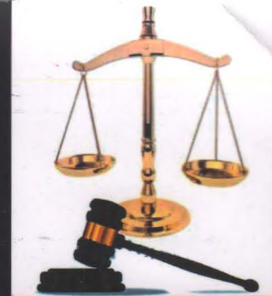




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IS THERE A RIGHT TO EDUCATION IN NIGERIA? APPRAISING THE RIGHT TO BASIC EDUCATION IN NIGERIA

By

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ABSTRACT

The right to education is one of the fundamental rights recognized and guaranteed in both international and regional instruments that Nigeria is a signatory to. This right is described categorically in the 1999 Constitution of the Federal Republic of Nigeria as a non-justiciable right by virtue of Section 6(6). This right is also recognized in the Child Rights Act 2003 and the Universal Basic Education Act 2004. Against this background, this article discusses the right to education as a specie of human rights. It adopts a desk review of relevant literature and case law to expatiate on the right to education as a fundamental human right. It leans on the theory of rights to argue that the right to education is a human right which is enforceable via the instrumentality of law and the institution. In doing so, it draws inferences from international legal instruments which advocate for the right to education as a human right. It then concludes that though the Nigerian 1999 Constitution as amended does not recognize the right to education as a justiciable right, however with the enactment of the Universal Basic Education Act in 2004, and by judicial

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activism via the pronouncement of the Nigerian courts, the right to education is now regarded as an enforceable fundamental human right in Nigeria.

INTRODUCTION

The Right to education is one of the fundamental rights recognized and guaranteed in international, regional instruments that Nigeria is a signatory to. As a matter of fact, education is more than just a fundamental right, it is a catalyst to human development; it helps pave the way to a successful and productive future.²The importance of education to the development of children, nations and the human community at large cannot be overemphasized. It has been established that opening classroom doors to all children without discrimination is an important tool in breaking intergenerational chains of poverty because, education is intrinsically linked to all development goals such as supporting gender empowerment, improving child health, maternal health, reducing hunger, spurring economic growth and attaining peaceful co-existence.³

Despite the important role education plays in the life of children and the community at large, it is estimated that about forty percent of Nigerian children between the ages of six and eleven do not attend primary school. Although in recent times, there has been a significant increase in school enrolment rate; nevertheless, an estimated amount of 4.7million children of primary school age are not in school.⁴

Education was formally acknowledged as a human right after the adoption of the Universal Declaration of Human Rights in 1948. This has since been affirmed in numerous other global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (1981). These treaties establish an entitlement to free, compulsory primary education for all children; an obligation to develop secondary education, supported by measures to render it accessible to all children, as well as equitable access to higher education; and a responsibility to provide basic education for individuals who have not completed primary education. Furthermore, they affirm that the aim of education is to promote personal development, strengthen respect for human rights and freedoms, enable individuals to participate effectively in a free society, and promote understanding, friendship and tolerance.

The right to education has long been recognized as encompassing not only access to educational provision, but also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality.⁵Human rights advocates claim that

²United Nations International Children's Emergency Fund. (UNICEF) 2005. Education. <www.unicef.org>accessed 17 February 2018

³Shamar D. The importance of school education in child development, education world. <www.educationworld.in.org> accessed 12 January 2018

⁴ UNICEF op cit.

⁵UNICEF2007. A human right-based approach to education for all. <www.unicef.org> accessed 1 February 2018

every child has a right to education. This claim is based primarily on two premises. First, Human Rights advocates endorse the right to education because they believe that if children receive basic primary education, they will likely be literate and numerate and will have the basic social and life skills necessary to secure jobs, to be an active member of a peaceful community, and to have a fulfilling life. Second, they recognize that, despite this recognition of education as a right by the Universal Declaration of Human Rights (UDHR), many children fail to benefit from even basic primary education.

This gap between the positive recognition of the right to education and the negative reality facing many children has led rights advocates to conclude that education must be considered a human rights issue on par with the right to food or the right to freedom. And as such, the Millennium Development Goal (MDG) to achieve universal primary education by 2015 was established to fight for the right for all children everywhere, regardless of gender, to a complete course of basic primary schooling. This is a goal that the 2010 Education for All report clearly indicates has achieved some progress.⁶

This article discusses the right to education as a species of human rights. It leans on the theory of rights to argue that the right to education is a fundamental human right which should be enforceable in the courts of law. In doing so, it sheds more light on the following sub-themes; education as a human right, theory of rights, right to education in the Child Rights Act 2003 and Universal Basic Education Act 2004, it finally seeks to answer the question 'Is there a right to education in Nigeria?'

Education as a human right

Education as a human right means that it is a right that is legally guaranteed for all without any discrimination; that states have the obligation to provide/protect, respect and fulfill it and if they do not, there are ways to hold them accountable for such violation. Defending every child's right to education is one way to advance every child's chance to get at least a minimal level of protection and support as that child develops. It is of no use to claim, however that a child has a right to education if there are no means for that child to realize this claim. It is on this basis that Orend has opined that, "We do not know the full scope of our human rights until we know that the duties correlative to them can be performed at a reasonable cost".⁷ Providing children with educational opportunities can be expensive and, clearly, children (particularly young children) do not have the means to provide such resources for themselves. As a result, not only must consideration be given to what qualifies an object like education as a high-priority claim or human right, consideration must also be given to the social context necessary to acknowledge this claim and to accept the social cost to implement it.⁸

Education is an institution that typically is established through a collective social desire to have civil and supportive societies. And if one considers the social dynamic found in many countries around the world, there is the suggestion that usually the more education people have, the better

⁶ Sharon L.E. 'Education as a Human Right in the 21st Century'[2013](21)(1) *Democracy & Education*;1-9

⁷Brian Orend, *Human Rights: Concept and context*. (Peterborough Broadview Press, 2002), 139

⁸Brian Orend *Justifying socioeconomic rights in Economic rights in Canada and the United States* Howard-Hassmann Rhoda E. and Claude E. Welch (eds)(University of Pennsylvania Press, 2006), 25– 40.

off they can be. With this in mind, many societies traditionally view education (at least primary and secondary education) as a genuine public good that adults and educators provide for children until such time that they outgrow their childhood vulnerabilities and inexperience to become contributing members of society themselves. Many existing international laws and UN documents have been created to promote and to protect this notion of education like the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). These documents have helped to establish viable legal mechanisms from which nation-states can implement, support, and assess effective social structures necessary to provide for appropriate educational opportunities. For instance, Article 13 (1) of the ICESCR, stipulates that the States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.⁹

In considering education as a human right in Nigeria, the first legal instrument to examine is the Constitution. The Constitution of the Federal Republic of Nigeria is the grundnorm, by implication, the Constitution is the fundamental order or rule from which all other laws derive their validity. Chapter IV of the constitution itemizes certain basic rights which are grouped as fundamental human rights. These rights are inalienable and apply to all the citizens of the country. These rights include:

- a. right to life
- b. right to personal liberty
- c. right to human dignity and freedom from slavery and torture,
- d. freedom from discrimination on the basis of sex, race, or ethnicity, religion, political persuasion e.t.c.,
- e. freedom of thought, opinion, conscience and religion,
- f. freedom of expression,
- g. freedom of association and the right to peaceful assembly,
- h. freedom of movement
- i. right to fair hearing in both civil and criminal causes.¹⁰

In addition, Chapter II of the Constitution highlights the fundamental objectives and directive principles of state policy. Ordinarily, the Fundamental Objectives and Directive Principles of State Policy are the basic principles to guide the policies which are expected to be utilized for Nigeria to realize the national goals.¹¹ Section 18 in particular annotates the educational objectives. It provides that the Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. It further provides that the Government shall strive to eradicate illiteracy and when practicable, provide free compulsory and universal basic education, free university education and free adult literacy programme.

⁹ UNICEF2007. A human right-based approach to education for all. www.unicef.org accessed 1 February 2018

¹⁰ All these are stated in Sections 33-42 of the 1999 CFRN as amended.

¹¹ Taiwo A. Olaiya, 'Interrogating the non-justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria' [2015] (8)(3) *Journal of Politics and Law*; 11

However, the aforesaid sections as laudable as they seem to be are not justiciable.¹² This is because Section 6(6)(c) states that the 'judicial powers vested in accordance with the foregoing shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution'.

The implication of the non-justiciability of the provision of chapter II is that citizens cannot obtain redress from the courts if denied their socio-economic and developmental rights as provided for in the constitution.¹³ Thus the government and any of its agents cannot be held accountable for not upholding the provisions unless the provisions can be matched with another in furtherance of Chapter IV of the constitution, or any other legislation of the legislative arm of government.¹⁴ This position is reinforced in the case of *Attorney General Ondo State v Attorney General Federation*¹⁵ where it became well established that rights under the Fundamental Objectives and Directive principles of state Policy are not justiciable except as provided for in the constitution.

Theory of rights

Rights are those conditions of social life without which no man can seek, in general, to be himself at his best. The essentiality of rights is established by the fact that individuals claim them for the development of their best self. The state thus has a very important role to play in the recognition of human rights and it is the primary duty of the state to help the individual in his efforts to achieve his best self and, if that be the case, the state has a very big responsibility in the field of realization of rights.¹⁶

The central theme of the legal theory of rights is that rights completely depend upon the institutions and recognition of state. An individual cannot claim rights if those are not recognized by the state. Mere recognition, moreover, is not sufficient for the exercise of rights. The state must, through law and institutions, implement the rights. If these two conditions are not fulfilled then individuals will have hardly any opportunity to enjoy rights. Rights must be indispensable for the realization of objectives which men cherish. The rights of the individuals must also aim at the general welfare of the society.

According to positivism theory of law, legal rights are essentially those interests which can be recognized and protected legally. Austin thus made a distinction between legal rights and other categories of rights which he labelled as moral rights. Legal rights are the category of rights which are creatures of law strictly so called, and these rights are armed with legal sanctions and as such could be enforced judicially. Austin argued further that X is a right-holder because he is

¹² Section 6 (6) (c) of the same 1999 Constitution as amended.

¹³ Ikpeze O.V., 'Non justiciability of Chapter II of the Nigerian Constitution as an impediment to development' [2015] (5) (18) *Developing Country Studies*; 48

¹⁴ Folorunsho A.H. Abdulraheem T.A. Tamin-Imam M. K., 'The Children's Right to Education in Nigeria: Challenges and Solutions' [2014] (6) *Journal of Public Law and Constitutional Practice*; 104-117

¹⁵ (2002) 9 NWLR 722

¹⁶ _____ Theory of Rights: Laski, Barker and Marxist Theories

<www.politicalsciencenotes.com.theoryofrights> accessed 26 March 2018

the beneficiary, or intended beneficiary, of another's duty, or perhaps of the absence of a duty on him which the law might otherwise have imposed.¹⁷

Salmond on the other hand opined that a legal right is an interest recognized and protected by rule of law and violation of such an interest would be a legal wrong. The Fundamental Human Rights as enshrined in the 1999 constitution are a specie of legal rights the violation of which would be a legal wrong. In the same vein, a legal duty is an act that creates an obligation to do something the opposite of which would be a legal wrong, and whenever law assumes a duty to a person, a corresponding right also exists with the person on whom the duty is imposed.¹⁸

Based on the foregoing, the right to education can aptly be described as a moral right which is not armed with legal sanction and which makes it unenforceable. Whilst the Fundamental Human Rights are legal rights which are enforceable and the observance of which imposes a duty on the state to perform. However, based on the central theme of the legal theory of rights, an individual cannot claim the right to education unless such right is recognized by the state. The state can implement these rights through the instrument of law and institutions. This in the opinion of the writer describes how enactment of the UBE Act has now given recognition to the right to education as a category of enforceable right.

Major international instruments that have recognized and advocate for the right to education

- 1. Universal Declaration of Human Rights, 1948** has been described as the most comprehensive document on the rights of individuals. UDHR recognizes a right to education for all individuals which should be free in its elementary and fundamental stages. The convention asserts that education is a tool for strengthening respect for human rights and fundamental freedoms and for promoting peace, tolerance and friendship amongst all nations of the world.¹⁹ The Convention recognizes the prior right of parents to determine the kind of education that should be given to their children. The provision of this convention in the opinion of the author of this article establishes the role that parents ought to play in the education of their children, and that parents can give education to their children/wards depending on their economic status.
- 2. African Charter on the Rights and Welfare of the Child, 1990** recognizes a right to education which every child is entitled to. The Charter enjoins state parties to take all appropriate measures with a view to achieving the full realization of this right and in particular to provide free and compulsory basic education; encourage the development of secondary education in its different forms and to progressively make it free and accessible to all; make the higher education accessible to all on the basis of capacity and ability by every appropriate means.²⁰ It is also interesting to note that this Charter identifies the role education plays in the preservation and strengthening of positive African morals, traditional values and cultures as well as the promotion and achievements of African unity and solidarity.²¹

¹⁷ Stanford Encyclopedia of Philosophy, 'Legal Rights' [2017] <<https://plato.stanford.edu>> accessed 17 March 2018

¹⁸ Singer, J. 'The Legal Right debate in analytical jurisprudence from Bentham to Hohfeld' [1982] *Wis Law Review* 975- 984

¹⁹ Article 26 UDHR 1948

²⁰ Article 11 ACRWC 1990

²¹ This convention was ratified in Nigeria on July 23, 2001

3. Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child enjoins state parties to recognize the right of the child to education with a view to achieving this right progressively on the basis of equal opportunity. To this end, it makes primary education compulsory and available free to all; it also encourages the development of different forms of secondary education, including general and vocational education, making them available and accessible to every child. The Convention likewise advocates that higher education be made accessible to all on the basis of capacity by every appropriate means.²²

4. International Covenant on Economic, Social and Cultural Rights, 1966

Article 13 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to education. And with a view to achieving this right, makes primary education compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; and lastly, higher education be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.²³

5. UNESCO Convention Against Discrimination in Education, 1960

This Convention prohibits all forms of discrimination in attaining education. It identifies practices that amount to discrimination to include deprivation of access to education of any type, limiting any person to education of an inferior standard and inflicting on any person or group of persons condition which are incompatible with the dignity of man. It enjoins state parties to abrogate statutory provisions which involve discrimination in education.

These human rights conventions have affirmed the right to education. Although lacking the legally binding force of the treaties, these conventions have introduced an additional impetus for action, together with elaborated commitments and time frames for their attainment. The World Conference on Education for All 1990 set the goal of universal primary education for the year 2000, a goal not met but subsequently reaffirmed for 2015 at the World Education Forum in 2000. This Forum also committed to an expansion and improvement of early childhood care and education, the elimination of gender disparities in education and the improvement of quality in education.

In addition, the international community and leading development institutions agreed to the Millennium Development Goals, expressed in the Millennium Declaration, which commit them to ensuring that all girls and boys complete a full course of primary education and that gender disparity is eliminated at all levels of education by 2015. In 2005, the 'International Conference on the Right to Basic Education as a Fundamental Human Right and the Legal Framework for Its Financing adopted the Jakarta Declaration. This emphasized that the right to education is an internationally recognized right in its interrelationship with the right to development, and that the legal and constitutional protection of this right is indispensable to its full realization.

²²Article 28 Convention on the Rights of the Child 1989

²³The convention became ratified in 1993

Is there a right to education in Nigeria?

In 1948, the UDHR asserted that everyone had a right to education. Subsequently, a World Conference on Education for All was held for the purpose of forging a global consensus to provide basic education for all.²⁴ In a swift response to this, the Federal Government of Nigeria launched the Universal Basic Education Scheme in 1999 for the purpose of achieving compulsory, free and universal basic education. The Universal Basic Education (UBE) Scheme was a policy reform of the Federal Government whose aim was to rectify the distortion in basic education in the country. In a bid to achieve its aim and objectives, the UBE Scheme was reenacted in 2004 as UBE Act. The Act was to remove all obstacles to lifelong education for the Nigerian citizenry.²⁵

Right to education in the Child Rights Act 2003

Even though the Nigerian constitution does not guarantee the right of the child to education, the Child Rights Act 2003²⁶ makes provision for the right to education alongside other rights for the general wellbeing of the child. The Act enshrines the rights of all children to free and compulsory primary education and to freedom from discrimination, among other rights.

Section 15 of the Act provides that every child has a right to compulsory free universal basic education up to junior secondary school and it is the duty of every parent and guardian to ensure this. Section 15(6) makes failure to ensure that a child enjoys the right guaranteed under subsection (2) by a guardian or parent a criminal offence.

The provisions of the Child Rights Act makes right to education an absolute right of every child especially basic education and imposes punishment for erring parents/guardians, however, the Act is silent on penalties for violation on the part of Government. The Act mandates every parent or guardian as the case may be to enroll a child under his care into senior secondary school on completion of basic education, or to learn a trade or skill that would help in his or her development and the employer of the child shall ensure that all the necessities for learning the trade or skill is provided the child.

Free education as guaranteed under S15 (1) is limited to "basic education". The Act does not define what basic education is but, section 15 of the Universal Basic Education Act offers assistance to this by stating expressly that "basic education means early childhood care and education and nine years of formal schooling". The direct implication of this is that, there is no right to free education for a child who has successfully completed junior secondary school. The duty to see that the child furthers his education is on the parent or guardian as the case may be and not on the government.

It should be noted that free education guaranteed under sub-section (1) is limited to "basic education". The Child Rights Act does not define what basic education is but, section 15 of the Universal Basic Education Act (UBE Act) offers assistance to this. It provides that "*basic education means early childhood care and education and nine years of formal schooling*". The direct implication of this is that, there is no right to free education for a child who has

²⁴Tsafe A., 'A Critical analysis of Universal basic Education on its implementation so far' [2013] (2)(1) *Scientific Journal of Pure and Applied Science*; 1-12

²⁵Adebola O., 'Perceived impact of Universal Basic Education on National Development in Nigeria' [2007] (6)(1) *International Journal of African and African American Studies*; 48- 58

²⁶ Cap C50 LFN 2004

successfully completed junior secondary school. The duty to see that the child furthers his education is on the parent or guardian as the case may be and not on the government.

The Child Rights Act also offers more protection to the female gender by prohibiting the expulsion of female students who get pregnant in the course of schooling. Such students are to be given the opportunity to continue with their schooling after delivery on the basis of their individual ability.²⁷

Right to Education in the UBE Act 2004

The UBE Act established the Universal Basic Education Commission (UBEC) which oversees the achievement of the Act's aim and objectives. The Act provides for tripartite sources of funding for the implementation of the UBE scheme which are: The federal government grant of not less than 2% of its consolidated revenue funds, funds or contribution in the form of federal guarantee credit and local or international donor grants. Although this Act covers both the State and Local government, the state government can only benefit from the Federal government block grant meant for the implementation of the UBE scheme if it can contribute at least 50% of the total cost of the project to show its commitment towards the execution of the project.²⁸

The Act is a demonstration of the commitment of the Government of Nigeria's towards ensuring that the right of children to education is adequately catered for. It starts by acknowledging in its section 1 that the power to legislate on matters relating to basic education is under the purview of the state government.²⁹ It however states that federal government has only stepped in by way of providing aid.

Section 2 of the Act confers on every child the right to compulsory, free and basic universal education. It also places on the government an obligation to provide free and compulsory universal education for every child of primary and secondary school age. This section likewise places an obligation on parents to ensure that their children or wards complete both primary and junior secondary education. It stipulates fines and penalties for contravention of the law.³⁰ From the provisions stated above, it can be deduced that every government in Nigeria now has a legal obligation to provide free and compulsory basic education for each child.

The question that should then be asked is does every Nigerian child now have the constitutional right to free and compulsory primary education, and free junior secondary education by the provisions of the UBE Act 2004 and the Child Rights Act 2003? This came up for consideration in the case of *Legal Defence and Assistance Project, (LEDAP) v the Federal Ministry of Education & Attorney General of the Federation*³¹, in which LEDAP asked the Federal High Court to determine whether by the combined effect of Section 18(3)(a) of the 1999 Constitution and Section 2 (1) of the Compulsory, Free Universal Basic Education Act, (UBE) 2004, the right

²⁷ S15(5) Child Rights Act

²⁸ Section 11 of the UBE Act

²⁹ Item 30 of part II of the second schedule to the 1999 constitution. For a more detailed discussion on the UBE Act, see B.T Danmole. "Emerging issues on the Universal Basic Education Curriculum in Nigeria: Implications for the Science and Technology component" [2011] (8) (1) *Pakistan Journal of Social Science* 62- 68

³⁰ S2(3) and S 2(4)

³¹ Unreported (FHC/ABJ/CS/978/15)(2017) NGHC2(1 March 2017)

to free and compulsory primary education and free junior secondary education for all qualified Nigerian citizens are enforceable rights in Nigeria.

LEDAP also asked the court to determine whether the federal and state governments are under constitutional obligation to provide financial and institutional resources for free, compulsory and universal primary education and free junior secondary education for all Nigerian citizens, and whether failure by any government to adopt and implement free, compulsory and universal primary education and free junior secondary education amounts to a breach of constitutional obligation of the government in accordance with its duty and responsibility under Section 13 of the Constitution.

The court answered all the questions raised by the plaintiff in affirmative, and stated that in doing so, it relied on the Supreme Court decision in *Attorney General of Ondo State & Others vs. Attorney General of the Federation*³² where it was held that the provisions of Chapter II of the Constitution, even though were not enforceable by virtue of section 6(6)(b) of the constitution, can be made enforceable or justiciable by legislation.

Thus, following this decision of the Supreme Court, the presiding judge held that by enacting the UBE Act, the National Assembly had in fact made the right to free and compulsory primary and free junior secondary education contained in Chapter II an enforceable or justiciable right. By this judgment, any child not enrolled in school or who is withdrawn from school can exercise his or her constitutional rights against the parent or guardian or even against the government.

In *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*³³ the plaintiff was a human rights non-governmental organization registered under the laws of the Federal Republic of Nigeria. The first defendant was a member of the Economic Community of West African States. The second defendant was likewise a body set up by the first defendant to ensure the success of basic education in the country. According to the Applicant, it all began when a report of investigations was conducted into the activities of the second defendant. The investigation centered on the mismanagement of funds allocated for basic education in ten states of the Federation of Nigeria. In October 2007, the independent Corrupt Practices Commission (ICPC) reported having more than 488 million naira of funds looted from state offices and headquarters of the second defendant and was still battling to recover another 3.1 billion naira looted by officials of the second defendant. The Applicant contended that this was not an isolated case but illustration of high level corruption and theft of funds meant for primary education in Nigeria. The result being that Nigeria was unable to attain the level of education that she deserved in that over five million Nigerian children had no access to primary education, among others. The Applicant catalogued a number of factors that had negatively affected the educational system of the country, including failure to train more teachers, non-availability of books and other teaching materials etc.

The charge against the first defendant was that she had "contributed to these problems by failing to seriously address all allegations of corruption at the highest levels of government and the levels of impunity that facilitated corruption in Nigeria." The result was that this had "contributed to the denial of the right of the peoples to freely dispose of their natural wealth and resources,

³²(2002) 9 NWLR (Pt. 772) 222,

³³ ECW/CCJ/APP/08/08

which served as the backbone to the enjoyment of other economic and social rights such as the right to education. SERAP contended that the destruction of Nigeria's natural resources through large scale corruption was the sole cause of the problems denying the majority of the citizen's access to quality education.

The main issue was whether the right to education is justiciable and can be litigated before the court. The second defendant applicant contended that the educational objective of the first defendant, the Federal Republic of Nigeria, contained in Chapter II of the 1999 Constitution of the Federal Republic lies at the heart of the plaintiff's suit. The second defendant also contended that the provisions of Chapter II of the 1999 Constitution are the directive principles of state policy and are therefore not justiciable. They claimed that the principles of state policy represent the ideals which the Federal Government ought to strive to achieve and do not confer any positive rights on any citizen. They stated further that the Federal Government of Nigeria had absolute powers over educational matters and that by Section 6(6) of the Constitution, jurisdiction over such issues is reserved exclusively for the Federal High Court. Again, second defendant stated that though the Constitution had imposed a duty on all the three organs of government to strive to eradicate illiteracy and to provide free compulsory basic education, these are just educational policies which are non-justiciable. In short, the second defendant contended that the subject matter of the suit was covered by the provisions of the Nigerian Constitution on the directive principles of state policy and cannot be determined or enforced by the Court.

The court held amongst other things that it is trite law that this Court was empowered to apply the provisions of the African Charter on Human and Peoples' Rights and Article 17 thereof guaranteed the right to education. It is well established that the rights guaranteed by the African Charter on Human and Peoples' Rights are justiciable before the Court. Therefore, since the plaintiff's application was in pursuance of a right guaranteed by the provisions of the African Charter, the contention of second defendant that the right to education is not justiciable as it falls within the directive principles of state policy cannot hold. Indeed, the right to education of a child under the Nigerian law has with the enactment of the UBE Act attained a new fit; it is no longer merely a fundamental objective of state policy. It is now an enforceable right at least to the extent covered by the Act.

Okeke and Okeke³⁴ have a different opinion concerning the justiciability of the provisions of Chapter II. They opined that using legislation to make justiciable the non-justiciable policy of governance as contained in Chapter II is a material contradiction because it is generally believed that the constitution is the basic norm from which other laws within a given legal system derive their validity. They interpreted the dictates of the supremacy clause as providing that the constitution cannot be altered through the instrumentality of any ordinary legislation but rather by altering the constitution itself. Any standard constitution according to them must contain the terms and manners through which it can be amended. Section 9 of the constitution has laid down provisions for altering the provisions of the constitution. They finally contended that granted that majority of the provisions of Chapter II of the constitution need to be made justiciable and enforceable, a better way of doing this is by amending the constitution itself and not by means of ordinary legislation.

³⁴G. N. Okeke and C. Okeke " The justiciability of the Non- Justiciable constitutional policy of Governance in Nigeria" [2013] (7) (6) *IOSR Journal of Humanities and Social Sciences* 9-14

Drawing from Okeke and Okeke's opinion, the right to education in Nigeria need not be made justiciable by the provisions of the UBE 2004 Act and the Child Rights Act 2003 but rather by amending the Constitution itself.

Duru³⁵ on the other hand argues that the provisions of Chapter II of the 1999 Constitution are enforceable under certain well defined parameters. Firstly, it is within the legislative competence of the National Assembly as contained in the Second Schedule, Part I of the Constitution to establish and regulate authorities for the Federation or any part thereof for the promotion and enforcement of the Fundamental Objectives and Directive Principles and to prescribe minimum standards of education at all levels. Thus, the provision of S6(6)(c) is subject to the legislative powers exercisable by the National Assembly for the purpose of enforcing the provisions of Chapter II. And secondly, Duru stated that where a breach of the provisions of Chapter II of the constitution also constitutes an infringement of the provisions of Chapter IV, the former becomes justiciable as well. This implies that Chapter II may be justiciable as part of Chapter IV if the facts constituting a violation of the former are the same with that of the latter. This Duru described as an "indirect approach to justiciability".³⁶

Kutigi³⁷ posited the general principle of law that an effective remedy must accompany every right so that in cases of violations of rights, the victimized individual has a measure of redress. This right, Kutigi maintained, must be guaranteed and available. In cases of violations of economic, social and cultural rights, the new trend in human rights jurisprudence is a growing global acceptance of the justiciability of economic, social and cultural rights.

It should be noted that it is not only the recognition of the basic right to education that would guarantee access to education for Nigerians. There are in addition a number of bottlenecks that could hinder access to the right. As Obashoro rightly stated, a result oriented implementation of the right to education requires attention to be paid to three areas in particular; planning, monitoring and evaluation.³⁸ Adequate funding of the educational sector is a necessity. Funding for basic education has come primarily from federal and local governments resources over the years; state governments have tended to prioritize tertiary education relying on local governments' resources for primary education. A general lack of accountability inherent in current practices leads to inefficiency in use of resources. Officials estimate that these challenges account for 40% - 45 % of allocated funds. Recurrent capital expenditure imbalances in budgetary allocations aggravate the challenges and stifle the provision of education infrastructure. The non-inclusion of performance conditions in the criteria for federal matching

³⁵Duru Onyekachi Wisdom 'The justiciability of the fundamental objectives and directive principles of state policy under Nigerian law' [2012] <ssrn/downloads.id2140361.pdf> accessed 16 August, 2018.

³⁶Ibid This probably influenced the Court of Appeal's decision in Archbishop Anthony Olubunmi Okogie & Ors v AG, Lagos where it was held that Chapter II of the 1999 Constitution is subject to legislative powers conferred on the State. See A. O. Popoola "Fundamental Objectives and Directive Principles of State Policy: Executive Responsibility and the Justiciability Dilemma" in Epiphany Azinge & Bolaji Owasanoye (eds) *Justiciability and Constitutionalism: An Economic Analysis of Law* (Nigerian Institute of Advanced Legal Studies Press, 2010), 324

³⁷Halima Doma Kutigi 'Towards Justiciability of Economic, Social and Cultural Rights in Nigeria: A Role for Canadian-Nigerian Cooperation?' [2017] (4) *The Transitional Human Rights Review* 144

³⁸Oluwayemisi O. Obashoro, 'Child Education under Child Rights Act (2003) and UBE (2004): Challenges and Prospects' , <www.hdinigeria.org> accessed 13 March 2018

grants to state governments on basic education may lead to lack of incentives for performance and inefficiency.³⁹

Conclusion

It is distressing to note however, that notwithstanding the remarkable departure that these two landmark decisions of the court have made in an era where right of a child to education was nothing more than a directive principle if state policy thereby unenforceable, there is no guarantee that every child in the country would enjoy this right. This is so because several factors still influence access to court by the average Nigerian whose right has been violated. These militating factors range from the cost of hiring a legal representative, time spent on litigation, the whole idea of the court system seems so complex to the average man that he would rather wallow in silence than initiate an action in court. Nevertheless, the decisions of the court especially those guaranteeing the enforceability of the right to education is a step in the right direction and this will no doubt mark the beginning of a new era in the protection of the rights generally in the nation.

³⁹Chinedum Nwoko, Financing Education in Nigeria: Opportunities for the action, A country case study for the Oslo Summit on Education for development [2015]<cap.africa-platform.org> accessed 13 March 2018; See generally S.O.Labo-Popoola, A.A. Bello and F.A. Atanda, "Universal Basic Education in Nigeria: Challenges and Way Forward" [2009] (4) (6) *Social Sciences* 614-621