



A LEGAL EXAMINATION OF THE RIGHTS TO EDUCATION IN NIGERIA

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Abstract

The importance of education in the life of a nation cannot be over emphasized. Education remains the only path to development, proper organization of a nation and creating responsible citizens. It is this actual importance of education that placed it as a subject of state regulation. promotion, preservation and attainment. Over the years. education has evolved from the informal system to the formal system. It has also evolved from a private matter to a public concern, just as some countries have made the acquisition of basic education mandatory. And in international legal regime the right to education has evolved into a fundamental human right. While the right to education in international law is in the realm of fundamental human rights, the same cannot be said of municipal laws, It is true that governments of nations recognise and accept the role of education in human development, most municipal laws do not consider it as such, and they however, considered it as an essential privilege. In Nigeria, like it is in every nation, the affairs of regulating education are a matter left in the hands of the state, who is the keeper of the common conscience, wealth and wellbeing of the entire citizenry. The legal framework for the provision and regulation of education and right to education in Nigeria is traceable to the 1999 Constitution of Nigeria. The most relevant provision is Section 18(1) of the Constitution, and items 27, 28, 29 and 30 Of Part II of the Second Schedule to the 1999 Constitution. In this paper, we shall critically examine the legal frame on the right to education in Nigeria. We shall examine the extent to which the law guarantees access to education, and at the end we shall make useful contributions on how we can improve on what we have now.

Keywords: Rights to Education, Qualified Rights; Human Rights.

1. INTRODUCTION

Education is the bedrock on which nations stand, builds solid foundations, and are moulded into great nations. As the bedrock of development, education is a social phenomenon that concerns every facet of the society the government, the parents, non-governmental organizations (NGO's). The benefits of education are both personal and societal. At the personal level, human beings today need specific set of skills to survive in this competitive world as well as progress. This set of skills is acquired through Education. And at the societal level, it makes a mass of the population aware of the socio-economic and political scenario of a nation, thereby inculcating in them, a mind that is

beneficial to the society, whether it is in the protection of civil, economic, socio-political rights, or inventions of tools.

Through the ages, the education of the human mind has evolved through different processes. At the initial stage of education, it was basically the duty of the parents and immediate family to educate a child in an informal system. As the society evolved and became more complex, education evolved into a more complex formal system. Because of the complexity of the subjects taught in this formal system, the human mind is prepared to understand and conceptualise complex axioms, which further deepened the complexity of the society. Because the advancement of society has been the duty of people who participated in the formal system of learning, the society has metamorphosed into a system where those who do not participate in such formal learning are not able to function well. As the society advanced and the role of education became more emphatic, governments of nations assumed the role of regulating and providing education as a social responsibility.

Since the government assumed the role of regulating and providing education, education began to assume a legal character. Nations began to make laws for the regulation of the various aspects of education, including the setting and maintenance of standards. As the society progressed, most people began to seek avenue to participate in education. The government also realised that, it is a lot easier and cheaper to regulate and control the segment of the population who has acquired education than those who did not. Also, given that an uneducated person can barely participate in the modern society, it became imperative that a child should have the right to be equipped with necessary skills to enable him/her participate in the society. This witnessed the emergence of social organizations that pushed for the right to education.

Once education became a subject of government regulation and a right to be pursued, its development and participation fully became a matter of law. Therefore, the evolution of education began to follow the evolution of the law. This is also true for Nigeria as formal education has evolved through different stages since it was introduced by the colonial government.

Education policy in Nigeria began with the education proclamations of 1882, 1887 and the subsequent ones. This was when financial policy on education and other regulatory policies began though not codified in a documentary form. This was the development until few years after independence when it became necessary to have a precise definition of the education objectives and the philosophy of same in Nigeria, it was the reasoning that gave birth to the present National Policy on Education (NPE) in 1977 and subsequently edited up to the present 4th edition. The NPE is a vibrant policy document on Education in Nigeria as it stipulates the justification of the Government's investment on education and the functions of education in the life of the individual and the society at large. The NPE has a similar tone with the provision of section 18, of the Constitution of the Federal Republic of Nigeria 1999 (The Constitution) which sets out the need and how to make education available, accessible, affordable and adaptable to the Nigerian citizen by the Government from primary to tertiary level. The content of this document is more of suggestive in nature than having binding effect as it is a guide on how to achieve the education goal of the country, hence it does not confer right of

any kind on education whether ordinary or fundamental. It is interesting to point out that the Constitution.

CONCEPTUAL FRAMEWORK

The Concept of Rights

The concept of right is premised on the notion that the citizens can only get what the 1a'. gives them and nothing more, unless otherwise the favour of the holder of state power who may at his discretion allowable by law, give anything more. Our approach is further strengthened by the constitution which provides that:

“This constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria; if any other law is inconsistent with the provisions of this Constitution, this Constitution, s/tall prevail, and that other law shall, to the extent of the inconsistency, be void”.

The Concept of Education

Like philosophy, there are many definitions of education as there are educators. “Education” is an umbrella word under which a large number of processes take place. Individual differences are more or less determined by their philosophical orientations . However, our concerned here is the formal education and we shall concentrate on that. Historically, there are two schools of thought concerning the origin of education. One view holds that the term education is derived from the Latin word ‘educere” which means “to lead out”. This group of philosophers following the tradition view of Plato and other idealists. believe that the learner has innate ideas which only need to be squeezed out. pulled out and expanded.

The other opposing school of thought holds that education comes from the Latin word “educere” which means “to form” “to train”. This group follows the tradition of John Locke and other realists which hold that the child’s or leaner’s mind is a “tabula rasa” (an erased or blank sheet) n which to write. To our mind, both views are not wrong. They are two sides of a coin. Whether there are forms in the learner’s mind or it is formless, one thread that runs through both views is that the manifestation of a person’s mind is formless unless education is applied to it. Therefore, education may be defined as the process of facilitating learning, or the acquisition of knowledge, skills, values, beliefs, and habits. Educational teaching methods include storytelling. discussion. teaching, training, and directed research.

The Concept of a Legal Rights

The definition of Legal rights has been a subject of debate for many decades. We will analyse under the light of various interpretations and definitions by prominent philosophers of legal jurisprudence to understand what a legal right is. One of the very first questions that would come to the mind of any individual when looking at legal jurisprudence is, how would one define legal rights. However, before a legal right is defined, question of what a right is in general should be answered. The features of Legal Rights to Education as a legally guaranteed human right means:

1. The right to education is legally guaranteed for all without any discrimination;
2. States have the obligation to protect, respect, and fulfil the right to education;
3. There are ways to hold states accountable for violations or deprivations of the right to education;
4. It encompasses both entitlements and freedoms, including the:
 - a) Right to free and compulsory primary education;
 - b) Right to available and accessible secondary education (including technical and vocational education and training), made progressively free;
 - c) Right to equal access to higher education on the basis of capacity made progressively free;
 - d) Right to fundamental education for those who have not received or completed primary education;
 - e) Right to quality education both in public and private schools;
 - f) Freedom of parents to choose schools for their children which are in conformity with their religious and moral convictions;
 - g) Freedom of individuals and bodies to establish and direct education institutions in conformity with minimum standards established by the state;
 - h) Academic freedom of teachers and students.

THEORETICAL FRAMEWORK

The theories adopted by a writer on the rights to education in Nigeria depend solely on the background of such writer. Legal writers adopt a legal perspective, whilst sociologist, educationist, political writers adopt the socio-political perspective.

The Theory of Education

Education theory is the theory of the purpose, application and interpretation of education and learning. It is largely an umbrella term, being comprised of a number of theories, rather than a single explanation of how we learn, and how we should teach. Rather, it is affected by several factors, including theoretical perspective and epistemological position.

So many authors have expressed the view that a good education is a human right and not a privilege. They argued that a human right is a right that is given to anyone, no matter their gender, nationality, colour, ethnic origin, religion, language and so on. A human right can't be given or taken away from anyone.

One of the reasons many people believe a good education is a human right is because the international human rights law ensures that every person has the right to receive an education. They argued that, according to Article 26 of Universal Declaration on human Rights, everyone has the right to education. After that, many other international groups including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Convention against Discrimination in Education have recognized and spread that education is a right to everyone. Some authors are of the view that the right to education is relative to location. They argued that, people who live in developed economy are entitled to pursue

education as a right. Whereas, people who live in developing economies where basic human materials such as food, clothing and shelter are absent should rather consider education as a privilege.

Education is the key that allows people to move up in the world, seek better jobs. and ultimately, succeed fully in life. Education is very important, and no one should be deprived of it. The right to education is one of the human natural rights which every person should have from youth to when they are old. Human natural rights are fundamental privileges acquired from the rational nature of man and the natural moral. Right to education is an inalienable right for it cannot be renounced or transferred because it is necessary for the fulfilment of one's primitive obligation. According to John Dewey: "Education is not preparation for life; Education is life itself". This simply means deprivation of right to education is deprivation of right to life.

LEGAL AND INSTITUTIONAL FRAMEWORK

The subject matter of rights is one of law. Every right must be traceable to a law otherwise it is not a right but a privilege. Also, where there is a right, there is likely the issue of breach. Therefore, a right does not exist unless it exists within a legal framework and institutional framework for its protection and enforcement in the likely event of a breach. The legal right to education may be drawn from international law or municipal/domestic law. There are several laws which regulate education in Nigeria. Nigeria is a federation of 3 (three) tiers of government. Each of these levels of government is empowered to make laws providing for and regulating education. Also, Nigeria is a member of signatory to several international instruments which guarantee the right to education. Most of these laws created institutions/agencies for the protection and/or regulation of education in Nigeria.

Legal Framework

The right to education has long been recognized as a universal fundamental right in various global, regional and national legal instruments, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention of the Rights of child (CRC). These Instruments stipulate that: Everyone has the right to education; Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory; Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

Legal Framework for the Protection of Rights to Education under Nigerian Laws can be classified into the following: The Constitution, Federal Laws, State Laws and Local Government Laws. Some of these laws are not relevant for this study. The relevant laws include The Constitution, the Compulsory and Universal Basic Education Act.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the the grund norm, it is the basic law of the land from which all other Laws derive their validity. The Constitution provides that it is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. It further provides if any other law is inconsistent with its provisions, it shall prevail, and that other law shall, to the extent of its

inconsistency be void. The provisions of the Constitution override any other provision, in any other law. The Constitution is the Supreme authority and every right is traceable to it. The constitution provides that the government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. It shall promote science and technology, eradicate illiteracy; and to this end it shall and as and when practicable provide free, compulsory and universal primary basic education.

The African Charter on Human and Peoples' Right (ACHPR) was adopted by the Organization of African Unity (OAU, now African Union, AU) in 1982. Nigeria ratified and domesticated it in accordance with Section 12 (1) of the 1979 Constitution, which provides that "No treaty between the Federation and other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly". The Charter thus became part of our laws by virtue of the African Charter on Human and Peoples' Right (Enforcement and Ratification) Act. The Charter guarantees the right of every individual to education.

Compulsory and Universal Basic Education Act (CUBE Act) provides for compulsory, free universal basic education for all children of primary and junior secondary school age in the Federal Republic of Nigeria. The Federal Government's invention under this Act shall only be assistance to the States and Local Governments in Nigeria for the purposes ensuring uniform and qualitative basic education throughout Nigeria.

The Child Rights Act was enacted in 2003, from the United Nations Convention on the Rights of the Child. Although this law was passed at the Federal level, it is only effective if State assemblies also start it. The Children's Rights Act 2003 (CRA) was created to serve as a legal documentation and protection of Children rights and responsibilities in Nigeria.

The law has three primary purposes: to incorporate the rights of the Convention on the Rights of the Child (CRC) and the African Charter on Human and Peoples' Rights into the national law, to provide the responsibilities of government agencies associated with the law and to integrate children-focused legislation into one comprehensive law. It also acts as legislation which guarantees the right of a child to education.

The Education (National Minimum Standards and Establishment of Institutions) Act deal amongst other things with the specification of various authorities empowered to prescribe minimum standards of education in Nigeria; and to impose penalties for any contravention of its provisions.

The Nation University Commission Act created the National Universities Commission as a body corporate charged with the responsibility of advising the Federal and State Governments of all aspects of university education and the general development of universities in Nigeria. However, there are other Primary and subsidiary legislations on education that are relevant to this discussion. Most of these legislations are mainly enabling laws for the establishment, monitoring and regulating educational agencies charged in part or in full with the responsibilities of upholding and ensuring the accomplishment and sustenance of the National objective of education as

contained in the National Policy on Education (NPE). Some of these laws are the National University Commission Act the Joint Admission and Matriculation Board Act, the West African Examination Council (WAEC) Act; the National Examination Council (NECO Act).

Institution Framework

As earlier stated, the right to education is guaranteed both under domestic and international law. Therefore, there are domestic and international agencies/institutions for the protection of the right to Education.

The National Universities Commission (NUC) was established in 1962 as an advisory agency in the Cabinet Office. However, in 1974, it became a statutory body. The NUC is an agency under the Federal Ministry of Education (FME). The NUC has a Governing Council. Over the years, the Commission has transformed from a small office in the cabinet office to an important arm of government in the area of development and management of university education in Nigeria. The main functions of the Commission are outlined as follows:

- a) Granting approval for all academic programmes run in Nigerian universities;
- b) Granting approval for the establishment of all higher educational institutions offering degree programmes in Nigerian universities;
- c) Ensure quality assurance of all academic programmes offered in Nigerian universities and
- d) Channel for all external support to the Nigerian universities.

The Commission has twelve Directorates; Directorate of Academic Planning, Directorate of Inspection and Monitoring, Directorate of Management Support Services, Directorate of the Establishment of Private Universities, Directorate of Students Support Services, Directorate of Research, Innovations & Information Technology, Directorate of Finance and Accounts, Directorate of Accreditation, Directorate of Open and Distance Education, Directorate of Liaison Services and International Cooperation, Directorate of Corporate Communications, and the Directorate of the Executive Secretary's Office. Each of the Directorates is headed by a Director.

The Universal Basic Education Commission (UBEC) is Federal Government's Agency saddled with the responsibility for coordinating all aspects of Universal Basic Education (UBE) programme implementation. The UBEC was created by the Federal Government of Nigeria to execute the Universal Basic Education programme as a reform programme aimed at providing greater access to, and ensuring quality of basic education throughout Nigeria.

The Joint Admission and Matriculation Board Act created the Joint Admission and Matriculation Board (JAMB) and empowered it to:

- a) Conduct Matriculation Examination for entry into all Universities, Polytechnics and Colleges of Education (by whatever name called) in Nigeria;
- b) Appoint Examiners, Moderators, Invigilators, members of the Subject Panels and committees and other persons with respect to matriculation examinations and any other matters incidental thereto or connected therewith;

- c) Place suitably qualified candidates in the tertiary institutions after having taken into account:
 - The vacancies available in each tertiary institution;
 - The guidelines approved for each tertiary institution by its proprietors or other competent authorities;
 - The preference expressed or otherwise indicated by the candidates for certain tertiary institutions and courses;
 - Such other matters as the Board may be directed by the Honorable Minister to consider or the Board itself may consider appropriate in the circumstances.
- d) Collate and disseminate information on all matters relating to admissions into tertiary institutions or any other matter relevant to the discharge of functions of the board.
- e) Carry out other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under or pursuant to this Act.

The National Examinations Council (also known as NECO) is an examination body in Nigeria that conducts the Senior Secondary Certificate Examination and the General Certificate in Education in June/July and December/January respectively, and the council official twitter page is National Examination. NECO was mandated to take over the responsibilities of the National Board of Education Measurement (NBEM). Its maiden examination took place in mid-2000. It is headed by the Registrar/Chief Executive, appointed by the President under section 9(H of its establishing Act. It has six departments, each headed by a director. Each Department has divisions, composed of units. A team of directors and a registrar are the governing body.

The West African Examinations Council is West Africa's foremost examining board established by law to determine the examinations required in the public interest in the English-speaking West African countries, to conduct the examinations and to award certificates comparable to those of equivalent examining authorities internationally. By this mandate, the Council is expected to:

- a) Assist in the development of sound education
- b) Ensure that educational standards are maintained
- c) Give the people of West Africa a vision of the great potentials which lie beyond examinations.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) asserts that education is a human right for all throughout life and that access must be matched by quality. The Organization is the only United Nations agency with a mandate to cover all aspects of education. It has been entrusted to lead the Global Education 2030 Agenda through Sustainable Development Goal 4. The roadmap to achieve this is the Education 2030 Framework for Action (FFA).

UNESCO provides global and regional leadership in education, strengthens education's standards worldwide and responds to contemporary global challenges through education with gender equality an underlying principle. its work encompasses educational development from pre-school to higher education and beyond. Themes include global citizenship and sustainable

development, human rights and gender equality, health and HIV and AIDS, as well as technical and vocational skills development.

A CRITIQUE OF NIGERIA'S RIGHTS TO EDUCATION POLICIES

It is an incontrovertible fact that the Constitutions of most democratic countries is the supreme law from which every other law must originate or be rooted. More so the provisions of such constitutions have binding force on all authorities' institutions and persons. The Supremacy of the Constitution is expressed in the fact that any law or act which is inconsistent with the provisions of the Constitution is void to the extent of its inconsistency. It follows therefore, that every enquiry as to the existence of any right or the extent of every right must begin with the constitution.

The right to education in Nigeria is guaranteed under the Constitution of the Federal Republic of Nigeria. Section 18 (1), (2) and (3) of the Constitution provides that:

‘Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. (2) Government shall promote science and technology (3,) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide: (a) Free, compulsory and universal primary education; (b) Free secondary education; (c) Free university education; and (d) Free adult literacy programme.”

Section 18 of the Constitution is under Chapter II of the Constitution. Chapter II of the Constitution contains the Fundamental Objectives and Directive Principles of State Policy. Section 13 of the Constitution imposes a duty on all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of Chapter II of the Constitution. However, the said Section 18 is fraught with the problem of unenforceability. By virtue of Section 6 (6) (c) of the Constitution, the law is that every provision contained under Chapter 11 of the Constitution do not create enforceable rights and obligations. In other words, the benefits created under Chapter II of the Constitution do not give a person a right of action in court; in legal parlance that is to say that Chapter II of the Constitution is non-justiciable.

By virtue of Section 6 (1) of the Constitution the Judicial powers of the Federation is vested in the courts. However, the judicial powers of the Courts to interpret the Constitution and apply sanctions cannot be extended to any matter contained under Chapter II, which contains Fundamental Objectives and Directive Principles of State Policy the of the Constitution. Section 6 (6) (c) of the Constitution provides that the judicial powers vested in the courts:

“Shall not, except as otherwise provided by this Constitution, extend to am’ issue or question as to whether any act or 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.”

Section 6 (6)(c) of the Constitution limits the extent to which the courts of law in Nigeria use their inherent powers to adjudicate on any matter and give sanctions where necessary to all matters between persons or between government, or authority and persons in Nigeria for the determination of any question as to civil rights and obligation of that person. Its implication for the right of right education guaranteed under Section 18 of the Constitution is that any violation of the said right by the government of person(s) cannot be questioned in any court.

In certain circumstances the rights guaranteed under Chapter II of the Constitution may be enforced through the courts. This possible because the said Section 6 (6) (c) created an exception within itself by the usage of the phrase “except as otherwise provided by this Constitution. It follows therefore, that the rights and obligations imposed on the government under Chapter II of the Constitution may be enforced in the following circumstances: (1) Where the constitution in its justifiable sections directs that a particular section of Chapter II of the constitution shall be complied with in carrying out the provisions of that section of the constitution. It was held in the case of *Federal Republic of Nigeria v. Aneche & 3 Ors*, that: ‘In my humble view S. 6 (6) (c) of the constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words “except as otherwise provides by this constitution “. This means that f the constitution otherwise provides in another section, which makes a section or sections of chapter II justiciable it will be so interpreted by the courts.” 2. Where the constitution in its justiciable sections empowers the Legislature to implement the provisions of the Chapter 11 of the constitution (i.e. legislation). In the Indian case of *Mangru v Commissioner of budget municipality* , it was held that:

“the directive principles are required to be implemented by legislation, and so long as there is a law carrying out the policy as laid down in the directive principles, neither the state nor the individual can violate any existing law or legal right under color of following a directive”

The second situation appears to be the status of Section 18 of the Constitution. A combined reading of Sections 4(2), 20 and item 60(a) under Part I of the Second Schedule to the Constitution reveals that the responsibility to make laws for the implementation of Section 18 of the Constitution and every other section under Chapter Ii of the Constitution is within the Exclusive Legislative competence of the National Assembly. Pursuant to this, in the effort to guarantee the right to education in Nigeria, the National Assembly enacted the some laws which shall be examined herein as follows:

The Rights to Education as guaranteed under the Compulsory Free and Universal Basic Education Act is a positive at guaranteeing a right to free basic education in Nigeria. Section 2(1) of the Act provides that: “Every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age.” The Act further imposed a duty on every parent to ensure that every:

“...child or ward attends and completes his- (a) primary school education (b) junior secondary, by endeavouring to send the child to primary and junior secondary school”.

Section 4 (1) of the Act further provides that: “Every parent shall ensure that his child receives full-time education suitable to his age, ability and aptitude by regular attendance at school.” It follows that whereas application for the enforcement of environmental standards cannot lie pursuant to Section 18 of the Constitution, such action may lie pursuant to the provisions of the Compulsory, Free and Universal Basic Education Act.

The Child Rights Act (CRA) and the Education (National Minimum Standard and Establishment of Institutions) Act (Education Act) in conformity with the United Nations’ Convention on the Rights of the Child considered some issues relating to and/or offering the well-being of the Nigerian Child. The Act generally guaranteed the overall protection of a child and his welfare in all ramifications, taking cognisance of such care and protection as duties of all and sundry or any person or bodies upon whom legal obligation is placed to do so. Unlike the Constitution, the CRA in its wordings considered education as absolute right of every child especially at the elementary level of primary and secondary school. Having provided for education as right to child, the Act places corresponding duties on the Government to provide education for the child.

The Act incorporated penal provision by spelling out punishment for erring parents and guardians in the discharge of their legally imposed duties under the Act. But remain silent on any violation on the part of the Government in the discharge of its own duty under the Act. In what looks like protection of the right to education of the child, the CRA under section 58 provides for supervision orders whereby courts can make orders to ensure that a child of a particular school/education age who is being denied of proper education to come under the supervision of the state to ensure that such child receive proper education.

The African Charter on Human and Peoples’ Right (Enforcement and Ratification) Act (The Charter) guarantees the individuals the right to education. Therefore, a person who desires to enforce the right to education or compel the government to take positive remedial actions against the violation of such right may as well bring such action pursuant to the African Charter on Human and Peoples Rights. Such action may be pursuant to Articles 17 and 25 of the Charter which provides thus:

“Every individual shall have the right to education; “States Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedom contained in the present Charter and to see to it that these freedom and rights as well as corresponding obligations and duties are understood.”

The Charter being a treaty can only be enforced by the courts to the extent that it has been enacted into law by the National Assembly . Happily, the National

Assembly has since enacted the African Charter on Human and Peoples' Rights into law. The Charter is now a part of our Corpus Juris. It is now known as the African Charter on Human and Peoples' Rights Ratification and Enforcement Act. Section 1 of the Act provides that:

As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in schedule of this Act shall, subject as there under provided have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial powers in Nigeria

It is therefore clear that all authorities and persons exercising legislative, executive and judicial powers in Nigeria are enjoined to give full recognition and effect to the African Charter on Human and Peoples' Rights. It therefore follows that the jurisdiction of the courts to give recognition and full effect to the provisions of the Charter remains unimpaired. Also, by virtue of the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 2009, the rights under the Charter are enforced in the same way by which the Fundamental Rights under the Constitution may be enforced. For further reading and comprehension, the researcher recommends: Order II Rule I, paragraphs 3 (a) (bi) of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009.

Deducing from the above, it is very clear that the right to education is securely guaranteed under the Charter, of which it is enforceable by any person who alleges that his/her to education has been infringed.

The Right to Education under International Law has long been recognized as a universal fundamental right in various global, regional and national legal instruments. The Universal Declaration of Human Rights (UDHR); the international Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention of the Rights of child (CRC) are the basic instruments which provide for safeguards to the right to education. Nigeria is a signatory to most of the international treaties and conventions recognising various rights to education. However, these treaties are not enforceable in Nigeria because "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law the National Assembly.

As matter of policy, education as human right is regulated by various United Nations inventions via its specialized agencies such as the United Nations Educational, Scientific and al Organisations (UNESCO), the United Nations Children Fund (UNICEF), International hour Organisation (ILO) and the likes. Apart from the international collective commitment to recognition, guarantee and protection of human rights as the fundamental objective and mission of the United Nations.

THE CHALLENGES TO THE RIGHT OF NIGERIA EDUCATION IN NIGERIA

Apart from the legal and judicial based challenges hindering the provision of education in Nigeria, there are other challenges such as political, financial, corruption, socio-cultural and religion and security challenges inhibiting the progress of the educational sector in Nigeria particularly at the basic level (primary and secondary education). The itemized challenges will be listed as follows.

- a) Political challenge
- b) Instability of our School Calendar/System
- c) Inadequate teaching researcher equipment
- d) Financial challenge
- e) Under staffed, underfunded & overcrowded schools
- f) Corruption
- g) Socio-cultural and religious challenges

CONCLUSION

The progress of the human society depends on education. Countries that take education seriously are advanced and developed. Education in Nigeria is not given the priority that it deserves. Therefore, it is guaranteed as a fundamental right. There are so much gaps in the law on education in Nigeria. However, it is our opinion that every Nigerian child has right to free and compulsory primary education, and free junior secondary education.

The Federal and State Governments have constitutional duties to provide adequate fund for the said free and compulsory education, and failure to do so will amount to a constitutional breach. The reason is simple. Even though the right to free education in Section 18 (3(a) of the Constitution was ordinarily not enforceable being in chapter 2 of the Constitution, by the National Assembly enacting the Compulsory, Free Universal Basic Education Act, of 2004. The Act has made that provision of the Constitution an enforceable right. By virtue of the Act, the Federal and States Governments are under a Constitutional obligation to provide financial and institutional resources for free, compulsory and universal primary education and free junior secondary education for all Nigerian citizen.

In *State and Others v. Attorney General of the Federation*, it was held that the provisions of Chapter 2 of the Constitution, even though they are enforceable by virtue of Section 6(6) (c) it may be enforced by Section 6(6) (c) of the Constitution, can be made enforceable or justiciable by legislation. Therefore, by enacting the Compulsory, Free Universal Basic Education Act, of 2004, the National Assembly has made the right to free and compulsory primary and free junior secondary education contained in Chapter 2 an enforceable right.

RECOMMENDATIONS

Our educational sector has been encountered so many obstacles which are responsible for the decay in our educational system and ultimately our national life. We make the following recommendations in order to solve the problem of education in Nigeria:

- a) The Constitution should be amended to elevate the right to education to the realm of a fundamental right.
- b) The government should ensure enforcement of the laws on education.

- c) The government should ensure the security of students and schools, especially in areas ravaged by insurgency.