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**Employing the 4As as Essential Features of Education to
Evaluate the Extent of Implementation of Right to Free
Primary Education in Nigeria**

Osifunke Ekundayo*

Abstract

The right to free and compulsory primary education in Nigeria in this paper will be premised on the 4As framework, given that it is legally grounded in international law. It is central to the premise of rights-based approach (RBA) that human beings have inalienable rights. The 4As are the essential features of the right to education which are highlighted in this paper and will serve as the benchmark against which primary education in Nigeria will be analysed. Using the 4Ascheme would be a helpful tool for the interpretation of the right to education. It is meant to be a model strategy for action which would enable all children in Nigeria to attain free primary education. The four components: availability, accessibility, acceptability and adaptability are elaborated in this paper, with the aim of revealing what the situation is and what we need to do.

Introduction

The right to primary education free of charge is protected in a number of human right treaties and international instruments. Among the international treaties that have built the right to education into what it is today are The 1948 Universal Declaration of Human Rights (UDHR),¹ the 1960 UNESCO Convention Against Discrimination in

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¹ Article 26, Universal Declaration of Human Rights, (UDHR) 1948, G.A. Res 217, UNGAOR 3rd Sess.Supp. No127 at 71 UN Doc A/80 (1948), Article 4(a).

Education (CADE),² the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),³ the 1989 Convention on the Rights of the Child, (CRC),⁴ and the 1990 African Charter on the Rights and Welfare of the Child (ACRWC).⁵ All of these instruments establish an entitlement to free, compulsory primary education for all children. The right to education is a very specific well-developed set of norms and obligations to which state parties have agreed through global, regional and domestic accords for over sixty years. The specific guarantees of the right to education are articulated in articles 13 and 14 of ICESCR,⁶ and in articles 28 and 29 of the CRC.⁷

The right to education is often referred to as a “multiplier right” because it is a precondition to the understanding and exercise of other rights.⁸ The right to education is more than children having access to education; the state also plays an imperative role in the planning and delivery of the right. The right to education is considered as comprising four interrelated and essential features commonly referred to as the 4As which stipulate that primary education must be: available--it must be free and government-funded with schools having adequate infrastructure and trained teachers; accessible-- the system is non-discriminatory and accessible to all; acceptable-- the content has to be relevant, culturally appropriate and of good quality, and adaptable--education must evolve with the changing needs of the society.⁹ These taken together provide the core human rights standards of education and embody the intrinsic value of the right to education

² UNESCO Convention against Discrimination in Education (1960) entered into force 22nd May 1962.

³ Article 13, International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), 993UNTS 3 entered into force January 3 1976.

⁴ Article 28, Convention on the Rights of the Child (CRC) (1989)/G.A.Res44/25 UNGAOR, 44th sess, Supp No49 at 167, UN Doc/44/49 (1989), entered into force 2nd September 1990.

⁵ Article 11 African Charter on the Rights and Welfare of the Child (ACRWC) (1990), OAU/Doc/CAB/LEG/24.9/49 (1990) entered into force Nov 29 1999.

⁶ Arts 13& 14. ICESCR

⁷ Arts 28 &29CRC.

⁸ Committee on Economic, Social and Cultural Rights, *General Comment No 13, the Right to Education* (article 13 of the Covenant).E/C.12/1999/10, para. 1.

⁹ CESCR General Comment No. 13, *The right to education (Art.13)*: 12/08/1999, para 6.

without which the right would lose its meaning. In essence, primary education needs to be relevant, inclusive, child-centred and of high quality.

The 4As features of right to education

Drawing on international human rights provisions, four elements have thus been identified as key features of the right to education, namely availability, accessibility, acceptability and adaptability. The concept of these 4As was first proposed by the former UN Special Rapporteur on the Right to Education Katarina Tomasevski.¹⁰ She devised a scheme which measures the content of education against international legal law, corresponding states' obligations and the entitlements of the right holders. She divided the obligations relating to the right to education into a 4A framework namely availability, accessibility, acceptability and adaptability. She also proposed that right to education indicators be established on the basis of this framework.¹¹

This scheme was adopted by the Committee on Economic, Social and Cultural Rights in its General Comments No 13¹², in which the committee has extended and clarified the obligations of the states towards education under these four essential features. The 4A scheme clarifies the meaning of education as a human right and provides a clear indication of the entitlements of the right holders and the related legal obligations incumbent on the duty-bearers.¹³ While the scheme used to include availability, accessibility, acceptability and adaptability, UNESCO's cultural dimension in human rights and development, claims the scheme has been revised to only incorporate

¹⁰ This scheme has been used for the first time by the then UN Special Rapporteur on the right to education, Katarina Tomasevski in her preliminary report, see UN Doc E/CN.4/1999/49, chapter II. See also K. Tomasevski, *Education Denied-Costs and Remedies*, London & New York, Zed Books, 2003, p51-52.

¹¹ K. Tomaševski, Annual Report of the Special Rapporteur on the Right to Education, 7 January 2002, E/CN.4/2002/60, at 12-13.

¹² Committee on Economic, Social and Cultural Rights (UNCESCR), General Comments no13, The Right to Education, E/C.12/1999/10 para 6, see also, Article 13(2) (e) ICESCR.

¹³ Melchiorre, Angela, *The Missing Link: Using the dynamics of Human Rights advocacy to enhance Gender Equality in Education for Girls and Women in Situations of Extreme Poverty*. UNGEI 2010, www.right-to-education.org, accessed on 14/05/2013.

availability, accessibility and quality to “measure the right of a situation”.¹⁴

In contrast, the right to education indicators established by the Robert F. Kennedy Memorial Centre for Human Rights are based on the 4A framework to which is added accountability (thereby making it a 5A framework). The 4A is legally-grounded in international law and is expounded in the CESCR Committee's General Comment No 13 of 1999. The 4A scheme is used throughout this paper as it is the benchmark currently used in rights assessment. For example, the Office of the Columbian Ombudsman is currently monitoring the right to education with right to education indicators based on the 4A framework. US state courts also applied the 4A framework to develop indicators for examining the quality or acceptability of education.¹⁵

There are three advantages in taking the 4A framework as starting point to establish right to education indicators. First, indicators based on the 4A framework are the most closely linked to international human rights law, since this framework appears to be the best way to classify state obligations relating to the right to education. Second, the 4A framework has proven effective in bridging the gaps, which is especially important considering that indicators stem from the development field. Third, the 4A framework emphasises both the quantitative and qualitative aspects of the right to education, by measuring not only the right to education but also rights in education and rights through education.¹⁶ The four components as well as “quality” (4As and Q) are elaborated as follows.

Availability

From the Committee on Economic, Social and Cultural Rights' view, availability means that educational institutions and programmes have to be available in sufficient quantity, and there should be adequate

¹⁴ http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/creativity/pdf/culture_and_development_indicators/Dimension%205%20Human%20rights.pdf

¹⁵ Gauthier de Beco, Right to Education Indicator based on the 4 A framework, Concept Paper for The Right to Education Project, May 2009, www.right-to-education.org/resource/right-education-indicators-based-4-concept-paper p 6 accessed 18/02/2013.

¹⁶ Ibid.

infrastructure and trained teachers able to support education delivery while some institutions will require facilities such as libraries and computer facilities.¹⁷ Availability of functioning education institutions and programmes, as well as the provision of infrastructure to support learning indicators include factors like safe school buildings, having adequate number of classrooms with sufficient blackboards, tables, desks, chairs and space per class. The schools must have adequate number of sanitation facilities for both sexes, access to safe drinking water, canteens recreational facilities, and sufficient recreation ground. There must be sufficient numbers of qualified teachers receiving domestically-competitive salaries.

Availability as regards schools and teachers in Nigerian primary educational institutions

The challenge of making schooling available for all children in Nigeria is succinctly portrayed by outlining the major determinants; infrastructure and teachers. The infrastructure and facilities are inadequate for coping with the number of pupils.¹⁸ The National Policy on Education specified a maximum of 40 pupils per class in primary schools.¹⁹ However, in urban centres, the classrooms are overcrowded with 70 – 100 children in one room.²⁰ The result is overcrowded classrooms, which makes learning and assimilation difficult. Due to poor funding of primary education, maintenance of existing facilities is inadequate; new facilities are not built so buildings are not enough to accommodate the pupils. Most of the school buildings are in poor condition. The situation has been exacerbated by the fact that most of the buildings that have been constructed in recent years are also of very poor quality. They have been badly built because of poor procurement practices, poor management of construction, poor workmanship, the use of poor

¹⁷ CESC General Comment 13; 1999; para6.

¹⁸ Victor Dike The state of education in Nigeria and the health of the nation. Africa Economic Analysis According to the author, " The recent statistics on primary education available to this writer shows that there are about 2,015 primary schools in Nigeria with no buildings of any type" <http://www.africaeconomicanalysis> accessed 12/03/2013

¹⁹ National Policy on Education, 4th edition 2004.

²⁰ Education Sector Support Programme in Nigeria (ESSPIN) SBMCs in Policy and Practice: Lagos State Report, Report Number LG 401 April 2009, p 13.

quality materials, lack of supervision during construction, and political interference.²¹ Even where buildings have been constructed to acceptable standard, maintenance is severely lacking and this has resulted in many buildings being in a state of disrepair. Most schools have inadequate school furniture for both staff and pupils. The schools are not secure, some of the schools have low fences despite many being close to main roads in both urban and rural areas, and animals often wander freely across the school play areas.²² In rural parts of Kwara State for example, it is estimated that less than 20% of the school classrooms meet the current minimum requirements for a safe and comfortable learning environment.²³ With reference to the safety in schools, the incessant attacks orchestrated by Boko Haram, have created problems for schools, particularly in the northwest of Nigeria where pupils are attacked and killed by these Islamic fundamentalists --this has kept many children away from school. In sum, the infrastructure and facilities are inadequate to cope with the increasing population of pupils in primary schools. The school environment is therefore generally not conducive to learning due to the physical condition of most schools and lack of teaching and learning resources.²⁴ The classrooms are overcrowded and in some instances schools have operated with teacher-pupil ratio of 1:76.²⁵ Whereas, the National Policy on Education prescribes that the teacher-pupil ratio should be 1:40.²⁶ In other instances, as many as four classes are accommodated in one classroom that is overcrowded and in a state of poor repair.²⁷ The quality of public education suffers in consequence with the justification that public funding is scarce.

Hinchliffe in his report on public expenditures on education in Nigeria revealed that primary education is currently underfunded in the

²¹ Education Sector Support Programme in Nigeria (ESSPIN), School Doc No, ESSPIN 032, May 2009.

²² Education Sector Support Programme in Nigeria (ESSPIN), School Case Study Reports, Kaduna, Kano and Kwara States, May 2009.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ National Policy on Education 4th edition 2004.

²⁷ Ibid.

country.²⁸ Also, Adebisi and Oladele described the funding of education in Nigeria as follows: “the budgetary allocations to the formal education system also have the shape of an inverted pyramid in which secondary and tertiary education receives more than four times as much public resources as primary education.”²⁹ As such, it is very obvious that primary education is underfunded. As it stands, Nigeria’s educational allocation continues to fall short of international benchmarks. While Ghana, South Africa, Cote d’Ivoire, Kenya and Morocco allocated 31%, 25.8%, 30%, 23% and 17.7% respectively of their annual budget to education in 2005,³⁰ Nigeria allocated 8.43% to education during the same period.³¹ Nigeria’s total annual percentage of budgetary allocations to education is significantly lower than those of 20 World Bank sampled countries in 2012.³² The Dakar Framework recommended that at least 20% of the national budget or 5% of the Gross Domestic Product (GDP) should be spent on education³³ while UNESCO recommends 26% both of which are significantly higher than the 8.43% allocated by Nigeria.³⁴ In essence, inadequate government funding has always been a major problem in the availability of free primary education in Nigeria.

²⁸ Hinchliffe, Keith, *Public Expenditures on Education in Nigeria: Issues, Estimates and Some Implications*, Africa Region Human Development Working Paper Series, August 2002 Human Development Sector Africa Region, (Washington D.C.: The World Bank 2002).p23.

²⁹ Adebisi, M.A & Oladele, O., Public Education Expenditure and Defence Spending in Nigeria: An Empirical Investigation available <http://www.saga.cornell.edu/saga/educonf/adebisi.pdf> accessed 25 March 2014

³⁰ Editorial, in; ‘Africa- Asia University Dialogue for Basic Education Development’, (2008) Vol. 11, No 3 December *Journal of International Cooperation in Education*, p5.

³¹ Kpolovie, P. & Obilor, I., Adequacy-Inadequacy: Education funding in Nigeria, (2013) Vol 2(8) *Universal Journal of Education and General Studies*, pp.239-254 Aug Available on line <http://www.universalresearchjournals.org/ujecs/> accessed on 14 August 2014.

³² World Bank (2012). World Bank selected 20 countries’ annual budgetary allocation to education. Washington D.C.: The World Bank. <http://www.africaneconomicanalysis.org/...gen/education10204234737htm>.

³³ The Dakar Framework for Action, Education for All: Meeting our Collective Commitments, 26-28 April 2000. www.unesco.org

³⁴ Ibid.

Staffing of schools with trained teachers is the main substance of availability. The indispensability of qualified teachers in the delivery quality education cannot be ignored. Nigeria does not have enough people willing to be teachers, especially in rural areas. Problems range from teacher quantity, quality, incentive and self-image. Many strikes take place mainly because of delayed payment of teachers' salaries.³⁵ According to ESSPIN-funded study of primary and junior secondary teachers in government schools, 75 of 19,000 teachers achieved the minimum standards for teaching core subjects.³⁶ Total percentage of trained primary teachers is 66%.³⁷ The physical facilities are in poor condition and the teachers are not adequately prepared for their roles. The morale of teachers is low due to the basic conditions of service such as the work environment, and low salaries. In several instances, teachers waited for long periods of time to receive their salaries. Teachers are generally dissatisfied with their basic conditions of employment and their working conditions; this has resulted in low morale and low esteem of the profession.³⁸ Also, there is always shortage of teachers and this is having a negative effect on the quality of education these groups of children receive.

Where education is available, there should be parental freedom of choice of schools for their children. This allows individuals to choose in accordance with their religious and moral convictions schools for their children or wards. This enables private individuals or groups to have the right to establish non-public schools following the minimum standards set by the state.³⁹ States are the

³⁵ UNESCO, *The State of Education in Nigeria*, UNESCO Abuja Office, 2000 p 76.

³⁶ Johnson, David and Sergij Gabrscek, *Education Sector Support Programme in Nigeria (ESSPIN), An Assessment of the Development Needs of Teachers in Nigeria Kwara State Case Study: Report No. KW 301, 2008.* [http://www.esspin.org/index.php/resources/download/52/KW%20301%20An%20Assessment%20of%20the%20Development%20Needs%20of%20Teachers%20in%20Nigeria%20\(Revised\)](http://www.esspin.org/index.php/resources/download/52/KW%20301%20An%20Assessment%20of%20the%20Development%20Needs%20of%20Teachers%20in%20Nigeria%20(Revised)) see also, *Education Projects: (Nigeria) 20 May 2012. House of Commons Debate. TheyWorkForYou.com* accessed 15/05/2013.

³⁷ UNESCO 2010 *State of Education Country Study- Nigeria.*

³⁸ *Ibid.*

³⁹ Art 26 (3) UDHR; Parents have a prior right to choose the kind of education that shall be given to their children, Art 5 UNESCO Convention against Discrimination in Education; The State Parties to this Convention agree that: b)

providers of public primary education, but under international law, private actors too have the liberty to establish and direct educational institutions.⁴⁰ This means that individuals, organisations, religious institutions, companies or other bodies are free to open schools or other educational institutions and administer and govern them according to their wishes. There are three key arguments in support of privatisation: first, that private schools provide better quality education and better learning outcomes for students; secondly, that the growth and development of education market will stimulate economic growth at the local level and, lastly, that the private sector is able to facilitate systemic change within the education sector through a more innovative approach.⁴¹ The state has the responsibility of monitoring all the schools whether private or state-owned. If private entities fail to comply with the state's minimum standards, then the state must intervene. State will be providing educational services as the main education provider, as private education is seen as a parallel system offering an alternative choice for parents and students. The state is the major duty-bearer and carries the ultimate responsibility for ensuring that the right to education is upheld. However, human rights responsibilities apply to all, including private education providers. States have a responsibility to ensure that private institutions do not jeopardise the quality of education being provided. This means that the state has a duty to regulate and monitor private education providers to ensure that they conform to human rights standards. The state must develop laws and policies aimed at the full implementation of the right to education. The human rights framework provides

It is essential to respect the liberty of parents,...firstly to choose for their children institutions other than those maintained by the public authorities but conforming to...minimum standards.., Art 13(3) ICESCR; The State Parties to the present Covenant undertake to have respect for the liberty of parents ...to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State.., Art 29(2)CRC No part of [articles28&29] shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions

⁴⁰ ICECR Article 13 (4); Art 29 (2) CRC and Art 11(7) African Charter on the Rights and Welfare of the Child..

⁴¹ Using Human Rights Standards to Access Privatisation of Education I Africa by Bailey Grey, Right to Education Project Coordinator.

standards which set out freedom and limitations of private education. Whether it is the state or a private provider or combination of the two, the education provided must conform to human rights standards.⁴² The state is obliged to ensure that educational standards in public schools do not fall behind those in private school.

Accessibility

Accessibility relates to education being made accessible to all without discrimination on any grounds, of factors such as affordability and physical accessibility. For states to fulfil their obligation to provide education as a human right, educational institutions and programmes have to be accessible to everyone. Education must be accessible to children (rural, marginalised, and unreached) who otherwise would have been excluded, and state-delivered education must be of same quality for all groups in society.

Non-Discrimination in Education

The fundamental principles of non-discrimination and equality of opportunity in the domain of education are expressed in the 1960 UNESCO Convention against Discrimination in Education. The convention was aimed at ensuring education becomes truly inclusive by effectively reaching the unreached, highlighting in particular the poor, marginalised and the vulnerable groups, children, young people and rural population denied of equal access to education.⁴³ The convention considered that discrimination in education is a violation of rights. Dakar Framework for Action, written by the UNESCO, which focuses on frameworks for regional education practices, further emphasises the elimination of all forms of discrimination and prioritised the excluded, vulnerable and marginalised children.⁴⁴ The principles of equality and non-discrimination are embedded throughout the human rights framework and prescribe that all rights must be “exercised without discrimination of any kind as to race,

⁴² Ibid.

⁴³ Article 1 UNESCO Convention against Discrimination in Education 1960.

⁴⁴ Dakar Framework for Action, Education for All: Meeting our Collective Commitments. Adopted by World Education Forum. Dakar, Senegal 26-28 April 2000.

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”⁴⁵.

The prohibition against discrimination articulated in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, is subject to neither progressive realisation nor the availability of resources: it applies fully and immediately to all aspects of society.⁴⁶ The Committee of ICESCR interprets articles 2(2) and 3 in the light of the UNESCO Convention against Discrimination in Education. Within the education framework, the principle of non-discrimination extends to all persons of school age residing in the territory of a state party, including non-nationals, and irrespective of their legal status.⁴⁷ The CRC Committee, in its concluding observation on reports submitted by Nigeria, recommends Nigeria to ensure that children in rural areas have access to education.⁴⁸ Discrimination against children with disabilities is pervasive in many formal educational systems and informal educational settings, including the home⁴⁹. Children with HIV/AIDS are also heavily discriminated against in both settings. In relation to the education of children affected by HIV/AIDS, the CRC Committee recommends that states parties should make adequate provision to ensure that infected children can stay in school.⁵⁰ Van Bueren pointed out that a group of children, rarely highlighted by international instruments but often unable to benefit from equal educational opportunity, are children in incarceration.⁵¹ She reminds that the duties of states parties to

⁴⁵ UDHR Article 2, ICECR Article 2(2); ACRWC in Article 3; UNESCO Convention against Discrimination in Education, 1960, article 1(1).

⁴⁶ CESCR General Comment No13, para 3.1

⁴⁷ CESCR General Comment No 13, para 34. See also case of the Nubian Children brought before Committee of Expert of the ACRWC.

⁴⁸ CRC Committee, Concluding Observations: Nigeria CRC/C/NGA/CO/3-4(2010), para 78b.

⁴⁹ Beiter, Klaus, *The Protection of the Right to Education by International Law*, Leiden, Martinus Nijhoff Publishers, 2005, p 415.

⁵⁰ CRC Committee, General Comment No3: HIV/Aids and the rights of the child (UN Doc.CRC/GC/2003/3, 2003paras 17-18.

⁵¹ Van Bueren, G, *The International Law on the Rights of the Child*, Dodrecht, Martinus Nijhoff Publishers 1994 p 248.

numerous treaties enshrining child's right to education are not reduced because of a child's confinement.⁵²

States parties are required to undertake to implement immediate measures both to prevent discrimination, where it has occurred.⁵³ The measures are set out for repealing any statutory, administrative instruction, or practice which involves discrimination.⁵⁴ The principle of non-discrimination in education is an immediate obligation; it plays a key role in empowering marginalised groups such as women and girls, and helps to combat wider discrimination within societies. States have a minimum core obligation to ensure that resources are allocated in a non-discriminatory manner. Therefore, as states develop and expand educational programmes, all educational institutions nationwide should benefit equally.

Similarly, Article 28(1) CRC places a duty on state parties to recognise the right of the child to education with a view to achieving the right progressively "on the basis of equal opportunity". The right to education on the basis of equal opportunity is fundamental to the child's right to education. Van Bueren argues that the drafters of the Convention on the Rights of Children made all other aspects of the right to education dependent upon equal opportunity to education.⁵⁵ Verheyde further pointed out that for the principle of equality to be practised, special attention would have to be given to specific groups which are particularly vulnerable to discrimination in education and which consequently require special policies by the state party.⁵⁶ This was also upheld by the Committee of Experts of the African Charter on the Rights and Welfare of the Child in its decision on the complaints brought before it by the Open Society Justice Initiative (OSJI) on behalf of children of Nubian descent, a vulnerable people group, against the government of Kenya.⁵⁷ The committee in its

⁵² Ibid.

⁵³ Art.3 UNESCO Convention against Discrimination in Education 1960.

⁵⁴ Art 3(a) & (b).

⁵⁵ Van Bueren, G., *supra* pp. 245-248.

⁵⁶ Verheyde, M., *Commentary on the UN Convention on the Right to Education Article 28, The Right to Education*, Martinus Nijhoff Publishers, p.40.

⁵⁷ 002/09 IHRDA and Open Society Justice Initiative on behalf of children of Nubian descent v Kenya. 22 March 2011.

decision recommended that the Government of Kenya should adopt a short-term, medium-term and long-term plan, including legislation, administrative and other measures to ensure the fulfilment of the right to education of these vulnerable children.⁵⁸

To reiterate this, *A Framework for Action in Sub-Saharan Africa: Education for African Renaissance in the Twenty-first Century* (1999)⁵⁹ bears evidence to the importance accorded to normative action for basic education. The Framework reaffirms that "education is a basic right and a basic need for all African children, youth and adults, including those with disabilities, as recognized in the international instruments, including the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the Convention on the Rights of the Child".⁶⁰ The Framework provides that "Special attention shall be devoted to the rights of disadvantaged groups, including girls and women, ethnic minorities, the disabled, those affected by the HIV/AIDS pandemic and those in especially

The complainants allege that the Nubians in Kenya descended from the Nubian Mountains which is found in what is current day central Sudan and were forcibly conscripted into the colonial British army in the early 1900s when Sudan was under British rule. Upon demobilisation, allegedly although they requested to be returned to Sudan, the colonial government refused and forced them to remain in Kenya.

At Kenyan independence in 1963, the citizenship status of the Nubians was not directly addressed and for a long period they were constantly treated by the government of Kenya as aliens, since according to Kenya government they did not have any ancestral homeland within Kenya; and as a result could not be granted Kenyan nationality.

A complaint was brought before the Committee of Experts of the African Charter on the Rights and Welfare of the Child alleging violation of Article 3 of the ACRWC that the children of Nubian descent were treated differently from other children in Kenya. It was also alleged that the children of Nubian descent had less access to educational facilities for the fulfilment of their right to free and compulsory primary education than comparable communities who were not composed of children of Nubian descent, which is a violation of Article 11(3) ACRWC. They claimed that there is de facto inequality in their access to available educational services and resources.

⁵⁸ Ibid

⁵⁹ The Framework was adopted by the Regional Conference on Education for All for Sub-Saharan Africa in Johannesburg (South Africa) in December 1999.

⁶⁰ *Ibid.*, p.26

difficult circumstances in other ways".⁶¹ In its Article 11(3) (e), ACRWC provides that "...States are to take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community"

Accessibility in Nigerian educational system

In Nigeria, even though the constitution incorporates provision of non-discrimination as a fundamental right,⁶² the committee on CRC in its concluding observation on Nigeria, after consideration of its reports on 11 June 2010,⁶³ raised concern that discrimination of children is still prevalent in Nigeria. Discrimination is tolerated by the state party, in particular vis-à-vis the girl-child, also against children with disabilities, children in street situations and children of minority groups.⁶⁴ The committee further requested that the state party is to provide more information in its next periodic report on measures taken to give practical effect to the principle of non-discrimination as per Article 2 of the convention especially in relation to the girl-child, children with disabilities, children in street situations and children of minority groups.⁶⁵ While Section 11 of the Constitution of Nigeria declares as a fundamental right, that all persons are entitled not to suffer discrimination on the grounds of factors such as sex and ethnicity, customary laws conflict with these rights and, even though the constitution is theoretically supreme, it is not enforced as it should be. This results in undermining the constitutionally-guaranteed rights of children without discrimination, especially children in vulnerable people groups for example as regards family law and succession rights.⁶⁶ In Zimbabwe, there is some jurisprudence indicating the court's willingness to recognise the customary laws that are

⁶¹ *Ibid.* see part 4.2.1 on A review and harmonisation of existing policies and legislation of the Framework, p. 29.

⁶² Section 42 (2) 1999 Constitution of Nigeria.

⁶³ Committee on the Rights of the Child Concluding observation: Nigeria CRC/C/NGA/CO/3-4, 2010

⁶⁴ Committee on the Rights of the Child Concluding observation: Nigeria CRC/C/NGA/CO/3-4, 2010 para 28

⁶⁵ Committee on the Rights of the Child Concluding observation: Nigeria CRC/C/NGA/CO/3-4, 2010 para 29.

⁶⁶ *Mojekwu v. Mojekwu*, (1997), 7NWLR Part 512, 283.

discriminatory against women especially as regards succession and family law matters.⁶⁷

In Africa including Nigeria, girls are usually disadvantaged in access to education due to cultural or religious beliefs, for example girls are married off at young age. As a result, gender parity has been a focal point at several international summits and conferences since the 1990s.⁶⁸ The MDGs have aimed at elimination of gender disparity in primary and secondary education by 2005 and at all levels by 2015.⁶⁹ The 2005 aim was not seen as a reality in Nigeria as there were persisting gender inequalities in enrolment and retention rates in the northern states of Nigeria; this was said to be a concern to the committee of the CRC, and the committee reiterated that state party is to give special attention to the education of the girls.⁷⁰

Education is critical to the future of all children, but especially to those who are vulnerable, for example, children with disabilities and the girl-child. These groups are often discriminated against and are more likely to drop out of school.

Children with disabilities: Children with disabilities are among many groups of children still not enrolled in primary education in developing countries including Nigeria. Disability is still overwhelmingly viewed as a social welfare issue. As a result, disabled people are seen as passive victims requiring charitable assistance, and disability is considered a "special" issue, isolated from mainstream development. Children in Nigeria face several challenges in access to education, ranging from inadequate educational facilities for children

⁶⁷ *Magaya v. Magaya*, (1999) 1ZLR 100.

⁶⁸ The 1990 World Conference on Education for All (Jomtien), Article 3(3) of the World Declaration on Education for All, the 1995 World Conference on Women (Platform for Action, Beijing (UN Doc. A/CONF.177/20/Rev.1,1996), paras 263 and 279); the 1990 World Summit for Children (Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990, para 10); and the 2000 World Education Forum (Dakar) (Articles 7(ii) and (v) and 8(vi) of the Dakar Framework for Action.

⁶⁹ UN Millennium Development Goals, <http://www.un.org/millenniumgoals> accessed on 3rd May 2013.

⁷⁰ CRC Committee, Concluding Observation: Nigeria (UN Doc. CRC/C/NGA/CO/3-4 para 71(iv)).

with special needs, and most of the teachers are not trained in special education. Segregation in separate special schools of pupils with special educational needs or poor attempts at integration has left disabled children and students not achieving their potential.⁷¹ The alternative is to engage in the transformational process in schools, that is the development of inclusive education. Inclusive education can be interpreted as the philosophy and practice for educating students with disabilities in general education settings.⁷² The practice is based on the notion that every child should be an equally-valued member of the school culture. In other words, children with disabilities should benefit from learning in a regular classroom, while their peers without disabilities gain from being exposed to children with diverse characteristics, talents and temperaments.⁷³ There is gap in school participation between children with and without disabilities. Children with disabilities are often discriminated against within the Nigerian educational context. The following problems exist in Nigeria as regards inclusive education: shortage of trained staff and resource teachers at primary, secondary and tertiary levels; no clear guidelines on inclusive education, no concrete commitment in terms of budget allocation in the country for inclusive education; lack of awareness and education facilities for people with disabilities in rural areas, and inaccessible schools and public transport.⁷⁴ In most cases, these children are not integrated into the state educational systems because of their disabilities. UN Convention on the Rights of Persons with Disabilities⁷⁵ requires that:

⁷¹ Rieser, Richard, *Implementing Inclusive Education A Commonwealth Guide to Implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities*, (London: Commonwealth Secretariat 2008), p. 16.

⁷² Bryant, D. P., Smith, D. D., & Bryant, B. R. *Teaching Students with Special Needs in Inclusive Classrooms*, (Boston, MA: Pearson Education Inc, 2008).

⁷³ Ajuwon, Paul, 'Inclusive Education for Students with Disabilities in Nigeria: Benefits, Challenges and Policy Implications', (2008) v23 n3 *International Journal of Special Education*, p11-16.

⁷⁴ *Ibid.*

⁷⁵ UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106*, available at: <http://www.refworld.org/docid/45f973632.html> [accessed 5 September 2014]

States Parties. . .shall ensure that. . .persons with disabilities can access an inclusive, quality and free primary education on an equal basis with others in the communities in which they live. . .receive the support required within the general education system to facilitate their effective education. . .are able to access tertiary education, vocational training, adult education and lifelong learning. . .⁷⁶

In relation to disability and education, rights-based approach and equity have been both framed and strengthened by a number of international declarations, including CRC.⁷⁷ Inclusive education ensures the presence, participation and achievement of all students in schooling. Inclusive education acknowledges that all children can learn and respects differences in children. To enable children with disabilities to fulfil their potential, provision must be made for them through the provision of special teaching and learning materials. States are directed to recognise “the special need” of children with disabilities including a duty placed on states parties to CRC to ensure that children with disabilities have effective access to education and training.⁷⁸ Such education should, according to UNESCO, be suited to the individual needs of children, regardless of the degree of disability or special need.⁷⁹ Education must be accessible to all, especially the most vulnerable groups, and without discrimination. All children have the right to education.

Girl-child non-discriminatory education benefits both girls and boys and thus contributes to more equal relationships between women and men. Equality of access to and attainment of educational qualifications is necessary if more women are to become agents of change. Literacy of women is an important key to improving health, nutrition and education in the family and to empowering women to

⁷⁶ Article 24 Convention on the Rights of Persons with Disabilities.

⁷⁷ Article 29 (1) CRC, see also CRC *General Comment No1 (2001) The Aims of Education*, para 10.

⁷⁸ Art 23(2) CRC.

⁷⁹ Art10 UNESCO note 37.

participate in decision-making in society.⁸⁰ In Nigeria, discrimination against girls' access to education persists in many areas, owing to cultural attitudes such as early marriage and pregnancy, inadequate and gender-biased teaching and educational materials, sexual harassment and lack of adequate and physically, and otherwise, accessible schooling facilities. Initiatives undertaken to increase enrolment and retention of girls have been developed by Nigerian government and are being implemented. Such initiatives include the National Strategy on Girls' Education and FGN Gender Education Project.⁸¹ To boost girl-child education nationwide, tripartite partnership programme and funding between the federal and state governments and UNICEF was launched in 2011 and has commenced disbursement of funds for the training of female teachers to states' universal primary education boards.

Sokoto State, one of the states with poor girl-child education record, trained 800 female teachers (2012-13) with N49.5m granted to 224 school-based management committees as critical components in achieving UBE for all.⁸² Despite the encouraging efforts from government, early marriage is still a big cause of school dropout, due to the ingrained negative cultural attitude. Another cultural norm which exists in many cultures is that educating girls is regarded as less valuable, or not expected, and these girls may instead work, providing domestic services, for instance. Early marriage is serious problem primarily because it hinders a girl's chances of continuing with her education and this in turn hampers her life chances. As Tomasevski rightly pointed out:

Education operates as multiplier, enhancing the enjoyment of all rights and freedoms where the right to

⁸⁰ Beijing Platform for Action. Chapter IV. B. Education and training of women para 69.

⁸¹ CRC Concluding Observation of Report Submitted by Nigeria June 2010, CRC/C/NGA/Co/3-4, para 28 see also Nigeria's 5th Periodic Country Report: - 2011-2014 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria June 2014.

⁸² Nigeria's 5th Periodic Country Report: - 2011-2014 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria June 2014, Section 2.

education is effectively guaranteed, as opposed to depriving people ...especially girls and women ...of the enjoyment of many if not all rights and freedoms where the right to education is violated...⁸³

Article 11(3) (e) of ACRWC obliges state parties to take special measures to ensure equal access for girls to education. Theoretically, state parties are supposed to implement immediate measures both to prevent discrimination arising and eliminate discrimination where it has occurred.⁸⁴ The measures are clearly set out in UNESCO Convention Against Discrimination in Education as follows: repealing any statutory, administrative instruction or practice which involves discrimination;⁸⁵ prohibiting any form of assistance provided by public authorities to educational institutions which restrict or express preference solely on the ground that pupils belong to a particular group,⁸⁶ and granting equal access to education to children who are residents and foreign nationals.⁸⁷

The convention also establishes as a specific target the reduction of female-student drop-out rates and the organisation of programmes for girls who have left school prematurely.⁸⁸ In Nigeria, girls lag behind boys in terms of school enrolment and literacy.⁸⁹ In sum, education has a profound effect on girls and women's ability to claim other rights and achieve status, such as economic independence, in society.

In order to eliminate and prevent discrimination regarding access of children to institutions, state parties are to abrogate any statutory

⁸³ Tomasevski, K 'Human Rights in Education as Prerequisite for Human Rights Education', in *Right to Education Primers*, No. 4, (Gothenburg: Lund 2001), available at www.right-to-education.org

⁸⁴ Art 3 UNESCO Convention Against Discrimination in Education 1960.

⁸⁵ Art 3(a) and (b) UNESCO Convention against Discrimination in Education 1960.

⁸⁶ Art 3(c) UNESCO Convention against Discrimination in Education 1960.

⁸⁷ Art 3(d) UNESCO Convention against Discrimination in Education 1960.

⁸⁸ Art 10(f) UNESCO Convention against Discrimination in Education 1960.

⁸⁹ UNESCO-IBE World Data on Education, 7th edition, 2010/11. <http://www.ibe.unesco.org/> accessed 02/01/2014. The gross enrolment ratio was estimated at 95% (103.9% for boys and 87.7% for girls). An average of 46.6% of primary school pupils who dropped out from schools were girls.

provision and to discontinue any administrative policy which involves discrimination in education. States must also give foreign nationals resident in the territory the same access to education as is given to their own citizens.⁹⁰ States are enjoined to provide reports on the results and obstacles encountered in the application of the Convention against Discrimination in Education.⁹¹

Physical accessibility

In its General Comment, Committee on CESCR states that the obligation to ensure education is physically accessible entails: education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location...⁹² For the state to satisfy the scheme's element of physical accessibility, schools should be located within a safe physical reach of the pupils, at some reasonably convenient geographic location including those living in rural areas. All learning environment must be physically accessible for every child.⁹³ The duty requires special measures such as construction of more schools in isolated areas and provision of transport to schools which are located in far distance. The state is under an obligation to provide schools that are within reachable distance for the learners.

Economic accessibility

For the state to satisfy the economic accessibility requirement of the scheme, education has to be free or, at least, affordable to all. Primary education should be available "free to all" without hidden costs. It is important to establish the scope of the principle of free education. The Committee on Economic, Social and Cultural Rights has set forth as follows in this regard:

The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the

⁹⁰ Discrimination against Roma is a problem in several countries, this includes discrimination in the field of education. General Recommendation XXVII (Fifty-Seventh Session, 2000) Discrimination against Roma [compilation, 2004, pp.219-224.

⁹¹ Article 7 UNESCO note 37.

⁹² General Comment No13, para 6.

⁹³ Ibid.

child, parents or guardians. Fees imposed by the Government, the local authority or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardise its realisation. They are often highly retrogressive in effect...Indirect costs such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not, or the obligation to wear a relatively expensive school uniform can also fall into the same category. Other indirect costs may be permissible, subject to the Committee's examination on a case- by- case basis...''⁹⁴

Whilst in general, economic, social and cultural rights (ESC rights) are to be fully realised progressively,⁹⁵ the duty to realise the right to free and compulsory primary education is an obligation of immediate effect.⁹⁶ Article 14 ICESCR requires state party that has not been able to secure compulsory primary education, free of charge to undertake within two years to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years.⁹⁷ The plan is to be developed within years of ratifying the ICESCR or within two years of a subsequent change which has led to the non-observance of the relevant observation.⁹⁸ The plan of action must cover all the actions which are necessary in order to secure each of the required component parts of the right.⁹⁹ In General Comment No11, the committee also points out that the obligation to adopt a plan of action cannot be avoided on the grounds that the necessary resources are allegedly not available. If a state party lacks the financial technical resources and other resources required to adopt a plan, state

⁹⁴ CESCR, General Comment No11: Plans of Action for Primary Education (Art 14 of the Covenant), 10 May 1999, E/1992/23, para 7.

⁹⁵ Art 2(1), ICESCR.

⁹⁶ CESCR, General Comment No 13: The Right to Education (Art 13 of the Covenant), UN Doc. E/C.12?1999/10, para51.

⁹⁷ Art 14 ICESCR.

⁹⁸ CESCR General Comment No11, para8.

⁹⁹ Ibid.

should seek and receive international assistance and cooperation in order to do so.¹⁰⁰

Tomasevski points out that the governments were obliged to ensure free and compulsory primary education for all children immediately or elaborate a plan and seek international assistance so as to comply with this obligation as fast as possible.¹⁰¹ Further, in appropriate cases, the committee encourages state parties to seek assistance of relevant international agencies, including the International Labour Organisation (ILO), the United Nations Development Programme (UNDP), the United Nations Educational Scientific Organisation (UNICEF), the International Monetary Fund (IMF) and the World Bank, in relation both to the preparation of plans of action under article 14 and their subsequent implementation. The committee also calls upon the relevant international agencies to assist state parties to the greatest extent possible to meet their obligations on an urgent basis.¹⁰² In sum, a state party cannot escape the unequivocal obligation to adopt a plan of action on the ground that the necessary resources are not available. If the obligation could be avoided in this way, there would be no justification for the unique requirement contained in article 14 which applies, almost by definition, to situations characterised by inadequate financial resources. By the same token, and for the same reason, the reference to “international assistance cooperation” in article 2 (1) and to “international action” in article 23 of ICESCR are of particular relevance in this situation. At the level of primary education, the CRC requires that education is free.¹⁰³

Challenges and obstacles to economic access to free primary education

School fees act as a barrier to education for poor children, girls, orphans, rural residents, children with disabilities, and other disadvantaged groups. Fees prevent poor children from accessing learning opportunities. The cost of education has always been the

¹⁰⁰ Ibid para 9 and also para 3.

¹⁰¹ Tomasevski, K. *Education Denied: Costs and Remedies*, Zed Books, London, 2003, p 53.

¹⁰² CESCR General Comment No 11 para 11.

¹⁰³ Art 28 (1) CRC.

main obstacle to children's attending schools. Imposing fees may lead to the further exclusion of socially and culturally marginalised groups in sub-Sahara Africa, in particular children from poor families who are unable to pay the fees will remain deprived of education. The argument that school fees may be necessary to ensure the quality of primary education is unacceptable as it is the obligation of states to ensure that the quality of education does not suffer from its free-of-charge policy. In most developing nations, the governments frequently claim that they are unable – not unwilling-- to make education for all children of compulsory school age free, but are restrained due to structural adjustment programmes and economic recession. For poor nations, only 2% of educational funds come from international aid, while governments' finance 63% of its cost and 35% are privately funded. Within the 2% of internationally-funded education, much is taken up to finance parallel creditors' and donors' bureaucracies.¹⁰⁴

Arguably implementation of free primary education in a state suffering from such vast economic and social disparities is a daunting task. For example, in Nigeria, the government faces three major constraints. First is inability to collect taxes. State cannot finance education unless it generates resources, it cannot generate resources unless companies and individuals pay tax. Those who do not earn enough to be liable to taxation are in the majority and are not taxed; therefore, the amount of money the government is able to collect through various taxes does not amount to much. Second, the government's reliance on crude oil as its main source of revenue is inadequate as there is worldwide oil glut. So, the crude oil exported from Nigeria does not fetch high price. Third, there are understandable international constraints on the country's national budget due to loan agreements it has signed with the IMF, as a result, budget expenditure and how much will go to education are influenced by the macro-policy and preferences of the IMF. There are caps on the government spending because of economic policies included in the loan agreements.

¹⁰⁴ Tomasevski, K., *The State of right to education worldwide: Free or Fee: 2006 Global Report*, Copenhagen, August 2006 p xiii see also, UNESCO - Bulletin of the UNESCO Education Sector, Paris, No. 5, April-June 2003.

International human rights law assumes that states should generate resources needed for education through general taxation; nonetheless, international cooperation has been envisaged as the method for redressing inability of individual states to comply with their human rights obligations. It is clear that governments should not be left alone with the obligation to realise the right to education. In particular, international financial institutions should pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and other measures.¹⁰⁵ The word, “free” in Article 28(1) (a) of the CRC, regards education at the primary stage and which should be secured for all children regardless of family means.¹⁰⁶ The CRC committee considers the cost-free aspect of primary education as crucial, and strongly recommends states to fulfil this obligation.¹⁰⁷ UNESCO also attaches high importance to the state obligations for free primary education: free, compulsory and universal education is one of the most clearly-defined of the rights which governments have a duty and responsibility to make a reality.¹⁰⁸

The term, “free” must be understood to mean that the delivery of elementary education itself would be free of charge but it is not explicit in its expectation of other expenses such as transportation costs, books or school uniforms. Newell and Hodgkin argued that

¹⁰⁵ CESCR General Comment No 13 para60. See also, Dakar Framework for Action, para 10, in which it is stated that: “We affirm that no countries seriously committed to education for all will be thwarted in their achievement of this goal by a lack of resources.”

¹⁰⁶ Newell, P & Hodgkin, R., *Implementation Handbook for the Convention on the Rights of the Child*, (2008) 3rdedn, UNICEF, p.421.

¹⁰⁷ E.g. CRC Committee, *Concluding Observations: Senegal* (UN. Doc. CRC/C/ 46, 1995), paras 128and 142; *Lebanon* (UN. Doc. CRC/C/ 54, 1996), para 56; *Zimbabwe* (UN. Doc. CRC/C/ 54,1996), para 89; *Kenya* (UN. Doc. CRC/C/111, 2001), para 135; *Cameroon* (UN. Doc. CRC/C/111, 2001), paras 379-380; the *IvoryCoast* (UN. Doc. CRC/C/ 108, 2001), paras 337-338; the *Gambia* (UN. Doc. CRC/C/111, 2001), para 452-453; and *South Africa* (UN. Doc. CRC/C/94, 2000), para 447.

¹⁰⁸ UNESCO’s *Medium -Term Strategy 2002-2007* (31 C/4, para57) UNESCO, Paris.

states are not required to make all primary education free,¹⁰⁹ but should ensure that free primary education is 'available.'¹¹⁰ The 1990 Jomtien World Declaration on Education for All (EFA) and the 2000 Dakar Framework for Action call for universal free primary education. At the meeting of the EFA group in November 2002 which was held in Abuja, Nigeria, the ministers of education recommended that governments in developing nations must ensure that free and compulsory primary education is a right reflected in national legislation and practice. Ironically, Nigeria's constitution does not declare primary education free or compulsory. At another meeting on EFA in New Delhi, India, in November 2003, the action agenda featured in the communiqué issued after the meeting contains commitments by the ministers of education to "...[enact] national legislation to enforce children's rights to free, and compulsory quality education... ." This commitment commits children to education and resists children from working or earning an income. However, complications arise when progress occurs at different rates in various countries, and children who do not yet have access to free education are banned from working. This urges the provision of free education as soon as possible but gives states leeway in its failure to deliver too. The push for free education is based on the notion that progress can only occur when there is universal free education for all. The provision of accessible free education is the only way to legislate education participation, and the idea behind education to be made compulsory was for collective identity.¹¹¹ Despite international pressure on governments to provide free education, the international human rights law mandates "progressive realisation of the right to education". This means states do not have to provide free education if it is without their means but sign of progress towards its delivery is necessary to suffice the law.¹¹² Increasingly, the position of international development community and the national community has shifted, becoming more in favour of fee abolition. Many aspiring presidential candidates present free primary education as necessary

¹⁰⁹ Art 29 (2) CRC recognises the liberty of individuals and bodies to establish educational institutions.

¹¹⁰ Newell & Hodgkin note 106 p.421.

¹¹¹ Ibid

¹¹² Art 14 ICESCR and CESCR General Comment No11 para 8

political bait in the effort to get votes. This is evidenced by the fact that political parties in developing countries have often used school-fee abolition as a campaign pledge, a trend seen in Malawi, Uganda and Kenya.¹¹³

There have been arguments over the interpretation of the term 'free education'. Some have argued that it infers only tuition fees should be free and some have counter-argued that other compulsory charges apart from school fees should be free too. Those who argue only tuition fees should be free argue that where the state is under-resourced, the quality of education will suffer without extra funding from caregivers. The provision of education is expensive and the premise behind scholars who argue for subsidy is that more resources contribute to, or increase, the quality of education delivered. Birdsall and Orivel in the context of Mali argued that revenues collected from fees could be used to improve both quality and access.¹¹⁴ Along the same vein, Thobani from his study argued that government funding alone led to mass under-provision of education in developing nations. He pointed out that such rationing of provision for education is as a result of fixed budget constraints and introduction of fees would make-up for the shortfall.¹¹⁵ According to Bray, many developing countries cannot afford to provide the necessary funding to deliver adequate education services through tax revenues alone as tax revenues tend to be quite small when a large percentage of the population lives in poverty.¹¹⁶

¹¹³ Al-Samarrai, S. Financing primary education for all: Public expenditure and education outcomes in Africa. 2003. Retrieved from <http://www.dfid.gov.uk/r4d/PDF/outputs/ForAll/paper57.pdf> accessed 13/03/14 see also World Bank 2009 Abolishing school fees in Africa: Lessons from Ethiopia, Ghana, Kenya, Malawi and Mozambique, Washington DC: World Bank/UNICEF

¹¹⁴ Birdsall, N., & Orivel, F., 'Demand for primary schooling in rural Mali: Should fees be increased?' *Education Economics*, 4(3), (1996) 279-296.

¹¹⁵ Thobani, M. 'Charging user fees for social services: Education in Malawi,' *Comparative Education Review*, 28 (3), (1984) 402-423.

¹¹⁶ Bray, M., School fees- philosophical and operational issues. In M. Bray & K Lillis (Eds.), *Community financing of education: issues and policy implication in less developed countries*. Oxford: Pergamon Press (1988), p 60.

It should be noted that it cannot be categorically affirmed that funds raised through fees will be channelled directly back into the school where they are collected or into education systems in general, especially in countries where revenues are in demand by many competing sectors. Tomasveski argued in favour of making tuition and other charges free in primary schools. The scholar explained that while, technically, no tuition fees are charged in primary education, many students still cannot afford the cost of unsubsidised textbooks, other learning materials as well as extra-curricular activities. Students who cannot afford the costs are denied schooling. Moreover, many children have to work to pay for the costs of their own primary schooling.¹¹⁷ School fees and supplementary payments are disguised with name other than tuition fees, including user charges, registration fees, school maintenance, development levies and exam fees. Regardless of the term used, the fundamental fact is that poor children cannot access education if there are charges. Sometimes, costs of learning materials are sold at prohibitively high rates which prevent children from enrolling or force them to drop out before competing primary school. The pattern of charges shows that they are aimed to purposefully exclude poor students. Students who cannot pay fees may be forced to stay out of schools even if education is compulsory. The main cause of dropout and decrease in enrolment in the elementary system is lack of family income and inability to afford the required school expenses. Payment of fees in primary schools have acted as a significant barrier to enrolment, and implementing free education has resulted in enrolment indicating that schooling has become much more accessible when fees are removed.

The CESCR stated as follows with regard to primary education being free:

The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure availability of primary education without charge to the child, parents or guardians. Indirect costs such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not) or the

¹¹⁷ Tomasevski, K., *Education Denied: Costs and Remedies*, London, Zed Books, 2003, p.15.

obligation to wear a relatively expensive school uniform should be eliminated.¹¹⁸

However the committee has noted that other indirect costs may be permissible, subject to examination on a case-by-case basis.¹¹⁹ However the CESCR is yet to specify explicitly which indirect costs may be permissible. Further, the CRC committee highlighted that the obligation to provide for cost-free primary education incorporates the obligation to provide the necessary learning materials, at least for children of poor families.¹²⁰ Fees are the most regressive form of educational system financing available as they contribute to the unaffordable costs burdens imposed on poor households and they represent one facet of social exclusion experienced by those from poor households.¹²¹ While states should enact legislation to make primary education compulsory, rendering education *de jure* compulsory is not sufficient to guarantee effective enjoyment of the right to education without providing it free of charge. Governments are obliged to eliminate *all* financial obstacles so that *all* children can complete compulsory education. Education should be free so as to be compulsory.

Acceptability

Acceptability refers to the curriculum and teaching methods used in education delivery which are advised to be relevant, culturally appropriate, of good quality¹²² and in accordance with the best interest of the child. Acceptability also includes a safe school environment conducive to learning. It refers to whether or not curricular and teaching methods are sufficient to meet basic learning needs.

¹¹⁸ CESCR Committee, General Comment No 11 on plans of action for primary education (UN Doc, E/C, 12/1999), para 7.

¹¹⁹ Ibid.

¹²⁰ E.g. CRC Committee, Concluding Observations: Sierra Leone (UN. Doc. CRC/C/ 94, 2000), paras 447. 180-181; the Central African Republic (UN. Doc. CRC/C/ 100, 2000), para 468; Cameroon (UN. Doc. CRC/C/111, 2001), paras 380; Guinée-Bissau (UN. Doc. CRC/C/ 118, 2002), para 75; and Mozambique (UN. Doc. CRC/C/114, 2002), para 306.

¹²¹ Gilson, Lucy & Di McIntyre, 'Removing user fees for primary care in Africa: the need for careful action,' *BMJ*, Oct 1 2005; 331 (7519): 762-765 at 763.

¹²² CESCR General Comment 13 para6(c).

Curriculum must be flexible so that it can adapt to changing needs. Acceptability also addresses the form and substance of the education with regard to both quality and appropriateness.¹²³

The scope of “acceptability” has recently been broadened in international human rights jurisdiction to include a system of education that seeks to protect learner’s right on issues such as language rights, parental choice and discipline of pupils. In the revised understanding, a state must respect the right of individuals to be taught in the child’s first language. The language of education can be an obstacle to children’s learning, because if the children do not understand the language, no learning can take place. The CRC highlights that;

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.¹²⁴

Arguably, it is impossible for a state to ensure teaching and learning in all the languages in the country, nevertheless education should be a principal means for preserving linguistic diversity. This does not imply that the state must allow the use of these languages as the only medium of instructions. It is the state that determines whether the official language is to be used as a medium of instruction in education. Article 29, subparagraph 1(c) of CRC provides that education of the child shall be directed “to the development of respect for the child’s parents, *his or her own cultural identity, language and values*”, among other things. Based on this provision, Tove Skutnabb-Kangas and Robert Dunbar argued that, from the provision, it is obvious that education in a language other than the child’s mother tongue, which contains no recognition of that mother tongue, is highly unlikely to

¹²³ Tomasevski, ‘Preliminary Report of the Special Rapporteur on the Right to Education’, UN Doc.E/CN.4/1999/49 (1999 Report), p62-69.

¹²⁴ Art 30 CRC

contribute to respect for the child's cultural identity, language and values.¹²⁵ They contended that only mother-tongue education can adequately ensure the development of the respect required by this provision.¹²⁶ In Nigeria, the medium of instruction in the primary school is the language of the environment for the first three years, with English language being taught as a subject. From the fourth year, English is used as the medium of instruction.¹²⁷

Adaptability

CESCR expounds as follows on adaptability of education: "Education has to be flexible so it can adapt to the needs of students within their diverse social and cultural settings".¹²⁸ In the 4A scheme, adaptability in education refers to the flexibility of the system of education to incorporate the changing needs in society. Education must be able to respond to rapidly-changing global realities, but simultaneously accommodate the needs of the local ethnic, religious or linguistic identities.¹²⁹ The indicators for adaptability are education must meet the specific needs of the children in the local context and must be adaptable to meeting the changing needs of the society. In other words, there has to be balance between the exposure of children to the local and global community, to be complemented by their need to familiarise them with their own as well as foreign cultures.¹³⁰ In addition, adaptability of education has been further recognised with regard to the situation of disabled children. In developing countries, negative attitudes based on traditional thinking still act as a big social barrier to getting disabled children of primary-school-age children into school, and to complete primary education. Children with visual, hearing, physical or mental impairments tend to be segregated in special schools or denied education altogether.¹³¹

¹²⁵ Skutnab- Kangas & Dunbar, R., *Indigenous Children's Education as Linguistic Genocide and a Crime against Humanity? A Global View*, <http://www.galdu.org> accessed 05/04/2015

¹²⁶ Ibid

¹²⁷ Nigerian National Policy on Education, 4th ed, (2004) p 16.

¹²⁸ CESCR General Comment No 13 para 6.

¹²⁹ Tomasevski, 1999a, para 71 (UN Doc. E/CN.4/1999/49).

¹³⁰ Ibid para 71.

¹³¹ Tomasevski, *Human Rights Obligations in Education: The 4-A Scheme*, The Netherlands, Wolf Legal Publishers, 2006 p 109.

United Nations Convention on the Rights of Persons with Disabilities, Article 24¹³² provides as follows: Art 2 (b)- "*Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live...*"

Education must be welcoming to all, adapting the system to the learner, rather than expecting the learner to adapt to the system, and bearing in mind that every child has his or her own capacity to learn.

Quality education

Universal free primary education cannot be achieved without improving quality. In many parts of the world, an enormous gap persists between the numbers of students graduating from school and those among them who master a minimum set of cognitive skills.¹³³ A quality education for every child will enable him or her to fulfil his or her potential, realise opportunities for employment and develop life skills¹³⁴. At the Dakar Framework for Action, nations and international organisations were committed to ensure the provision of primary education of good quality and to improving all aspects of educational system.¹³⁵ Any policy aimed at pushing net enrolments towards 100% must also assure quality education in decent learning conditions and opportunities. The obligation to provide primary education free of charge is inextricably linked with the obligation to ensure quality education as established by the Convention against Discrimination in Education.¹³⁶ The right to quality education comprises the right of every child to a quality education that enables him or her to fulfil his or her potential, realise opportunities for employment and develop life skills.

¹³² UN 61/106. Convention on the Rights of Persons with Disabilities, adopted by the General Assembly on 13 December 2006,

¹³³ UNESCO, Education for All The Quality Imperative, EFA Global Monitoring Report 2005, Paris, UNESCO, p 17.

¹³⁴ Ibid.

¹³⁵ Dakar Framework for action, collective commitments para 7ii, UNESCO, *EFA Global Monitoring Report, 2005: The quality imperative*, UNESCO Publishing, Paris, 2004, p. 17.

¹³⁶ Art 1(2) Convention Against Discrimination in Education.

A state party is under obligation to provide and maintain this quality level, otherwise attending classes would be meaningless. The argument that school fees may be necessary to ensure the quality of primary education is unacceptable: it is the obligation of states to ensure that the quality of education does not suffer from its free-of-charge character. In fact, imposing fees may lead to the further exclusion of socially and culturally marginalised groups, in particular children from poor families who are unable to pay the fees would remain deprived of education permanently. Quality education targets, based on benchmarks in terms of class-size, teacher-student ratio, text books, school building and amenities as well as deployment of qualified and trained teachers.

Adequate and appropriate financing of education

One of the factors that has led to decline in the quality of education is low allocation of funding for education in most developing countries.¹³⁷ Quality is reflected by a range of pointers, including government spending on education. Within the international human rights framework, governments are obligated to allocate the maximum of their available resources to fulfil economic and social rights, in particular education.¹³⁸ Brazil, Costa Rica and the Philippines are three examples of countries that have constitutional provisions guaranteeing a percentage of the budget for education.¹³⁹ Such legal safeguards permit stakeholders to hold governments accountable for progressive realisation of the right to education and for aspects of its quality. Public expenditure on education represents a higher proportion of GDP in rich countries than in poorer ones. Spending on education has increased over the past decade in many developing countries, notably in Kenya.¹⁴⁰ Odiba contends that the underfunding

¹³⁷ Tomasevski, K. *The State of the Right to Education Worldwide. Free or Fee: 2006 Global Report* Copenhagen, p 9.

¹³⁸ Committee on the Rights of the Child, General Comment No 5 (2003). General measures of implementation of the Convention on the Rights of the Child, para 6.

¹³⁹ Art 212 Constitution of the Federative Republic of Brazil 3rded 2010, Art 78 Costa Rica 1949 (Rev 2011), & Art XIV Section 5(5) 1987 Constitution of the Republic of the Philippines.

¹⁴⁰ Kenya's total public spending on education by 2010 is 6.7 higher than France which is 5.9 same year. Source:

status of Nigeria's educational institutions has manifested itself in the poor state of infrastructural facilities and materials for teaching and learning.¹⁴¹ The budgetary allocation to the educational sector in Nigeria is 2% which is one of the lowest amongst 46 countries covered by UNESCO's Education for All global monitoring report.¹⁴² The poor funding has led to poor educational infrastructure and inadequately-equipped classrooms and schools.¹⁴³ In sum, a quality primary education hinges upon qualified well-trained teachers, imparting knowledge, values and skills in a learning environment which has adequate infrastructure, facilities and a safe school environment.

Education for all cannot be achieved without improving quality. In many parts of the world, an enormous gap persists between the numbers of students graduating from school and those among them who master a minimum set of cognitive skills. A study was conducted 1997 for the purpose of assessing learning achievements of Nigerian primary school children at primary level four. The results of this study indicated that the children lacked basic numeracy and literacy competencies.¹⁴⁴

Conclusion

Education, like all other human rights, is founded on the rule of law, therefore, there is the need to assess the willingness and the ability of the government to translate the legal norms into practice. The conceptual framework which highlights what should be the government's obligation is what is structured into the 4A scheme: making education available, accessible, acceptable and adaptable. There is the need for monitoring as this enables determination whether

<http://www.worldbank.org/indicators/SE.XPD.TOTL.GD.ZS>
12/03/2014.

accessed

¹⁴¹ Odiba, A. I. "Educational Quality Improvement in Nigeria: Interventions, Challenges and the Way Forward", *Journal of Research in Education and Society; Volume 3, Number 3, December 2012*, pp 53-59 at 56.

¹⁴² UNESCO Education Report, 2010.

¹⁴³ UNESCO Education Report, 2012.

¹⁴⁴ Falayajo, Wole et al, "Assessment of Learning Achievement of Primary IV Pupils in Nigeria." National Report of the Federal Government of Nigeria/UNICEF/UNESCO, September 1997.

the means employed are leading to the desired ends and if it turns out not to be the case the necessary corrective actions required. In sum, employing the 4A scheme will explain what government should do and should not do, what the right to education is, what amounts to its violation and how human rights should be protected in education.

The need to protect and provide access to education cannot therefore be postponed until a later stage of economic growth and improved financial resources. Resources must be committed for service delivery and effective law enforcement. Respect, protection and fulfilment of the right to education require a strong commitment on the part of the government of Nigeria. The right to education must be perceived as a necessary doorway through which children can access other cardinal rights, as it is the foundation stone of a rights-based means of their achieving their rightful places in the world both as children and as adults. Primary education is the basis for high-quality skills development in numeracy and literacy which will lead to advancement to higher educational level.