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Folorunsho, Ahmad Hussein^a; Imam-Tamim, Muhammad Kamaldeen^b & Abdulraheem, Taofeeq Abolaji^c

ABSTRACT

Right to education is one of the fundamental rights recognised and guaranteed in international, regional instruments. Nigeria as a signatory to most of the human rights instruments is expected to ensure the effectiveness of the implementation of the relevant provisions of the conventions that guarantee right to education. Provision of education in Nigeria therefore ought to be as of right, and should therefore be available and accessible to the Nigerian children as a proof of the protection of the said right. However, implementation of children right to education in Nigeria remains a mirage and this is not unconnected with some identified challenges. It is in the light of this that this paper examines and analyses the challenges facing the implementation of children's right to education in Nigeria and come out with suggestions for possible solutions. The paper uses legal doctrinal and content analysis of Nigerian statutes and relevant literature.

1. INTRODUCTION

Education is a catalyst to human and societal developments.¹ Nigeria is a signatory to most of the international treaties and conventions recognising various rights, and must work towards granting and protecting these rights as committed by the relevant instrument.² Educational right is an integral part of those expectedly guaranteed rights which need serious attention in the area of enforcement. In the year 1973, the Nigerian Government convened a seminar of experts to develop a documentary guideline for the educational goals and objectives of the country consequent upon which a policy document was produced known as the National Policy on Education. This document sets out among other things, the philosophy and goals of education in Nigeria and guidelines for the accomplishment of the said educational goal.³ But the document as elegantly composed by the experts has not been given the expected attention in the area of implementation. This paper therefore analysis the relevant law and policy on children education in Nigeria, this paved way for the overview of some challenges hindering the recognition, protection and provision of children education and the paper ends with conclusion and recommendations.

2. CHILDREN'S RIGHT TO EDUCATION IN THE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Right to education as human rights has its legal basis in the international human rights instruments and as a matter of policy, education as human right is regulated by various United Nations conventions via its specialised agencies such as the United Nations educational, Scientific and Cultural Organisation (UNESCO), International Labour Organisation (ILO) and the like. This could be said to mean the protection of the right to education at the global, regional and state levels respectively. The treaties, soft-

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¹ Dakuku Peterside (The Punch: Nigerian Newspaper), Monday December 3, 2012, page 20

² See A.H Folorunsho, "Judiciary and Human Rights Protection: A Case Study of Nigeria," A dissertation submitted in partial fulfillment of the requirements for the degree of Master of Comparative Laws, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 2010, at 6

³ See National policy on Education, 4th Edition. In the year mentioned above, experts were drawn from various interest groups ranging from the voluntary agencies and external bodies outcome of which the draft of the document was produced. After due consideration of same vide comments from interest groups across the nation, the final document was fashioned i.e the National Policy on Education first published in 1977, the 2nd and 3rd editions were published in 1981 and 1998 respectively. The current edition which is the 4th edition was published in the year 2004.

law documents like: declarations, resolutions and adopted standard rules are the legal framework and policies that established and protect the right to education. The right to education gained proper recognition and protection through the adoption of series of instruments after the birth of the United Nations in 1948 and the provisions of these instruments became the framework for the recognition and protection of human rights generally⁴ and right to education in particular at the global level.

The American Declaration of the Rights and Duties of Man,⁵ this declaration in recognition of right to education and its protection provides thus;

"Every person has right to an education, which should be based on the principles of liberty, morality and human solidarity. Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society. The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilise the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary education"⁶

The provision of this declaration conspicuously guaranteed education as right of man, the purpose which the full enjoyment of same will serve in the private life of individual and the expected consequential value an educated person adds to the society among others and promotes free education particularly at the foundation level, which is the concerned level in this research. Apart from the international collective commitment to the recognition, guarantee and protection of human rights as the fundamental objective and mission of the UN,⁷ the issuance and adoption of the UDHR⁸ significantly enhanced and prepared the platform for states in the area of human right protection and particularly provides for the recognition and guarantee of the right to education in clear terms as follows;

"(1) Every one has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."⁹

In the above referred provision of the UDHR, it is glaring that right to education is internationally recognised as human right and should be made available and accessible at all levels, professional and higher education inclusive. The provision also guarantees free education to a level. It suffices therefore to hold that finding this particular provision, made in this clear language in the document which can be described as the mother of all other human rights instrument confirms the status of education as human right beyond any doubt. Concretising the status of right to education as one to be guaranteed, respected and protected, the instrument went further to the functions of education as "human right" and the expected goal in the life of individual, nations and the globe of the same if implemented. It provides as follows;

"(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote

⁴ See art 1(3) of the UN Charter, 1945 and art 55(c) of the same charter read together, in which the promotion of universal respect for, observance, recognition and protection of human rights and fundamental freedoms are made the obligation of the UN

⁵ See Shumrahayu A. Aziz, "International Documents on Human Rights" (Malaysia, ABCDEF (ILBS) Publication, 2009) at 2 where the author cited the document as O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.LV/II.82 doc.6 rev.1 at 12 (1992).

⁶ See Article XII of the American Declaration of the rights and Duties of Man

⁷ See art 1(3) and art 56 of the UN Charter

⁸ Adopted by the UN General Assembly on the 10th of December, 1948

⁹ See art 26(1)

understanding, tolerance and friendship among all nations, racial or religious groups, shall further the activities of the United Nations for the maintenance of peace."¹⁰

Placing the obligation of providing education on the states, the article fashioned out another fundamental rights of parents out of the right of their children to education in the following words;

(3) Parents have a prior right to the kind of education that shall be given to their children.

Right to elementary education which is the focus of this research signifies the formal schooling system at the primary and secondary levels. Although this instrument was a declaration adopted by the UN General Assembly, hence, it serves as the pivotal foundation or pilot mechanism for the subsequent legal framework and policies on the right to education at international, regional and state levels.

Giving legal efficacy and binding effect to the provisions of the UDHR, in a later development, the International Covenant on Economic, Social and Cultural Rights (ICESCR) came on board.¹¹ This document re-affirmed the position of the UDHR of the need for adequate respect and protection of human rights as classified under the two main categorizations of rights.¹² One of the major effects of this covenant is that, it imposes corresponding obligatory duties on the state parties to respect the agreement undertaken towards putting all necessary efforts in the path of achieving the full realisation of the rights guaranteed therein by all appropriate means on equal footing.¹³ Right to education therefore is one of the fundamental rights recognised, described and defined in the instrument. The document in its wordings re-emphasised the right of every individual citizen under the watch of the state to education at various levels. In fact, just a replica of the provision of article 2(1-2) of the UDHR though with little addition, in which right to education is defined, its specific purpose, individual benefit and the general societal gain are set out and steps to be taken for its realization are stipulated.¹⁴

Lending credence to the above framework on right to education at the international level, the International Covenant on Civil and Political Rights (ICCPR) in corroboration to the need to respect and protect human rights by state parties without discrimination of any kind,¹⁵ the document calls for domestication of the provision into the state's local laws by all states¹⁶ for effective implementation of those recognised rights. Although unlike the UDHR and ICESCR, the ICCPR did not expressly mention the right to education in any of its provision or lists it among the rights recognised by the covenant, but it implied the guarantee and protection of the same in the wordings of its articles 18(4) and article 27 respectively. With particular emphasis on article 27 which is similar in construction with articles 13(3) of the ICESCR and article 26(3) of the UDHR in the area of respect for the right of parents on the education of their children. Article 18(4) provides;

"The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conviction."

Other relevant international instruments that formed the basis of the legal framework and educational policies for the recognition and protection of right to education include those international instruments

¹⁰ Art 26 (3)

¹¹ Art 26 (3)

¹² This is an International agreement/treaty of the UN, adopted on the 19th December, 1966

¹³ Articles 2(1) and 3 of the ICESCR

¹⁴ Article 13 and 14 of the ICESCR

¹⁵ Article 2(1) of the ICCPR

¹⁶ See article 2(2) of the ICCPR where it provides thus: "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present covenant."

Folorunsho, A.

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providing protection against discriminations in the enjoyment of right to education either on racial ground¹⁸, gender disparity¹⁹ and/or intolerance on faith and religion basis.²⁰ In discussing the right to education with particular reference to primary and secondary education with a view to pointing out the international instruments that form the basis of the right, the UN Declaration on the Rights of the Child²¹ and the Convention on the Right of the Child (CRC)²² are very essential. Right to primary and secondary education is mainly if not exclusively right of children because ordinarily adulthood sets in toward the completion of secondary education or thereafter as the case may be. Also by the definition of a child as given in the CRC,²³ childhood remains within the period of the completion of secondary education. Proclaiming comprehensively, the rights of the child, right to education is one out of many other rights that is extensively provided for in the Convention.²⁴

The convention is emphatic on education as of right particularly to be enjoyed by children by way of implementation through the famous features of right to education which are; availability, accessibility, affordability and adaptability (4As).²⁵ Other relevant and important instruments are the instruments of the specialised Agencies of the UN which serve as legal and policy documents in the area of right to education. Such as the UNESCO²⁶ Convention against Discrimination in Education (CDE),²⁷ the UNESCO Convention on Technical and Vocational Education²⁸ and the International Labour Organisation Convention Concerning Indigenous and Tribal People in Independent Countries (Convention No.169)²⁹

While treating the issues in this research in descending order, the African continent just like many other regions, is not left out in the campaign for the recognition and protection of human rights generally, and

¹⁸ See the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which was proclaimed by the UN National Assembly on the 20th November 1963 and adopted in 1965. Articles 1, 2 (1 & 2), 3 and particularly article 5(e)(v) where right to education and training is specifically enlisted among many other rights which by this Convention, State Parties undertake to prohibit and eliminate all forms of racial discrimination, be it race, colour, or national or ethnic origin in the enjoyment of same.

¹⁹ See the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted in 1979 but came to force in 1981. Article 10 of the Convention deals directly with issues of education in the following language "State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights which men in the field of education and in particular to ensure, on a basis of equality of men and women." The import of this convention is that it did not only recognize education as a fundamental right of everybody, neither did it on guarantee its enforcement and protection, but went further to ensure and protect equality in educational opportunities between men and women and forbids discrepancies and disenfranchisement of any one in the enjoyment of same on ground of sex particularly against women.

²⁰ See the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, adopted on the 25th of November, 1981. In recognition and protection of right to education and respect for the right of parents in the protection of their children's educational rights, Article 5(2) provides thus; "Every child shall enjoy the right to have access to education in the manner of religion or belief in accordance with the wishes of his parent or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or guardians, the best interests of the child being the guiding principle"

²¹ It is UN human rights instrument adopted in 1959 to cater for the interest of children being vulnerable members of the society that need special protection.

²² Pursuant to the adoption of the above referred declaration is the adoption of the CRC in 1989 which eventually came into force on the 2nd of September, 1990.

²³ See article 1 of the CRC

²⁴ See articles 28 and 29 of the CRC

²⁵ See articles 28(1)(a-c and e), 28(2 and 3), 23(3), 29, 32, and article 40(4)

²⁶ See articles 28(1)(a-c and e), 28(2 and 3), 23(3), 29, 32, and article 40(4)

²⁷ This is a specialized agency of the UN that came to being on the 4th of November, 1946 and became the UN specialized agency in December of the same year, with special responsibilities for the rights related to education, science, culture and communication. the agency has education as its priority in its activities

²⁸ See articles 1,3,4,5(1)(a and b) of the UNESCO Convention against Discrimination in Education(CDE) which was adopted by the UN General Conference in December, 1960

²⁹ Also adopted in 1989

³⁰ See the preamble and article 29 of the Convention which is a revised edition of the ILO Convention No. 107 on the Indigenous and Tribal Population which was first adopted in 1957.

the right to education in particular. Therefore, under the umbrella of the former Organisation of African Unity (OAU) now African Union (AU),³⁰ human rights instruments in form of legal documents and formulation instruments have been prepared and adopted at the African level on human rights issues, and in particular on the right to education,³¹ supervisory duty of which is placed on its own specialised agencies³² i.e. the African Commission on Human and Peoples' Rights³³ and the African Court on Human and Peoples' Rights.³⁴ The ACHPR recognises generally basic and other rights,³⁵ duties of individuals and that of states³⁶ as well. Article 17(1) of the charter briefly provides for the right to education³⁷

The African Charter on the Rights and Welfare of the Child on the other hand provides extensively for the right to education under article 11, article 11(1) provides that "Every child shall have right to an education while other parts of the same article such as article 11(1-7) provide for other measures to be taken in respect the provision of the Charter, protection enforcement and enjoyment of the right to education through duties placed on stake holders, parents/legal guardian and the state inclusive.³⁸ The documents enumerated are the international and regional instruments that placed duties on States in the recognition and protection of the right to education, they also serve as the legal framework and policy document in the regard for member States to be seen and taken as templates towards which States should fashion their respective legal and policy documents in the recognition, implementation, enforcement and protection of the right to education.

3. AN OVERVIEW OF CHILDREN'S RIGHT TO EDUCATION IN THE NIGERIAN LAW

The supreme law of the land is the Constitution, it is otherwise known as the ground norm.³⁹ All along the or Rights has always been incorporated in the Nigerian Constitutions whereby certain rights are listed as fundamental right,⁴⁰ excluding the right to education. Those rights contained therein are by the authority of the constitution and the positioning therein guaranteed and enforceable rights. As far as education as a human right in Nigeria is concern, the first legal instrument to be considered is the Constitution since all rights enjoy the constitutional guarantee and protection. From the independence constitution of 1960 to the 1999 Constitution of the Federal Republic of Nigeria (CFRN) the faith of education as human right remains the same. As far as the 1999 constitution is concerned, there are two fundamental issues provided for there in; (i) the fundamental human rights⁴¹ and (ii) the fundamental objectives and directive principles

³⁰ OAU is an International Organisation established at Addis Ababa, Ethiopia in 1963 to promote unity, defend the sovereignty and territorial integrity of the member states, also, to promote international cooperation, eradicate all forms of colonialism and coordinate members' economic, diplomatic, educational, health, welfare, scientific and defence policies. The organisation was later changed to African Union (AU) in 2002 with the same functions and objectives.

³¹ See the African Charter on Human and Peoples' Rights (ACHPR) adopted by the OAU in 1981 and came into force in 1996, also the African Charter on the Rights and Welfare of the Child (ACRWC) which was adopted by the same Organisation in 1990

³² The AU's bodies include the Assembly of the AU, the Pan-African Parliament, the African Court of Justice and Human Rights, the AU Commission, the African Central Bank of Africa, the African Monetary Fund, the African Economic Community (AEC) etc.

³³ A regional Human Rights Commission established for the protection of human rights in the African continent. It was established 1987

³⁴ Also a regional court set up to cater for cases having human right flavours, established in 2006 to complement the work of the Commission in the area of human rights protection.

³⁵ See articles 3-14, 15-18 and 19-24 of the Charter

³⁶ See articles 27-29 of the Charter

³⁷ Articles 1, 25 and 62 of the Charter

³⁸ Article 17(1) provides for the recognition of every individual's right to education and the right to participate in the cultural life

of the state policy.⁶⁰ Through both the reference to the fundamental rights in the language of the constitution and the justiciable rights while the latter is not. The latter is in fact not a justiciable principle in the Nigerian Constitution that is made reference to the preamble of the constitution.⁶¹ The issue is raised in the which provides that:

- (1) Government shall ensure its policy towards education that there are equal and adequate educational opportunities at all levels (2) Government shall promote science and technology (3) Government shall strive to establish primary, and by law and regulations that in the when practicable provide: (a) free, compulsory and universal primary education (b) free secondary education, (c) free university education and (d) free adult literacy programme

Issues referred to as rights which are even fundamental are enumerated in a specific chapter of the constitution i.e. chapter IV from section 22 to 33. Issues contained in the chapter are treated as rights and fundamental objectives and directive principles of state policy and are "right" whether fundamental or otherwise.

4. THE DISPARITY BETWEEN EDUCATION AND OTHER FUNDAMENTAL RIGHTS IN THE NIGERIAN CONSTITUTION

One of the major disparities between education and other fundamental rights in the Nigerian Constitution is that, the fundamental rights are legal rights conferred by the spirit of the constitution while the provision of chapter II confers no legal right. Chapter IV of the constitution is meant and seen as such by all those listed in the Bill of Rights therein contained are given preference over and above others. They are inviolable and if violated in any way, they are justiciable and redress can be sought in the court of law.⁶² The attitude of the Nigerian courts in treating issues for constitutional review on any of the rights in Chapter IV confirms the protective preference accorded to the chapter as a whole and the rights therein as well.⁶³ In addition to the general provisions of law on courts' jurisdiction on any constitutional matter, special provisions are made, conferring specific jurisdiction on courts for the protection of the same in Chapter IV and in respect the sacrosanctness of its value⁶⁴ to the extent of providing a very special procedural rules for adjudication on, and enforcement of the provisions of this particular chapter of the Nigerian Constitution.⁶⁵ Whereas Chapter II is where education belongs and other issues contain therein do not enjoy this kind of legal preference and judicial protection.⁶⁶ It is an unambiguous constitutional provision that as then contained in Chapter II is

⁶⁰ See Sections 13-24 of Chapter II of the CRRS, 1999

⁶¹ The words as contained in the preamble of the constitution is the accomplishment of the national unity, social well-being, social justice, political stability and economic growth.

⁶² See section 24(1) of C. 233 (2) (3) & (4) also see *Kenia v. Attorney General* [1991] 1 C.L.J. 22 at 23 where the Supreme Court is discharging its function of defending the constitution observed that "it is important to bear in mind that as we are concerned with the interpretation of a constitutional provision", see also *A.G. v. Education & Information Minister* [1991] 1 C.L.J. 22 at 23 and *A.G. v. AG* [1991] C.L.J. 22 at 24

⁶³ See *Agbaje v. Director of ISS* (1999) 3 S.C. 459, *Abacha v. Abacha* (1999) 1 F.R.D. 481 where the Supreme Court held that the state cannot escape liability in case of violation of any provision of the constitution by its officers or agents. Also *Edwards v. Commissioner of Police & another*, unreported case, but see *PRATLAW* 2005

⁶⁴ See section 6 and 23(2)(c) of the CRRS 1999

⁶⁵ A special rule of procedure made pursuant to section 44(3) of 1999 F.R.D. is a code of Fundamental Rights Enforcement Procedure. Rules made in 1979 are still in force as of 1st January, 1981. Later, rule 1(1) of the F.R.D. 2002 a provision of section 44(2) of the CRRS provides that, "any person who alleges that any of the Fundamental Rights provided for in the constitution and in which he is entitled, has been or is being or is likely to be infringed may apply to the court in the state where the infringement occurred or is likely to occur for redress"

⁶⁶ See *Abacha v. Attorney General* (1999) 4 S.C. 27 (p. 201) where at 28-29. The court of Appeal held that the state is not a party to the dispute and that the state is not a party to the dispute. There may include rights given rights which are not contained in the constitution which are neither fundamental nor justiciable in the court. These may include rights given

within the courts' jurisdiction "not justiciable" hence not recognised as guaranteed rights to be protected. Section 6(6) (c) is explicit when it provides that;

"The judicial power vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this Constitution, extend to any 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 Objective and Directive Principles of State Policy set out in Chapter II of this Constitution"

The constitution by this provision robs the court off the jurisdiction to protect the provisions of Chapter II and the items therein, education inclusive. It therefore suffices to say that education is neither seen nor considered as a right whether fundamental or not in the mother of all laws in Nigerian (the constitution). Also, failure to include it among those rights listed under Chapter IV has great effect on its status as a right in Nigeria. Ordinarily mere tagging Chapter IV and II as "fundamental right and fundamental objectives" respectively, constitutes a serious disparity and also consequential to the attentions given to both.

5. NATIONAL POLICY ON EDUCATION AND EDUCATION AS A FUNDAMENTAL HUMAN RIGHT

Educational 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 educational objectives and the philosophy of same in Nigeria. It was this reasoning that gave birth to the present National policy on Education in 1977 and subsequently edited up to the present 4th edition.⁵⁰ This is a vibrant policy document on education in Nigeria which stipulates the justification of the Government's investment on education and the functions of education in the life of individual and the society at large. The NPE is of thirteen sections and in a similar tone with the provision of section 18, Chapter II of the CFRN set out the need and how to make education available, accessible, affordable and adaptable to the Nigerian citizens by the government from primary to tertiary level. The content of this document is more of suggestive in nature than having binding effect as a guide on how to achieve the education goal of the country, hence it does not confer right of any kind of education whether ordinary or fundamental. It is interesting to point out that the CFRN has declared its own provisions relating to education unquestionable when violated or not complied with, how much more a mere policy document.

6. CHILD RIGHTS ACT AND EDUCATION ACT

Although the Nigerian Constitution neither guaranteed nor protected right to education, but the Child Rights Act in conformity with the United Nations' CRC considered some issues relating to and/or affecting the well-being of the Nigerian Child as right worth to be protected. 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 CFRN, the CRA in its wordings considered education as absolute right of every child, especially at the elementary level of primary and secondary schooling. Having provided for education as a right of a child, the Act places corresponding duties on the Government to provide education for the

by the Constitution as under the Fundamental Objectives and Directive Principles of State Policy under the Chapter II of the constitution"

⁵⁰A seminar of experts in educational matters and interest groups was convened in 1973. After serious deliberations by participating educational experts and agents, on what should be the national policy on education for Nigeria as a sovereign independent nation, a draft document was issued which was later subjected to comments from states and other stakeholders. The final document was afterward produced titled the National Policy on Education and published in 1977. After the first edition in corresponding with social change and educational demand of every time, the 2nd and 3rd editions were published in 1981 and 1988. With the aim of updating the 3rd edition to inculcate new ideas and innovations the current 4th edition of 2014 was published

The Act incorporated penal provisions by spelling out punishments for erring parents and guardians in the discharge of their legally imposed duties under the Act⁵² but remain silent on the any violation on the part of the Government in the discharge of its own duty under the Act. In what looks like protection of right to education of a 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 has been disenfranchised is properly educated under the supervision of a designated authority. The import of section 58 (1-7) of the CRA is just to ensure that the child is made available to attend school so as to be educated. But in the contrast, no further attention is paid in the Act to the role of the Government in making education available, accessible, affordable and adaptable to the child. It becomes unimpressive that though, the CRA comprehensively provides for the protection of the child's right to education among others and guaranteed same, the said right is however neither guaranteed nor protected in the constitution while the provisions of the CRA just like any other law is subjected to its conformity with the constitution.

The CRA has provided that the child is entitled to be educated and in corroboration to this, the Education (National Minimum Standard and Establishment of Institutions) Act⁵³ has come to regulate how better the child should be educated. The Education Act is the enabling law for the maintenance of the minimum standard of education in all forms of established educational institutions in Nigeria, from primary to higher education, technical and teachers' education inclusive. The Act regulates the expected standard of all infrastructures in schools and other educational institutions, their maintenance for conducive learning activities and the expected manpower. The Act also provides for supervisory authority vested with power of inspection and necessary sanctions for failure of any institution to comply with and maintain the required minimum standard in all forms.⁵⁴

7. OTHER RELEVANT LEGISLATIONS RELATING TO EDUCATION IN NIGERIA

There are other 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 NPE. Some of these laws are; the National University Commission Act;⁵⁵ the Joint Admission and Matriculation Board Act;⁵⁶ the West African Examination Council (WABC) Act;⁵⁷ the National Examinations Council (NECO) Act;⁵⁸ and the

⁴ Joint Admission and Matriculation Board (JAMB) Act, 2004. This body is also structured by the Act and corporate body called, Joint Admission and Matriculation Board (JAMB). This body is also structured by the Act and corporate body called, Joint Admission and Matriculation Board (JAMB). This body is also structured by the Act and corporate body called, Joint Admission and Matriculation Board (JAMB).

Compulsory Free and Universal Basic Education Act.⁵⁹ This particular Act in its provision gave definition of basic education⁶⁰ and placed the duty of providing free, compulsory and universal education upon the government.⁶¹ It goes further to place duty on parents and guardians to ensure attendance by their children and criminalised with punishments any breach of such duty.⁶² Just like NUC on university education, the UBE Act created a body known as the Universal Basic Education Commission (UBEC) for the implementation of its provisions. The Act however failed to provide for a remedy for any breach on the part of government.

8. CHALLENGES OF CHILDREN RIGHT TO EDUCATION IN NIGERIA

One of the major problems facing the provision of education in Nigeria is the inadequacy of educational law in the country, particularly as education is not recognized as a right in the Nigerian constitution. This inadequacy did not give the judiciary the opportunity to protect the people's educational right through the court's pronouncement. Education is neither recognized, guaranteed nor protected as a right under the Nigerian constitution, the none inclusion of education as a right under chapter IV constitute as a challenge for the educational right.⁶³ This gives the general believe that since it is not within the bill of rights,⁶⁴ it is not a "right", hence no claim could be brought regarding it. The contradictory provision of the constitution under sections 13 and 6 (6) (c) is a very serious legal challenge confronting the provision of education generally and primary and secondary education in particular. Section 13 is to the effect that all government organs, all authorities and persons in their executive, legislative and judicial capacity, have duties and responsibilities to apply, observe and give effect to the provisions of chapter II of the constitution, where education is included though not as a right like the items in the chapter but as Fundamental Objectives and Directives of State Policy.

In this sense, the legislative arm of government at Federal state and local levels are empowered to make other laws in order to give pragmatic effect the provisions and effectuate the issues provided for in the chapter. More so, particularly that issues relating to education are on the concurrent legislative list of the constitution.⁶⁶ In the same vein, the executive arm has the duty to abide by the law and make resources and other logistics available for the effective application and observation of the provisions of the chapter under reference.⁶⁷

The judiciary on the other hand as a mechanism of guide in the light of the existing laws, has the duty to facilitate the enforceability of the undertakings in the constitution.⁶⁸ Also as an institution of multifunctions which includes; sustenance of constitutional governance, human rights protection, safeguarding and preservation of the value of the constitution, determination of the intent of the lawmakers and interpretation of the constitution and laws generally is its famous function.⁶⁹ Manifestation of individual

section 2 of the Act and the major examinations under the watch of this body is the pre-requisite examination for the award of the O' level Certificate for onward qualification for higher learning.

⁵⁸ It established NECO, WAEC and NCEC are like twins bodies working in collaboration with each other to conduct examinations in secondary schools in Nigeria. The functions of NECO are made more expansively under the Act as contained in section 7 of the Act.

⁵⁹ See the Federal Government of Nigeria, Official gazette, 91(66). Gov. Notice No. 142, Lagos, 2004

⁶⁰ See section 15 (1)

⁶¹ See section 2(1)

⁶² See section 2(2 and 4)

⁶³ See chapter II and IV of the Constitution of the Federal Republic of Nigeria, 1999

⁶⁴ See sections 33-4, chapter IV of the CFRN 1999

⁶⁵ See sections 13 and section 6 (6) (c) of the CFRN 1999

⁶⁶ See Part II, Second Schedule, CFRN 1999

⁶⁷ See section 5 of the CFRN 1999

⁶⁸ See Tim Dare, "The Role of Law and the Role of Lawyers" in Tom Campbell, Jeffrey Goldsworthy, *Judicial Review and Democracy* (USA: Ashgate, 2002) at 372

⁶⁹ See H. Kwasi Prempeh, "Marbury in Africa: Judicial Review and Challenge of Constitutionalism in Ghana" *Tulane Law Review*, (2006); 25 at 5 and 6. See also Chapter V, part I of the Constitution of Ghana, 1999

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and institutional misconduct is noticeable through the power of courts nullifying and declaring such misconducts either ultra vires or unconstitutional and null and void.⁷⁰ The provision of section 13 of the constitution also connotes that the judiciary as an organ of government is empowered by the constitution to perform its above enumerated functions by "observing, and applying" the provisions of the said chapter and give legal effect to it by addressing and adjudicating on any legal issue arising there from.⁷¹ However, in the case of judiciary and its power to attend to and address issues bothering on chapter II of the constitution, section 6 (6) (c) of the same constitution ousted the jurisdiction of the Nigerian court and precluded it from exercising its jurisdiction on issue or question of act or omission by either an authority or person in relation to the Fundamental objectives and Directive of Principles of State policy provided for under Chapter II of the Constitution.⁷²

This noticeable conflict between the provision of section 13 and section 6 (6) (c) which excludes the jurisdiction of the courts on issues bothering on contravention of Chapter II by the government is to the effect that the duty imposed on all organs of government, authorities and persons in section 13 is limited to the extent that the provisions are not enforceable by the judiciary and the executive arm may not comply with the provisions in Chapter II unless and until specific laws have been enacted by the legislative arm for the enforcement of same.⁷³ The legal/judicial challenges facing education has made it practically impossible for the citizens to challenge the government when it fails to give effect to its required obligations contained in chapter II of the constitution. This is due to either the fact that people are ignorant of the government's duty or those who are not ignorant are handicapped by the constitutional limitation. Apart from the constitution, other legislations that provide for the provision of free basic education, such as the Child right Act, the Universal Basic Education Law, the Teaching Service Commission Law are leaneature of the International Instruments which obligated every member state, which Nigeria is one, to provide free basic education.⁷⁴ Therefore, on the face value of the constitution, particularly under chapter II of the constitution, it is obvious that the law mandated the government to provide free basic education by the use of the word "shall" in section 18.

From this perspective, the law is clear as to what is expected of the government in the provision of free basic education.⁷⁵ However, there is always a problem as earlier stated that there is no legal or judicial remedy if the government fails to fulfill these obligations as the government can neither be challenged nor compelled by any authority including the court of law to fulfill same.⁷⁶ It suffices to say that the law on education in Nigeria is inadequate, this is because, if chapter II of the constitution cannot be enforced, how much more can other laws be enforced, these are laws which ordinarily derive their legitimacy from the constitution itself.⁷⁷ The import of this is that, if the UBE, CRA and other laws say government at all levels must provide free basic education⁷⁸ and the constitution says if the governments fail to provide same it goes to no issue.⁷⁹ This simply means there is conflict between the provision of the constitution and other laws and definitely the constitution prevails as the mother of all other laws, and on the principle of supremacy of the constitution.⁸⁰

⁷⁰ See David S. Law, "A Theory of Judicial Power and Judicial Review" 97 *Georgetown Law Journal* (2009), at 13

⁷¹ See section 13 of the CFRN 1999

⁷² See section 6 (6) (c) of the CFRN 1999

⁷³ See Akande

⁷⁴ See Fawehinmi G, *People's Right to Free Education (At All Levels)* (John West Publications Ltd., Lagos 1974) at 1.

⁷⁵ Section 18 (1-3) of the CFRN 1999, also See section 15 (1) of the Child Rights Act

⁷⁶ See *Uzonkwu v Ezeonu II* (1991) 6 NWLR (pt 200) 708 at 761-762

⁷⁷ See section I(3) of the constitution which provides for the supremacy of the constitution and any law in Nigeria that contains any provision(s) that are at variance with the provision of the constitution will be null and void subject to their inconsistency with the constitutional provision

⁷⁸ See section 15 (1) of the Child Rights Act

⁷⁹ See section 13 read along with section 6 (6) (c) of the CFRN 1999

⁸⁰ See section I (3) of the CFRN 1999

Several efforts have been made to raise legal issues on the legal status of Chapter II of the constitution before the Nigerian courts. Litigants are found in some cases taken in court pleading the issue of education where Nigerian courts declined jurisdiction on the ground of non justiciability as contained in chapter II of the constitution.⁶¹ The principle of law upon which the courts based most of their decisions and the attitude of declining jurisdiction is "mister clause" as explained in section 6(6) of the constitution. The enforceability of educational right and other issues in chapter II of the constitution have been questioned in Nigeria. It has therefore been argued that non justiciability of provisions in chapter II is inimical to educational development in Nigeria.⁶² However, the struggle for the justiciability of educational right in Nigeria has gained international recognition, as what looks like a favorable improvement in this regard happened in the case of *ABUJAH v. Federal Republic of Nigeria and Others*.⁶³ This case was filed before the ECOWAS court for the recognition and enforcement of the citizen's right to education. The Federal Government raised preliminary objections regarding the jurisdiction of the court to entertain such matter but was overruled. The Federal Government through the UNIA later argued in the substantive matter that, education is a mere directive policy of the government and not a legal right entailed to by the citizens. While the plaintiff argued per contra, it relied at the end of the proceedings by the court that since Nigeria is one of the signatories to the international conventions (ICCPR, UDHR, ICESCR). It has become a commitment on Nigeria as a member to fulfill the obligations therein and is duty bound to implement the articles contained in the covenants. The court therefore decided that the right to education contained in chapter II of the Nigerian constitution can be enforced before the court of law. Consequently, the learned counsel to the plaintiff remarked after the judgment saying;

This is the first time an international court has recognized citizen's legal right to education, and sends a clear message to ECOWAS member states, including Nigeria and indeed all African governments, that the denial of this human right to millions of African citizens will not be tolerated.⁶⁴

Ordinarily, this ought to be a relief but the relative question is whether the ECOWAS court's judgment will be binding on Nigeria or how would effect be given to such judgment. Obviously, the judgment is yet to have any positive effect in Nigeria in any manner, this is because the government has deliberately refused to give recognition to the said judgment, this is as a result of the government's position on the matter from inception by challenging the court's jurisdiction but it is the hope of Nigerians that a government will come that would be responsive and responsible towards enforcing the said judgment.

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 discussed as follows;

a. Political challenge

The first among other prevailing challenges is the political challenge. It could be sum up as lack of political will, meaning, there is no political will from the political class (governments) to making education available and accessible to the Nigerian children. This is evident by the government's neglect of the education sector in Nigeria. Usually, provision of education is one of the items on the priority lists of the

⁶¹ See G.N. Okeke, C. Okeke, The Justiciability of the Non justiciable Constitutional policy of Governance in Nigeria, IOSR Journal of Humanities and Social Sciences (IOSR-JHSS) Vol. 2, issue 6 2013 at 1, also the case of *Unions v. Ezeonu II* (1991) 6 NWLR (pt 200) 538 at 761-762, see also G.N. Okeke, Fundamental Objectives and Directive Principles of State policy: A Viable Anti Corruption Tool in Nigeria, unpublished, available at ...

⁶² See Imam Tamm M.K., "Challenges of Sustainable Development in Nigeria: Legal Perspectives", in Egbewole W.O., Eudaye M.A., Ogburng A.O., *Law and Sustainable Development in Africa*, (Al-Fatah Publications Ltd, Ikorin 2012) at 116.

⁶³ ECWACJ/APP/00038 delivered on 27th October 2009.

⁶⁴ See Imam Tamm M.K., "Challenges of Sustainable Development in Nigeria: Legal Perspectives", in Egbewole W.O., Eudaye M.A., Ogburng A.O., *Law and Sustainable Development in Africa*, (Al-Fatah Publications Ltd, Ikorin 2012) at 116.

campaign manifesto of all the political parties while seeking political offices. Promises of making education free, available and accessible is normally the ultimate in their respective campaign agenda. Unfortunately, none of the parties that came to power have given effect to or fulfill the campaign promise of prioritizing education as contained in their manifesto.⁸⁵ It is obvious that the efforts of the government in providing free basic and secondary education in Nigeria is grossly inadequate both in term of legal and policy framework. The neglect of education by the government could be seen from how poorly the government has been financing the sector in Nigeria and through the corrupt practices that has eaten deep into the education sector unchecked.

b. Financial challenge

Lack of political will as stated above is one of the reasons for the failure and refusal of the government to cater appropriately for the provision of education in Nigeria. This can be deduced from the budgetary policy of the government.⁸⁶ Financial stability of a sector determines its success. Failure of successive government to fulfill their political campaign promises in the area of education simply indicates that the governments have failed to prioritize provision of education and this attitude reflects in their respective budgetary allocations for the education sector.⁸⁷ Financing education is a major problem within the political challenges, this is because in Nigeria, the education sector has a very low margin of allocation in the government budget and this has been a recurrent thing.⁸⁸ Despite the UNESCO recommendation that all member states that are signatory to the international covenants are legally committed to allocating 26 percent of their total annual budget to the education sector of their respective states particularly the developing nations,⁸⁹ Nigerian governments do not place much emphasis on the premium on education sector. It is noteworthy that such percentage may not be adequate enough to cater for education; this is because education has been seen as the foundation of other sectors that any government strives upon. But despite this fact, it has been observed that no government tenure in Nigeria has earmarked through its budget, reasonable percentage that can cater for the education sector, despite unending demand by the stakeholders, pressure groups and NGOs.⁹⁰

Consequently, Nigerian governments have woefully failed to fulfill this obligation and this has always had a spillover effect on the existing insufficient and inadequate educational facilities in the educational institutions, resulting in the schools being either underequipped or not equipped at all, many schools are

⁸⁵ F. Nnabugwu, "May Day: NUT Calls for UNESCO's 26% Budget to Education", Vanguard, 2 May 2013. <http://www.vanguardngr.com/2013/05/may-day-nut-calls-for-unescos-26-budget-to-education/> (Accessed on 18 May 2015) See political parties Manifestos, M.A. Umar, Interview with the Author, Maiduguri, Borno State, 10 November, 2014

⁸⁶ See O. Michael, Adequacy of Budgetary Allocation to Education in Nigeria, Pakistan Journal of Business and Economic Review, Vol. 3 Number 1, 2012 at 145

⁸⁷ C. Abah, "Budget: Still a Drop in the Ocean for Education", Punch, 11 January 2015. <http://www.punchng.com/education/budget-still-a-drop-in-the-ocean-for-education/> (Accessed on 18 May 2015)

⁸⁸ See Nigeria budget allocation to education from 1999 to 2014

⁸⁹ See also C. Abah, "Budget: Still a Drop in the Ocean for Education", Punch, 11 January 2015. <http://www.punchng.com/education/budget-still-a-drop-in-the-ocean-for-education/> (Accessed on 18 May 2015), see also UNESCO, Funding Gap for Education growing, According to New Figures Released by UNESCO, available at <http://www.unesco.org/new/en/education-services/in-focus/articles/funding-gap-for-education-growing-according-to-new-figures->

understaffed; educational facilities are not available and student/teacher ratio is very high in the beyond imagination. This has equally accounted for the truncation of academic sessions of schools every now and then, as there is hardly a year in Nigeria that Nigerian students will not sit for months, all because the stakeholders in the education sector (lecturers, teachers and students) are fighting for one educational right or the other, and since they cannot challenge the government in court on education, they always fight their course by sitting at home.

c. corruption

Corruption within the government is another major problem affecting the provision of education in Nigeria. Corruption has been institutionalized within the Nigerian government⁹¹ so much that it becomes the order of the day.⁹² It is an endemic within the government functionaries and the education administrators in particular.⁹³ This is because the meager allocation allotted to education in the budget is not usually get to the source where it would be utilized⁹⁴ and this greatly precludes the effective implementation of the already existing policy particularly the Universal Basic Education Policy and National policy on Education generally.⁹⁵ This particular policy proposes the provision of free compulsory basic education to all Nigerian children.⁹⁶ However, poor leadership, lack of misplacement of priority and corruption did not allow proper implementation of the same as the available fund is not judiciously and appropriately utilized.

d. socio-cultural and religious challenges

In addition to the above explained problems, socio-cultural and religious factors are other major challenges of the development of education in Nigeria. This is one of the factors preventing people from challenging the government's failure to provide education. It has been observed that in some parts of the country especially the eastern part, the majority of the tribe there do not believe so much in the education of male child. They rather believe that a male child should rather engage in entrepreneurship activities to make money for the family. Also the socio-cultural practice of the people of the northern part of the country is another, where there is misunderstanding and misapplication of some religious doctrines resulting in the notion that, Western education is a prohibition to a Muslim (Boko Haram). This concept of boko haram has been observed to be an ancient perception hundreds of years back, it is dated to the arrival of the missionaries in Nigeria where the new system of education was been used as a mechanism

⁹¹ See M.A.O Aluko, *The Institutionalization of Corruption and its Impact on Political Culture and Behaviour in Nigeria*, *Journal of African Studies* 11 (3), 2002, 393-402 at 393.

⁹² See O.R. Kayode, *Corruption in Nigeria: An Appraisal*, *Journal of Law, Policy and Globalization* Vol. 19, 2013 at 42.

⁹³ G. U. Osimen, T. S. Adenegan, A. Balogun, *An Assessment of Corruption in the Public sector in Nigeria: A Study of the South Local Government Area, Ondo State*, *Canadian Social science*, Vol. 9, No. 5, 2013, 87-97 at 87. See also O.O. Adegboye, S.T. Akindele, O.A. Aluko, B. Agesin, *Institutionalizing the Culture of Accountability in Local Government Administration in Nigeria*, *African Journal of Political Science and International Relations* Vol. 6 (4), 2012, 81-91. Also relevant is I.K. Moku, E. Yusuf, *The State and Political corruption in Nigeria: An Anatomy of a Pervese Pathology*, *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Vol. 19, Issue 7, Ver. VI, 2014, 17-24 and M. M. Ogbeyi, *Political Leadership and Corruption in Nigeria Since 1960: A socio-economic Analysis*, *Journal of Nigeria Studies*, Vol. 1, No. 2, Fall 2012.

⁹⁴ C. Abah, "Budget: Still a Drop in the Ocean for Education", *Punch*, 11 January 2015, <http://www.punchng.com/education/budget-still-a-drop-in-the-ocean-for-education/> (Accessed on 18 May 2015) where COEASU President was quoted to have said that the decline in the sector is not surprising, but further noted that the country has yet to meet the UNESCO requirement, the little budgeted for does not get to the appropriate institutions.

⁹⁵ A. Abayonu, "Stakeholders split over UN Report on Nigeria Education", *Vanguard*, 16 April 2015, 4 May 2015.

convert people to Christianity.⁹¹ Meanwhile, Islamic education was deeply rooted in the people as at that time, hence the people resisted the introduction of western education in the north.

e. security challenges

The consequential effect of the socio-cultural and other factors discussed above on education in Nigeria definitely be narrowed minded, and illiterate persons are prone to violence due to their uncivil mind. This has manifested in Nigeria, right from the time the country returned to civil rule. The country has been managing various security challenges. For example, there was the Odua Progressive Congress (OPC) from soon after that was subdued, the Niger/Delta Militants sprang up, when that was conquered by the introduction of amnesty for them by the late Yar'adua administration, the Boko Haram terrorists emerged which eventually degenerated to the extent of taking over and having full control of not less than 24 local government areas in three different states of the northern part of Nigeria, namely; Maiduguri, Yobe and Adamawa.⁹²

The security challenge had adversely impacted on education, instances are the drastic drop in the school children attendance, destruction of the available physical infrastructures. This is evident by series of terrorist's acts of bombing of schools and killing of innocent school children. The famous abduction of over 200 female secondary school girls for since 2014 is another instance, which led to the slogan "bring back our girls" through which the majority of the citizens accused the government of either complicity in the abduction and/or negligence on the part of the government. As a result of this challenge and heinous act of terrorism, parents find it unsafe to send their children to school in the country particularly in the volatile areas.

9. Conclusion and recommendations

International, regional instruments on human rights and local enactments made provision of primary and secondary education a priority duty of the state. It was discovered through the analysis of law and policy that education is not recognised as fundamental human right in Nigeria as the same is not contained in the constitution. Consequently, it is discovered through the above that the features of right to education have not been fulfilled in Nigeria because, the law and policy framework on right to education in Nigeria is not adequate enough to ensure the protection of the children's right to education. Constitutional amendment is hereby recommended for the inclusion of right to education in the bill of right under chapter IV, also the general review of the national policy on education and machineries should be put in place for proper implementation of the policy and enforcement of the existing law. Lastly corruption should be fought to stand still to enhance accountability and checks and balances in the management of education in the country.

⁹¹ See Adebayo Rafiu Ibrahim, *Muslim Educational Reform in Southwestern Nigeria* (ed) B. A. Umar, S. Shehu, Mu. U. Mahamfathi, Muslim Educational Reform Activities In Nigeria (Kano, Benchmark Publishers Limited, 2005), at 130 where the main object of the missionary education was quoted as put by Boyd and King as follows "The church undertook the business of education not because it regarded education as good itself but because it felt it could no longer do its own work properly without doing its adherents, and especially its clergy, as much of the formal learning as was required for the study of the sacred writings for the effective performance of its religious duties"

⁹² Ibid 134, the consequence of the refusal of the northerners to accept Western education was emphasized by Sir Ahmadu Bello the premier of the northern region while addressing a group of students at the London Constitutional Conference in 1957. Where he was quoted saying "we are now paying the penalty for the reluctance of our forebearers to accept modern education methods. But it has been a good lesson to us and has made us strive to greater efforts to make up for this lost time"

⁹³ Ibid, H and Anwar, K. . "41 days to Election: 13 Local Governments under Boko Haram". *Daily Trust*, 4 January 2015. www.dailytrust.com.ng/sunday/index.php/news/19241-41-days-to-elections-13-local-govts-under-boko-haram (Accessed on 29 May 2015). Also reported by Wallis, W. "Boko Haram Squeezed as Nigeria offensive gathers pace". *The Financial Times*, 18 March 2015. www.ft.com/intl/cms/s/0/1b65fe9e-cd56-11e4-9144-feab7de.html#9xzz3bRyt4z5v (Accessed on 29 May 2015).