entered into force 3 May, 2008).

³⁵¹ UNICEF, cited above at note 143, p. 34.

encourage their activity relating to this.³⁵² Furthermore, curriculum development has to include disability issues so as to easily reach all students in formal and continuous manner.

The Committee on Economic Social and Cultural Rights observed that:

In order to facilitate the equal participation ... of [CWD], Governments should inform and educate the general public about disability. In particular, measures must be taken to dispel prejudices or superstitious beliefs against [CWD], for example those that view epilepsy as a form of spirit possession or a CWD as a form of punishment visited upon the family.³⁵³ [emphasis added]

Similarly, the general public should be educated to accept that CWD have as much right as any other child to make use of various services such as education, health care, recreation centres and cultural venues, etc.

Just as raising awareness among the general public is important, so too is promoting the awareness of disability issues among professionals, including the judiciary, educationalists, health professionals and social workers at all levels of seniority. This is most effectively carried out by PWD and their families. Initiatives of this kind help to ensure that CWD are treated with equity, considering the disabling situations they face, in all aspects of civil society.³⁵⁴ Parliaments also have special role in raising awareness, in the wider community, of the need for special measures to CWD and their benefit to society as a whole.³⁵⁵

CWD shall also be empowered and educated about their rights so as to enable them advocate about and claim their rights in case they are denied or interfered with. In this regard, establishing children's parliament and ensuring effective participation of CWD in it is one way of raising their awareness as to their rights.³⁵⁶

³⁵² As a matter of fact, school management as well as all teachers need to be trained on disabilities issues for them themselves get awareness on the matter.

³⁵³ CESCR General Comment No. 5, para 38.

³⁵⁴ UNICEF, cited above at note 143, p. 34.

³⁵⁵ UN handbook for parliamentarians, cited above at note 10, p. 68.

³⁵⁶ Child parliament members could be given trainings on issues of CWD and subsequently they can be able to reach other children they represent in different communities and pass the awareness they get.

3.2.6 Engaging children (and persons) with disabilities in various processes

Engaging CWD, PWD and DPOs in various measures designed to implement their rights is manifestation of recognition of their inherent dignity and effective mechanism of achieving the purposes of the CRPD³⁵⁷ and other instruments. The ‘nothing about us without us’ mantra of DPOs, which was the basis for involvement of PWD in the drafting and negotiation of the CRPD,³⁵⁸ has to always be considered in all process that affect their rights. The international community has consistently acknowledged that policy-making and programme implementation in this area should be undertaken on the basis of close consultation with, and involvement of, representative groups of persons concerned.³⁵⁹ This has to be done from the start to avoid making, mostly costly, changes of plans afterwards.³⁶⁰ PWD are in a better position to raise the concerns of CWD than non-disabled counterparts. For this reason their participation in decision making processes that affect the rights of CWD has to be guaranteed. For example, parliamentarians with disabilities may positively affect legislations concerned with issues of CWD by putting insights from their own personal experiences.

Participation of (adult) PWD by itself is not enough. It has to be accompanied by direct participation of CWD themselves. Article 7 of the ACRWC is intended to afford African children additional protection considering their vulnerability in voicing their views³⁶¹ even if it is modelled after the CRC. In this regard the CRC Committee noted that:

More often than not, adults with and without disabilities make policies and decisions related to CWD while the children themselves are left out of the process. It is essential that CWD are heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. This should include their representation in various bodies such as

³⁵⁷ CRPD, article 4(3).

³⁵⁸ Kanter, cited above at note 260, p. 308; for years, the disability rights movement had repeated the ‘nothing about us without us’ mantra. Consequently, the Ad Hoc Committee established by the UN General Assembly to consider proposals for a comprehensive convention on the rights of persons with disabilities responded by developing procedures that, for the first time in the UN’s history, ensured an open process and participation of civil society. M. Rasmussen and O. Lewis, ‘Introductory note to the United Nations Convention on the Rights of Persons with Disabilities’, *International Legal Materials*, Vol. 46, No. 3 (2007), p. 441.

³⁵⁹ CESCR General Comment No. 5, para 14; CRPD, art. 33(3).

³⁶⁰ Schulze, cited above at note 181, p. 59.

³⁶¹ L. Ehlers and C. Frank, ‘Child participation in J. Sloth-Nielsen (ed.), *Children’s Rights in Africa: A Legal Perspective* (2008), p. 113.

parliament, committees and other forums where they may voice views and participate in making the decisions that affect them as children in general and as CWD specifically.³⁶²

Engaging CWD in various processes ensures that the policies are targeted to their needs and desires, and it ensures their inclusion in society. To facilitate their participation, they should be equipped with whatever mode of communication they may need. Furthermore, States Parties should support the development of training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.³⁶³

The State Party must, therefore, put in place mechanisms that reinforce the principle of respect for the views of the child as provided in the CRC.³⁶⁴ This principle must be respected in matters affecting individual CWD or as a group and matters of concern to children generally as a part of the community or society.³⁶⁵

3.2.7 Seeking international cooperation and assistance

One of the main measures through which states realize socio-economic rights of CWD is by recognizing the importance of international cooperation and assistance as provided in article 32 of the CRPD.³⁶⁶ International cooperation is particularly important measure in enabling developing countries to fulfil their treaty obligations³⁶⁷ since 80% of PWD live in these low income countries and only 4% are estimated to benefit from international cooperation programmes.³⁶⁸ Consequently, 'voluntary contributions from Governments, increased regional and bilateral assistance as well as contributions from private sources should be encouraged'³⁶⁹ and States should actively pursue them.

³⁶² CRC General Comment No. 9, para 32.

³⁶³ Ibid.

³⁶⁴ For more on the principle of respect for the views of the child, see section 2.4.1.4 above.

³⁶⁵ UNICEF, 'Law reform and implementation of the Convention on the Rights of the Child', *Innocenti Research Centre*, (2007), p. 27.

³⁶⁶ CRC, arts. 4, 17 (b), 23 (4), 24 (4), 28 (3); ICESCR, art. 11, ACHPR, preamble; see also Rishmawi, cited above at note 95, para. 60, p. 23.

³⁶⁷ CRC, preamble; CESCR General Comment No. 5, para 13.

³⁶⁸ Schulze, cited above at note 181, p. 173.

³⁶⁹ CRC General Comment No. 9, para. 22: Realization of international cooperation has been achieved mainly through the elaboration of agreements, various forms of projects or programmes, including technical assistance from UN agencies, bodies and organs and bilateral and multilateral treaties of aid and loans. See Rishmawi, cited above at note 95, para. 94, p. 36.

As repeatedly recommended by the CRPD Committee, States Parties shall avail themselves of 'technical cooperation from the member organizations of the Inter-Agency Support Group (IASG) for the [CRPD] for the purpose of obtaining guidance and assistance on implementing the CRPD and concluding observations of the Committee on States reports'.³⁷⁰

The CRC Committee noted that when States ratify the CRC 'they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international co-operation, to global implementation'.³⁷¹ Therefore, international cooperation for development and, thus, for the realization of socio-economic rights of CWD is an obligation of all States.³⁷² As noted by the ICESCR Committee, this is a particular duty for those States which are in a position to assist others.³⁷³ It is important to note, though, that cooperation should not be understood as only applying in a North-South dimension, but also South-North, South-South and North-North.³⁷⁴

States Parties must also create favourable conditions for alternative means of realizing the rights of CWD.³⁷⁵ For example, there has been ample evidence documented of the critical role international NGOs and CSOs have played with regard to implementations of rights, including socio-economic rights of CWD. Among other things, they promote ratification and implementation of various treaties; assist state party reporting process by providing 'shadow reports'³⁷⁶; carry out dissemination of knowledge about various treaties and documents of relevance; engage in monitoring, advocacy and training initiatives; and promote participation of children, including CWD, by sponsoring various events like children's parliaments.³⁷⁷

³⁷⁰ CRPD, Tunisia, CRPD/C/TUN/1, para. 46; CRPD, Peru, CRPD/C/PER/CO/1, para. 54.

³⁷¹ Rishmawi, cited above at note 95, para. 92, p. 35.

³⁷² Ibid.

³⁷³ CESCR General Comment No. 3, para. 14.

³⁷⁴ Schulze, cited above at note 181, p. 173.

³⁷⁵ Ensuring effective implementation of socio-economic rights of CWD should ideally involve not only government agencies, but also non-governmental organizations and civil societies working for and with CWD. Rishmawi, cited above at note 95, paras. 123-124, pp. 48-49.

³⁷⁶ Shadow reports are reports prepared by NGOs on pertinent and valuable information regarding the progress achieved and obstacles encountered in the implementation of treaties, which they provide to governments as well as treaty bodies. They serve as alternative source of information to state reports on implementation of treaties at domestic level.

³⁷⁷ UNICEF, cited above at note 101, p. 92.

Accordingly, barriers against national and international organizations (CSOs/NGOs) that are engaged in promotion of the rights of CWD have to be avoided.³⁷⁸ In this regard, Vienna Declaration and Program of Action has provided that:

There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as, obstacles to the enjoyment of these rights.³⁷⁹

This can hugely benefit from the Declaration on the Right to Development which under article 32 enshrines the concept of inclusive development: CWD are to be included in all phases of development programs: planning, design, implementation, evaluation, etc.³⁸⁰ Such programmes have to be rights-based and therefore also accessible. Consequently, no development money shall be spent to create further barriers, e.g. no schools with stairs, and every programme will have a special focus on ensuring inclusion of CWD.³⁸¹

3.3 Conclusion

Ratification is just the beginning in recognizing the rights entrenched in the various human rights treaties and it, *per se*, does not realize the purported goals of the treaties without effective implementation. For effective implementation of the socio-economic rights of CWD provided in the treaties, States Parties must undertake various measures. Incorporation and harmonization of domestic law with the spirit of the CRPD and other instruments in a comprehensive manner; developing appropriate policies and programs and implementing legislations that give due emphasis to the issues of CWD, which are supported by budgeting for the realization of the intended goals are some of the main measures. Various

³⁷⁸ The CRC Committee has expressed its concern to some States of insufficient efforts to involve CSOs in the implementation of the CRC and pointed out the need to closer participation between government and NGOs. For example, it recommended to Antigua and Barbuda the need to systematically involve CSOs throughout all stages of implementation. Id, p. 92.

³⁷⁹ Vienna Declaration and Program of Action, art. 13, U.N. DOC. A/CONF.157/2312 (Jul. 12, 1993), available at <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)> (last accessed on October 20 2011)

³⁸⁰ This is similar with the general obligation provided under article 4(1) (c) of the CRPD, which imposes the obligation to take the protection and promotion of the human rights of persons with disabilities into account in all policies and programmes, and article 4 (3), which obliges States to secure participation of CWD in development and implementation of all implementation measures affecting their rights.

³⁸¹ Schulze, cited above at note 181, p. 174.

administrative measures shall also be designed, accompanied by effective monitoring mechanisms in which CWD have effective participation. The judiciary must also be accessible and active to remedy CWD whose rights are violated.

Due regard has to also be given, in all measures taken, to the relevant provisions of the CRC, ACRWC and other treaties rather than being limited to the CRPD. Whenever such other treaties or national laws provide more conducive means of realization of the rights of CWD, States must resort to them. States are also recommended to refer to the comprehensive General Comments of the CRC Committee on 'CWD' and the ICESCR Committee on 'PWD', which covers a broad range of issues, and others Comments that generally deal with the rights of the child that are equally applicable to CWD. Learning experiences from states that have secured effective realization of the rights of CWD is indispensable. Implementation measures shall also benefit from international cooperation and an active role that could be played by Civil Societies. Generally, ensuring socio-economic rights of CWD requires an ongoing process of putting in place various other measures that can best serve the intended purpose. In an attempt to grasp the condition of CWD and implementation of their socio-economic rights in Ethiopia, the next chapter analyzes various measures taken/being taken in the country from the view point of measures of implementation provided under various treaties discussed in this chapter.

CHAPTER FOUR

IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS OF CHILDREN WITH DISABILITIES IN ETHIOPIA

4.1 Introduction

It is noted in Chapter one that according to the WHO's report, 80% of PWD live in developing world to which most African countries belong.³⁸² Africa has a high percentage of CWD.³⁸³ Given their numbers, the invisibility of Africa's CWD is disturbing. Since birth, they are usually excluded from access to development that all children need. The daily reality of life for CWD and their families is frequently one of discrimination and exclusion in all countries, including Ethiopia.³⁸⁴ Discrimination mainly manifests itself in socio-economic areas, including inaccessible environment to enjoy socio-economic services.

Ethiopia has ratified general human rights instruments as well as disability and child specific instruments that recognize socio-economic rights of CWD. Among others, it has ratified the ICESCR, ACHPR, CRC, ACRWC and CRPD.³⁸⁵ These instruments dictate the category of people that are considered to be 'children' and those that are to be regarded as 'children with disabilities'. As discussed in chapters two and three in detail, they provided a range of socio-economic rights that are to be legally claimed by CWD and measures to be taken to effectively implement the rights.

This chapter analyzes implementation measures being taken in Ethiopia in light of its treaty obligations, which have been dealt with in chapter three. The chapter starts by identifying whom the Ethiopian legal regime recognizes as CWD to determine the category of people

³⁸² WHO, cited above at note 1, p. 261.

³⁸³ The African Child Policy Forum, The African Report on Child Wellbeing: How Child Friendly are African Governments? (2008), p. 31.

³⁸⁴ Id, 31-32; Aron Degol, The role of the Ethiopian Human Rights Commission in the protection of the rights of vulnerable groups: the case of children, women and persons with disabilities, Addis Ababa University Law Library (2009, unpublished).

³⁸⁵ Ethiopia has ratified (accessed to) the ICESCR on 11 June 1993; the ACHPR on 15 June 1998; the CRC on 14 May 1991; the ACRWC on 02 October 2002; and the CRPD on 7 July 2010. See also Accession to the African Charter on Human and Peoples' Rights, Proclamation No. 114/1998; Convention on the Rights of the Child Ratification Proclamation No. 10/1992; African Charter on the Rights and Welfare of the Child Ratification Proclamation, Proclamation No. 283/2002; Convention on the Rights of Persons with Disability Ratification Proclamation, Proclamation No. 676/2010.

under study. It, then, goes on to analyze compliance of implementation measures being taken in Ethiopia with measures dictated under international instruments. The chapter assesses the measures by selecting some specific rights, i.e. the rights to education, health, work and employment, and play, leisure, recreation and sports, which are crucial in the overall development of CWD and the realization of their best interests.

4.2 General: Children with disabilities in Ethiopia

4.2.1 Legal definition of the “child” in Ethiopia

The term ‘child’ represents a particular age group of persons in a certain state’s population though there is lack of uniform standard for joining and exiting this age group universally.³⁸⁶ Determining who is legally considered as a child in a certain state helps to identify the category of persons that could be beneficiaries of rights provided in a law, which are exclusively put at the disposal of such age group.³⁸⁷

The CRC, one of the core human rights instruments exclusively dealing with the rights of the child, provides that every human, being below the age of 18 years is to be considered as a child unless according to national law of a particular state majority is achieved earlier.³⁸⁸ Accordingly, the rights set forth in the CRC are applicable to all persons under the age of 18 unless the laws of the State party provide otherwise. In a similar but strict way, the ACRWC provides for every human being below the age of 18 years to be considered as a child.³⁸⁹ Consequently, domestic provision in a State party to the ACRWC for different standard would not affect the enjoyment of rights set therein by every person below the age of 18 years.

³⁸⁶ Many States use 18 years of age as a standard to delineate between children and adults (minors and majors). However, that is not an accepted standard universally and discrepancies are obvious among many jurisdictions.

³⁸⁷ Definition of the child has particular implications in setting protective minimum ages, in particular those for sexual consent, admission to employment and criminal responsibility. The requirement to make primary education compulsory also implies setting an age. It is in accordance with definition of the child that persons in particular age group acquire certain rights or lose certain protections. UNICEF, cited above at note 143, pp. 1 and 2.

³⁸⁸ CRC, art. 1. The wording of the provision leaves the starting point of childhood open: Is it birth, conception, or somewhere in between? It is noted that the intention of those who drafted the article was to avoid taking a position on abortion and other pre-birth issues, which would have threatened the Convention’s universal acceptance. Thus, for the purposes of the Convention, childhood ends at the 18th birthday unless, in a particular State, majority is achieved earlier. See UNICEF, cited above at note 143, p. 1.

³⁸⁹ ACRWC, art. 2.

The Constitution of the Federal Democratic Republic of Ethiopia³⁹⁰ (the Constitution) deals with the rights of the child under article 36 but failed to define (determine) who a child is.³⁹¹ Article 9(4) of the Constitution provides that all international treaties ratified by Ethiopia are integral part of the law of the land. Consequently, international human rights instruments that are ratified by Ethiopia automatically make up normative standards in the country's affairs like any other domestically enacted laws. Moreover, according to article 13(2) of same, constitutionally entrenched bill of rights shall be interpreted in a manner conforming to the principles of international human rights instruments adopted by Ethiopia.

Since Ethiopia has ratified both the CRC and ACRWC, the instruments are integral part of the law of the land. As per article 13(2) of the Constitution they can serve as interpretation thresholds for the meaning of a 'child' in the Ethiopian context. Both instruments provide that every human being below the age of 18 years is considered as a child though the CRC leaves a margin of appreciation for States Parties to determine otherwise. The margin of appreciation for Ethiopia, however, has been limited by ACRWC that sets inflexible standard.³⁹² Therefore, in Ethiopia every human being below the age of 18 years is a 'child'.

4.2.2 Who is a child with disability? Heterogeneity of disability and disability being an evolving concept

The CRPD does not explicitly define the word 'disability'.³⁹³ It rather describes that '[p]ersons with disabilities include those who have long-term physical, mental, intellectual or

³⁹⁰ Proclamation No. 1/1995, A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazeta, 1st Year, No. 1, 21st August 1995.[hereinafter referred to as the FDRE Constitution or the Constitution *mutatis mutandis*].

³⁹¹ The Revised Family Code simply defines the child as a member of either sex under the age of 18. However, this definition is limited to the Code. Other legal codes either define the child in differing ways or leave the definition open-ended. In this regard see observation of the Committee on the Rights of the Child, Consideration of reports submitted by States Parties under article 44 of the Convention, Third periodic report of States Parties due in 2003, Ethiopia, CRC/C/129/Add.8, 28 October 2005, para. 57.

³⁹² Only Botswana has entered reservation that it does not consider itself bound by definition of the child under article 2 of the ACRWC. See <http://www.acerwc.org/ratifications/> (last accessed on 24 February 2012). The UN Human Rights Committee opined that even if the ICCPR leaves determination of attainment of majority to State parties, in any case a State party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law (General Comment 17: Rights of the child, UN Doc HRI/GEN/1/Rev.6, (2003), p. 144, para. 4.)

³⁹³ The negotiators of the CRPD could not agree on whether, and if so how, disability or impairment could and should be defined. About 50 national definitions were considered and the discussion on lead to the conclusions that there would be no consensus over a 'definition' and the wording that was developed in the various definitions is many things, but it is not a definition. See Schulze, cited above at note 181, pp. 35 and 36.

sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.³⁹⁴ This implies that the CRPD understands disability not to be a sole result of medical impairment, but also societal barriers.³⁹⁵ The non-definition enshrines the social model, i.e. recognizing that discrimination and therewith the disabling of access for PWD is largely due to barriers of various kinds,³⁹⁶ including the built environment, but even more so to social and attitudinal ones such as stereotypes, prejudices and other forms of paternalistic and patronizing treatments.³⁹⁷

It is argued that defining disability has both pros and cons. Having a conclusive definition may result in leaving out people in need of protection or it may become obsolete to accommodate changing circumstances. Not having a definition opens the Pandora's Box of who gets to define disability or may lead to national legislation setting the frame, which may lead to exclusion of persons that should be protected by the CRPD.³⁹⁸ It would also be difficult to designate the legal interpretation of the scope of protection when the scope is unclear.³⁹⁹ In the negotiation of the CRPD, the non-definition outweighs and the Convention simply gives an open description of disability,⁴⁰⁰ which is believed to enshrine the social model of disability.⁴⁰¹ Taking this into account, national laws must be cautious in defining disability or putting scope of protection, and any attempt to do so by the State party shall give due regard to the spirit and purposes of the CRPD. In its concluding observations to Tunisia's State report, the CRPD Committee has raised its concern regarding the risk of exclusion of persons who should be protected by the CRPD due to national definition of disability.⁴⁰²

³⁹⁴ CRPD, art. 1.

³⁹⁵ Flynn, cited above at note 294, p. 18.

³⁹⁶ For example, a person in a wheelchair might have difficulties taking public transport or gaining employment, not because of his/her condition, but because there are environmental obstacles, such as inaccessible buses or staircases in the workplace, that impede his/her access.

³⁹⁷ Schulze, cited above at note 181, p. 27.

³⁹⁸ Attempts had been made to have reference to 'national legislation' to define disability by countries with a comparatively large populace, such as China, Russia, and India block, but were successfully stalled. See Schulze, *id.*, p. 36.

³⁹⁹ *Ibid.*

⁴⁰⁰ *Id.* pp. 27, 35-36

⁴⁰¹ The social model of disability, unlike the medical model that considers disability as a medical issue, recognizes disability to be the result of discrimination and the disabling environment PWD face, including the built in environment, stereotypes, prejudice and other forms of paternalistic and patronizing treatment.

⁴⁰² The Committee noted that certain persons, such as persons with psychosocial disabilities or intellectual disabilities, are at risk of exclusion of protection by the CRPD due to Tunisia's definition of disability. It thus recommended the State to review and reformulate the definition of disability based on the Convention.

The Preamble to the Convention, complimenting the ‘non-definition’ of disability in article 1, acknowledges that ‘disability is an evolving concept and [it] results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.’⁴⁰³ This indicates that society and opinions within society are not static, and the CRPD does not wish to impose a rigid view of ‘disability’ but a dynamic approach that allows adaptations over time and within different socio-economic settings.⁴⁰⁴ Thus, what is not conceived as a disability at a particular time or place might be considered as a disability at another time or place.

The classic conception of disabilities is highly related to observable traits such as physical, sensory or mental disabilities. Even within this category only distinct forms of disabilities, such as wheelchair users and a few other ‘classic’ groups such as blind and deaf people, have been recognized. However, disabilities are diverse and heterogeneous encompassing children born with congenital conditions such as cerebral palsy or children with severe arthritis, or children with intellectual disability or children with autism, children with mental or chronic illness, among many others.⁴⁰⁵ The CRPD has recognized the heterogeneity of disabilities under the generic terms ‘physical, mental, intellectual or sensory impairments’ and within this is given a response for cultural variations of not recognizing disabilities with a psycho-social, psychiatric or related dimension.

The evolving nature of disabilities suggests that various kinds of impairments could go on to be regarded as disabilities in the future. The definitions adopted by national laws and their interpretation could result in wider scope of disabilities that include various impairments such as those sustained due to illness or harmful practices. During negotiation of the CRPD an NGO called Persons with Disabilities Australia, had argued for a broad definition of disabilities to include, *inter alia*, HIV/AIDS as a disability⁴⁰⁶ though not successful. This may, yet, be considered in the future. Similarly, effects of harmful practices such as Female Genital Cutting might also be included within the scope of disability. Therefore, CWD cannot be easily defined unless precise contours of the term ‘disability’ are known. As such, a child

Committee on the Rights of Persons with Disabilities, Concluding observations: Tunisia, CRPD/C/TUN/CO/1, 13 May 2011, paras. 8 and 9.

⁴⁰³ CRPD, preamble, para. (e).

⁴⁰⁴ UN handbook for parliamentarians, cited above at note 10, p. 13.

⁴⁰⁵ WHO, cited above at note 1, pp. 7-8; Jones and Marks, cited above at note 90, p. 178.

⁴⁰⁶ Schulze, cited above at note 181, p. 38.

with some form of impairment should enjoy the benefit of doubt so as to ensure utmost protection from the disabling environment considering the descriptive wordings of the CRPD.

In sum, as has been discussed above, in Ethiopia every human being below the age of 18 years is a ‘child’ and those within this age group who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others can be identified as ‘Children with Disabilities’.

4.3 Implementation measures for socio-economic right of children with disabilities in Ethiopia

4.3.1 Data and statistics on children with disabilities

As noted in Chapter two, gathering data and statistics to ensure an accurate assessment of the conditions of CWD and design more effective implementation mechanisms is of paramount importance.⁴⁰⁷ According to the 2007 Population and Housing Census of Ethiopia, there are estimated 864,218 PWD in Ethiopia (1.17% of the population) from the total population of 73,750,932.⁴⁰⁸ Children’s share from this figure is 283,606.⁴⁰⁹ The 2007 data shows reduction of the number of PWD in the country compared to the 1997 Census report that indicated the existence of an estimated total number of 943,620 PWD in Ethiopia.⁴¹⁰

The official data on the estimated number of PWD is much smaller than the then WHO’s estimate that approximately 10% of the total population is comprised of PWD.⁴¹¹ It also diverges from the ILO estimate that some five to eight million people in Ethiopia, or 7 to 10% of the population, are believed to have Disabilities.⁴¹² Among these, CWD comprise

⁴⁰⁷ See section 3.2.4 above; CRPD, art. 31.

⁴⁰⁸ See Central Statistics Agency (CSA), The 2007 Population and Housing Census of Ethiopia: Statistical Report at Country Level, pp. 169-237.

⁴⁰⁹ The estimate on CWD includes children until the age of 19 because of lack of disaggregated data until the age of 18 years. Among the total number of children the male population comprises 157,007 while the women population encompasses 126,599.

⁴¹⁰ Ministry of Labour and Social Affairs, Developmental Social Welfare Policy, 1996, p. 59.

⁴¹¹ Gerard Quinn et al., Human Rights and Disability 1 (2002), available at <<http://www.nhri.net/pdf/disability.pdf>> (last accessed on 14 May 2012).

⁴¹² UNICEF Fact Sheet, “Ethiopia Disability Programme”, available at <http://www.unicef.org/ethiopia/ET_Disability_fact_sheet_Nov_06.pdf> (last accessed on 23 October, 2011).

substantial number though there was no comprehensive data.⁴¹³ This shades doubt on the accuracy of the Census data. It considerably deviates from the current estimate that about 15% of the world's population lives with some kind of disability and, out of which a larger proportion goes to the developing world⁴¹⁴ to which Ethiopia belongs.

The Ministry of Labor and Social Affairs (MoLSA), which is mandated to oversee issues of PWD and implementation of the CRPD,⁴¹⁵ recognizes that data gathered during the census is flawed.⁴¹⁶ Though it is informally recognized that the number of PWD in Ethiopia is much higher than the official figures,⁴¹⁷ the ministry bases its implementation measures on the official figures since it is gathered by a legitimate authority.⁴¹⁸ This has a grave impact in the implementation of the rights of CWD in the country by limiting the number of targets of implementation, kind and amount of international cooperation to be sought, minimizing budget to be designed for the implementation process, and reducing coverage of all parts of the country (urban and rural areas), among others.

On the other hand the task team in the Ministry of Education (MoE), which is tasked to oversee special needs education and inclusive education, carry out its task based on the WHO estimate that about 10% of the population is composed of PWD.⁴¹⁹ This is a manifestation of inconsistency created by poor data gathering system among responsible organs for the implementation of the rights of CWD.

⁴¹³ Ibid.

⁴¹⁴ WHO, cited above at note 1.

⁴¹⁵ Proclamation No. 691/2010, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, art. 30 (7) (a); Convention on the Rights of Persons with Disability Ratification Proclamation, Proclamation No. 676/2010, art. 3.

⁴¹⁶ Interview with Ato Zerubabel Elias, Capacity building and information service expert at Ministry of Labor and Social Affairs, on May 07 2012.

⁴¹⁷ Widespread poverty, the recurrence of internal and international conflicts including the 1998-2000 Ethio-Eritrean war are believed to increase the number of persons with disabilities in the country, rather than decreasing from the 1997 census results. Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Ministry of Education, Education Sector Development Program IV (ESDP IV), 2010/2011-2014/2015, 2003 EC – 2007 EC, Program Action Plan, (2010) (hereinafter ESDP IV Program Action Plan), p. 76; Interview with Ato Degefa Abadi, Special Needs Education Team Leader at the Ministry of Education, on May 11 2012. The expert believes that data gathering methods employed for the national census are poor and indicators used have only focused on those disabilities that are easily visible. He also notes that the Central Statistic Agency experts who work on gathering and interpretation of data and statistics do not have expertise knowledge on disability or expert assistance to identify and organize a disaggregated data on PWD, which is comprehensive and dependable, was not sought. Consequently, the Special Needs Education/Inclusive Education team at the Ministry of Education plans and organizes its implementation measures based on the WHO estimates.

The 2007 Census identified PWD as persons who were unable to carry out or limited in carrying out activities that others can do due to congenital or long term physical or mental disabilities.⁴²⁰ Limitation to physical and mental requirements has the effect of leaving out certain category of PWD, as can be observed from the CRPD that employed wide scope of persons to be protected as disabled. The question used in the Census questionnaire focused on observable disabilities leaving out diverse disabilities in the status 'other mental or physical' damage.⁴²¹ This evidences that Data gathering is done in a way that has not recognized heterogeneity of disabilities.⁴²² Disaggregated data on wide range of categories could have helped to identify and employ implementation measures in accordance with the needs of particular category of CWD, and thereby achieve better outcome.⁴²³ In this regard it is possible to systematically collect such data through national disability survey by looking into experiences of other states.⁴²⁴

4.3.2 Constitutional entrenchment of socio-economic rights of children with disabilities in Ethiopia

Constitutional entrenchment of rights has a profound importance to ensure that CWD enjoy the highest attainable legal protection and be recognized as holders of rights.⁴²⁵ The FDRE Constitution neither makes explicit reference to CWD nor mentions them under the provision that generally deals with the rights of children.⁴²⁶ It has failed to include explicit prohibition

⁴²⁰ CSA, cited above at note 24, p. 169.

⁴²¹ The question used reads as: Does (name) have a problem of seeing, hearing, speaking and/or standing/walking/seating, body parts movement, functioning of hands/legs or mental retardation or mental problem or other mental or physical damage?

⁴²² The Census report categorized PWD into the categories of: Blind, Difficulty in seeing, Deaf, Difficulty in hearing, Mute, Deaf mute, Non-functional upper limbs/difficulty in gripping/handling, Non-functional lower limbs/difficulty in standing/walking, Body movement difficulty, Learning difficulty and Others. See CSA, cited above at note 24. Virtually all indicators included in the report to disaggregate the data into various categories of disabilities are indicators of physical disabilities. Accordingly all other types of disabilities, with the exception of learning disabilities, are left out to be included in the indicator 'Others'. Even in such categorization the number of PWDs under 'other' disabilities is substantially low. This can explain that substantial number of PWD with diverse unobservable disabilities are left out of the Census data.

⁴²³ Though the Census report shows some disaggregation is done based on sex and age, it is obvious the data is not disaggregated in a variety of categories including various disabilities, urban rural distinction and the like.

⁴²⁴ Committee on the Rights of Persons with Disabilities, Concluding observation of the Committee on the report submitted by Argentina, CRPD/C/ARG/CO/1, 8 October 2012, paras. 49 and 50.

⁴²⁵ ACRWC, art. 1(1); Handbook for parliamentarians, cited above at note 20, p. 54.

⁴²⁶ See Chapter three of the FDRE Constitution on Fundamental Rights and Freedoms; see also FDRE Constitution, art. 36 on the rights of children. The provisions of the regional states' constitutions on human rights and fundamental freedoms are virtually the exact replicas of the Federal Constitution. Thus, it follows that the level of protection and recognition in states' constitutions is the same as the Federal Constitution.

of disability-based discrimination, which the CRPD Committee noted as one way of mainstreaming CWD.⁴²⁷ Consequently, it can hardly be said that it duly recognizes CWD; nor particular rights they require to equally enjoy rights with other able members of the society.⁴²⁸

However, constitutional entrenchment of socio-economic rights of CWD in Ethiopia can be identified from cumulative reading of its general provisions, which are equally applicable to CWD. Article 41 of the Constitution provides for economic, social and cultural rights of the Ethiopian people in a general way. The provision, however, is designed not in words entitling rights, but creating obligations on the government.⁴²⁹ It provides that ‘the State has the obligation to allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, within its available means’.⁴³⁰ It further states that ‘every Ethiopian national has the right to equal access to publicly funded social services’ including, *inter alia*, health and education;⁴³¹ and that the State is duty bound to ‘allocate ever increasing resources to provide to the public health, education and other social services’.⁴³²

It also provides for socio-economic rights, which are formulated similar to article 41 but in an elaborated way, under its National Policy Principles and Objectives part.⁴³³ Therefore, socio-economic rights of CWD can be inferred from these provisions of the Constitution too. The scant provisions expressly recognized in the Constitution can further be supplemented by treaties ratified by Ethiopia.⁴³⁴

⁴²⁷ Committee on the Rights of Persons with Disabilities, Concluding observation of the Committee on the report submitted by Hungary, CRPD/C/HUN/CO/1, 22 October 2012, para. 5.

⁴²⁸ For example, the Constitution of Uganda (1995) prohibits discrimination against persons with disabilities, including CWD, and it recognizes sign language. ILO Factsheet, ‘Inclusion of people with disabilities in Uganda’, p. 1.

⁴²⁹ Such formulation of the provision recognizing socio-economic rights (in a language of obligation rather than right) in the Constitution has a variance from international human rights instruments, including the UDHR and ICESCR. It also hardens determination of whether such socio-economic rights are justiciable. See Adem Kassie Abebe, ‘Human rights under the Ethiopian Constitution: A descriptive overview’, *Mizan Law Review*, vol. 5 No. 1 (2011), p. 54.

⁴³⁰ FDRE Constitution, art. 41(5).

⁴³¹ Id, arts. 41(3) and 90(1).

⁴³² Id, art. 41(4); it is worth noting that ever increasing resources does not mean maximum available resources. See Adem, cited above at note 429.

⁴³³ FDRE Constitution, arts. 89-91. These principles and objectives, even though are not judicially enforceable, they affect interpretation of the rights incorporated under fundamental rights and freedoms and strengthen the enforcement of the rights provided under article 41.

⁴³⁴ Even if detailed provisions on socio-economic rights of CWD are not found in the Constitution, its recognition that ratified treaties are part of the law of the land and the bill of rights entrenched in it shall be interpreted in accordance with international human rights instruments adopted by Ethiopia, affirms that the

exclusion as well as markedly compromising their access to education, including other services.⁴⁶⁰ It has been recommended by the CRPD Committee that in States with federal structure like Ethiopia, full accessibility has to be achieved in every region and sub-regional provinces of their territory.⁴⁶¹ By failing to do so, Ethiopia stands in a state of violation of the right to education of CWD in its territory.

A study conducted by the African Child Policy Forum on the situation of CWD in Ethiopia revealed that many CWD are not going to school since their parents cannot afford transportation and related costs. Lack of wheelchairs and crutches, household poverty, and lack of money to cover personal expenses forced such children to stay out of school or drop out to beg for alms.⁴⁶² Moreover, existing special education schools are limited to urban areas, which results in discrimination of access to education against CWD living in rural areas.⁴⁶³ The CRPD Committee repeatedly recommended that States need to devote particular attention to those CWD in rural communities,⁴⁶⁴ but this has been overlooked in Ethiopia.

Most schools in the country hesitate to admit CWD to the mainstream education. School administrations and teachers lack the awareness that such children have the right to education.⁴⁶⁵ Currently, only few schools are practicing inclusive education in the country, virtually all found in urban areas.⁴⁶⁶ Even in these schools, there are a lot of students in the waiting list. A research by Mamo Mengesha shows that less than one percent of CWD in rural areas have access to primary education.⁴⁶⁷ Among those that attend school, only few are in secondary schools and technical and vocational schools⁴⁶⁸ though the CRPD obliges States

impairments and physical impairments cannot fight their way to the water, and hence are forced to suppress their thirst. African Child Policy Forum, cited above at note 45, p. 63.

⁴⁶⁰ CRC General Comment No. 9, para. 39.

⁴⁶¹ CRPD Concluding observation 2012: Argentina, CRPD/C/ARG/CO/1, paras. 17 and 18.

⁴⁶² African Child Policy Forum, cited above at note 45, pp. 20, 62 and 65. For example, in Ethiopia, the average cost of crutches is about US \$8, an imported hearing aid has an estimated cost of about US \$160, while a wheelchair costs a staggering US \$224, hardly affordable for an average Ethiopian family, which has an average income per household of about US \$212.

⁴⁶³ *Id.*, 22.

⁴⁶⁴ For example see CRPD Concluding observation 2012: Argentina, CRPD/C/ARG/CO/1, para. 38.

⁴⁶⁵ Ministry of Education, cited above at note 439, p. 7; interview with Ato Degefa Abadi, cited above at note 419.

⁴⁶⁶ *Ibid.*; there are efforts to introduce inclusive education in various parts of the country. For instance, in Amhara region, North Gondar Chilga Woreda, schools are practicing inclusive education initiated by Save the Children Norway, Handicap International and the Woreda Education Office.

⁴⁶⁷ Mamo, cited above at note 458, pp. 84-94. There has not been significance difference in the data since this research is conducted.

⁴⁶⁸ Ministry of Education, cited above at note 439, p. 8.

to ensure CWD access to secondary education and that those who choose vocational training to receive it by making reasonable accommodation to them.⁴⁶⁹ This is a manifestation of how poor implementation of the right to education of CWD is and failure of coverage of implementation measures in whole parts of the country.

Sector offices at different levels have no focal points that follow up implementation of inclusive/special needs education with the exception of Addis Ababa Education Bureau.⁴⁷⁰ Consequently, issues related with the right to education of CWD have been submerged and overlooked. Without having responsible bodies (focal persons) that plan, organize, monitor and oversee implementation of the right, it is hardly possible to realize the right at all.

The CRPD obliges States to employ qualified teachers and train school staff in disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support CWD.⁴⁷¹ Lack of training for regular teachers about inclusive education in general and the special needs of students with disabilities is another reason that shadows implementation of the right. Even if the educational management, organization, community participation and finance guidelines foresee that two teachers trained in Special Needs Education should be assigned in primary and first cycle secondary schools in order to facilitate the education of students with special educational needs, the measure has not yet been implemented.⁴⁷² Due to inability of teachers to identify, assess and support those CWD who managed to go to school, they either drop-out of school or repeat classes.⁴⁷³ To tackle this problem, an introductory course in special needs education that is mainstreamed across teachers' education and training institutions in the country⁴⁷⁴ must be strengthened by further courses.⁴⁷⁵ A mechanism has to also be devised to

⁴⁶⁹ CRPD, art. 24 (2) (b), (c) and (5).

⁴⁷⁰ Interview with Ato Degefa Abadi, cited above at note 419.

⁴⁷¹ CRPD, art. 24 (4).

⁴⁷² ESDP IV Program Action Plan, cited above at note 419, p. 77.

⁴⁷³ Teferra, cited above at note 458, pp. 58-68.

⁴⁷⁴ B. Johnsen and Alemayehu Teklemariam, 'Towards Special Needs Education as a University Discipline: An Important Link on the Way to Education for All (EFA), Ethiopian Development and Cooperation' in H. Savolainen, M. Matero and H. Kokkala (eds.), When All Means All: Experiences in Three African Countries with EFA and CWD (2006), pp. 83-103.

⁴⁷⁵ All teachers' education and training institutions in the country offer introductory course in special needs education. Some institutions have also launched Special Needs Education Program. Among them are: Addis Ababa University at BA, MA and PhD levels, Dilla, Bahirdar, Gondar and Haromaya Universities at BA level, Adwa, Kotebe, Hossana and Sebeta Colleges of teacher education at Diploma level. Sign language training has

render the course for all teachers in the country to create awareness and equip them with basic skills about inclusive/special needs education.

There has been development on specifically stipulating CWD in the budgeting for education. However, the inadequacy of the budget to effectively implement the right left the children still at a marginalized status. Inaccessibility of schools, mainly in rural areas, lack of reasonable accommodation in school milieu,⁴⁷⁶ lack of education assistive devices and materials and lack of incentives for those teachers who take further training on special needs/inclusive education worsen the problem.⁴⁷⁷ This requires increment of budget and/or seeking international cooperation⁴⁷⁸ to the level where these problems, mainly associated with financial resource, are solved.

There has not been significant awareness raising measure taken. For example, in 2011 only 9000 people were targets of awareness raising campaigns and trainings throughout the country.⁴⁷⁹ It was carried out mainly in major cities and the targets were representatives of DPOs, government agencies, officials from sector offices and some community leaders.⁴⁸⁰ Discrimination of CWD manifests itself mainly within the society, especially in rural areas. Without raising awareness and disseminating relevant provisions of ratified human rights treaties for families, communities, sector offices, school administration and teachers at all levels, it is hard to expect the right to be achieved. It is also difficult for CWD to claim their right and advocate about them unless they are aware of their rights.

also been initiated at BA level at Addis Ababa University under linguistics department. Ministry of Education, 'Factsheet on special needs/inclusive education', Special Needs/Inclusive Education team, p. 2.

⁴⁷⁶ Inaccessible school milieu include: buildings with stairs, inaccessible toilet rooms, inaccessible class room arrangement, buildings with no wheelchair ramp etc... there is a move by the ministry of education to make 'plasma education' accessible for students with hearing disabilities.

⁴⁷⁷ ESDP IV Program Action Plan, cited above at note 419, p. 76-77; Ministry of Education, cited above at note 439, p. 10: There is no additional payment or increment of salary for those teachers who attend further training on special needs/inclusive education and get certified. This makes the teachers uninterested to attend the training out of their will. For example in 2008 only 16 teachers have attended Sebeta School for the Blind, which has the intake capacity of 50 teachers a year.

⁴⁷⁸ It is noted that the government of Finland is currently cooperating with the MoE in implementing special needs/inclusive education. Due to lack of dependable disaggregated data on the number of CWD, lack of/poor planning and reporting by regional and woreda sector offices, inadequacy of expert human resource and the like have made it difficult to make use of the assistance provided by the Finish government to the maximum amount extended. Interview with Ato Degefa Abadi, cited above at note 419.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid. It is noted that lack of focal points in sector offices, which could follow up special needs/inclusive education and its implementation, around the country is the main reason not to reach out a wider area.

Monitoring activities are not being carried out effectively due to lack of focal points in sector offices in different parts of the country, lack of concern and reporting on education of CWD by responsible bodies and inadequacy of trained man power in quality and quantity.⁴⁸¹ There is no established coordination mechanism between MoE and MoLSA in monitoring activities and preparing reports.⁴⁸² In the absence of such coordination it is difficult to prepare comprehensive reports to treaty monitoring bodies and for use domestically.

4.3.3.2 Health

The right to the enjoyment of the highest attainable standard of health is one of the basic rights for CWD since it encompasses and implicates on virtually all rights.⁴⁸³ In Ethiopia, the Ministry of Health (MoH) is mandated with powers and duties to carry out health related activities.⁴⁸⁴ It is particularly required to coordinate and direct the country's Health Sector Development Program (HSDP).⁴⁸⁵ Regional health bureaus and other government organs also exercise such mandates through delegated power from the MoH.⁴⁸⁶

Implementation of the right requires adoption of national health policy, strategies and plans of action, which are devised with particular attention, *inter alia*, to CWD.⁴⁸⁷ The National Health Policy currently in force is adopted in 1993. The Policy, apart from emphasizing inter-sectoral collaboration in the 'development of community based facilities for the care of the physically and mentally disabled',⁴⁸⁸ does not make particular emphasis on CWD.

However, the general policy on 'development of equitable and acceptable standard of health service system',⁴⁸⁹ 'assurance of accessibility of health care for all segments of the population',⁴⁹⁰ and '[p]rovision of affordable health care with special assistance mechanisms for those who cannot afford to pay'⁴⁹¹ are of particular relevance for PWD in general and CWD in particular. The priorities of the policy include giving special attention to the health

⁴⁸¹ Interview with Ato Degefa Abadi, cited above at note 419.

⁴⁸² Ibid; Interview with Ato Zerubabel Elias, cited above at note 416.

⁴⁸³ CESCR General Comment No. 14, p. 78, para. 3.

⁴⁸⁴ Proclamation No. 471/2005, art. 22.

⁴⁸⁵ Id, art. 22 (1).

⁴⁸⁶ Id, art. 22 (7).

⁴⁸⁷ CESCR General Comment No. 14, para. 43 (f).

⁴⁸⁸ Health Policy of the Transitional Government of Ethiopia, General Strategies No. 3.6.

⁴⁸⁹ Health Policy of the Transitional Government of Ethiopia, General Policy No. 3.

⁴⁹⁰ Id, General Policy No. 6.

⁴⁹¹ Id, General Policy No. 9.

Incorporation of provisions in international human rights treaties ratified by Ethiopia, and their subsequent implementation at all levels has been a subject of academic and judicial debate over years due to hazy wording of the Constitution.⁴³⁵ Albeit the Constitution provides that international treaties ratified by Ethiopia are integral part of the law of the land,⁴³⁶ confusions are there about the exact procedural requirements a treaty must pass through to be applicable domestically.⁴³⁷ The debate still sustains on treaties that recognized socio-economic rights of CWD and has impact on effective recognition and implementation of the rights. Yet, based on article 13 (2) of the Constitution it is possible to refer to international human rights treaties to fill such gaps as are created in the Constitution regarding socio-economic rights of CWD.⁴³⁸

4.3.3 Specific socio-economic rights of children with disabilities and their implementation in Ethiopia

This section assesses implementation measures being taken in Ethiopia by selecting some specific rights, i.e. the rights to education; health; work and employment; and play, leisure, recreation and sports, which are crucial for overall development of CWD and realization of their best interests. The selection of these rights, however, by no means implies superiority of these rights over the others, rather are believed by the writer to represent particular issues related with socio-economic rights of CWD and their implementation in Ethiopia.

Constitution impliedly entrenches socio-economic rights recognized by international human rights instruments to which Ethiopia is a State party, including ICESCR, CRC, ACHPR, ACRWC and CRPD. See FDRE Constitution arts. 9 (4) and 13 (2).

⁴³⁵ The debate on the issue is a broad one and cannot be covered here in this paper. For further reading see Sisay A. Yeshanew, 'The justiciability of human rights in the Federal Democratic Republic of Ethiopia' vol. 8 (2008), *African Human Rights Law Journal*; Takele Soboka Bulto, 'The Monist-Dualist Divide and the Supremacy Clause: Revisiting the status of Human Rights Treaties in Ethiopia' vol. 23 (2003), *Journal of Ethiopian Law*; Ibrahim Idris, 'The place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia Constitution' vol. 20 (2000), *Journal of Ethiopian Law*; Rakeb Mesele, 'Enforcement of human rights in Ethiopia', (2002), Action Professionals Association for the People, available at <<http://www.apapeth.org/Docs/ENFORCEMENT%20OF%20HR.pdf>> (last accessed on 1 November 2011).

⁴³⁶ FDRE Constitution, art. 9(4).

⁴³⁷ Some argue that once a treaty is ratified by the House of Peoples Representatives, which is the highest legislature in the country and mandated to ratify treaties, it gets immediate effect at all spheres by all organs of the government. Others, however, argue that mere ratification is not enough. They assert that the treaty has to be translated into the official language, which is Amharic, and be proclaimed by the President in the Negarit Gazeta, which is the official gazette used to publicize laws.

⁴³⁸ Note that according to article 9(4) of the Constitution international human rights instruments ratified by Ethiopia (which serve as interpretation thresholds for the bill of rights in the Constitution as per article 13(2)) are part and parcel of the law of the land.

4.3.3.1 Education

According to the MoE estimate, there are about 3 million children in Ethiopia that need special education due to disability, learning problems and special gift.⁴³⁹ These children are basically identified based on consideration of the disabling milieu for education that they have to face due to their disability. Such milieu includes low quality education, lack of appropriate teacher-student communication, socio-psychological challenges, socio-cultural problems and lack of educational resources needed by CWD.⁴⁴⁰ Accordingly, the number of CWD enrolled in education still remains extremely limited; and less than 3% of PWD in Ethiopia, mainly children, have access to primary education.⁴⁴¹ According to data collected by MoE, 55,492 CWD are enrolled in primary education (grade 1-8) in 2010/11.⁴⁴² Compared to the large number of CWD who do not have access to education, the number of students enrolled is very insignificant. Coupled with the problem that primary education is still neither free nor compulsory,⁴⁴³ which is an immediate obligation of the State,⁴⁴⁴ implementation of the right is far from reality.⁴⁴⁵

To realize the right to education as recognized by the Constitution and international human rights instruments ratified by Ethiopia, the Government adopted Education and Training

⁴³⁹ It is not clear whether children with 'special gifts' are considered as CWD or not. They are simply mentioned as those that need special education due to the disabling milieu they have to face similar to those children that have disabilities. Ministry of Education, Special Needs/Inclusive Education Strategy, 2006, p. 6. (The writer has the Amharic version of the strategy and reference to the strategy in the paper is based on the writer's own translation of the document).

⁴⁴⁰ Ibid.

⁴⁴¹ ESDP IV Program Action Plan, cited above at note 419, p. 76; UNESCO report in 2007 indicates that less than 1% of children with special needs have access to education. See African Child Policy Forum, cited above at note 45, p. 118.

⁴⁴² Ministry of Education, Education Management Information System (EMIS), 'Education Statistics Annual Abstract: 2003 E.C./2010-2011 G.C.', September 2011. The data categorized them into visually impaired, physically impaired, hearing impaired, mentally retarded and others.

⁴⁴³ United Nations Economic and Social Council, Committee on Economic, Social, and Cultural Rights, Forty-eighth session, 30 April-18 May 2012, Concluding observations, Ethiopia [hereinafter CESCR Concluding observation on Ethiopia, 2012], para. 26; see also Committee on the Rights of the Child, Forty-third session, Concluding observations: Ethiopia, CRC/C/ETH/CO/3, 1 November 2006, para. 63. Note that making primary education compulsory, free and available for all is a right that is capable of creating obligation of immediate effect. Rishmawi, cited above at note 95, para. 88, p. 34.

⁴⁴⁴ Verheyde, cited above at note 56, paras. 7, 14 and 42, pp. 10, 21, 54-55. The ICESCR creates obligation of immediate effect with regard to realization of the right to enjoy free and compulsory education. See ICESCR, art. 13 (2(a)).

⁴⁴⁵ The Committee on the Rights of the Child raised its concern that Ethiopian CWD have insufficient educational opportunities; and noted a double disadvantage for those who live in rural and remote areas. Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under article 44 of the Convention, Concluding observation: Ethiopia, CRC/C/ETH/CO/3, 1 November 2006, para. 51.

Policy in 1994. The Policy aims to provide education to all children without any discrimination and provides that disadvantaged groups will receive special support in education. Accordingly, it provides that 'special education and training will be provided for people with disabilities'⁴⁴⁶ and efforts will be made 'to enable both the handicapped and the gifted to learn in accordance with their potential and need'.⁴⁴⁷ Within the framework of the Policy, the Government has designed and launched a twenty years Education Sector Development Plan (ESDP). ESDP I was launched in 1997 and as of ESDP III (2005/06-2009/10) due consideration has been given to the expansion of educational opportunities to CWD.⁴⁴⁸ This consideration has been continued with the ESDP IV (2010/2011-2014/2015).⁴⁴⁹ Furthermore, the MoE adopted Special Needs/Inclusive Education⁴⁵⁰ Strategy in 2006,⁴⁵¹ which is aimed at implementing the right to education of CWD.

Though adoption of policies, strategies and programs that mainstream issues of CWD is one of the mechanisms for implementation of their rights, their effectiveness depends on many factors. The Education Policy that is still in force has been adopted in 1994, which makes it obsolete. Such policies have to be regularly revised to incorporate subsequent developments and to harmonize them with principles that have developed ever since their adoption.⁴⁵²

The Policy's focus on education of CWD, only providing non discrimination and provision of special support, is also insignificant, making it incomprehensive on the issue. Additionally, it is not cautious about the language used to describe PWD, i.e. the Policy used a derogatory

⁴⁴⁶ Ministry of Education, Education and Training Policy (1994), Educational Structure No. 3.2.9.

⁴⁴⁷ Id, Specific Objective 2.2.3.

⁴⁴⁸ ESDP IV Program Action Plan, cited above at note 419; Ministry of Education, Factsheet on special needs/inclusive education, Special Needs/Inclusive Education team, p. 1.

⁴⁴⁹ Ibid.

⁴⁵⁰ Id, p. 76: *Inclusive education* is a process of addressing and responding to the diversity of needs of all learners through increasing participation and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structure and strategies to respond to diversity needs. Generally, *Special Needs Education* focuses on providing services for individual child, while inclusive education focuses on the change of the whole system of the school environment to the need of the individual child.

⁴⁵¹ The Writer has learnt that there is a new strategy in the making that would replace the 2006 Strategy if the new draft is to be approved by the council of ministers. The team leader for Special Needs/Inclusive Education notes that the new draft has included new developments on inclusive education and considered recently ratified treaty, i.e. CRPD. Interview with Ato Degefa Abadi, cited above at note 419.

⁴⁵² For example, once advocated Special Needs Education for PWD has now left the fora for inclusive education in the mainstream educational system. Thus, policies have to be revised accordingly. Additionally, there has been adoption of treaties like the CRPD that provides general principles, which must inspire policy statements on persons with disabilities. Therefore, revisions that take these principles into account are necessary.

term: 'handicapped'.⁴⁵³ Moreover, neither the Policy nor the Strategy designed on Special Needs/Inclusive Education involved participation of CWD in the drafting and subsequent processes.⁴⁵⁴ Accordingly, it is possible to conclude that the right of CWD to express their view has not been respected. The ESDP III, which is said to make education of CWD one of the priorities, only makes a passing reference to special needs education as an afterthought.⁴⁵⁵ Moreover, the same challenges observed by the ESDP III have been re-observed by ESDP IV without significant changes achieved through the implementation of ESDP III.⁴⁵⁶ It is worth noting here that the National Programme of Action for Children and Women (1996-2000) and the National Plan of Action for Children (2003-2010 and beyond) sidelined the needs of CWD.⁴⁵⁷

Implementation of the right on the ground faces challenges due to inadequate budgeting, poor planning and monitoring, lack of trained professionals and teachers in quantity and quality, unavailability of resources needed to assist teachers and students for inclusive education, lack of awareness at all levels, and lack of dependable nationwide data on the number of CWD who would be targets of inclusive education.⁴⁵⁸

The challenge is further triggered by failure to adjust physical accessibility of schools to reasonably accommodate CWD.⁴⁵⁹ This is a major factor for their marginalization and

⁴⁵³ See Ministry of Education, Education and Training Policy (1994), Specific Objective 2.2.3.

⁴⁵⁴ The CRPD Committee recommended that policies and programmes that state parties to the Convention establish shall ensure the right of CWD to express their own view. See Committee on the Rights of Persons with Disabilities, Concluding observation of the Committee on the report submitted by Spain, CRPD/ESP/CO/1, 19 October 2011, para. 24(b); some DPOs and Federation of DPOs are said to have participated and raised their views on the new draft strategy on special needs/inclusive education in a discussion forum organized by the MoE. CWD, however, were not part of the discussion. Interview with Ato Degefa Abadi, cited above at note 419.

⁴⁵⁵ See Ministry of Finance and Economic Development (MoFED), Ethiopia: Building on Progress, A Plan for Accelerated and Sustained Development to End Poverty (PASDEP), Vol. 1, pp. 108-114.

⁴⁵⁶ See ESDP IV Program Action Plan, cited above at note 419, pp. 76-78.

⁴⁵⁷ See Ministry of Labor and Social Affairs, Ethiopia's National Plan of Action for Children (2003-2010 and beyond), 2004 [hereinafter National Plan of Action for Children].

⁴⁵⁸ ESDP IV Program Action Plan, cited above at note 419, pp. 76-77; Ministry of Education, cited above at note 439, p. 7; interview with Ato Degefa Abadi, cited above at note 419. See also Mamo Mengesha, 'Special needs education: Emerging in Ethiopia' in H. Savolainen, H. Kokkala and H. Alasuutari (eds.), Meeting Special Needs and Diverse Needs: Making Inclusive Education a Reality (2001); Teferra Tirussew, 'An Overview of Inclusive Development in the Last Fifteen Years in Ethiopia' in H. Savolainen, M. Matero and H. Kokkala (eds.), When All Means All: Experiences in Three African Countries with EFA and CWD (2006).

⁴⁵⁹ Studies show that public school buildings and facilities are not accessible for CWD in Ethiopia. For example, a study by African Child Policy Forum showed that in many schools toilets are at the far end of the schools, accompanied by tortuous ways to them and difficult to navigate for children with visual impairments. Water taps are only put on during breaks and lunchtimes, and children must fight their way to drink. Children with visual

needs of children⁴⁹² and provision of appropriate support to curative and rehabilitative components of mental health.⁴⁹³ The Policy does not mainstream CWD at all except for its mention to mental health, which could be applicable with regard to health needs of children with mental disability.

The Policy has not been revised ever since its adoption, which makes it obsolete. To put the Policy into effect and address health needs of the Ethiopian people, Health Sector Development Programme (HSDP) is being implemented since 1997/98. Currently it has reached its fourth phase (HSDP IV, 2010/11-2014/15).⁴⁹⁴ Nevertheless, the HSDP has not mainstreamed CWD. Its indirect contribution to CWD is the increase in number and coverage of physical health facilities and health workers in the country.⁴⁹⁵ This could promote CWD's access to basic health services, mainly in the rural areas. The blindness prevention and control programme, though did not mainstream children with sight disability, is also worth mentioning. Its implementation, however, encountered challenges due to poor data and statistics on the number of targets, shortage of resources and poor program coordination.⁴⁹⁶

Another obvious contribution of the HSDP with regard to disability is its emphasis on TB and leprosy related disability,⁴⁹⁷ blindness prevention and control, and mental health.⁴⁹⁸ Childhood blindness, with cataract, trachoma and glaucoma, has been identified as one of the major causes of blindness in Ethiopia. To tackle the problem of blindness, various initiatives have been taken, including launching the Global Initiative on blindness prevention and control, VISION 2020; establishment of a National Eye Bank and development and standardization of

⁴⁹² Id, Priorities of the Policy No. 8.1. Even if it is possible to argue that the health needs of children prioritized in the Policy could also include the health needs of CWD, there is no any evidence that this particular provision of the Policy was meant to include that.

⁴⁹³ Id, Priorities of the Policy No. 3.

⁴⁹⁴ In each phase, the document that takes the place from the previous summarizes the main goals of previous HSDP phase, its implementation and challenges faced. Therefore, it is possible to assess the aspirations of a certain phase from its document and its implementation from the subsequent phase's document.

⁴⁹⁵ Federal Democratic Republic of Ethiopia Ministry of Health, Health Sector Development Program IV, 2010/11-2014/15, [hereinafter HSDP IV], October 2010, p. 5.

⁴⁹⁶ Federal Ministry of Health, Health Sector Strategic Plan (HSDP-III) 2005/6-2009/10, 2005, [hereinafter HSDP III], p. 18.

⁴⁹⁷ The objective is to reduce the occurrence of disability related to TB and Leprosy. See HSDP III, id, p. 26.

⁴⁹⁸ See HSDP III and HSDP IV, cited above at notes 99 and 100.

cataract surgeons' training curriculum.⁴⁹⁹ Despite these initiatives, the targets that had been reached were not more than half of the planned.⁵⁰⁰

The HSDP aims the mainstreaming of detection and management of mental health problems, and integration of mental health services with the existing health service delivery system.⁵⁰¹ It envisages training of health workers on mental health.⁵⁰² In this regard, it provides for adoption and implementation of mental health policy.⁵⁰³ Accordingly, there is a National Mental Health Strategy in the making.⁵⁰⁴ The draft, if adopted, gives particular attention for children with mental health in the strategy.⁵⁰⁵ So far, however, mental health related measures have sidelined issues of children. In particular, laws prohibiting coercive medical treatment for children with mental health problem have not been developed.

Despite the fact that the policies, strategies and programmes have envisaged provision of mental health services in the mainstream health system, there has been lack/shortage of trained health professionals that could work with CWD in the general health system.⁵⁰⁶ They also addressed only a few types of disabilities leaving out a lot of other categories. The policies, particularly, failed to include measures for early identification and intervention of the various disabilities, including treatment and rehabilitation⁵⁰⁷ by providing all necessary

⁴⁹⁹ HSDP IV, cited above at note 99, p. 12. Performance report of the HSDP III showed that there has been increase in the number of woredas that implement SAFE strategy for trachoma and performance of cataract surgeries. In 2008/09 cataract surgery achievement rate went nearly 60% of the HSDP III target.

⁵⁰⁰ Ibid.

⁵⁰¹ HSDP III, cited above at note 100, p. 65; HSDP IV, cited above at note 99, p. 59.

⁵⁰² Training given to health extension workers on mental health in order to enable them educate the community, identify and refer, and make follow-up of patients is an invaluable goal. Furthermore, provision of basic training to general practitioners and health officers on mental health has the potential to increase accessibility of mental health in different parts of the country. See HSDP III, cited above at note 100, p. 66.

⁵⁰³ Ibid.

⁵⁰⁴ The draft National Mental Health Strategy, completed in February 2011, is not put to force yet (as of July 2012). It is meant to cover the years between 2011 and 2015.

⁵⁰⁵ The draft strategy identified children and adolescents with mental disability as vulnerable groups who require special consideration when developing, designing and implementing mental health services. It also envisages collaboration in implementation of mental health of children with other ministries, such as Ministry of Education and Ministry of Information (Radio and Television) and other stake holders (like NGOs). Furthermore, there is a plan to specifically address the mental health problem of children and adolescents and provide them specialized services of habilitation and rehabilitation. The Strategy particularly focuses on children's mental health promotion and de-stigmatization, school based mental health, treatment of children in community and hospital based settings. See Federal Democratic Republic of Ethiopia Ministry of Health, Draft National Mental Health Strategy, (2011-2015), 2011, pp. 56, 76, 81-82.

⁵⁰⁶ The CRPD reinforced the recommendation that the basic and continuing education and training of doctors and health professionals should always include firsthand and up-to-date information on childhood disability.

⁵⁰⁷ Rehabilitation services include physiotherapy, occupational therapy, speech therapy, audiology and/or psychological services: see Schneider and Saloojee, cited above at note 125, p. 197.

devices that enable CWD to achieve their full functional capacity in terms of mobility, hearing aids, visual aids, and prosthetics among others.⁵⁰⁸

Though it is the obligation of the State under the CRPD, neither Policy nor actual implementation measures have been taken with regard to early identification and intervention to prevent and minimize further disabilities of CWD.⁵⁰⁹ Neither the strategic documents nor implementation measures that are taken so far evidence accessibility of various rehabilitation services, such as speech therapy and physiotherapy, which at an early age are crucial for the development of CWD and their future participation in the society.⁵¹⁰ Access to orthopaedic devices, which would enable them to become independent, prevent further disabilities and support their social integration are lacking,⁵¹¹ though there are initiatives ongoing with regard to this.⁵¹² Youth friendly sexual and reproductive health care targeting adolescents with disabilities, which emphasizes on tackling the stereotype that PWD are asexual, has not been developed.⁵¹³ Protection measures for CWD from violence and abuse, including sexual violence that increases their risk of being HIV infected, has not been carried out.

Generally, though there has been expansion of health institutions, their physical accessibility⁵¹⁴ and affordability of the service are still in question.⁵¹⁵ Without having trained

⁵⁰⁸ CRC General Comment No. 9, paras. 51-57. The Committee finds that such measures are indispensable.

⁵⁰⁹ See CRPD, art. 25 (b).

⁵¹⁰ CRPD, art. 25 (b): CWD have the right to access services designed to minimize and prevent further disabilities, which include various therapies.

⁵¹¹ The right to health encompasses such services in addition to various other medical and social services. CESCR General Comment No. 5, para. 34; see also the Declaration on the Rights of Disabled Persons, General Assembly resolution 3447 (XXX) of 9 December 1975, para. 6; and the World Programme of Action concerning Disabled Persons, General Assembly resolution 37/52 of 3 December 1982, para. 95-107.

⁵¹² According to Ethiopia's State report to the CESCR, there is production of orthopaedic appliances, including provision of new equipment and maintenance especially for children in the country. Buildings have been constructed to strengthen artificial and supportive body part manufacturing institutions; and special national rehabilitation center has been constructed to provide medical services and training for orthopaedics professionals. Yet, implementation on the ground in this regard is far from reality. CESCR, Implementation of the International Covenant on Economic, Social and Cultural Rights, Combined initial, second, third and fourth periodic reports submitted by States Parties under articles 16 and 17 of the Covenant: Ethiopia, E/C.12/ETH/1-4, 28 August 2009, [hereinafter CESCR, Ethiopia, E/C.12/ETH/1-4], paras. 150, 151 and 153.

⁵¹³ Proper sexual and reproductive health care, which respects confidentiality and privacy, helps youth with disabilities to enjoy a fulfilling and decent life and to participate within their community. CESCR General Comment No. 14, paras. 22 - 23.

⁵¹⁴ Adequate access to buildings is an inherent part of the right to health of CWD. CESCR General Comment No. 14, para. 12 (b). Note that Proclamation No. 624/2009 provides that any public building and its facilities shall be accessible to children (persons) with disabilities. See Proclamation No. 624/2009, Ethiopian Building Proclamation, art. 36.

professionals on disability issues and the needs of CWD, existence of institutions by itself remains an unfulfilled promise. No measure has been taken to provide necessary health insurance and health care facilities for CWD coming from indigent families.⁵¹⁶ There is no initiative observed, which is aimed at ensuring private providers of medical services and facilities comply with the principle of non-discrimination in relation to CWD.⁵¹⁷ Therefore, it is fair to conclude that the State has failed to carry out its treaty obligations.

Similar with the general policies, the National Plan of Action for Children has sidelined CWD.⁵¹⁸ Without clear mainstreaming of CWD in health and health related services, in policies and plans, it goes without saying that it is difficult to expect focal points that would monitor implementation, nor targeted awareness raising and budgeting for CWD to ensure their right to health.⁵¹⁹

4.3.3.3 Work and Employment

Though all children, including CWD, are better off if they continue secondary education after completion of compulsory primary education, socio-economic realities might expect some, if not most, of them to prepare for the working world.⁵²⁰ Such realities, if not regulated systematically, can result in these children being easy targets for exploitation and perform hazardous works that may interfere with their overall development.

⁵¹⁵ Even if there is severe constraint in resource to provide health services for CWD, the state is obliged to do so through adoption of relatively low-cost targeted programmes. See CESCR General Comment No. 14, para. 18; CESCR General Comment No. 3, para. 3.

⁵¹⁶ Committee on ESCR noted that States have special obligation in this regard. CESCR General Comment No. 14, para. 19.

⁵¹⁷ The State is obliged to ensure that CWD get similar treatment in private health facilities without any discrimination. Since the principle of non-discrimination lays obligation of immediate effect, failure to ensure as such amounts to failure to implement the core content of the ICESCR and other international human rights instruments ratified by the State, and hence, *prima facie*, a violation. CESCR General Comment No. 14, paras. 26, 30, 43, 47; CESCR General Comment No. 5, para. 34.

⁵¹⁸ See National Plan of Action for Children, cited above at note 68, p. 60 for its goals on health.

⁵¹⁹ There are no focal points that specifically address and monitor health issues of CWD; no specific budgeting and awareness raising measure conducted targeting health related issues of CWD.

⁵²⁰ Note that minimum age for work in most jurisdictions including in ILO standard is lower than 18 years. In Ethiopia children above the age of 14 are eligible for work under the labor proclamation. This shows child labor is to be taken to exist for those children below the age of 14. CWD above the age of 14, if they engage in work and employment, it would not be considered as child labor.

In Ethiopia, as in many African countries, children in general and CWD in particular engage in labor activities,⁵²¹ often in the informal economy and house hold tasks, including menial tasks like begging. The very reason that forces them to work is their very survival⁵²² and the survival of their family.⁵²³ Poverty, lack of adequate access to education and lack of awareness forced Ethiopian children as young as 5 years old to actively work in family farms, informal businesses and sometimes in the formal sector for lower wages.⁵²⁴ This calls for taking up measures that protect their rights related to work and employment.

As noted in chapter three, and as is the case with other rights, implementation of the right to work and employment of CWD and protection from labor related abuses, necessitate adoption of appropriate legislation, strategies and policies; creating awareness on the right of CWD to be free from child labor and the required standards for those that are engaged in work related activities; adopting administrative, budgetary, judicial and various other appropriate measures designed to realize it.⁵²⁵

It is noted in chapter three⁵²⁶ that incorporation of standards set in international instruments and harmonization of domestic laws with same is one of the legislative measures States are required to undertake to ensure work related rights of CWD. In this regard, the Ethiopian labor law failed to conform to international standards to which Ethiopia is committed, by providing minimum age for work at fourteen (14) years of age.⁵²⁷ The Committee on Economic, Social and Cultural Rights has noted that States should adopt legislative measures that prohibit labor of children under the age of 16 as their obligation relating to child labor

⁵²¹ According to a study made on 43,061 households disclosed the fact that 85% of the children between the ages of 5 to 17 are engaged in some kind of productive and household activities; 33% of them combine schooling and work; that 92% of these children are engaged in unpaid work and that in most parts of the country the average number of hours of work is in the area of 33 hours a week. UNICEF on the state of the world's children 2005 stated that 43% of Ethiopia children between the ages of 5 and 14 are engaged in child labour during the years 1999 and 2003. V. Goel, 'Children's human rights in underdeveloped country: A study in Ethiopian perspective', African Journal of Political Science and International Relations, Vol. 3 (4), 2009, p. 150.

⁵²² For example, chronic food insecurity and malnutrition that put the survival of CWD at risk are still prevalent in Ethiopia. CESCR Concluding observation on Ethiopia, 2012, cited above at note 55, para. 22.

⁵²³ National Employment Policy and Strategy of Ethiopia, 2.3.5.9.1 Strategy for Protecting Children against Child Labor Exploitation, 2009, p. 48.

⁵²⁴ Id, Policy Action Area and Strategy - 2.3.5.9 Protecting Children against Child Labor, 2009, p. 47.

⁵²⁵ See also CESCR General Comment No. 18, paras. 22, 38 – 43, 48-51, pp. 139 ff.

⁵²⁶ See section 3.2.1.1 above.

⁵²⁷ Proclamation No. 377/2003, Labour Proclamation, 10th Year No. 12, 26th February 2004, [hereinafter Proclamation No. 377/2003], art. 89 (1) & (2).

under article 10 of the ICESCR.⁵²⁸ The labor law, by legitimizing employment of CWD who attained the age of 14, thus, failed to effectively prohibit child labor, including labor of CWD as per international standards. This exacerbates the fact that child labor is a widespread practice in Ethiopia.⁵²⁹ Furthermore, the law has failed to incorporate principles for the protection of young workers with disabilities from worst forms of child labor as provided in ILO Convention No. 182,⁵³⁰ which has been ratified by Ethiopia.⁵³¹

As a legislative measure, disability specific employment proclamation has been adopted by Ethiopia to ensure realization of the right to work and employment of PWD.⁵³² The law adopted the social model for disability⁵³³ and highlighted basic concerns related to employment of PWD. It, however, failed to even mention CWD though young workers are recognized under the labor proclamation.⁵³⁴ Consequently, it sidelined them from the mainstream legislative protection and further resulted in lack of appropriately and adequately designed laws, policies and programs that specifically deal with work related rights of CWD.

The existing general and disability specific labor laws have only dealt with work and employment in the formal sector. However, high unemployment and lack of secure employment forced workers, including CWD to seek employment in the informal sector of

⁵²⁸ CESCR General Comment No. 18, para. 24.

⁵²⁹ The major factors that gave rise to child labor in Ethiopia are household poverty, family disintegration and loss of parents due to various reasons. See National Employment Policy and Strategy of Ethiopia, cited above at note 125, p. 47.

⁵³⁰ ILO, Worst Forms of Child Labour Convention, 1999 (No. 182), Adopted on 17 June 1999 by the General Conference of the International Labour Organization at its eighty-seventh session, Entry into force: 19 November 2000. Art. 3 (d) of the ILO Convention categorized 'Work which, by its nature or the circumstances in which it is carried out, is likely to harm the *health, safety or morals* of children' as a worst form of child labor. Proclamation No. 377/2003, art. 89 (3) only prohibits engaging young workers in a work than endangers their *life or health* without expressly providing it as a worst form of child labor. Since further requirements with regard to safety and morals can provide better protection, they should be incorporated to the domestic laws.

⁵³¹ See Convention Concerning Prohibition and immediate Action for the Elimination of the Worst Forms of Child Labour Ratification Proclamation, Proclamation No. 335/2003. Art. 3 of the Proclamation mandates MoLSA to take all necessary measures for the implementation of the Convention.

⁵³² Proclamation No. 568/2008, Right to employment of persons with disability proclamation, 14th Year No. 20, Addis Ababa, 25th March, 2008 [hereinafter Proclamation No. 568/2008]. This proclamation has also repealed the pre-existing Proclamation No. 101/1994 on the Right of disabled persons to employment. The previous law is repealed because it 'created, by providing for reservation of vacancies for disabled persons, an image whereby people with disabilities to be considered as incapable of performing jobs based on merit and failed to guarantee their right to reasonable accommodation and to provide for proper protection'. See Proclamation No. 568/2008, preamble, para. 2.

⁵³³ For further information on 'social model' of disability, see section 2.7 above. See also Office of the High Commissioner for Human Rights, cited above at note 182, p. 13.

⁵³⁴ A young worker is a person who is in between 14 and 18 years of age. See Proclamation No. 377/2003, art. 89(1).

the economy.⁵³⁵ Children work in informal businesses and family farms for low wages.⁵³⁶ The laws have not targeted reduction of the number of those workers who are in the informal economy. Furthermore, there is no legislation that regulates domestic and agricultural works, which would allow workers in such sectors to enjoy the same level of protection as other workers recognized in the labor laws.⁵³⁷

A National Employment Policy and Strategy has been adopted in 2009 to guide the issue of employment creation and labor administration in a coordinated manner.⁵³⁸ It is designed to address the issue in urban and rural areas and formal and informal sectors.⁵³⁹ Promoting employment opportunities for PWD, enhancing youth employment and protecting children against child labor are among the cross-cutting issues of the Policy document.⁵⁴⁰

The Policy and Strategy, however, has sidelined CWD. Nowhere are they mentioned in it, not even in the priority areas that have direct linkage to their issues.⁵⁴¹ This evidences the little or no attention given to them and their particular needs. Despite the Policy's provision for enforcing institutional protection and equal employment opportunities to PWD, the Strategies on it failed to indicate the role of the State in ensuring children (persons) with disabilities the right to work in the mainstream employment sector. Apart from recognizing government's role to improve access to education and employment, no policy framework is set for the provision of adequate income support by the State for those who are denied opportunity for employment owing to their disability.⁵⁴²

⁵³⁵ CESCR General Comment No. 18, para. 10.

⁵³⁶ In Ethiopia, poverty, inadequate access to education and lack of awareness are some of the reasons that forced children to work. See National Employment Policy and Strategy of Ethiopia, Policy Action Area and Strategy - 2.3.5.9 Protecting Children against Child Labor, 2009, p. 47.

⁵³⁷ CESCR General Comment No. 18, para. 10.

⁵³⁸ National Employment Policy and Strategy of Ethiopia, cited above at note 125, p. iv.

⁵³⁹ Ibid.

⁵⁴⁰ Id, pp. 40, 45-48.

⁵⁴¹ The Cross cutting issues of the Policy and Strategy: Promoting employment opportunities for people with disabilities, enhancing youth employment and protecting children against child labor are issues that have direct implications on work and employment issues of CWD.

⁵⁴² According to the Committee on Economic, Social and Cultural Rights the State is duty bound to provide adequate income support to children (persons) with disabilities who have been denied opportunity for employment owing to their disability. See CESCR General Comment No. 5, para. 28.

A Strategy on making private employers aware of causes of PWD is emphasized.⁵⁴³ Yet there is no provision on monitoring of them for observing particular rights of children (persons) with disabilities related to work and employment, including non-discrimination and reasonable accommodation. Without effective monitoring in play, mere awareness creation cannot guarantee implementation of disability specific rights by private employers. The Policy and Strategy has to be comprehensively revised to incorporate new developments, such as the CRPD, which lay directions on effective mechanisms to be put in place to ensure CWD utmost protection of rights.⁵⁴⁴

As it is indicated in section 4.3.1 above, MoLSA is mandated to oversee issues of PWD. Under its auspices a new 'Social Protection Policy' is prepared, which is expected to be endorsed in the near future.⁵⁴⁵ The draft policy has dealt with various issues of PWD, including labor related issues. Nevertheless, it has also failed to mainstream CWD like its predecessors. They are only to be targeted under generally designed issues of PWD and/or orphan and vulnerable children.⁵⁴⁶ The national plan of action for the rehabilitation of peoples living with disability, adopted to implement international conventions and constitutional provisions regarding people living with disabilities,⁵⁴⁷ has also failed to mainstream particular issues of CWD. Its implementation has so far remained only on paper.⁵⁴⁸

Work and employment issues are one of the main mandates of MoLSA in addition to its overall mandate to oversee issues of PWD.⁵⁴⁹ While carrying out its mandates, it relies on standards set by some of the relevant international instruments. But there is a tendency to ignore General Comments and Concluding Observations of treaty bodies.⁵⁵⁰ Making use of such documents could have highly assisted effective implementation of various measures

⁵⁴³ National Employment Policy and Strategy of Ethiopia, 2.3.5.8.1 - Strategies for Promoting Employment Opportunities for Persons with Disabilities, 2009, p. 47.

⁵⁴⁴ For example, Ethiopia ratified the CRPD in 2010, which is a year after the adoption of the National Employment Policy and Strategy.

⁵⁴⁵ Interview with Ato Zerubabel Elias, cited above at note 416.

⁵⁴⁶ Ibid.

⁵⁴⁷ CESCR, Ethiopia, E/C.12/ETH/1-4, para. 149.

⁵⁴⁸ Despite some efforts by MoLSA to carry out promotional activities and provision of technical and professional assistance to stakeholders, such initiatives remained a one-time activity. Interview with Ato Zerubabel Elias, cited above at note 416.

⁵⁴⁹ See Proclamation No. 471/2005, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation.

⁵⁵⁰ Interview with Ato Zerubabel Elias, cited above at note 416.

carried out/needed to be carried out to ensure realization of socio-economic rights of CWD, including work and employment related rights.

Access to employment of CWD is highly limited in Ethiopia.⁵⁵¹ This fact left many to work in the informal sector. Those who are working in the informal economy have to work for a long time in unsafe and unhealthy conditions of work without any regulation from the State.⁵⁵² These conditions interfere with the children's health and their overall development. Hence, the State has failed to perform its obligation to protect CWD from such conditions.⁵⁵³

Child labor, which is highly prevalent and mainly involves children under the age of 14, has not been prevented yet. Children without parental care and those from marginalized families are in increased risk of engaging in the worst forms of child labor.⁵⁵⁴ This directly interferes with the children's health and development. Accordingly, CWD's rights related to work and employment have not been effectively ensured.

As noted in chapter three,⁵⁵⁵ specific budgeting for CWD is necessary so as to give them appropriate attention and ensure that particular measures of implementation with regard to their rights, *inter alia*, work and employment related rights are carried out effectively.⁵⁵⁶ Apart from budgeting for PWD in general, there is no specific budgeting for CWD in Ethiopia since they and their issues are not mainstreamed yet.⁵⁵⁷

Though MoLSA is clearly mandated to oversee issues of PWD, including their work and employment related rights, there is no focal point established that deals with issues of CWD.⁵⁵⁸ This reaffirms the fact that issues of CWD are sidelined. Consequently, their rights related to work and employment can be said to be overlooked and submerged. With a clear mandate given to it to oversee issues of PWD, including CWD, MoLSA had to have

⁵⁵¹ CESCR Concluding observation on Ethiopia, 2012, cited above at note 55, Para. 9.

⁵⁵² *Id.* para. 10.

⁵⁵³ In addition to creating opportunities for work, the State is required to provide minimum age for employment, regulate working hours and condition, and provide for penalties or other sanctions in time of failure to observe the laws and regulations. See Mower, cited above at note 104, pp. 43-44.

⁵⁵⁴ *Id.* para. 15.

⁵⁵⁵ See section 3.2.1.3 above.

⁵⁵⁶ UNICEF, cited above at note 8, p. 34.

⁵⁵⁷ Interview with Ato Zerubabel Elias, cited above at note 416.

⁵⁵⁸ *Ibid.*

established a focal point for CWD and established a national focal point to facilitate inter-sectoral coordination in the implementation of socio-economic rights of CWD.⁵⁵⁹

MoLSA monitors implementation measures carried out directly by it and by regional sector offices.⁵⁶⁰ It provides the necessary training and other required assistance for the regions to effectively implement the policies and programs, which eventually may contribute for the realization of work related rights of CWD. The regional offices report back to it about their successes and failures. In actual implementation activities, however, there is no significant coordination between them.⁵⁶¹ Lack of such coordination coupled with lack of national focal point (coordinating committee) negatively impacted on the preparation of the country's reports to be submitted to treaty bodies.

In the overall activities of MoLSA, there is development in the participation of DPOs.⁵⁶² In particular, its engagement with the Ethiopian Federation of Associations of Persons with Disabilities (EFAPD) is a notable advance. There is a move to establish DPOs Council to allow them engage co-ordinately.⁵⁶³ Nonetheless, it is the registered DPOs only that are invited to participate. It is known by the MoLSA that most PWD are not organized in any DPO. Since much awareness creation is not carried out, except for the registered ones that have access to the MoLSA, many are left out. Particularly, participation of CWD has not been sought.⁵⁶⁴ This goes against the very principle in relation to the rights of children in general and rights of CWD in particular, i.e. right to be heard and to participate.⁵⁶⁵

⁵⁵⁹ Effective monitoring of implementation of socio-economic rights of children (persons) with disabilities presupposes establishment of national coordinating committees or similar bodies, which serve as national focal point that ensure inter-sectoral coordination. See CESCR General Comment No. 5, para 14; UNICEF, cited above at note 8, p. 33.

⁵⁶⁰ Ibid. The MoLSA is mainly engaged in general implementation measures. It prepares policies and programs to be implemented basically by regional states. It assists them with the required assistance needed for them to effectively carry out their mandates. They finally report back to the MoLSA.

⁵⁶¹ Ibid.

⁵⁶² MoLSA provides trainings and other awareness raising measures for DPOs. It also engages them in activities that concern persons with disabilities.

⁵⁶³ Interview with Ato Zerubabel Elias, cited above at note 416.

⁵⁶⁴ The DPOs themselves are primarily membered by adults with disabilities.

⁵⁶⁵ For more information on the principle, see chapter two, section 2.4.1 (b) above.

4.3.3.4 Play, Recreation, Leisure and Sports

As it has been discussed in Chapter two above, socio-economic rights of CWD include their right to play, recreation, leisure and sporting activities.⁵⁶⁶ A twin-track approach is to be followed in this regard, i.e. ensuring access to 'mainstream' realms and 'disability-focused' realms of play, recreation, leisure and sports.⁵⁶⁷ Particular attention to this right of CWD is of paramount importance since it has the potential to offer them opportunities for healthy living, social interaction, recreational participation, or elite competition.⁵⁶⁸

Like other rights, States are obliged to take appropriate measures 'to ensure that CWD have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system'.⁵⁶⁹ However, as noted by the Committee on the Rights of the Child, 'insufficient attention has been given by States Parties and others to the implementation of this right',⁵⁷⁰ not only with regard to CWD but also children in general. Ethiopia is no exception to that.

In Ethiopia, there is no legislation, policy, strategy or plan that targets the right of CWD to play, recreation, leisure and sports.⁵⁷¹ Particularly, the National Plan of Action for Children has left the issue aside.⁵⁷² As noted in Chapter three of this paper, one of the measures for the implementation of the rights of CWD is designation of appropriate general and specific laws, policies, programs and plans that have incorporated and harmonized with international treaties ratified by the State. In this regard, there is an obvious failure of Ethiopia for the implementation of the right to play, recreation, leisure and sports of CWD.

⁵⁶⁶ Though the terms play, recreation and leisure, including sports are synonymous, they have important differences. 'play' describes activities which are not controlled by adults and which do not necessarily conform to any rules; 'recreation' describes various activities undertaken by choice for the purpose of pleasure; and 'leisure' is a broad term implying having time and freedom to do as one wishes. UNICEF, cited above at note 143, p. 469.

⁵⁶⁷ Schulze, cited above at note 181, p. 170; Roy, cited above at note 88, p. 6.

⁵⁶⁸ CRC, General Comment No. 9, paras. 70-71; M.A. Hums, A.M. Moorman and E.A. Wolff, cited above at note 89, p. 48.

⁵⁶⁹ CRPD, art. 30 (5)(d).

⁵⁷⁰ Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 34.

⁵⁷¹ Except Proclamation No. 692/2010 mandates the Sports Commission to '...ensure the creation of conducive condition for the participation of disabled persons in sport activities', no further legislation, policy, strategy or plan that mainstreams CWD in play, recreation, leisure and sports has been adopted. See Sports Commission Establishment Proclamation, Proclamation No. 692/2010, art. 5(2).

⁵⁷² See National Plan of Action for Children, cited above at note 68.

Though the CRPD clearly required the inclusion of activities aimed at realization of this right in the school system, the requirement has not been observed so far. Play fields and sporting activities being carried out in virtually all mainstream schools are not accessible for CWD.⁵⁷³ No training for recreation, leisure and play is given for school-aged CWD so that they express themselves and realize self satisfying, quality life.⁵⁷⁴ Teachers, including health and physical education (HPE) teachers are not themselves well trained in this regard.⁵⁷⁵ They also lack awareness creation trainings on the issue. Consequently, while supervising other students to engage in sports and play activities, they have to recommend those with disabilities to take rest even if the curriculum requires all students to participate.

Recreational programs broadcasted over the public media would often ignore particular needs of CWD. For example, there are child specific entertainment programs broadcasted over the national radio and television (Ethiopian Radio and Television Agency). These programs have sidelined the issues of children with hearing impairments to the extent that they are not adapted to them in any manner. Due to this they become unable to enjoy the program and to realize their basic right of participation. This obviously calls for budgeting and awareness creation to prepare programs directed to CWD and to adapt the general programs in accordance with their needs.

Places of play and recreation are usually inaccessible to CWD. The State's obligation to make sure that public as well as private service providers are accessible to CWD in an equal manner with those without disabilities has not been observed yet.

In the absence of a strategy aimed at realization of the right, it goes without saying that it would be difficult to expect a focal point, allocation of the necessary resources, development of mechanisms for monitoring and evaluation and coordination of various departments and agencies at all levels of government, including international cooperation for the realization of

⁵⁷³ The writer has visited a number of public as well as private schools, particularly primary schools, in Addis Ababa and outside. CWD are mostly left unattended during play and sports activities. Such activities could be carried out during break times of the students or as part of the curriculum being supervised by teachers. In both instances CWD simply stay sitting until those with no disabilities finish the activities.

⁵⁷⁴ The Committee on the Rights of the Child has clearly noted that there has to be inclusion of training for school-aged CWD about recreation, leisure and play. CRC, General Comment No. 9, para 44.

⁵⁷⁵ HPE trainees are just given some in-class courses related to disability but the courses are not supported by practical skill trainings and this affects the ability of teachers to actually apply the courses they have taken. Interview with Martha Tinsae, Health and Physical Education teacher, in August 06, 2012.

this right of CWD. Furthermore, awareness-raising on this right to the general community, to concerned bodies like teachers, play workers, environment planners and to CWD themselves is not carried out.

4.3.4 Judicial protection (enforcement) of the rights

As noted under chapter three, judicial protection of socio-economic rights of CWD is one of the essential measures for the implementation of their rights.⁵⁷⁶ Effective application of this measure presupposes the existence of justiciable socio-economic rights in addition to accessible justice system and strong judicial activism.

As provided above, socio-economic rights are entrenched in the Constitution under the crudely formulated provision of article 41.⁵⁷⁷ Unlike some jurisdictions that embody socio-economic rights as Directive Principles of State Policy (DPSPs) in their constitutions and making such rights not justiciable, which barred courts from enforcing them,⁵⁷⁸ their inclusion under article 41 of the FDRE Constitution in an equal footing with civil and political rights makes socio-economic rights under this provision justiciable human rights.⁵⁷⁹

Article 13(1) of the Constitution imposes duty on all federal and state legislative, executive and judicial organs to respect and enforce fundamental rights and freedoms. Sisay argues that the duty of the judiciary to enforce rights is an expression of justiciability of the fundamental rights and freedoms provided by the Constitution,⁵⁸⁰ including socio economic rights.⁵⁸¹ Accordingly, as per article 37 (1) of the Constitution that provides for the right to bring

⁵⁷⁶ See section 3.2.3 above.

⁵⁷⁷ See section 4.3.2.

⁵⁷⁸ See for example Part IV of the Indian Constitution and Chapter II of the 1999 Nigerian Constitution.

⁵⁷⁹ Rakeb cited above at note 435, p. 28. Note that socio-economic rights provisions similar to DPSPs of other States are included in the FDRE Constitution under its National Policy Principles and Objectives part. These principles, even though cannot be argued to be justiciable, they strengthen the interpretation of justiciable rights under article 41 and hence their enforcement. Apart from this supporting role, the principles cannot hamper justiciability of article 41 rights. See FDRE Constitution, arts. 89-91.

⁵⁸⁰ Sisay A. Yeshanew 'The justiciability of human rights in the Federal Democratic Republic of Ethiopia', (2008) 17 available at <http://ssrn.com/abstract=1530825> (last accessed on 1 November 2011), p. 5.

⁵⁸¹ In Ethiopia's State Party report to the CESCR, it is recognized that socio-economic rights are justiciable so long as actions based on them are related to State's obligations to 'respect' and 'protect'. With regard to actions related to the obligations to 'fulfil', they generally many not be justiciable but still there are instances where the Government is explicitly bound to fulfil them, hence making them justiciable. An example of this is the right to social security, which involves the Government's obligation to 'fulfil', and can be enforced before Social Security Appeal Tribunal. In general, it is provided that 'the Government acknowledges the justiciable dimension of economic, social and cultural rights'. CESCR, Ethiopia, E/C.12/ETH/1-4, paras. 14-15, and 17.

justiciable matter to courts of law or other competent bodies with judicial power and obtain decision or judgment, CWD have the right to bring issues involving socio economic rights to courts of law and obtain judgment.⁵⁸²

In addition to the clearly entrenched rights in the Constitution, Ethiopia has ratified various human rights treaties that incorporate justiciable socio-economic rights.⁵⁸³ Particularly, the African human rights system to which Ethiopia is committed to established justiciable socio-economic rights.⁵⁸⁴ Consequently, it is fair to conclude that Ethiopian human rights system has developed normative framework that recognized justiciable socio-economic rights.

However, judicial practice shows that Ethiopian courts generally shy away from adjudicating cases based on constitutional provisions in general and provisions on human rights in particular.⁵⁸⁵ This emanates from the belief that since the Constitution mandates the power of interpreting the Constitution and constitutional disputes to the House of Federation (HoF) with the recommendation of the Council of Constitutional Inquiry (CCI), courts are booted out from applying constitutionally entrenched norms.⁵⁸⁶

Cumulative reading of articles 83 and 84 of the Constitution with articles 6, 17 and 21 of the CCI Proclamation clearly indicate that the mandate of HoF is to decide on 'constitutional disputes', which is about constitutionality of laws or decisions contested that necessitate interpretation of constitutional provisions.⁵⁸⁷ Courts can actually apply constitutionally entrenched rights and provisions of international human rights instruments, including socio-economic rights, basing article 13 of the Constitution unless the provisions are contested to be unconstitutional and necessitate constitutional interpretation.⁵⁸⁸ Constitutional duty of the

⁵⁸² This is in line with article 8 of the Universal Declaration of Human Rights (UDHR), which provides that 'everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'. Note that article 13 (2) of the Constitution expressly provided that fundamental rights and freedoms specified in its chapter three, including socio-economic rights under article 41, shall be interpreted in a manner conforming to the principles of the UDHR.

⁵⁸³ See section 4.3.2 for more on this.

⁵⁸⁴ See section 3.2.3. above.

⁵⁸⁵ Sisay, cite above at note 580, p. 7.

⁵⁸⁶ Ibid.

⁵⁸⁷ Council of Constitutional Inquiry Proclamation, Proclamation 250/2001, Federal Negarit Gazeta 7th Year 40, 6 July 2001 [hereinafter Proclamation No. 250/2001]. See also Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to define its Powers and Responsibilities, Proclamation 251/2001, Federal Negarit Gazeta, 7th Year 41, 6 July 2001 [hereinafter Proclamation 251/2001].

⁵⁸⁸ Even in cases where 'constitutional disputes' arise, courts still retain the power to decide on the cases. What they do is they submit the legal issue that they believe is in need of interpretation to the CCI while the case is

judiciary to enforce the rights enshrined in the Constitution obviously extends to applying them in cases they are referred to. This fact is further strengthened by article 3(1) of the Federal Courts Proclamation that provides for federal courts the jurisdiction to entertain cases arising under the Constitution, federal laws and international treaties.⁵⁸⁹

There are, however, a few instances where Ethiopian Courts entertained cases invoking the human rights provisions of the Constitution and provisions of international instruments.⁵⁹⁰ Notably, in *Tsedale Demissie v. Kifle Demissie*⁵⁹¹ the Federal Supreme Court Cassation Division has rendered a landmark decision⁵⁹² regarding application of constitutionally entrenched human rights and human rights incorporated in international treaties by all levels of courts in the country.⁵⁹³ Even if the jurisprudence so far did not address socio-economic rights specifically, since they enjoy equal status with civil and political rights in the Constitution,⁵⁹⁴ their applicability by courts of law has also been established. Therefore, CWD can access courts for alleged violations of their socio-economic rights. Judicial activism to proactively apply the rights is still required to effectively enforce them.

Any consideration of the application of socio-economic rights recognized by law to issues that impact on the lives of children (persons) with disabilities must inevitably address the problems of accessing the justice system, let alone accessing 'justice'.⁵⁹⁵ In Ethiopia, those working in the field of administration of justice, including judges and lawyers are not trained

still pending with them and, resume and decide the case based on the interpretation referred back to them. See Proclamation No. 250/2001, art. 21.

⁵⁸⁹ Federal Courts Proclamation, Proclamation 25/1996, Federal Negarit Gazeta 2nd Year 13, 15 February 1996.

⁵⁹⁰ For example in *Dr Negaso Gidada v. the House of Peoples' Representatives and the House of Federation, the Federal High Court* expressing that as per article 9(4) of the Constitution they are integral part of the law of the land and as per article 13(2) they are standards of interpretation, it invoked articles 18 and 19 of the UDHR and ICCPR. For detailed analysis of this and other cases, see Sisay, cite above at note 580.

⁵⁹¹ *Miss Tsedale Demissie v Mr Kifle Demissie*, Federal Supreme Court Cassation Division, File 23632, judgment 6 November, 2006.

⁵⁹² The importance of this decision lies in the fact that all levels of courts, be it Federal or Regional, are duty bound to apply the interpretations of Cassation Division as a precedent. Federal Courts Proclamation Amendment Proclamation 454/2005, Federal Negarit Gazetta, Year 11, 2005, art. 4. Thus, it evidences that courts not only are expected to apply interpretation precedent in this particular decision, but also seen a green light to apply human rights provisions in the Constitution and international treaties in a similar manner as the Cassation Division.

⁵⁹³ The Court referred to arts. 3(1) of the CRC and 36(2) of the Constitution, which deal with the best interest of the child, to grant an aunt a minor's guardianship and authority to administer inheritance he received from his deceased mother over his father.

⁵⁹⁴ Adem, cited above at note 429, p. 429: the FDRE Constitution incorporates civil and political rights as well as economic, social and cultural rights on equal footing without any difference in consequence and thereby impliedly recognized the interrelatedness and indivisibility of all human rights.

⁵⁹⁵ Clements and Read, cited above at note 322, p. 32.

to handle CWD and their particular issues.⁵⁹⁶ They have also not developed effective child with disability friendly procedures. Additionally, the physical accessibility of the court houses and offices is also very questionable since most use old buildings that are hard for CWD to easily access.⁵⁹⁷ Moreover, no system is designed to address issues of poverty that can hinder CWD from accessing the justice system by making free legal aid available to them.⁵⁹⁸ Hence, accessibility of the judicial system to CWD is far from reality.

4.3.5 The role of independent national human rights institutions

The role that independent NHRIs would play in the implementation of socio-economic rights of CWD is considerable. As has been discussed in chapter three,⁵⁹⁹ irrespective of the degree of commitment of national governments to ensuring the rights of CWD, it is important that national developments are promoted and monitored through NHRIs such as commissioners or a children's ombudsperson.⁶⁰⁰

The FDRE Constitution under article 55 (14) & (15) dictate the House of Peoples' Representatives to establish the Human Rights Commission and the institution of Ombudsman. Accordingly, the House established the Human Rights Commission and the Institution of Ombudsman in 2000.⁶⁰¹

The objective for the establishment of the Ethiopian Human Rights Commission (hereinafter EHRC) is 'to educate the public be aware of human rights, see to it that human rights are protected, respected and fully enforced as well as to have the necessary measure taken where they are found to have been violated.'⁶⁰² To achieve such objectives it is entrusted with broad range of powers and duties.⁶⁰³ However, the EHRC has not mainstreamed CWD though they

⁵⁹⁶ Several lawyers, judges and prosecutors whom the writer has communicated about this issue noted that they do not have any knowhow or training on particular needs of CWD to access the justice system.

⁵⁹⁷ The writer has visited a number of court houses and offices of judicial administration bodies, mainly in Addis Ababa, and found out that most of them are not physically accessible to CWD. For example, they have stairs without an alternative to wheelchair ramp. There are no also direction guides written in sign language.

⁵⁹⁸ Clements and Read, cited above at note 322.

⁵⁹⁹ See section 3.2.2.2 above.

⁶⁰⁰ CRC General Comment No. 2, para. 1.

⁶⁰¹ Proclamation No.210/2000, Ethiopian Human Rights Commission Establishment Proclamation [hereinafter Proclamation No.210/2000]; Proclamation No.211/2000, Institution of the Ombudsman Establishment Proclamation [hereinafter Proclamation No.211/2000].

⁶⁰² Proclamation No.210/2000, art. 5.

⁶⁰³ Id, art. 6.

are generally included in the women, children and PWD directorate. Accordingly, it is possible to conclude that there is no focal point for CWD and no notable activities have targeted CWD.⁶⁰⁴ The Commission also lacks experts that could deal with CWD and their specific issues.⁶⁰⁵

Even if the EHRC engages itself with the task of overseeing implementation of socio-economic rights of CWD, it is worrisome that it could carry out the activities effectively. It is often criticized that the composition of the EHRC does not guarantee independence and pluralism needed for its effectiveness.⁶⁰⁶ With the State failing to implement its recommendations and suggestions, its activities with regard to human rights in general have bear little fruit.⁶⁰⁷ It is also not accessible to CWD, not even to the ones in Addis Ababa let alone to the majority of them situated in rural Ethiopia.⁶⁰⁸ Its role of availing remedies for violations is a mandate generally forgotten.⁶⁰⁹ Moreover, the failure of the EHRC to apply for accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights posed concern as to its effectiveness and its compliance with the Paris Principles.⁶¹⁰

The establishment of children and women's ombudsmen under the Institution of the Ombudsman is a positive development. The role it is playing with regard to setting up and monitor children's parliament in the country shows a progress for the accommodation of the views of children. Particularly, the quota requirement for membership of at least two CWD in

⁶⁰⁴ There is a department established under the EHRC as a focal point for women, children and people with disabilities. As children, issues CWD share with other children only can be addressed under this department. Tasks carried out targeting persons with disabilities can also involve issues of CWD. But there has not been activities undertaken that targeted CWD and no desk has been assigned to this purpose.

⁶⁰⁵ Aron, cited above at note 384, pp. 119-123.

⁶⁰⁶ Paris Principles on national institutions for the promotion and protection of human rights requires guarantees of independence and pluralism in composition of NHRIs and requires from government departments an advisory role only. See Principle 4, Paris Principles, General Assembly resolution 48/134 of 20 December 1993.

⁶⁰⁷ Tsegaye Regassa, Making legal sense of human rights: The judicial role in protecting human rights in Ethiopia', *Mizan Law Review*, vol. 3, No. 2 (2009), p. 304; Human Rights Committee, Concluding observations: Ethiopia, 102nd session, Geneva, 11-29 July 2011, CCPR/C/ETH/CO/1, 2011, [hereinafter HRC Concluding observations on Ethiopia, 2011], para. 6.

⁶⁰⁸ Aron, cited above at note 384.

⁶⁰⁹ Ibid.

⁶¹⁰ CESCR Concluding observation on Ethiopia, 2012, cited above at note 55, para. 6; HRC Concluding observations on Ethiopia, 2011.

the parliaments implies the attention given for them.⁶¹¹ Accordingly they could be able to raise particular issues of CWD.

However, owing to various reasons the Institution has not undertaken significant activities in the protection and promotion of socio-economic rights of CWD. There is no focal point (desk) that is specifically designed to address issues of CWD. Except for some minor awareness raising activities provided for members of the children's parliament and some administrative bodies concerned with services that could generally bear on socio-economic rights of CWD like education, much as not been achieved that could have effect on their rights.⁶¹² The major reasons identified are shortage of financial and human resources and lack of experts on issues of CWD.⁶¹³ Therefore, it is safe to conclude that Ethiopian NHRIs are not playing significant role in the implementation of socio-economic rights of CWD in Ethiopia.

4.3.6 Cooperation and assistance

In poor countries like Ethiopia, effective implementation of socio-economic rights cannot and should not be left as sole obligations of the State only. International cooperation and assistance and the involvement of national and international CSOs and NGOs is invaluable.⁶¹⁴ This requires States to seek such international cooperation and assistance and lay a framework that facilitates the activities of CSOs and NGOs.

Efforts have been made with regard to international cooperation and assistance that has implications on the rights of CWD, albeit not emphasised on their socio-economic rights. Among others, cooperation and assistance of United Nations Children's Fund (UNICEF), Handicap International and the government of Finland are notable in this regard.⁶¹⁵

⁶¹¹ Interview with Getacew Gebo, Children, Women and Person with Disabilities Research and Supervision Expert at the Institution of Ombudsman, on May 14, 2012.

⁶¹² Ibid.

⁶¹³ Ibid.

⁶¹⁴ CRPD, art. 32; Vienna Declaration and Program of Action, art. 13, U.N. DOC. A/CONF.157/2312 (Jul. 12, 1993). See also Chapter three, section 3.2.7 of this paper.

⁶¹⁵ MoLSA receives international assistance with regard to activities related to PWD from, *inter alia*, UNICEF and Handicap International though there is no mainstreaming of CWD. Interview with Zerubabel Elias, cited above at note 416. MoE on the other hand cooperate with the Finish government in carrying out activities related to inclusive/special needs education. Interview with Ato Degefa Abadi, cited above at note 419.

However, it is argued that the domestic legal framework set by Charities and Society's Proclamation⁶¹⁶ significantly strangles human rights related activities of CSOs and NGOs in Ethiopia.⁶¹⁷ Except Ethiopian CSOs/NGOs and those foreign NGOs operating in the country by virtue of an agreement with the Government,⁶¹⁸ the law excluded Ethiopian resident CSOs/NGOs and Foreign CSOs/NGOs⁶¹⁹ from involvement in activities related to, *inter alia*, the promotion of the rights of the disabled and children's rights, and the advancement of human and democratic rights.⁶²⁰

The law contradicts with the State's obligation to eliminate obstacles to the enjoyment of socio-economic rights of CWD's since CSOs/NGOs can play immeasurable role in the realization of these rights through, *inter alia*, advocacy and awareness raising, service delivery, technical assistance and capacity building schemes, researches, and monitoring and reporting compliance of the State with its constitutional and treaty obligations on human rights.⁶²¹ This has been confirmed by the CRPD Committee through its recommendation to States to ensure full participation of CSOs in implementation and monitoring measures.⁶²²

Though the law permits [Ethiopian] CSOs/NGOs to engage in activities related to the promotion of the rights of the disabled and children's rights, and the advancement of human

⁶¹⁶ Charities and Societies Proclamation No. 621/2009, 15th Year, No.25, 13th February, 2009 [hereinafter CSOs Proclamation].

⁶¹⁷ For detail analysis of the impact of the Proclamation on human rights related activities of CSOs and NGOs see Debebe Hailegebriel, 'Sub Saharan Country Report: Ethiopia', *International Journal of Not-for-Profit Law*, Vol. 12 No. 2(2010); Debebe Hailegebriel, 'Restrictions on foreign funding of civil society: Ethiopia', *International Journal of Not-for-Profit Law* vol. 12, No.3, (2010); Desset Abebe Teferi, *The role of civil society organisations in the realisation of human rights in Africa and the effect of regulatory mechanisms on their functions: Ethiopia and Ghana in perspective*, University of Ghana (unpublished), 2010; Meskrem Geset, 'The New Charities and Societies Proclamation and its Impact on the Operation of Save the Children Sweden-Ethiopia', Save the Children Sweden-Ethiopia, 2009.

⁶¹⁸ CSOs Proclamation, art. 3 (2) (b).

⁶¹⁹ Based on, primarily, their place of incorporation and source of funding the Proclamation classifies CSOs/NGOs into three categories: 'Ethiopian Charities/Societies':- These Charities or Societies are formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia or receive only less than 10% of their funds from foreign source and are wholly controlled by Ethiopians; 'Ethiopian Residents Charities/Societies':- These groups are exactly the same as the above one except that they receive more than 10% of their funds from foreign sources; and 'Foreign Charities':- These are Charities that are formed under the laws of foreign countries or which consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign sources. CSOs Proclamation, art. 2 (2), (3) & (4).

⁶²⁰ CSOs Proclamation, art. 14 (2) & art. 14 (5); It stands as a great concern that the law purports to limit the operation of non Ethiopian CSOs to developmental activities and service provision only. It is paradoxical to the growingly accepted notion of 'rights based approach to development' where any developmental work should be undertaken in the view of advancement of human rights values.

⁶²¹ Tsegaye, cited above at note 607, pp. 304-305.

⁶²² CRPD Concluding observation 2012: Hungary, CRPD/C/HUN/CO/1, para. 52.

and democratic rights, it indirectly encroached upon their effective participation in implementation of socio-economic rights of CWD by putting restraint on the amount of funds they receive from foreign sources, i.e. not more than 10% of their funds.⁶²³ In a poor country like Ethiopia where substantial local funding equating foreign donations cannot be raised, such restriction has significant ramifications on the enjoyment of socio-economic rights by CWD.⁶²⁴ The 70/30 allotment, which limits administrative and operational costs of all CSOs/NGOs to 30% of their budgets,⁶²⁵ resulted in limitation of activities of even [Ethiopian] CSOs/NGOs and their coverage of the whole part of the country, mainly the rural area where there is considerable number of CWD.⁶²⁶

4.4 Conclusion

As in many African countries, there is a high percentage of CWD in Ethiopia.⁶²⁷ International human rights instruments ratified by Ethiopia, such as the ICESCR, ACHPR, CRC, ACRWC and CRPD, provide for a range of socio-economic rights of CWD and measures to be taken for their effective implementation. The FDRE Constitution as well recognized such ratified treaties to be integral part of the law of the land and to serve as interpretation thresholds for the rights entrenched in it.

Data and statistics on CWD in Ethiopia, which is of paramount importance for effective execution of various implementation measures targeted at realization of their socio-economic rights, is poor. This resulted in lack of dependable data for harmonious planning and execution of implementation measures by various bodies hence led to inconsistencies. The Constitution does not give particular attention to CWD. Socio-economic rights in general

⁶²³ CSOs Proclamation, art. 2 (2).

⁶²⁴ Note that for registration purpose art. 57 (6) of the CSOs Proclamation sets a requirement that 'where the Society has Federal character and nomenclature, its work place and composition of the members shall show the representation of at least five Regional States'. Without having the necessary funding, it is obvious that it would be difficult to be represented in five regions and perform effectively. With this requirement the law provides for a double encroachment on enjoyment of socio-economic rights by CWD.

⁶²⁵ CSOs Proclamation, art. 88 (1). See also the 70/30 Guideline on Determining the Administrative and Operational Costs of CSOs issued by the Ethiopian Charities and Societies Agency.

⁶²⁶ For example Human Rights Council, an Ethiopian CSO, has been forced to cutback many essential services, *inter alia*, reduction of internet and telephone communication times, which reduced its ability to communicate with victims of human rights violations and obtain crucial information and inability of hiring qualified and experienced experts. See Human Rights Council, The Impact of the CSO Proclamation on the Human Rights Council (2011), p. 9.

⁶²⁷ The African Child Policy Forum, cited above at note 383, p. 31.

have also suffered clear designation in the Constitution. Their interpretation, however, can benefit from interpretation of rights recognized in international treaties adopted by Ethiopia.

In the implementation of various socio-economic rights in the country, particular issues of CWD have been sidelined. Except some efforts to mainstream them with regard to some rights like the right to education, they are generally left out of the overall programs of the State, including in areas of health, work and employment, play, leisure, recreation and sports. Policies, strategies and plans adopted show lack of incorporation of and harmony with international standards set by treaties ratified by the State. Little efforts put in place suffer ineffectiveness due to lack of dependable disaggregated nationwide data and statistics on CWD, poor planning and monitoring, lack of trained professionals, lack of coordination among concerned bodies and various stakeholders, and most of all shortage of resources.

Besides, monitoring of implementation measures by independent NHRIs is shadowed by lack of independence of these institutions and their failure to mainstream CWD in their activities. Little effort made to seek international cooperation in relation to socio-economic rights of CWD, coupled with a discouraging legal environment for the involvement of CSOs/NGOs in the realization of such rights, the fate of Ethiopian CWD and implementation of their socio-economic rights is left in limbo.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This paper analysed the issue of implementation of socio-economic rights of CWD in Ethiopia. The core assertion of the paper was that even if Ethiopia has ratified various international human rights treaties, which recognized socio-economic rights of CWD and provided mechanisms for their effective implementation, much has not been done to realize such rights. In addition to assessing implementation measures being taken in Ethiopia with regard to socio-economic rights of CWD, the paper analysed the international legal framework that recognized such rights and measures of implementation it provided. The following is a detailed conclusion and recommendations based on the findings of the study.

5.2 Conclusion

WHO's report show that over a billion people across the world comprise of PWD;⁶²⁸ amongst which 80% exist in the developing world to which Ethiopia belongs. CWD make 200 million out of the total number.⁶²⁹ Despite their substantial number, PWD in general and CWD in particular have been a marginalized social and economic underclass viewed by the public as undesirable, and as subjects of charity and pity.⁶³⁰ In all countries, including Ethiopia, they are disenfranchised citizens often denied the opportunity to enjoy the full range of socio-economic rights.⁶³¹ CWD are the most marginalized of all to enjoy socio-economic rights.⁶³² Discrimination on them, particularly, persists in areas of education, health, employment, recreation and access to public places and services.⁶³³

Over the past thirty years the rights of children (persons) with disabilities have been given a growing attention due to active role played by PWD, DPOs, NGOs and the commitment of

⁶²⁸ WHO, cited above at note 1, p. 261.

⁶²⁹ UN Secretary General's Study on Violence against Children; Thematic Group on Violence against Children with Disabilities Summary report, *Violence against CWD*, (2005), p. 4.

⁶³⁰ Smith, cited above at note 6, p. 13.

⁶³¹ Blanck, Adya and Reina, cited above at note 25, pp. 99-100; see also Smith, id.

⁶³² de Alwis, cited above at note 26, p. 293.

⁶³³ CESCR General Comment No. 5, para. 15; cited above at note 6, p. 15.

the UN human rights framework. Such commitment has also been expressed at regional levels. Accordingly, various human rights instruments that are ratified by Ethiopia have recognized a range of socio-economic rights of CWD, in a general and/or specific manner. The instruments include the ICESCR, ACHPR, CRC, ACRWC, and CRPD.

The treaties recognized particular vulnerability of CWD and asserted the need to realize their socio-economic rights as a means to achieving their enjoyment of all human rights equally with other members of their society and thereby lead a life of dignity.⁶³⁴ They provided for implementation measures that need to be taken by State parties in legislative, administrative, judicial and other areas to realize socio-economic rights of CWD as provided in the treaties.

Measures to be taken for effective realization of socio-economic rights of CWD include incorporation of rights recognized in the ratified treaties into the domestic law and harmonization of same with the spirit of the CRPD and other instruments in a comprehensive manner; developing implementing legislations and designing appropriate policies, strategies and plans that give due emphasis to particular issues of CWD. These shall be supported by specific budgeting for CWD to realize the intended plans.

Various administrative measures, which give due regard to the relevant provisions of the CRC, ACRWC and other treaties rather than being limited to a single treaty like the CRPD, shall also be put in place, accompanied by effective monitoring mechanisms in which CWD have effective participation.

Gathering disaggregated, accurate and dependable data and statistics on CWD is a vital factor since any planning and actual implementation highly depends on this factor for its effectiveness. Focal points tasked with addressing issues of CWD need to be established in all ministries and sector offices. The need for establishment of independent NHRIs and the role they shall play in promotion and monitoring of implementation measures is also crucial.

Adjusting accessibility of various economic, social and cultural services and making reasonable accommodation to CWD to include them in mainstream service delivery and

⁶³⁴ International law has recognized that civil and political rights and economic, social and cultural rights are universal, indivisible and interrelated. see The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 23 June 1999 UN Doc. A/Conf. 157/23 Part I para 5; Mapulanga-Hulston, cited above at note 240, p. 32.

integrate them with the society is of paramount importance. Awareness raising measures to the society so as to eliminate stereotypes, prejudices, discriminations and harmful practices against CWD, and to the children themselves so as to empower them claim their rights is required. Continuous training for professionals and those who work with CWD in diverse socio-economic areas is invaluable.

The judiciary must also be accessible and active to remedy the challenges faced by violations of socio-economic rights of CWD. This can be assisted by provision of accessible, affordable and appropriate administrative remedies. Contemporary discourse on human rights evidences that all categories of rights, socio-economic rights as well as civil and political rights, are indivisible, interrelated and interdependent. Accordingly, distinction between and among these rights with regard to justiciability has waned. Thus, explicit provision for justiciability of socio-economic rights in the constitution and subordinate laws is critical for judicial protection of the rights. Besides, judicial activism has a lot to play in giving life to the dead words of the law.

In all measures taken, referring to the General Comments of treaty bodies that cover a broad range of issues and their concluding observations on the reports of other states is indispensable. States are also required to seek for international cooperation and create favourable conditions for civil societies with a view of achieving full and effective realization of the rights.

States need to carry out measures of designing and strengthening monitoring mechanisms at national and international level. Nationally, establishment of national coordinating committee that serves as a national focal point on disability matters and facilitate inter-sectoral coordination, and engaging CWD, DPOs and independent NHRI in the monitoring activities is crucial. Creating favourable conditions for involvement of CSOs/NGOs in monitoring activities, in addition to wide range of activities they can engage in the realization of socio-economic rights of CWD, is essential. Internationally, submission of periodic reports on implementation of the treaties punctually and engaging regularly in the Conference of State parties that considers implementation of the CRPD is vitally important.

As in many African countries, the existence of a high percentage of CWD in Ethiopia is conspicuous.⁶³⁵ Albeit Ethiopia ratified the treaties that recognized socio-economic rights and provided for various measures of implementation, effective implementation of the rights with regard to CWD is far from reality. CWD and their issues have generally been sidelined in legislations, judicial areas, administrative and other measures of implementation targeted towards realization of socio-economic rights.

In the area of education, for example, some efforts are made to mainstream CWD through Special Needs/Inclusive Education programs. Yet, such little effort suffers ineffectiveness due to shortage of resources, poor planning and monitoring, lack of trained professionals, lack of coordination among concerned bodies and various stakeholders, lack of awareness raising activities, and most of all lack of dependable disaggregated nationwide data and statistics on CWD. In other areas like health, work and employment, play, leisure, recreation and sports, they are generally left out of the overall programs of the State. Virtually, all existing policies and strategies on diverse sectors are obsolete that need revision to fit to subsequent developments, *inter alia*, on issues related to socio-economic rights of CWD.

Monitoring activities on the implementation of the rights have been shadowed by lack of independence of the NHRIs and their failure to mainstream CWD in their activities. Though some efforts are made to avail international cooperation that targeted realization of socio-economic rights of CWD, they remain a drop in the sea. The legal environment in the country is also discouraging for CSOs/NGOs to assist implementation measures of the state.⁶³⁶

Empirical evidences show that, not only in Ethiopia but elsewhere, adults with and without disabilities usually make policies and decisions related to CWD while the children themselves are left out of the process. Despite some efforts to allow their participation through children's parliament, the views of CWD have been overlooked in all implementation activities being taken across various sectors.

⁶³⁵ The African Child Policy Forum, cited above at note 383, p. 31.

⁶³⁶ The obstructive effect of the Charities and Societies Proclamation No. 621/2009 on the activities of human rights organizations has been noted by the Committee on Economic, Social and Cultural Rights. see CESCR Concluding observation on Ethiopia, 2012], para. 7

5.3 Recommendations

For socio-economic rights recognized under international instruments ratified by Ethiopia, the Constitution and other relevant laws of the land to have real sense, effective implementation of those rights is mandatorily required. Accordingly, the State shall take all appropriate legislative, administrative, judicial and various other measures towards full realization of socio-economic rights of CWD in Ethiopia.

- Legislative measures shall start with specific mentioning of CWD in non-discrimination clauses and other substantive provisions of national laws, including the FDRE Constitution. Definition of the child shall also be provided in a straight 18 position set under international instruments. Provisions that generally deal with the rights of the child shall include separate provisions on specific issues of CWD. Furthermore, socio-economic rights shall be formulated as entitlements (rights) rather than in a language of duties as provided in the Constitution. Justiciability of socio-economic rights has to also be determined by law. It should be considered that socio-economic rights related provisions in the Constitution, which are situated in the National Policy Principles and Objectives part, need to be moved to the bill of rights chapter.
- Systematic legislative review, which is an ongoing review of all existing and proposed legislations, shall be conducted to incorporate rights recognized in international human rights treaties ratified by Ethiopia and to harmonize the already existing laws, including customary laws, with new developments. In particular, it is the recommendation of the writer that a comprehensive Children's Code (proclamation), which has a separate section (chapter) on specific issues of CWD, shall be adopted. The Code shall recognize heterogeneity of disability and the evolving nature of the concept of disability so as to afford wider protection possible for all CWD and avail the benefit of doubt for those with whom there is confusion as to their status. Careful language to describe CWD should be taken into consideration so as to avoid offensive terminologies, such as handicapped or crippled. The Code shall incorporate the disarrayed rights of CWD, including socio-economic rights provided in various treaties under the chapter that deals with their issues. In doing so, attention must be given to include provisions that are more conducive to the

realization of their rights in case where analogous provisions are found in different instruments. The Code will have to also be reviewed in a regular basis to conform to subsequent developments.

- Until such Code is adopted, the full body of the treaties have to be translated and published in the *Negarit Gazette* (Official Gazette). This would facilitate awareness raising and access among professionals working with the administration of justice including judges and lawyers and thereby taken into account before courts. It is also a means to widely disseminate the contents of the treaties to all other concerned bodies and the wider society, mainly if they got translated into different local languages found in the nine different regions.
- Ratifying the Optional Protocols to the ICESCR and CRPD is also recommended to ensure maximum commitment to socio-economic rights of CWD.
- To develop policies and programs and to implement same, as well as to understand the real situation on the ground, statistical data on CWD is invaluable. Accordingly, dependable disaggregated nationwide statistical data on CWD should be collected. It is possible to systematically collect such data through national disability survey by looking into experiences of other states. The questionnaires to be formulated to collect the data must demonstrate recognition of heterogeneity of disability. To ensure dependability and confidentiality (not to be abused to serve interests other than the public interest or genuine intentions) of the collected data and for it to have meaning, the CSA in gathering and interpreting same must adhere to standards of professionalism, including independence from influence of outside bodies like the government and shall engage experts on disability matters.
- Implementing legislations to general laws have to be adopted. There is a need to adopt general and specially designed appropriate policies, strategies and plans that deal with all aspects of life of CWD and mainstreamed their peculiar issues related to socio-economic rights. Formulation of the policies and programs and their actual implementation must give due recognition to the general comments of treaty bodies and their recommendations to state reports since they can make a great difference to the way in which disability issues are framed and handled. Referring to the Plan of Action for the African Decade of People with Disabilities as a guideline for the

national disability programme and putting in place mechanism for the implementation of the decade's objectives in a way that mainstreamed CWD is also helpful.⁶³⁷

- The existing policies and strategies on various areas like education, health, work and employment etc. have to be updated and revised in accordance with new developments to mainstream CWD and their particular issues in these areas. The revision has to be an ongoing process. Designing a policy and strategies exclusively dealing with issues of CWD in various areas has to be considered.
- Without sufficient budgeting and allocation of resources, in particular to CWD, realization of their socio-economic rights and effective implementation of the strategies and plans designed to promote the rights will only remain a lip service. National economic policy makers should take socio-economic rights of CWD into account in setting and evaluating national economic and development plans. Concerned bodies like the MoLSA, MoE, MoH etc. shall specifically set up budgets for issues of CWD in their annual budgeting. CWD should be visible in the economic and social planning and decision-making of the government and appropriate budgetary analysis should be done to cater for them and their particular needs. Such has to take the best interests of the children as its primary consideration to protect them from adverse effects of economic policies or financial downturns. It is important to make sure that the resources allocated correspond to their needs. There shall also be progressive increment of the budget until it is sufficient to fully realize their rights.
- Considering the vicious cycle relationship of disability and poverty, it is crucial to establish social security programmes and social safety nets to address vulnerability of CWD and protect and promote their rights. The role cash transfers (support grants) play in the realization of socio-economic rights of CWD should be recognized and such has to be introduced. Studies indicate that even in countries with low administrative capacities, cash transfers proved to be feasible and effective means of reducing vulnerability and poverty, especially of children, and realization of their

⁶³⁷ Organisation of African Unity, Continental Plan of Action for the African Decade of Persons with Disabilities 1999–2009 (Addis Ababa, Ethiopia: OAU, 2002), pp. 5–11. Among its objectives were commitments to develop policies and national programmes that encourage the full participation of persons with disabilities in social and economic development; to promote the self-representation of people with disabilities in all public decision-making structures; and to provide mechanisms for coordination, monitoring, and evaluation of the activities of the African Decade of Persons with Disabilities.

socio-economic rights, thereby assist realization of Millennium Development Goals.⁶³⁸

As vulnerable groups, the needs of CWD must be given priority during structural adjustment programs and spending cuts, and the State has to minimize the negative impacts of such measures on their interests.

- The state has to make 'nothing about them without them' its mantra in dealing with issues that affect the rights of CWD, including their socio-economic rights. Accordingly, it should emphasize the importance of participation of CWD, as well as adults with disabilities and DPOs in all sectors and at all levels of implementation of their rights, including in policy and decision-making processes that concern issues relating to them. This is critical since they can better inform policy makers and implementers about their situation, the barriers they are facing and mechanisms to overcome obstacles to the full and equal enjoyment of their rights. In all matters affecting them, the views of CWD must be respected in accordance with their evolving capacities. Specially, their effective representation in children's parliament established/being established across the country and school clubs must be encouraged and they should get the necessary assistance towards that goal.
- To this end, i.e. ensuring their effective participation, CWD should be empowered through trainings tailored to their abilities in schools, children's parliament, various clubs etc..., which aimed to teach them about their rights and how to advocate for them. Barriers against their full and effective participation should also be avoided through promotion of universal design of goods, services, equipments and facilities, promotion of availability and use of new information and communications technologies and ensuring accessibility of information about the technologies, and provision of assistive aids at an affordable cost or for free, whenever circumstances justify doing so.
- Accessibility of various services for CWD in the country, including in areas of health, education, sports, play, recreation and leisure etc. are far from reality. This calls for

⁶³⁸ See UNICEF, Child Poverty: A Role for Cash Transfers? West and Central Africa (2009), Regional thematic report 3 study, p. 17 ff. The positive impacts of cash transfers on poverty reduction, child well-being and realization of their socio-economic rights can be observed in their contribution, *inter alia*, to increase in monetary income of households and thereby reduce poverty gap, enable families to cover costs of education, health, food, clothe, and other services; enable families to invest in their children and thereby contribute to human capital development; reduce child labor, including labor of CWD, and violations of other rights; and empowerment and gender equality.

adjustment of accessibility and making reasonable accommodation for the children in all socio-economic aspects and at all places. Training for professionals, staff and stakeholders like building owners, who work with them in diverse areas, is crucial so as to enable them to provide CWD with a better service and assistance in accordance with their specific needs.

- Adjusting accessibility of the built in environment should be considered as most schools, health centers, recreational areas and the like are not physically accessible to CWD. It is important to emphasise that they enjoy various services in the mainstream service delivery as it is a means for their social integration and creation of awareness to the society in order to change the way they are depicted and reinforce that disability is just normal difference.
- Specifically, for example, introductory course in special needs education that is being delivered across teachers' education and training institutions in the country should be encouraged and strengthened by further courses. It should be supported with appropriate teaching materials, human and financial resources, and engagement of qualified experts on disability matters including experts with disabilities.
- Ongoing short term trainings on inclusive/special needs education should also be given for regular teachers. They should be trained on how to identify, assess and support those CWD in accordance with their needs.
- Curriculum adaptation towards inclusive education is also needed. When special needs education is the most appropriate form under the circumstances, such should be provided with a quality and standard as general education. However, inclusive education should generally be the principle and gradual integration of those in special education has to be the target goal.
- Availing access to compulsory and free primary education, which has been failed to achieve hitherto, should be given due attention to realize accessibility of education for all CWD.
- Technical and vocational education has to be adapted in accordance with specific needs of students with various disabilities so as to create them work and employment opportunities. Establishment of such training centers shall be expanded to avail accessibility to CWD in rural communities.
- Minimum age for work has to be set in compliance with international standards to avoid labor of CWD. The police and judicial bodies shall collaborate with community

leaders and the society in large in the eradication of child labor in all its forms and at levels; they have to pursue such cases and take serious measures that deter and educate those involved in this practice.

- Initiatives being taken in the production of orthopaedic appliances and training of orthopaedic professionals shall be strengthened and production and training centers should be expanded. Private organs that may be interested in prosthetics production should be encouraged. Prosthetic and orthopaedic devices have to be made accessible to all CWD across the country at an affordable cost or for free. Rehabilitation services that provide various therapies shall be introduced giving particular attention to CWD in rural areas.
- Training health extension workers, who work deep in the rural community, in disabilities issues is an invaluable measure to avail accessibility of health services to the rural CWD, particularly for early identification and intervention as well as habilitation and rehabilitation purposes. Trainings should be given in ongoing basis.
- Public recreation areas should be adjusted to reasonably accommodate CWD. Private providers of leisure and recreation services should be encouraged to do the same, and they shall be monitored for their observation of non-discrimination principle with regard to CWD.
- Focal points that plan, organize, monitor and oversee implementation in various areas have to be established across the various sector offices. They should be equipped with the necessary resources, including human and financial, and should develop coordination mechanism amongst themselves to make a concerted effort, especially under a national focal point for CWD that could be established within the MoLSA. In their functions, the focal points shall always ensure participation of CWD and DPOs.
- Among the core assertions of the CRPD is that disability is a result of attitudinal and environmental barriers that PWD suffer in their interaction with the society. Such barriers are the major reasons that limit the enjoyment of their rights in an equal basis with other non-disabled members of the society. Challenging, and eventually eradicating, such barriers highly depends on raising awareness of the society about disability issues. Effective realization of the rights of children (persons) with disabilities also depends on making the society, all stakeholders and children (persons) with disabilities themselves aware of the equal rights they are entitled to and the special protection they are accorded. In this regard, the media could play crucial

role. Accordingly, public media shall accord air time and columns for this and private media shall also be encouraged to do the same. Various sector offices have to also make their respective activity in this regard by engaging with local leaders, local associations (like edir), school clubs and by all other appropriate means.

- Active monitoring mechanisms on implementation of the rights have to be set up. As suggested by Audrey Chapman, monitoring should not only focus on progressive realization of the rights but also on identification of violations.⁶³⁹ The DPOs should be given significant role in this regard. The proposed DPOs Council could serve as an umbrella organization in coordinating their activities and in monitoring and evaluating implementation measures employed at various levels and areas. Hence its establishment has to be one of the priorities.
- The NHRIs like the EHRC and the Institution of Ombudsman has to give particular emphasis to CWD by establishing desks for them and mainstreaming their issues within the departments they generally set up for women, children and PWD. They should sensitize the Government, public agencies and the general public to the provisions of the CRPD and other conventions and actively monitor ways in which the State is meeting its obligations. They have to enjoy independence in their function and should be provided with the requisite resources; human, financial and material. The EHRC is recommended to apply for accreditation and to comply with the Paris Principles to ensure its effectiveness.
- In state reporting for various treaty bodies, the concerned bodies shall specifically prepare reports on implementation of socio-economic rights of CWD. The regular reporting obligations have to be respected so as constantly review developments in implementation activities.⁶⁴⁰ Submission of reports must be accompanied by taking the necessary measures recommended by treaty bodies and learning lessons from reports of other states. Engagement in the Conference of State parties to the CRPD is an important source of learning good experiences and such has to not be missed.

⁶³⁹ A.R. Chapman, 'A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights', *Human Rights Quarterly*, vol. 18, (1996), p. 30.

⁶⁴⁰ Ethiopia has a track record of delaying State reports to treaty bodies; for example, as much as 17 years late in case of the ICCPR and ICESCR, but that trend seems to change currently with the preparation of State report on implementation of CRPD within two years of ratification of the Convention. Though not submitted yet, MoLSA reported that it has finalized preparation of the report (as of August, 2012).

- As evidences show, international cooperation has not been utilized to the fullest so as to implement socio-economic rights of CWD yet. The different ministries, particularly MoLSA, shall work actively in seeking such cooperation from donors and development organizations to support its activities and the activities of various sector organs and facilitate the engagement of international organizations in this regard. In particular, the often recommended technical cooperation, by the CRPD Committee, from the member organizations of the Inter-Agency Support Group (IASG) for the CRPD should be availed to obtain guidance and assistance on overall implementation of the CRPD.
- The current legal environment that disabled the activities of CSOs/NGOs in socio-economic rights of CWD has to be reconsidered to create an enabling environment for them to assist the activities of the State. A state with the objective of building democracy and realization of the rights of CWD must provide an open space for participation. The almost absolute barriers and the disabling environment set by the law are direct violations of the rights of CWD and thus call for serious reconsideration. It is worth noting that the plan of action for the African Decade, which is applicable to Ethiopia, is designed to be implemented by a number of actors, including CSOs and NGOs.⁶⁴¹ Therefore, the Charities and Societies Proclamation needs thorough amendment or repeal in this regard. The 70/30 Guideline on Determining the Administrative and Operational Costs of CSOs has to also be revised to enable all CSOs/NGOs, including Ethiopian that can encompass various DPOs, to expand their activities and coverage across whole parts of the country, especially rural areas where there exist substantial number of CWD.
- Implementation measures have to be complimented with effective enforcement mechanisms for their effectiveness. CWD, who claim violation of their rights, must get effective remedies through judicial and/or quasi-judicial bodies. This requires availing accessibility of such bodies and remedies. Consequently, strong judicial activism is required in invoking and applying constitutional and treaty based bill of rights. It has to be recognized that access to effective remedies (judicial and administrative) may require the provision of free legal assistance to CWD, including sign language interpreters and communication assistance, the provision of information

⁶⁴¹ Flynn, cited above at note 294, p. 89.

in Braille and other means and modes of communication and the modification or flexible application of existing laws and practice regulating matters of procedure and evidence. Physical accessibility of courts and administrative bodies has to be adjusted in a way they reasonably accommodate CWD.

- CWD in rural areas have to be given due attention in all process since implementation measures are mostly carried out in urban areas. The fact that majority of CWD exist in rural areas calls for serious work to be done by all stakeholders directed at the rural Ethiopia. This, however, by no means suggests overlooking of the urban CWD.

In all implementation measures taken, the general principles of the CRC and ACRWC, and the general principles of the CRPD should be given particular regard.⁶⁴²

⁶⁴² See Chapter Two for detailed discussion on the general principles of the CRC and ACRWC, and CRPD.

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