Reinventing the Wheel and Salvaging the Girl Child: Can the Maputo Protocol Provide a Bulwark?

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Abstract

Often times than not Violence against the Child (VAC) is conceptualized in its physical form. However, this article argues that denial of access to quality education is a pathway that enshrines violence against the child. It projects that a reliance on the Maputo Protocol can provide a veritable bulwark. It is thus argued that Article 10 (3) of the Maputo Protocol that require States to ensure preference to social development in general as opposed to military spending will ensure that basic education provides the basis for the girl child empowerment. It is noted that if the aspirations of the Maputo Protocol would be realized, then access to quality basic education is a prerequisite. In addition to article 10, it is argued that Article 12 of the Maputo Protocol must be promoted beyond the present rhetoric of African States by ensuring that the needed funds are committed to the education of the girl child especially at the basic education level. The paper advances the need for Article 10 (3) to be implemented with Article 12 as a major focus. A proper adherence to Article 10 (3) will ensure the delivery of quality basic education by the proper allocation of needed resources to basic education. To achieve this, the life skill component of basic education must be well entrenched to empower the girl child; teacher welfare improved and provision of necessary sanitary situations that inhibit access to the basic education needs of the girl child eliminated. In addition, it is advanced that gender based perspective to basic education curriculum is important to eliminate issues of Violence against the child that is normally presented as discrimination, inequality and disrespect for women. The paper concludes by reiterating that States have an obligation to fulfil its protective mandates in ensuring that basic education meets its goals of ensuring respect of the individual and benefit of the society by allocating required funds to the basic education sector. The paper shall be divided into five parts. Part one deals with introduction; part two addresses the conceptual framework of basic education; part three examines the provision of articles 10(3) and 12 of the Maputo Protocol and its pivotal role to the realization of other rights set forth therein; Part four considers the effect a non-gender sensitive curriculum has on perpetrating violence against children and also the benefits of a deliberative approach by starting the discussion of gender empowerment early. Finally, part five shall deal with conclusions and recommendations on how a gender sensitive curriculum can be achieved.

Keywords: Girl Child, Education, Maputo Protocol, Violence

1.0 Introduction

Education is a concept that transcends schooling within the formal structure of an academic institution. While from the perspective of the West, education represents structured progress from early childhood to adulthood. In the African concept education was a means of life through which a child progresses looking forward to people directly ahead for inspiration and provision of solution for the community.[1] According to Berg, "education in common usage represents merely the delivery

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[1] For diverse concepts and perception of education from an African Perspective see generally AB Fafunwa *History of Education in Nigeria* (George Allen & Unwin London 1974); Hansungule M & Onuora-Oguno AC *African Perspective*

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of knowledge, skills and information from teachers to students… education could also be described as the process of becoming educated".[2] The definition as presented by Berg presents the nuanced nature of defining the concept of education. Within the African philosophical and the Western philosophies terrain the existence of education in Africa prior to the advent of the colonial powers remains an unsettled issue. The conflict between African education and Western education as argued by Fafunwa creates a huge suspicion. Fafunwa opines that education as conceptualized by the West targeted a remodelling of existing ideologies by Africans. In the Nigeria situation, Fafunwa highlights the suspicion created in the minds of the Islamic populated Northern region of Nigeria.[3] The major attribute of education as passed down by colonialist suggests the hugely Eurocentric models that sought to derail African identities.[4] However, it is important to note education presents an opportunity for enhancing any society and rather than delve into the friction as to the nature and content of African or Western education, recourse should be had to the provision of quality education.[5]

It is underscored that African education was targeted more at the boy child as opposed to the girl child. The African community concentrating more on the education of the male child relegated the education of the girl child to the background. In most situations this level of discrimination was more tied to customary practices that placed more relevance on the male child as against the girl child.[6] This was not different from the host of discriminatory and inimical norms that graced the life of a woman starting from girlhood. Women were seen more as chattels, burden bearers and reproductive instruments. They had no contribution to the means of the development of the community as they were meant to be seen and not heard. It is restated however, that the cruel treatment that women passed through was not peculiar to Africa but generally all over the world.[7] Thus with this understanding, it is suggested in the paper that the time to ensure the empowerment of women in Africa is now by eliminating all forms of inequality and discrimination that is attendant in the basic education landscape.

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of Education: A catalyst for the desired Africa of tomorrow? Presented at Thabo Mbeki Advanced Leadership Institute August 2013.

[2]Berg, Don. "Definition of education." *Attitude to Learning Theory* (2012).

[3]AB Fafunwa *History of Education in Nigeria* (George Allen & Unwin London 1974); for further discuss on the challenges between the Western education and African education see generally Hansungule M& Onuora-Oguno A.C "*African Perspective of Education: A catalyst for the desired Africa of tomorrow*?" Thabo Mbeki Book Series on African Renaissance, Thabo Mbeki African Leadership Institute, University of South Africa, Johannesburg, South Africa (Acceptance email received January 20 2014); W Ogundele *Wipe Your Feet on It. Yes it's Kente: Armah's Anatomy of Colonial Education in Nigeria* 194-213 (2008) *Papers in English and Linguistics* Vol 9; J Kenyetta *Facing Mount (1979Kenya)*
128.http://www.unisa.ac.za/contents/colleges/docs/TMALI%20Book%20Series%20Outline%20(2).pdf

[4] Grace Bunyi 'Rethinking the place of African indigenous languages in African education' (1999) 337–350Int. J. of Educational Development 19.

[5] Grace Bunyi 'Rethinking the place of African indigenous languages in African education' (1999) 338Int. J. of Educational Development 19.

[6]Azubike C Onuora-Oguno'Enhancing Women's Rights in Nigeria- Customary Law vs Statutory Law' in Layla Al-Zubaidi, Paula Assubuji and Jochen Luckscheiter (eds) *The Perspective, (*Heinrich Boll Stiftung e.V., Cape Town, South Africa 2013).

[7]For a detailed insight into the challenges that confront the education of the girl child see generally Chikezie Anyanwu& Azubike C Onuora-Oguno 'Ten Years of the AU Protocol on the Rights of Women in Africa: An Overview of The girl child access to Basic Education in Africa'www.equalitynow.org/sites/.../MaputoProtocol_JourneytoEquality.pdf accessed March 10, 2017.

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It was based on the new developments and growth of human rights that a recognition of women's right grew. By way of international reaction to these challenges, the Convention on Elimination of all Forms of Discrimination against Women (CEDAW); Convention on Marriageable Age and International Labor Organization (ILO) seeking to protect the rights of women,[8] came into place. As observed by Ogbaji, the growth of the Convention on Elimination of all forms of Discrimination against Women (CEDAW) represents the heightened efforts to curb the various existing cum entrenched discrimination suffered by women in Nigeria.[9]

However, it is observed that despite the emergence of the various legal instruments that enshrines the protection of the rights of women and the girl child, a huge gap continues to exist. This is aptly captured by Plan International in its report, it was found that:[10]

> First, while legislation for girls' and women's rights continues to progress, these improvements are often fragile, and are not matched by implementation on the ground, as we will see during the course of this report. Second, while there has been a major international emphasis on girls' and young women's education and labour-force participation, this is not enough. There is inconsistent or a lack of discussion of the structural impediments to gender equality in education and in the paid labour force. Unpaid care work and domestic labour continue to trump girls' greatest efforts in school and threaten their future in the workplace. Third, the investment and support given to individual girls and young women needs to be matched by an emphasis on collective transformation, and attitudinal and behavioural change from adults. This involves genuine commitment at all levels.

Following the call for greater respect for the rights of women and particularly the girl child on the African continent, the Protocol to The African Charter on the Rights and Welfare of Women (African Women Protocol) was agreed to.[11] Majority of African states signed and ratified the treaty establishing the hope for a better realization of the right of women. The emergence of the African Women Protocol represented a new hope for the enhancement of the rights of women and the girl child on the African continent. According Nsibirwa, "the Draft Women's Protocol may be considered an African instrument which has gone further than the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)".[12] The African Women Protocol indeed holds a huge promise for the enhanced protection of women in Africa; this position is further reiterated by Onuora-Oguno when he opines that the provisions of the Charter could provide a viable ground for the elimination of the menace of early marriage in Nigeria.[13]

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[8] See for Instance International labor Organization Convention 189.

[9] Ogbaji Udochukwu AO, UNCEDAW, Women Rights and Enforcement Compliance in Nigeria: The South-South Experience (1999-2010) https://www.academia.edu/4239224/UNCEDAW_WOMEN_RIGHTS_AND_ENFORCEMENT_COMPLIANCE_IN_NIGERIA_THE_SOUTH-SOUTH_EXPERIENCE_1999-2010_?login=chivida_2000@yahoo.co.uk&email_was_taken=trueaccessed March 7 2017.

[10] PLAN INTERNATIONAL Because I am a Girl the State of the World' s Girl s 2014 Pathways to Power: Creating Sustainable Change for Adolescent Girls http://www.plan.org.au/~/media/Documents/Research%20and%20Reports/Because_I_am_a_Girl%20The%20State%20of%20the%20Worlds%20Girls%202014%20Pathways%20to%20Power.ashxaccessed March 11 2017.

[11] The Protocol was adopted on 11 July 2003 and entered into force on November 25, 2005 at Maputo upon ratification of the required 15 states of the African Union.

[12] Martin S Nsibirwa 'A brief analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women' (1 Afr. Hum. Rts. L.J. 40 2001).

[13] Onuora-Oguno AC 'Constitutionalising the Violation of the Right of the Girl Child in Nigeria: Exploring Constitutional Safeguards and Pitfalls' http://ohrh.law.ox.ac.uk/constitutionalising-the-violation-of-the-right-of-the-girl-child-in-nigeria-exploring-constitutional-safeguards-and-pitfalls/accessed March 7 2017.

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It is based on the provisions of the protocol that this paper investigates the *modus* of realizing women empowerment through access to quality basic education. It is further argued that this will lead to enhancement of quality and elimination of discrimination. The issue however is whether the conventions are enough to properly eliminate the discriminatory tendencies. Discriminatory tendencies as conceptualized include acts that relegate women to the background as inferior to men.[14]The Convention on Elimination of all forms of Discrimination against Women in article 1 defines discrimination against women as 'any distinction, exclusion or restriction made on the basis of sex...on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'. Article 10 thereof further provides that 'States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure equal rights with men in the field of education'.

It is against this background that the aspiration of the Maputo Protocol to ensure that funds are directed specifically to the enhancement of the education of the girl child to curb discrimination is advanced.

The successes and failures of the various interventions will be critically examined and this will be reflected in the recommendations. The following section of the paper will examine the conceptual framework of basic education with a particular reference on the girl child and the challenges faced.

2.0 The Conceptual Framework of Basic Education

The emergence of the term basic education is synonymous with primary education in certain quarters.[15] It is noted that the International Covenant of Economic Social and Cultural Rights (ICESCR) makes reference to the concept of primary education. It provides specifically that:[16]

> The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
>
> 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
>
> (a) Primary education shall be compulsory and available free to all;

The centrality of education is further captured in the Universal Declaration of Human Rights when it is provided that:[17]

> Everyone 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.

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[14]See generally Chikezie Anyanwu& Azubike C Onuora-Oguno 'Ten Years of the AU Protocol on the Rights of Women in Africa: An Overview of The girl child access to Basic Education in Africa' www.equalitynow.org/sites/.../MaputoProtocol_JourneytoEquality.pdf accessed March 10, 2017.
[15]Arendse L 'The obligation to provide free basic education in South Africa: an International law perspective' (PER / PELJ 2011) ; Aluede ROA J. 'Universal Basic Education in Nigeria: Matters Arising' 97(Hum. Ecol.2006).
[16]Covenant on Economic Social and Cultural Rights, Article 31. Emphasis supplied.
[17]Universal Declaration of Human Rights, Article 26 (1), Emphasis supplied.

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The emergence of the term basic education is largely assumed to be the outcome of the World Conference on Education that held in Thailand.[18]The focus of the meeting that eventually metamorphosed into what is known today as the Jomiten Declaration comprised of about 155 countries examining the importance of primary education and eventually coming up with a "The Framework for Action to Meet the Basic Learning Needs defined targets and strategies to meet the basic learning needs of all by the year 2000".[19] The emergence of the term basic therefore represents the intrinsic nature of the concept of education as conceived by the General Comment (GC) No 13.[20]

According to Unagha, the first attempt to conceptualize primary education in Nigeria was a direct product of the National Policy on Education 1977; however, a re-launch of the initiative by the Obasanjo administration in 1999 adopted the term basic education. [21] Igoh on describes the adoption of the term basic education in Nigeria as an "off shoot of international collaboration".[22] Basic education therefore ideally represents the early stages of the education of a child.

However, occasioned by poor quality in education and the learner inability to show some extent of literacy and numeracy, some countries have expanded the scope to include the early stages of tertiary education. For instance in Nigeria, basic education was originally grounded on the 6-3-3-4 system of education but presently it represents the 9-3-4 system. Some states in Nigeria are attempting a restructuring to 3-6-4. The Osun State of Nigeria however operates a totally different pattern and structure which is classified as elementary, middle and high school.[23] The question of the scope of basic education still remains unsettled within the South African jurisdiction with issues of age or duration being the proper determinant.[24]

Despite the controversies, an important factor that influences the extent of basic education is its content and the numeracy and literary ability of pupil. This has led to concepts like adult basic education.

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[18] www.unesco.org/education/pdf/11_93.pdf (accessed March 13 2017

[19] http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/the-efa-movement/jomtien-1990/ (accessed February 27 2015).

[20] Paragraph 1 of the GC provides that "Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence". See generally http://www.refworld.org/docid/4538838c22.html (accessed February 27 2017).

[21] Amanze Onyebochi Unagha 'Implementing Universal Basic Education (UBE) through the Strategic Provision of School Library Services' accessed February 27 2017.

[22] Nicholas Ogbogo Igoh 'Reappraising Universal Basic Education (Ube) Programme for Functionality and Self Reliance: Issues and Challenges' http://www.globalacademicgroup.com/journals/qualitative%20education/REAPPRAISING%20UNIVERSAL%20BASIC.pdf accessed February 28 2017.

[23] See generally http://osun.gov.ng/education/delineation-of-schools/ accessed March 7 2017.

[24] Skelton A, 'The Role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law' 6 (De Jure 2013); V Calderhead 'The right to an "adequate" and 'equal' education in South Africa: An analysis of s.29 (1) (a) of the South African Constitution and the right to equality as applied to basic education'. (Section 27 and Equal education 2011).

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It is however, instructive to note that the reliance on nomenclature[25] of either primary or basic is least important as the goals set forth are more germane. This position is reiterated by the key outcomes of the Jomtien declaration which among others included:[26]

i. Universal access to learning
ii. A focus on equity
iii. Broadening the means and the scope of basic education
iv. Enhancing the environment for learning and
v. Strengthening partnerships by 2000

A closer look at the "emphasis on learning outcomes" points the concept of quality education. Thus, the overall challenge remains the question of quality. According to the former UN Special Rapporteur on Education, he argued that education must be measured in terms of availability, accessibility, affordability and adaptability.[27]

Considering the question of access and affordability, vulnerability comes to mind. While the statistics on out of school children is enormous and worrying for Sub-Saharan African countries, the girl child is unarguably more disadvantaged. Factors that inhibit her access to education include though not limited to paucity of funds-poverty, transportation, feeding; security challenges; cultural bias; religious philosophy and unavailability all leading to poor completion rate.

2.1 Conceptualizing Quality Education Framework

According to Faure as captured in the United Nations Educational Scientific Cultural Organisation (UNESCO) report, the concept of quality education could be summarily referred to as a core aspect of social change which is synonymous to "the eradication of inequality and the establishment of an equitable democracy".[28] Furthermore in the same report, UNESCO aligning with the views of Pigozi describes quality basic education as:[29]

> ... learning is perceived to be affected at two levels. At the level of the learner, education needs to seek out and acknowledge learners' prior knowledge, to recognise formal and informal modes, to practise non-discrimination and to provide a safe and supportive learning environment. At the level of the learning system, a support structure is needed to implement policies, enact legislation, distribute resources and measure learning outcomes, so as to have the best possible impact on learning for all.

[25] I have further argued in another place that nomenclature should not overshadow the efforts of Nigeria to evolve a quality education with effective and measurable outcomes. See generally Hansungule M & Onuora-Oguno A.C Beyond Nomenclature: Special Education or Inclusive Education: Advocating Quality Basic Education Global Alliance for Justice Education, India, 2013. http://www.gaje.org/azubike-onuora-oguno/accessedMarch10, 2017

[26] http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/the-efa-movement/jomtien-1990/accessed February 27 2017.

[27] K Tomaševski *Removing obstacles in the way of the right to education Primers No 1* (2001).

[28] UNESCO's conceptualization of quality: a framework for understanding, monitoring and improving education quality http://www.ibe.unesco.org/fileadmin/user_upload/COPs/Pages_documents/Resource_Packs/TTCD/sitemap/resources/1_1_3_P_ENG.pdfaccessed February 27 2017.

[29] UNESCO's conceptualization of quality: a framework for understanding, monitoring and improving education quality http://www.ibe.unesco.org/fileadmin/user_upload/COPs/Pages_documents/Resource_Packs/TTCD/sitemap/resources/1_1_3_P_ENG.pdf accessed February 27 2017.

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In addition, quality is further envisaged to encompass a robust and effective education system and structure. This is captured by UNESCO in the General Education Quality Analysis/ Diagnosis Framework (GEQAF) when it found that:

> ...The key premise of GEQAF is that equitable delivery good quality education and effective learning experiences requires robust and well-functioning education systems...This Framework adopts a comprehensive and systemic approach to education and acknowledges the reality that accountability to deliver quality education and to effectively facilitate learning lies at all levels and in all aspects of a general education system...

Despite the above positions, it is noted that the definition of the concept of quality education remains a nuance just as the definition of defining education as a concept. Quality education according Luong have been approached from two major paradigms- human rights and human capital approaches; summarily, quality is envisaged to summarily, quality is envisaged to "Secure equal social status and foster equal opportunities of self-realization for all".[30]

Consequently, from the foregoing quality as envisaged in this paper covers the scope of access, availability, adaptability and acceptability.[31]

The above, recognised as the 4A's of education, represents the core content of basic education. In examining the core content of quality education, Cooman has found that there is need to ensure the ease of access and availability of education facilities to all.[32] In addition, the central places of adaptability and acceptability have also been expounded to be very pivotal in measuring to what extent an educational framework will be said to be qualitative. A central theme that runs through the above concepts enshrines the importance of ensuring that all factors capable of obstructing the education of the girl child are eliminated.

According to Anyanwu and Onuora-Oguno, all inimical customary practices;. unfriendly sanitary situations and poverty among other factors continue to obstruct access to education of the girl child and ultimately the enhancement of equality.[33]

The next section of the paper will now examine the various education law and policy in Nigeria.

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[30] Minnh Phuong Luong & Wolfgana Nieke 'Conceptualizing quality education from the paradigm of recognition' 18(Journal of education and practice 2014); see also generally for authors opinion on the two approaches AC Onuora-Oguno & M Hansungule 'Making the path by walking: education as a human right or human capital' paper presented at the World Congress of Constitutional Lawyers, University of Oslo June 2014 http://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws4/w4-hansungule&azubike.pdf accessed March10 2017; see also K Tomasevski, 'Globalizing What: Education as a human right or as a Traded Service?' 30 (Indiana Journal of Global Legal Studies 2005).

[31] For a detailed discussion on the concept see generally K Tomasevski 'The right to education report submitted in accordance with Commission resolution 2002/23, mission to Indonesia', 1-7 July 2002. E/CN.4/2003/9/Add.1 4 November 2002; S Woolman & B Fleisch 'On the right to an 'Adequate' basic education in S Woolman & B Fleisch (ed) *the Constitution in the classroom, law and education in South Africa1994-2008 109* (PULP 2009).

[32] F Coomans 'Clarifying the Core Elements of the Right to Education'http://www.uu.nl/faculty/leg/NL/organisatie/departementen/departementrechtsgeleerdheid/organisatie/onderdelen/studieeninformatiecentrummensenrechten/publicaties/simspecials/18/Documents/18-03.pdf accessed March7 2017.

[33] Anyanwu C&Onuora-Oguno (2013) AC An Overview of the Girl Child Access to Education in Africa in Kombo BA, Sow R & Mohamed FJ (eds)*Ten Years of the AU Protocol on the Rights of Women in Africa: An Overview of The girl child access to Basic Education in Africa 74*(Equality Now on Behalf of Solidarity for African Women's Rights (SOAWR), coalition, African Commission on Human and Peoples'Right and Make Every Woman Count (MEWC), Nairobi, Kenya (www.equalitynow.org/sites/.../MaputoProtocol_JourneytoEquality.pdf).

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3.0 Education-Law and Policy

Starting from the global paradigm, right to education is a fundamental human right.[34] It is described as an intrinsic right with ability of transforming an individual to greater aspiration in the society.[35]Education has inherent potential to change the fortunes of a girl to contribute meaningfully in the society and also ensure respect of human dignity. According to Witcher:[36]

> ... Investing in women and empowering women lifts entire families, communities and countries out of poverty. Studies, using cross-country regression, typically find that female education has a larger impact on economic growth than male education...These outcomes not only improve the quality of life of women and families but also foster economic growth. Economic benefits of addressing and reducing barriers to women's education and engagement in the workforce can be substantial...

Similarly, the positive impact of education on the girl child is further captured by Moghadam by restating the effect education has on women taking control of their reproductive rights, economic and emotional stability.[37]

On the African continent, the human rights frameworks advocates for education as an aid to proper appreciation of the wellbeing of the society via the individual.[38] In addition, it advocates for education to be a means of preservation of the culture and identity of a people.[39]According to Woolman:[40]

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[34]Despite the fact that economists have continued to contend the human rights nature of the right to education, the position adopted in this paper follows the argument of scholars that have found that due to the intrinsic nature of the right to education it is a core fundamental human right. See generally K Tomaševski *Removing obstacles in the way of the right to education, Right to educationPrimers 12* (INO 2001) ; KD Beiter *The Protection of the Right to Education by International Law* (Martinus Nijhoff2006).

[35]See generally John Dewey 'Democracy and Education- Education as a Necessity of Life'http://www.gutenberg.org/files/852/852-h/852-h.htmaccessed February 27 2017; National Advisory Committee on Creative and Cultural Education All Our Futures: Creativity, Culture and Education available at http://sirkenrobinson.com/pdf/allourfutures.pdfaccessed February 27 2017.

[36]Jackson L Witcher 'Educate the Women and You Change the World: Investing in the Education of Women Is the Best Investment in a Country's Growth and Development' http://files.eric.ed.gov/fulltext/EJ870099.pdfaccessed February 27 2017.

[37]Valentine M. Moghadam'Modernizing Women: Gender and Social Change in the Middle East' 135 (Lynne Rienner, United States 2003).

[38]The Various African human rights instruments remain the only human rights treaties that place obligations on an individual. For instance the African Charter on Human and Peoples' Rights (ACHPR) in chapter two places duties on individuals towards the realization of the rights enshrined in the Charter. Similarly the African Charter on the Rights and Welfare of the Child also places obligation on the African parent in article 20. Article 31 thereof further places obligations on the child, it provides: Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty; (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need; (b) to serve his national community by placing his physical and intellectual abilities at its service; (c) to preserve and strengthen social and national solidarity; (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society; (e) to preserve and strengthen the independence and the integrity of his country; (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity. It is argued that the obligations that are placed on the African child cannot be met without education and therefore the importance of state parties to ensure that equality is enhanced and discrimination eliminated if the obligations will be met.

[39]The debate between the existence of several concepts in African continues, for instance the existence of human rights in Africa or purely a Western concept, existence of African philosophy among other concepts. See generally the

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> ...The relationship between education and national development in Africa continues to be a question of critical concern in many countries. Education should function as an agency of cultural transmission as well as change; it should also reflect the dynamic process of nation building that is continually being modified by new conditions. The school's effect on culture and its role as a conveyer of culture are issues of great political sensitivity in most countries. Although early European nation-states evolved as the political expression of one culture, most countries today include people of many cultures. Most African states, for example, have high levels of cultural and linguistic diversity. This situation presents many challenges for schools, which are expected to cultivate a common national spirit and unity. Some obvious questions that are asked in many nation-states are whether and how diversity can coexist with unity. Another issue is whether national values can ever have as deep a significance as the moral and social foundations of any particular culture...

The above opinion of Woolman receives strong credence from the position of the African Cultural Charter. The adoption of the Charter is premised on the conviction that "education should edify African cultural values" consequently aside a continues link of education and cultures, it is provided that "the adaptation of educational curricula to development needs and to the National and African Cultural and Social realities;"[41] furthermore it advocates "the introduction of African Culture into all national educational systems;".[42]

In both the global and regional paradigms, education is a fundamental right. This is supported by the fact that education:[43]

> satisfies a basic human need for knowledge, provides a means of helping to meet other basic needs, and helps sustain and accelerate overall development. Another important role of education lies in the fact that it helps to determine the distribution of employment and income for both present and future generations. And education influences social welfare through its indirect effects on health, fertility and life expectancy.

In most countries, various domestic laws and policy enshrine the right to education. In Nigeria, section 18 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for education. In South Africa, section 29 of the Constitution provides for the right to education. The major difference between the two constitutions above is that while the right to education is justiciable in South Africa and treated with an immediate realization approach, Nigeria sees it as an aspiration.[44] Also, the role of the courts in adjudicating the management of resources set out for education purposes in terms of promoting access and availability is well secured in South Africa,

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following works: Josiah A. M. Cobbah 'African Values and the Human Rights Debate: An African Perspective' 309 (Human Rights Quarterly 1987).

[40]David C. Woolman 'Educational reconstruction and post-colonial curriculum development: A comparative study of four African countries'(International Education Journal 2001).

[41]African Cultural Charter Article 1 (c).

[42]African Cultural Charter Article 2 (a).

[43]Otive Igbuzor, 'Financing quality basic education in Nigeria'http://www.gamji.com/article6000/NEWS6345.htm accessed March6 2017.

[44]The notion of justiciability of the right to education in Nigeria as well as other socio economic rights have remained within the academic space. Several scholars have argued that the situation should not be seen as no longer non justiciable with the availability of jurisprudence that can be relied on. See generally Egbewole W.O & Onuora-Oguno A.C 'Beyond the Horizon: Justiciability of the Right to Education, Towards an Independent Judiciary' African Network of Constitutional Lawyers, University of Lagos, May 2012; C Mbazira *Litigating Socio-Economic rights in South Africa: A choice between corrective and distributive justice* (PULP 2009); 'D Olowu 'Human Rights and the Avoidance of Domestic Implementation: The Phenomenon of Non-Justiciable Constitutional Guarantees' 69(Sask. L. Rev. 2006); D Olowu *An integrative rights-based approach to human development in Africa* (PULP 2009).

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but not in Nigeria.[45] For instance, in the case of *The registered trustee of the Socio-Economic Rights and Accountability Project (SERAP)* V *the Federal Republic of Nigeria and Universal Basic Education Commission (UBEC),*[46]the myth about non justiciable of the right to education in Nigeria was lifted by the ECOWAS court. A major factor that was identified in the case as a major catalyst in inhibiting access to education was corruption. While the corruption is a hydra headed monster affecting every sector of the Nigerian existence, it has plagued the education sector greatly.

It is noted that the main reason for the disparity in approach towards the role of the judiciary in enforcing the right to basic education is shrouded in the mystery of financial and competing economic constraints on the executives. A perusal of the global laws on this issue shows the need for a drive towards a progressive realization of the right to tertiary education but mandatory nature of primary education.[47] This was the platform upon which the Maputo Protocol paid special attention to the issue of finance of basic education. The next section of the paper analyzes the Maputo Protocol provisions on the economic aspect of education in African countries.

3.1 Article 10(3) and 12 of the Maputo Protocol

Two important premises informed the Maputo Protocol. One was the underlining commitment to ensure women participation in Africa's development and the other was the need to take concrete steps towards the realization of the human rights of women especially with eliminating all forms of discrimination and gender based violence.[48]

The violations identified above can be eliminated if the right to basic education is realized for the girl child.[49] In realizing the urgency and importance of this, the Maputo Protocol proceeds to provide in articles 10 (3) that:

> States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

An underlying concept in the provision above speaks to the need to ensure that expenditure is enhanced in social rights like education. As a follow up on the right, article 12 specifically speaks to the realization of the girl child to education. States Parties shall take all appropriate measures to among others 'eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training'.

3.1.1 Military expenditure versus education expenditure

In the case of Nigeria, a major question that arises especially in the present face of the *book haram* insurgence is whether the military budget should be reduced in favour of education budget. Before discussing the two paradigms, a brief concept of a budget is outlined below.

It is important to state that a budget is 'a framework within which nations and individuals align with a practical set of processes and procedures to meet specific goals'.[50] The importance of a

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[45] See generally A Skelton 'How far will the courts go in ensuring the right to a basic education?'(SAPL2012).

[46] Suit No: ECW/CCJ/APP/12/07; Judgment No: ECW/CCJ/JUD/07/10.

[47]See generally R Howard 'The full-belly thesis: should economic rights take priority over civil and political rights? Evidence from Sub-Saharan Africa' in C Heyns & K Stefiszyn (eds) *Human Rights, Peace and Justice in Africa: A Reader* (Pulp 2006); KD Beiter *The Protection of the Right to Education by International Law* 606 (Martinus Nijhoff2006).

[48]See the preamble to the Maputo Protocol.

[49] Onuora-Oguno A.C 'Enhancing Women's Rights in Nigeria- Customary Law vs Statutory *Law' the Perspective* (Heinrich Boll Stiftung.2013).

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budget therefore is measurable by the effective impact it has on sectors like education, health and general infrastructural development. It is therefore practicable to imply that the present low quality of basic education in Nigeria represents poor budgetary implementation and financing of the basic education sector in Nigeria.

According the parliamentary definition of a budget in South Africa, a budget could be defined as"...an annual plan for what government wants to achieve and how it will spend money to achieve those goals. It is the most important economic instrument of the government. It is used to:[51]

I. make sure that the state has the resources it needs to do its work

II. create conditions which stimulate economic growth

III. clearly indicate the priorities of government

From the above functions of a budget, an instructive position of the authors is on "creation of conditions which stimulate economic growth". It is our position that the neglect of education in Nigeria from inception contribute immensely to the present challenge of the *boko haram* menace. It is argued that, if proper educational curriculum has been embarked on at least from the point of Nigerian independence Nigeria may have stood a chance to avoid the present security challenge.

Considering the present situation in Nigeria and the emergence of the *boko haram* group,[52] arguments have been brought forward on the need to increase funding of military operations as against education. It is however argued that the proliferation of arms and violence in the Nigeria state is traceable to long years of neglect of building a quality education system.[53] Leadership failure, insensitivity and poverty are equally responsible.

Boko haram in its literal interpretation represents the rejection of the values of Western education. Since its inception, attacks have been targeted on educational facilities. The girl child has remained the most vulnerable in this circumstances culminating in the adoption of the over 200 Chibok girls. While it is not apt to claim that lack of education is solely responsible for the activities of the *boko haram* sect, it is our informed opinion that it contributes hugely to growth of the insurgency. What remains unarguable is the negative impact of the *boko haram* menace on the Nigerian education sector.[54] Thus, it is our submission that a nation must invest *ab initio* on its

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[50] 'The Challenge of Nigeria budget Implementation' http://www.hallmarknews.com/2013/the-challenge-of-nigerias-budget-implementation accessed March 12, 2017.

[51] http://www.parliament.gov.za/content/9Parliament%20and%20the%20Budget.pdf accessed March 10 2017.

[52] It is to be noted that the Boko Haram have claimed responsibility on the killing of several school children in North Eastern Nigeria. The sect rejects the concept of Western Education, for details on the activities of the sect on education in Nigeria see generally the following; Schools Shut to prevent Boko haram attacks: Nigerian government closes colleges after 43 students were shot and hacked to death in suspected boko haram attack http://www.aljazeera.com/news/africa/2014/03/schools-shut-prevent-boko-haram-attacks-20143615264765350.html accessed March 3 2017; Olokor 'F Boko Haram stops 15,000 pupils from schooling ...destroys 200 schools'http://www.punchng.com/education/boko-haram-stops-15000-pupils-from-schooling-destroys-200-schools/accessed March 10 2017; Nigeria states closes school amidst fear of boko haram attacks http://www.theguardian.com/world/2014/mar/18/nigeria-state-closes-schools-fears-boko-haram. accessed March 3, 2017.

[53] Alele Williams 'Comments during the Education Summit of Channels TV Nigeria, March 2014'.

[54] Boko Haram's impact on Nigeria Education in crisis http://www.economist.com/blogs/baobab/2014/05/boko-harams-impact-nigeriaaccessed February 28 2017;
Boko Haram beyond Nigeria: Girls' education under threat http://www.aljazeera.com/indepth/opinion/2014/06/boko-haram-nigeria-education-20146363912922864.htmlaccessed February 28 2017; NIGERIA: School attendance down

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budget therefore is measurable by the effective impact it has on sectors like education, health and general infrastructural development. It is therefore practicable to imply that the present low quality of basic education in Nigeria represents poor budgetary implementation and financing of the basic education sector in Nigeria.

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[50] 'The Challenge of Nigeria budget Implementation' http://www.hallmarknews.com/2013/the-challenge-of-nigerias-budget-implementation accessed March 12, 2017.

[51] http://www.parliament.gov.za/content/9Parliament%20and%20the%20Budget.pdf accessed March 10 2017.

[52] It is to be noted that the Boko Haram have claimed responsibility on the killing of several school children in North Eastern Nigeria. The sect rejects the concept of Western Education, for details on the activities of the sect on education in Nigeria see generally the following; Schools Shut to prevent Boko haram attacks: Nigerian government closes colleges after 43 students were shot and hacked to death in suspected boko haram attack http://www.aljazeera.com/news/africa/2014/03/schools-shut-prevent-boko-haram-attacks-20143615264765350.html accessed March 3 2017; Olokor 'F Boko Haram stops 15,000 pupils from schooling ...destroys 200 schools'http://www.punchng.com/education/boko-haram-stops-15000-pupils-from-schooling-destroys-200-schools/accessed March 10 2017; Nigeria states closes school amidst fear of boko haram attacks http://www.theguardian.com/world/2014/mar/18/nigeria-state-closes-schools-fears-boko-haram. accessed March 3, 2017.

[53] Alele Williams 'Comments during the Education Summit of Channels TV Nigeria, March 2014'.

[54] 'Boko Haram's impact on Nigeria Education in crisis http://www.economist.com/blogs/baobab/2014/05/boko-harams-impact-nigeriaaccessed February 28 2017;
Boko Haram beyond Nigeria: Girls' education under threat http://www.aljazeera.com/indepth/opinion/2014/06/boko-haram-nigeria-education-20146363912922864.htmlaccessed February 28 2017; NIGERIA: School attendance down

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education system so as to ultimately ensure that the above stated objective of national budget is achievable.

Despite the above position, it is further submitted that the Nigerian governments has a huge challenge in ensuring the protection of the Nigerian child within the school environment so as to ensure the enhancement of education.[55]

Consequently, the need to find a balance between military spending and education budgeting must be a central focus of the Nigerian Government. According to Omojimite:[56]

> From the perspective of a developing country like Nigeria, the military is placed at an advantage in resources allocation than the education sector for the following reasons. First, security is considered a necessary requirement for the development of the various sectors of the economy including education. Second, the security chiefs have direct access to the presidency – a relationship which they could exploit to their advantage in presenting request for addition resources. Teachers do not have such direct access to the presidency. Third, the presidency is likely to be more sympathetic to the requests of the military as a strategy to dissuade them from military coups.

The identified pattern in Omojimite's view represents the influence of the military in governance in Nigeria. Consequently, from the wake of the post-civil war era in Nigeria to the long years of military dominance and involvement in governance in Nigeria, the challenge of preference of military spending above educational spending continues to loom large.

In the views of Adebiyi and Oladele in assessing the positives and negatives of higher spending in military against education sector, they found that:[57]

> ...Not only is this inversion of the financial pyramid not equitable, it is also not efficient. Particularly in the poorest developing countries, where primary education has been most neglected, the social rate of return on investing in basic education is high. In addition to high returns, investing in primary education has the advantage of bringing government closer to the people it serves while simultaneously giving people greater control over their own lives and a basic institution of the communities in which they live...

The above findings aligns with the authors views that an early investment devoid of corruption in Nigerian basic education would have evolved a regime that is able to curb the menace of various militia groups and ultimately the *boko haram* insurgence.

The position of international law as represented by UNESCO, however, is that 26% of national budgets should be set aside for the funding of education. Despite the above obligation; Nigeria is yet to decrease military spending in favour of driving an enhanced spending on

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after Boko Haram attacks http://www.irinnews.org/report/95327/nigeria-school-attendance-down-after-boko-haram-attacksaccessed February 28 2017.

[55]This challenge is also faced by other countries, for instance theUnited States of American is also opined tospend more on defense than they spend on education. However, sharp contrast that exists in the two examples is that the states also contribute a great sum in the funding of education in the United States which has been argued to be able to make up for the perceived deficit in the Federal spending. See generallyDo Americans Care More About War than Education? http://www.forbes.com/sites/erikkain/2011/04/17/do-americans-care-more-about-war-than-education/accessed February 28 2017.

[56]Ben U. Omojimite 'Education and Defence Spending in Nigeria: Implications for Economic Growth' 59 (Journal of Educational and Social Research 2012).

[57] Michael Adebayo Adebiyi, & Oderinde Oladele 'Public Education Expenditure and Defence Spending in Nigeria: An Empirical Investigation' http://www.saga.cornell.edu/saga/educconf/adebiyi.pdfaccessed February 28 2017.

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education, a perusal of budgets in Nigeria from 1999 up until 2013 shows that only about 8% have been allocated to the entire education sector in the country.[58]

This is not just a violation of the obligation under the Maputo Protocol but also the Dakar framework on education that advocates for at least 20% funding of education in a country.[59]

Having examined the military versus education expenditure debate, the need of further investing in curriculum reformulation is discussed with the aim of asserting how it enhances the aspirations of the Maputo Protocol.

3.1.2 Maputo Protocol and Eliminating Discrimination in Basic Education Curriculum

The beginning premise of this section is to underscore the import of the need to ensure that the curriculum of basic education eliminates all forms of stereotypes against the girl child while empowering them.[60]Discrimination against the girl child is envisaged to present in different forms. For instance, any factor which limits the ability of a girl child to access education would be tantamount to discrimination. Thus in this regard issues of sanitary conditions will come to the fore. It is therefore important to ensure that the sanitary conditions of the schools are in proper condition to assist the accessibility of the girl child.

As already highlighted, existence of inimical cultural practices and religious philosophies contribute largely to the content of discrimination against the girl child in education parlance. All state parties to the Maputo Protocol and CEDAW remain under obligations to ensure that all forms of factors that limit the enjoyment of rights to education as well as other rights by the girl child are eradicated.[61] The Maputo Protocol is intrinsically linked to education as enshrined in General Comment No 13 of Convention on Economic, Social and Cultural Rights (CESCR) that advances the vital role education plays in the realization of all rights.

From the foregoing, it is submitted that a sure means of ensuring that elimination of discrimination against the girl child in Nigeria is achieved is by an enhanced financing of the basic education. The next section of the paper discusses this concept.

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[58]Nigeria ranks lowest in the analysis of education funding in sub-Saharan Africa, see generally L. Ezeuwa, J N Oruwari and O. R. Simobi 'Funding pattern as a major education dilemma in Africa: the Nigerian experience'http://www.globalacademicgroup.com/journals/world%20educators%20forum/FUNDING%20PATTERN%20AS%20A%20MAJOR%20EDUCATION%20DILEMMA%20IN%20AFRICA.pdfaccessed February 28 2017; Nigeria: Funding - Don Seeks Implementation of 26 Percent Education Benchmark http://allafrica.com/stories/201502110767.html accessed February 28 2017.

[59] Budgetary allocation to education sector http://www.slideshare.net/statisense/budgetary-allocation-to-education-sector accessed March 3 2017. For further insight into budgetary performance and allocation of funds to basic education in Nigeria see generally 2013, 'How the states fared with basic education in Nigeria' http://dailyindependentnig.com/2014/01/2013-how-the-states-faired-with-basic-education/ accessed March 3 2017.

[60]Tamale Sylvia bemoans the continued stereotype character of basic education curriculum in Uganda and other parts of sub-saharan Africa, she is of the opinion that the unchanged mindset of the teachers continues to entrench the age long culture of suppression of women starting from the girl child (conversation during lecture on gender at the centre for human rights, University of Pretoria, March 28, 2014).

[61] Raising her voice: Implementing the Protocol on the Rights of Women in Africa: Analysing the Compliance of Kenya's Legal Framework http://fahamu.org/images/MaputoProtocol.pdf accessed February 28 2017; Human Rights Watch: No way Out Tanzania's obligation under international law http://www.hrw.org/ru/node/130123/section/10accessed February 28 2017; The girl child http://www.un.org/womenwatch/daw/beijing/beijingat10/L.%20The%20girl-child.pdfaccessed February 28 2017.

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4.0 Financing Education: Enhancing quality of the Girl Child

One major question about financing education is who should finance education? The argument has always been whether the cost of education should be borne by government or by individuals receiving education. There has been a lot of debate about cost of education especially on who should bear the cost.[62] The question of the source of funding of education has been described to be a major responsibility of the government.[63] As have also been shown in the examined international law instruments, State parties are under obligation to ensure legislative and other measures to deliver quality education to the girl child.

In Nigeria, a major legislative attempt in ensuring that education is available is the enactment of the Universal Basic Education Act (UBE Act).[64] According to Labo-Poopola *et al*, despite the existence of several policies on education, the UBE Act represents a bold step by the government of Nigeria to drive the implementation of basic education.[65] Etuk *et al* describe the UBE Act as "one of the social policies of government used in strengthening and improving the wellbeing of her citizens".[66] It is our informed opinion that the prospects of the UBE Act enshrine the provision of education with very specific concerns for the girl child. However, despite the claims that the implementation of the programs and aspirations of the Universal Basic Education Commission (UBEC) show that the increased access to education for girl child has been achieved, there is need to ensure proper funding of education as this will indeed engineer the desired results.[67]

To achieve the above desired effect of education on the girl child, government funding must take into cognizance major areas. For the purposes of this paper, two areas are considered.

4.1 Adequate budgeting towards change in stereotypes and pedagogy

The basis of achieving change in stereotypes and pedagogy is to ensure a transformative education system.[68] The concept of transformative education advocates for a system of education in which the child is seen as the object of education and not the subject.[69]It is noted that:[70]

> fulfilment of individual and collective rights to quality education for children, youth and adults, a cornerstone in the fight against poverty and in the development of social justice and sound democracies. Educated citizens constitute a pivotal prerequisite for an active and legitimate civil society capable of driving social change towards a more transparent and accountable democratic society and sustainable pro-poor economic growth.

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[62]Otive Igbuzor, 'Financing quality basic education in Nigeria'http://www.gamji.com/article6000/NEWS6345.htmaccessed March 11 2017.

[63] , K Tomasevski, 'Globalizing What: Education as a human right or as a Traded Service?' 30 (Indiana Journal of Global Legal Studies 2005).

[64]Universal Basic Education Act 2004.

[65]See generally Labo-Popoola SO, Bello AA and Atanda FA 'Universal Basic Education in Nigeria: Challenges and Way Forward'http://www.medwelljournals.com/fulltext/?doi=sscience.2009.636.643accessed February 28 2017.

[66] Etuk, Grace Reuben, Ering, Simon Odey Ajake and Uchenna Egodi 'Nigeria's Universal Basic Education (U.B.E.) Policy: A Sociological Analysis' 179 (American International Journal of Contemporary Research 2012).

[67]See some of the achievements of UBEC http://ubeconline.com/index2.phpaccessed February 28 2017.

[68]Uganda have already embarked on this with intents of driving an enhanced basic education, see generally Gender Responsive Pedagogy for Primary Schools in Uganda http://labeuganda.org/resources/Gender%20Responsive%20Pedagogy%20for%20Primary%20Schools%20in%20Uganda.pdfaccessed February 28 2017.

[69] K Tomaševski 'Removing obstacles in the way of the right to education' 1 (Primers 2001).

[70]IBIS Global Education for Change Strategy 2012-2017 http://ibis.dk/sites/default/files/PDF%20global/Strategies/education_for_change_strategy_ibis_2012-17_eng.pdf accessed February 28 2017).

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An important aspect of this approach is to ensure that learning environment is friendly to the girl child. Education must be channelled in an environment that enhances the dignity of the girl child. Government must ensure that sanitary conditions that will not violate the privacy of the girl child are adequately provided. Also the stereotypes where girls are used as burden bearers- fetching water from streams; sweeping and general sanitation in schools must also be eliminated.

In most local schools in Nigeria for instance, the girl child still does such chores as hauling water from far away streams, sweeping the environment to keep it clean while the boy learner is absolved from such. This is against the cultural incline that such duties are the domestic and nature occasioned duties of the girl child in the African Community.[71]

The teaching pedagogy further reinforces discriminatory teachings in schools. The need for teacher re-education and re-learning are important to ensure that literature that reinforces discriminatory appendage to the girl child is expunged from the curriculum is paramount. Funds must be dedicated to ensuring that the old curriculum and its pedagogy are replaced with a more friendly system.

Closely related to the shift in the pedagogy is that of teacher quality. It is important that the orientation of teachers be changed to respect the values of the girl child. It is agreed by the authors that this task can only be achieved by engaging the communities and religious institutions but the role of the government is crucial.[72] The need to invest properly on the restructuring of teacher education in African countries must be followed up in serious and concerted ways in order to stem the continued dropout rates in schools.[73] Funds must be engaged in advocacy and interactions with the various cultural and religious institutions that have the capacity to ensure that respect for the girl child is enhanced.

5.0 Enhanced accessibility and adaptability

Another important aspect of funding of education to assist in building respect for the girl is on ensuring that schools are accessible and adaptable. In the first instance considering the high risk girls face in terms of sexual violence that most times end up in rape and even death, there is need to ensure that the distance to schools are improved.

Furthermore, considering the continued stereotype in homes that sees girls carry out loads of domestic labour before being allowed to school, there is need to empower them in terms of ensuring that the girl child is not an object of child labour. A combination of the poverty and vulnerability of the girl child in several circumstances exposes them to unwanted pregnancies and low completion rates in schools.[74] These situations present the girls child as objects of loose morals in the society and lead to exclusion from schools. In South Africa, the situation of pregnant learners has been an issue attended to by courts. The courts have found that excluding a pregnant learner from school is

[71] Onuora-Oguno AC Problem of Gender Inequality: The Future of the African Woman 142 The Jurist 2004).

[72] Anyanwu C&Onuora-Oguno A.C; Ten Years of the AU Protocol on the Rights of Women in Africa: An Overview of The girl child access to Basic Education in Africa www.equalitynow.org/sites/.../MaputoProtocol JourneytoEquality.pdf accessed March 12 2017.

[73] Awwalu Muhammad Inuwa, Najeemah Bint Mohammad Yusof "Teachers Challenges in Nigerian Public Secondary Schools Climate: Implications on Students Dropouts" 125 (Science Journal of Sociology & Anthropology, 2012).

[74] It is shown statistically that financial burdens accounts for a very high percentage of dropout rates in rates of school children of school going age in Nigeria. See generally 'Nigeria education fact sheet' http://photos.state.gov/libraries/nigeria/487468/pdfs/JanuaryEducationFactSheet.pdf accessed February 26 2017).

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a violation of a learner's right not to be discriminated against and also to education.[75] In the *Welkom Case*[76] the exclusion of a 15 year old learner in line with the school governing body policy was held by the Supreme Court to be a violation of the rights of the learner as enshrined under the 1996 South African Constitution.

If these rights must be achieved, the awareness must as of necessity be created in parents to be able to pursue the realization of the rights and insist on the government committing the perquisite funding to education.[77]

5.1 Judicial restraint fostering girl child discrimination?

Pre-marital sex and resultant pregnancy are seen as violation of moral principles, which attracts different forms of stigmatization from individuals and members of the community. For the student, the chances of expulsion from school increase with unintended pregnancy and this is often a measure to prevent contamination of other students. Therefore, unintended pregnancy is a major cause of termination of studies among females enrolled in secondary school.[78]

The above position illustrates the entrenched discrimination against the girl child learner in the Nigerian basic education sphere. It is conceded that the judiciary is yet to be tested by confronting it with the issue of discrimination based on access to education.[79] It is reiterated however, that caution and restraint by them may suggest decline based on the non justiciability of chapter two rights in the Nigerian Constitution. Aside the perceived restraints on the part of the judiciary, approach from teachers also frustrate the possible use of the courts. For instance, in a research carried out in Delta State of Nigeria, it was found that '96.4% of teachers were of the opinion that the law courts should not be used in redressing school administrative issues'[80]

Increasingly, the girl child continues to suffer shame and discrimination in the circumstances where enhanced funding from the government will better their situation. It is decried that in most circumstances, lack of records of 'girls who drop out of schools to know what becomes of them are not maintained'.[81] Consequently, aside the restraints on the side of the judiciary in inter meddling with issues concerning the funding of the education of the girl child; the role of the judiciary in ensuring that policies on education framework eliminate discrimination is needful.

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[75] *WELKOM HIGH SCHOOL Case* (CCT 103/12 [2013] ZACC 25), The Constitutional Court found that policies that excluded pregnant learners from school violated the learners right to education. full judgement available at http://41.208.61.234/uhtbin/cgisirsi/20130711115128/SIRSI/0/520/J-CCT103-12

[76] [2013] ZACC 25

[77] Peter James Kpolovieand Isaac Esezi Obilor 'Adequacy–Inadequacy: Education funding in Nigeria' (Universal Journal of Education and General Studies 2013).

[78] Onyeka IN & Miettola J et al 'unintended pregnancy and termination of studies among students in Anambra state, Nigeria: Are Secondary schools playing their part? 109 (African Journal of Reproductive Health 2011).

[79] For a discussion on the attitude of the Nigerian judiciary to issues concerning discrimination of women in Nigeria see generally Anaeme FO Reducing Gender Discrimination and Violence against Women through library and information services http://www.webpages.uidaho.edu/~mbolin/anaeme.htmaccessed March 7, 2017; Onuora-Oguno A.C "Enhancing Women's Rights in Nigeria- Customary Law vs Statutory Law" *the Perspective*(Heinrich Boll Stiftung 2013).

[80] Nakpodia ED 'Appraisal of the use of law courts in the administration of justice: A case study of Delta State Secondary Schools, Nigeria' 213 (Journal of Public Administration and Policy Research 2011).

[81] Osulah W 'The Impact of Teenage Prefnancy on School Dropout among Secondary School Girls in Embu Municipality' http://www.grin.com/en/e-book/199931/the-impact-of-teenage-pregnancy-on-school-dropout-among-secondary-school accessed March 7 2017.

6.0 Findings and Conclusions

It is concluded in this paper that there are obvious challenges with the funding of education in African countries. The demand by several sectors of the minimal available resources continues to portend some challenges. It is also concluded that basic education is a fundamental right both under global human rights laws and regional human rights laws. With the call in the Maputo Protocol for enhanced spending on education towards the realisation of the rights of the girl child as against increased military funding, the need to find a balance ensues.

It has also been shown that budgetary allocations in a country like Nigeria continues to waiver, however, the implementation of the available resources continues to portend some serious challenges to increasing the lot child to education and invariably the girl child.[82]

In addition, the importance of ensuring adequate funding of education as a means of ensuring the elimination of discrimination against the girl child is well established. According to Bamisiaye, financing of education has a direct correlation with the level of output that the nation gets in terms of quality human resources.[83]

6.1 Recommendations

From the findings of the paper, it is recommended that if the continued discrimination against the education of the girl child must be enhanced in order to ensure the elimination of discrimination the following must be adopted:

i. The government must increase the funding of education and also ensure proper translation of such budgetary allocations;
ii. Policies that are not in line with Nigerian obligations under the Maputo Protocol and other international law instruments must be brought declared null and void to the extent of such inconsistencies;
iii. An enhanced involvement of the judiciary in ensuring the elimination of discriminatory actions in the school sphere which creates inequality between the girl and boy learners. It is recognised however, that there is need for the engagement of public interest litigation on these issues so as to test the resolve of the judiciary and also develop jurisprudence.
iv. The need to ensure the use of more funding to initiate environmental security- by the provision of good sanitary conditions and learning environment;

[82] 'Declining fortune of education in Rivers state' http://www.nigerianorientnews.com/?p=2779accessed March 10 2017.
[83] Bamisaiye EA 'Qualitative primary and secondary education in Nigeria implications for implementation' http://unilorin.edu.ng/journals/education/ije/feb1983/QUALITATIVE%20%20%20PRIMARY%20%20AND%20%20SECONDARY%20%20EDUCATION%20%20%20IN%20NIGERIA%20IMPLICATIONS%20FOR%20IMPLEMENTATION.pdf accessed March 12 2017.

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Finally, it is recommended that the role of basic education in enhancing equality and elimination of discrimination among the girl child in Nigeria will be achieved with the prerequisite funding and respect of obligations under international human rights laws.

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