



The Justiciability of Right to free Basic Education Conundrum in Nigeria, South Africa and India: from Obstacle to Miracle

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Abstract: The right to free basic education is guaranteed under the national, international and regional laws. While many states protect the right to education in their Constitutions in form of fundamental right, which is enforceable in courts, others, including Nigeria, do so in form of directive principle of the state policy which is perforce, unenforceable. Its non justiciability has constituted an obstacle, making its realization a smokescreen. A global monitoring report by UNESCO Education for All on sub-sahara Africa indicated that about 33 million children of school age are still not enrolled in school in the region. Nigeria, together with six countries reportedly had more than one million out-of-school children while several million adults are also illiterates. This paper therefore, examined the legal framework for the right to basic education in Nigeria, appraising the applicable domestic, regional and international instruments. The paper also applauded the recent breakthroughs recorded by Nigeria through judicial interventions. The author drew comparative lessons from South Africa and India and consequently proffered recommendations towards the actualization of the said right.

Keywords: Human right; International law; Judicial activism; Fundamental objective

1. Introduction

There is a growing international recognition of the universality, independence and indivisibility of human rights. The United Nations World Conference on Human Rights held in Vienna in June 1993 emphasized the need for its recognition². This buttressed the stance that all human rights should apply to all persons at all times

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² Vienna Declaration and Programme of Action' (12 July, 1993) UN Doc. A/ CONF.157/23, Art 5.

without distinction. It also means that political, economic, social and cultural differences cannot and should not be used as an excuse for the denial or violation of human rights (Mubangizi, 2004). In the African context, the African Charter on Human and Peoples' Rights¹, places some measures of emphasis on the universality of rights and recognizes in its preamble that 'the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.' It is perturbing that despite the foregoing, civil and political rights tend to be the focal point of human rights violations in most African countries, though in Africa, economic and social rights are the daily concerns of most people.

Economic and socio-cultural rights depict that every person must be offered conditions under which they can meet their required needs for survival and enjoyment of life (Brand, 2005, p. 1). These rights include the right to education, food, housing, work and social security *inter alia*. They are especially relevant for the vulnerable and disadvantaged groups in the society as they help to, as much as possible, bridge the equality gap between the rich and the poor (Shehu, 2013, p. 102). These rights are protected under the international and regional human rights instruments requiring member states to respect, protect and fulfill them.

The right to free basic education is guaranteed in international and regional laws. The South African Constitution enshrines the right to education in the Bill of Rights chapter of the Constitution. The courts in South Africa have held that the right to free basic education establishes an affirmative obligation on the state to provide a range of educational resources, including schools, classrooms, teachers and textbooks². In India, the right to education was added to the Constitution in a 2002 amendment. The Constitution³, now obligates the government to provide free and compulsory education to all children between the ages of six and fourteen years, although the government may determine the manner in which such free and compulsory education is provided. The Nigerian Constitution provides that it shall be the responsibility of the government to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels⁴, it shall provide science and technology⁵, it shall strive to eradicate illiteracy, and to this end, government shall, as and when practicable, provide free, compulsory and universal

¹ Also known as the Banjul Charter (adopted 17 June 1981, entered into force 21 October, 1986).

² Section 29 (1) of the South African Constitution 1996.

³ Article 45 of the Indian Constitution 2002.

⁴ Section 18 (1) of the 1999 Constitution of the Federal Republic of Nigeria, Cap. C 23, LFN 2004 (as amended) (hereinafter referred to as CFRN 1999).

⁵ Section 18 (2) CFRN, *Ibid*.

primary education; free secondary education; free university education; and free adult literacy programme¹.

However, towards the actualization of the right to education, the right must be effectively implemented at the national level through the adoption of constitutional provision, legislation and policies. The debate, in respect of which so much intellectual stamina has been applied, revolves around the twin questions as to the status of right to education and the justiciability or enforceability of the right. In other words, there is the recurring question of whether socio-economic right (of which right to education is a specie), are rights, the breach of which will attract legal repercussions. The problem of status entwines with more intractable question of whether the courts can entertain a complaint on a breach of such right (Nwatu, 2012, p. 10).

Inasmuch as many states protect the right to education in their Constitutions in the form of fundamental right, which is enforceable at law², others do so in form of a 'directive principle of state policy' which constitutionally obligates the government but is perforce unenforceable: (Olowu, 2006, pp. 39-78; Olowu, 2007, pp. 91-107; Miamingi, 2009, p. 7). The Nigerian Constitution falls into the latter category. The Constitution, in its chapter II, provides for the right to education in form of directive principle of state policy which has been described by Oni & Oyewo as a locomotive engine without lubrication, given the effect of section 6 (6) (c) of the 1999 Constitution. (Oni & Oyewo, 2019, p. 244).

Despite its universal recognition as a fundamental right, the realization of the right to education remains a chimera, in the developing countries because of its non-justiciability³. The guarantee of the right to education, especially for girls and women, remains a distant goal for millions of individuals throughout the world, especially in sub-Sahara Africa. Also in Nigeria, millions of school age children have no access to any kind of basic educational services while several million adults are also illiterates out of which almost two thirds are women (Dall, 1995, p.143). According to Coomans, it is a common place to say that everyone has a right to education (Coomans, 2007, p.183). However, it is a matter of common

¹ Section 18 (3) (a) and (b) CFRN, Ibid.

² The South African Constitution of 1996 also falls into this category. It's chapter 2 provides for the right to education as a fundamental right.

³ At the dawn of the century, 875 million of the world's citizens are illiterates. One out of every five children aged 6 – 11 in developing countries - an estimated 113 million – is not in school, 60% of them are girls. Nine countries; Bangladesh, Brazil, China, Egypt, India, Indonesia, Mexico, Nigeria and Pakistan (E9) – are home to 70% of the world's illiterates. See 'UNESCO Education for All: An Achievable Vision'. (UNESCO, Paris, 2000), 3.

knowledge that there is a big gap between the right to education laid down by international texts and the persistence of some disenchanting realities.

Govindjee and Taiwo have expressed concern that sub-sahara Africa still has a large number of out of school children and illiterate adults. This position is at variance with the aim of the MDGS in ensuring that children in the world are able to access good quality education at all levels by 2015 (Govindjee & Taiwo, 2012, p. 127). It is perturbing that Global Monitoring Report on sub-sahara Africa gave a huge figure of about 33 million children of school age still not enrolled in school in the region. In this figure, Nigeria, together with other six countries, reportedly had more than one million out-of-school children¹. It is also worrisome to discover that the quality of education is poor, with millions entering schools but not learning enough to meet their basic learning needs (Dall, 1995, Ibid). It is observed that the link between access and success is weak in Nigerian schools².

Sequel to the foregoing, it is the aim of this work to evaluate the framework for the realization of the right to free basic education in Nigeria from the perspective of the efficacy of the existing framework. It is observed that most of the existing studies on free basic education in Nigeria have focused on the adequacy or otherwise of constitutional and statutory protection of the right to education generally. However, this study is aimed at shifting focus to free basic education specifically, with a view to examining the mechanisms for the enforcement of the existing protections and the effectiveness of the approaches so far. The paper is divided into six parts. The first part is the introductory segment where the problem is identified and the statement of the problem is discussed. The introductory part also encapsulates the conceptual clarifications. The second part traces the historical background of the right to education. The author delved on the legal framework for right to basic education in part three, thereby appraising the domestic, regional and international instruments. In the fourth part, the paper reviews the judicial interventions towards the implementation and actualization of the ideals of the right to free basic education in Nigeria. In the fifth part, the paper endeavours to draw lessons from South Africa and India through statutory and judicial mechanisms, while the paper concludes in the sixth part with proffered recommendations.

¹ Others are Burkina Faso, Cote d'Ivoire, Ethiopia, Kenya, Mali and Niger.

² See DFID Document on Education in Nigeria. <http://www.dfid.gov.uk/document/publications/PSA/E.pdf>> accessed on 08 August 2019.

1.1. Conceptual Clarifications

For the purpose of this study, we shall clarify three major concepts viz: human rights, basic education and justiciability.

1.1.1. Human Rights

Human rights are neither new ideologies nor new phenomena. They are rights to which every human is entitled by virtue of his or her humanity (Chengwe, 2000, p. 241). Human rights precede the ancient Greek philosophies and while it existed before the two great world wars, they were however brought to the fore and became subject of serious discourse after the gory events of the World War II (Akingbehin, 2018, p. 366). The trio of John Locke, Thomas Hobbes and Jean Jacques Rousseau postulated that human beings were once in a state of nature, by which time, according to Hobbes, life was solitary, poor, nasty and short (Ibidapobe, 2005, p. 30). Consequently, due to the insecurity of their lives and properties, the citizens surrendered the enforcement of their rights to the king (sovereign) in return for protecting them (Akingbehin, 2017, p. 3).

Without necessarily entering into the definitional obfuscation of ‘human rights¹,’ it suffices to say, for the purpose of this paper, that ‘human rights’ are basically, rights which inhere in every human person by virtue of common humanity. Human rights are both natural and universal. This assertion receives lesser clarification when we draw a distinction between human rights and legal rights. Human rights have their source in natural law and therefore, they are not the gift of any authority or government. However, human rights may be crystallized by positive laws or legal instruments (Cranston, 1973, p. 5; Eze, 1984, p. 5).

Human rights, are therefore, not restricted to any particular brand of rights but an amalgamating phrase which captures both civil and political rights on the one hand and social, economic and cultural rights on the other hand. However, contemporary human rights scholarship has adopted the taxonomy of ‘human rights’.² Typical example of social, economic and cultural rights is the right to education. Owing to the nature of the second generation rights, they are referred to as ‘positive rights’ because they require affirmative government action for their realization. Some authors have styled them welfare rights, right of credit or security oriented rights. (Nwatu, Ibid, p. 24).

¹ Such definitions have always reflected ideological, emotive and intellectual prejudices of the definers and have to be either too wide or too narrow.

² The four broad classifications of human rights are: civil and political rights (first generation rights), social, economic and cultural rights (second generation rights) rights to development in peace and justice (third generation rights) and emerging or penumbra rights (fourth generation rights).

1.1.2. Right to Education

Within the context of this work, education is the development of the physical, the mental and the religious power; and without which there will be ignorance, illiteracy and manifold problems for the government to solve¹. Education is very crucial for any government or societal development. Hence, the future of any country depends on the level of education (Malemi, 2012, p. 106).

The right to education is central to human, social and economic development and it is a tool for development of full potential of human beings and ensuring human dignity generally. Education as an empowerment tool means that the right to education is a means to attain other fundamental human rights. The General Comment No. 1² of the UN Committee on the Right of the Child, in Article 29 of the Child Rights Commission (CRC), captures the essence of the right to education when it stated, *inter alia*:

... the education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence³.

Education is crucial to ensuring human dignity of all individuals and the objectives of having a right to education is the actualization of the individual's rights and dignity. The objective also entails amongst other things, fostering physical and cognitive development, allowing for the acquisition of knowledge, skills and talents, contributing to the realization of the full potential of the individual, enhancing self-esteem and increasing confidence, encouraging respect for human rights, shaping a person's sense of identity and affiliation with others. It also enables socialization and meaningful interaction with others⁴. The meaningful development of the individual and the attainment and enjoyment of other fundamental human rights is therefore, impossible without education.

¹ Brown v. Board of Education, 347 US 483 1954, Badejo v. Federal Ministry of Education [1996] 8 NWLR (Pt. 464), 15, S.C., Ukaegbu v. A. G. Imo State [1983] 1 SCNLR 1.

² This comment was adopted by the Committee on the Rights of the Child at the Twenty-sixth session, on 17 April, 2001.

³ Para 2, General Comment No. 1 [2001], Article 29 (1): The Aims of Education, CRC/GC/2001/1, 17 April, 2001, available online @ <<http://www.ohcr.org>>page>article29(1)> accessed 12 December, 2019.

⁴ UNESCO's *Right to Education Handbook*. <https://www.unesco.org>> accessed 12 December, 2019.

Basic education therefore connotes the period of study/schooling between the first year in the primary school and the end of junior secondary school. This period spans through nine years¹. However, some instruments define basic education with reference to age i.e. period between the ages of 6 – 14 years². It is therefore the intendment of the author to construe basic education as used in this research work as expressed above.

1.1.3. Justiciability

Justiciability simply mean enforceability. It is an integral condition precedent of a matter put to a court of law for resolution of all forms of controversies³. It also refers to the amenability issues presented for adjudication before judicial or quasi judicial body⁴. Consequently, the courts can only ensure that the state is held accountable for its actions in accordance with the domestic, regional and international human rights obligations, if the citizen rights are enforceable. Justiciability also refers to the ability to claim a redress before an impartial court or tribunal when infraction of a right has occurred or is likely to occur. It implies access to justice and accountability. Justiciable rights grant right-holders a legal cause of action to enforce them whenever the duty-bearer does not comply with his or her duties.⁵ The existence of a legal remedy is to be understood both in the sense of providing a procedural remedy upon the infraction of a right or an imminent violation of same, and the process of awarding adequate redress to the victim. These are the defining features of a full-fledged right⁶.

Justiciability is the extent to which a court can exercise its judicial authority. The Supreme Court of Nova Scotia (Canada) in the case of *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*⁷ offered a comprehensive definition of justiciability in the following words:

...justiciability may be defined as a set of judge-made rules, norms and principles, delineating the scope of judicial intervention in social, political and economic life. In court, if a subject matter is held to be suitable for judicial determination, it is

¹ See section 15 (1) of Universal Basic Education Act 2004, where ‘Basic Education’ is defined as early childhood care and education and first nine years of the formal schooling.

² See Article 21A of Indian Constitution where basic education is defined in terms of education provided for a child who is between the age of 6 – 14 years old.

³ <<http://www.duhaime.org/legaldiscovery/J/.aspx>>accessed 29 January, 2020.

⁴ <<http://www.right-to-education.org/issue-page>>accessed last 20 January 2019.

⁵ <<http://www.academia.edu/5185441/>>the justiciability of the fundamental objectives and directive principles of state.

⁶ <<https://thelawdictionary.org/education/>>accessed 16 January 2021.

⁷ 2008 NSSSC III; available online at <<https://contrarian.ca/up-content/uploads/2009/12/murphy%20decision.pdf>> accessed 24 October, 2020.

said to be justiciable; if a subject matter is held not to be suitable for judicial determination, it is said to be non-justiciable...

The implication of this judicial pronouncement is that, for a right to be justiciable, it must be based on statutory or constitutional basis, such as can entitle the right holder to take his or her claim before a court in the case of violation or denial of right.

2. Historical Foundation of Right to free Basic Education

Traditional or indigenous education has been as old as mankind itself. However, education in its formal or organized form was conceived originally as a preserve of the elite-princes and nobles. Thus, in renaissance Europe, education was the responsibility of parents and the church. Reflecting the view of the thinkers of that era, Mill wrote that:

...an education established and controlled by the state should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence (Mill, 1974, p. 10).

State participation in the sphere of education gained momentum from the advent of socialist theorists in the early nineteenth century. Socialist theory took cognizance of the fact that individuals had claims to basic welfare entitlements. It is therefore not surprising that the Soviet Union Constitution of 1936 was the first of its kind to recognize the right to education, thereby imposing it on the states to provide same. Consequently, by virtue of the Soviet Constitution, free and compulsory education at all levels, which was a system of state scholarships and vocational training in state enterprises, became guaranteed.

The right to education was first given a global recognition in a series of minority treaties which evolved after the First World War under the auspices of the League of Nations. The treaties were concluded as an adjunct to the peace treaties between the Allied and Associated powers and the defeated nations (Hogson, 1988, p.10). The first of such treaties was the treaty between the Principal Allied and Associated powers of Poland¹. Article 9 obliged the Polish state to provide:

... In the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents, adequate facilities for ensuring that in the primary schools, the instruction shall be given to

¹ This was signed on the 28 June 1919 (112 Great Britain Treaty Series, 232).

children of such nationals through the medium of their own language... (Hogson, Ibid).

The right to education got a subsequent global recognition through the auspices of the League of Nations which took place with the proclamation of the Declaration of Geneva in 1924.¹ The western liberals' response came in the form of Roosevelt's Declaration of right to education in the 1944 speech on the Second Bill of Rights (Hogson, *ibid*). This had great influence on the development of international human rights instruments which were developed and through which the right to education now attain global acceptance².

3. Legal Framework for the Right to Basic Education

We shall examine the legal framework at the national, regional and international levels

3.1. National: Nigeria

Nigeria is a member of the United Nations and a signatory to many international human rights instruments that provide for the right to education viz: UDHR, ACHPR, UNCRC *inter alia*. The principles expressed in these international instruments are further entrenched in some domestic statutes touching on the right to education either directly or indirectly. These domestic instruments are of more significance in defining the legal framework for the right to education in Nigeria because majority of the international instruments are conventions, which are soft laws and at best serve as guiding principles for domestic policies. The right to basic education, has therefore been enshrined in national constitutions and bills of rights and other domestic legislations (Taiwo, 2013, p. 72). In this regard, Nigeria has comprehensive provisions on the right to education under the laws, statutes, relevant policies and white papers on the right to education. These include the Constitution of the Federal Republic of Nigeria 1999, the Child Rights Act 2003,

¹ The Declaration was adopted by the Fifth Assembly of the League of Nations on 26 September, 1924.

² The relevant instruments include the Universal Declaration of Human Rights (UDHR), 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, The International Covenant on Civil and Political Rights (ICCPR), 1966, the UNESCO Convention Against Discrimination in Education, 1960, International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), 1966, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979 and the Convention on the Rights of the Child (CRC, 1989), *inter alia*.

the National Policy on Education 2004 and the Compulsory Free and Universal Basic Education, Act 2004, *inter alia*.

3.1.1. The Constitution of the Federal Republic of Nigeria 1999 (as amended):

The Constitution of the Federal Republic of Nigeria 1999 (as amended), is sacrosanct and it is binding on everybody including the state. Thus, any law, policy or conduct that is inconsistent with the constitution is null and void to the extent of its inconsistency¹. The 1999 Constitution is enacted for the purpose of promoting good governance and welfare of all persons in the country on the principles of freedom, equality and justice and for the purpose of consolidating the unity of the country². The Constitution recognizes the fundamental human rights and the fundamental objectives and directive principles of state policy³. The significant difference between the two species of rights is that, the fundamental rights are inviolable, whereas the fundamental objectives and directive principles of state policy are not. The ‘rights’ contained in chapter II of the Constitution which includes the right to education, is a form of fundamental objective and directive principle and as such, non-justiciable.

The ‘right’ to education is enshrined in section 18 of Nigeria’s Constitution 1999 and it is contained in section 18 (1): The provision enjoins the government to direct its policy towards ensuring there are equal and adequate educational opportunities at all levels. The provision also requires that the government shall strive to eradicate illiteracy and provide as and when practicable, free, compulsory and universal primary education *inter alia*⁴.

As to the legal effect of the directive principles in the Nigerian Constitution, Aguda posited as follows:

... on the face of it, the constitution does not give any legal right to individuals, in so far as the fundamental objectives and directive principles of the state policy are concerned (Aguda, 1993, p. 68)

It must be underscored at this juncture that the major obstacle militating against the effective actualization of the fundamental objectives is that they are regarded as economic, social and cultural rights which are non-justiciable in the context of the Constitution. (Aguda, 2000, pp. 87-88) Section 6(6) (c) of the 1999 Constitution

¹See Section 1 (1) of CFRN 1999, Ibid.

²See the Preamble to the CFRN 1999, Ibid.

³Sections 13 – 24 deal with fundamental objectives and directive principles of state policy while Sections 33 – 46 contain the fundamental human rights.

⁴ See section 18, 1999 CFRN. Ibid.

provides that the judicial power vested (by the constitution) on the courts: shall not extend ... to any issues or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of the Constitution.

3.1.2. The Child Rights Act 2003

In line with her duty as a state party to the United Nations Convention on the Rights of the Child,¹ Nigeria enacted the Child Rights Act in 2003, which entrenched certain rights of the child in Nigeria. One of the most significant provisions of the Act is contained in section 15 which provides that every child shall be afforded the right to free, compulsory and universal basic education and that it is the duty of the government to provide same.

Section 20 of the Act also enjoins guardians, institutions, parents and authorities who are responsible for the care, maintenance, upbringing, education, training, socialization, employment and rehabilitation of a child, to provide the necessary guidance, discipline, education and training for the child in his or her care, such as will equip the child to secure his assimilation and observance of responsibilities set out, towards engendering the welfare of the child.

3.1.3. The National Policy on Education 2004:

The National Policy on Education (NPE), 2004 states that education in Nigeria is an instrument 'par excellence' for effecting national development. Consequently, it is imperative for the country to spell out in clear and unequivocal terms, the philosophy and objectives that underlie its investment in education.² Thus, for the benefit of all citizens, the Nigerian government should be cognizant of the fact that the country's educational goals should be clearly set out in terms of their relevance to the needs of the individual and those of the society, in consonance with the realities of our environment and the modern world. (Taiwo, op cit)

The National policy on education, is also the government's way of realizing that part of the national goals which can be achieved using education as a tool.³ Nigeria's philosophy of education therefore, is predicated on the following notions: (a) That education is an instrument for national development; To this end, the

¹ See Article 4 of the Convention on the Rights of the Child.

² See Federal Republic of Nigeria, National Policy on Education, 4th ed. (FME, Abuja, 2004)

³ S. I. Para 1 of the National Policy on Education, 2004.

formulation of ideas, their integration for national development, and the interrelation of persons and ideas are all aspects of education; (b) That education fosters the worth and development of the individuals for each individual's sake and for the general development of the society; (c) That every Nigerian child shall have a right to equal educational opportunities irrespective of any disabilities; and (d) That there is need for functional education for the promotion of progressive and united Nigeria, and to this end; school programmes need to be relevant, practical and comprehensive while interest and ability should determine the individual direction in education.¹ Thus, to ensure the full actualization of these goals and values, the policy obligates all other agencies to work in concert with governments by contributing their full potential to education. As a corollary to the above aspirations, all other agencies are under the obligation to work in concert with the governments by contributing their full potential to education.

3.1.4. Compulsory, Free Universal Basic Education Act, 2004:

In 2004, the Compulsory, Free and Universal Basic Education (UBE) Act was enacted². The Act enjoins every government to provide free, compulsory and universal basic education³. It defines 'basic education' as early childhood care and education for the first nine years of formal schooling.⁴ It is worthy of note to underscore that the UBE Act only provides for free and compulsory basic education for every child up to the end of junior secondary education, without incorporating the remedial basic education for adults.⁵ The Act also creates a duty on all parents to ensure that their children/wards attend and complete basic education, a breach of which attracts penal sanction⁶. The Act also creates the Universal Basic Education Commission (UBEC) to implement the provisions of the Act.

It is also observed that the compulsory, free and UBE Act also provides that 'services' provided in the public schools shall be free of charge⁷. Services to be provided free of charge include books, instructional materials, classrooms, furniture and lunch⁸. The Act makes it a criminal offence for any person to receive

¹ S. I. Para 4 of the (NPE).

² See Federal Republic of Nigeria, Official Gazette, 91 (66), Government Notice No. 142, Lagos, 2004.

³ S. 2 (1) of the Act

⁴ See S. 14 (4) UBE Act, Ibid.

⁵ S. 2 (1) and 3 (1), Ibid.

⁶ S. 2 (2) & (4), Ibid.

⁷ S. 3 (1) of the UBE Act, Ibid.

⁸ S. 15 of the Act, Ibid.

fee from parents or guardians of children in respect of those services¹. Schooling is also free and no one may charge pupils for tuition or any other fees².

It is quite worrisome that despite the fact that there is provision for free lunch in public primary schools, the reality is that such programmes are observed in breach than compliance in the country³. Also, while the Act provides for free services in the public primary schools, hidden costs are still being collected unabated. Books are not provided in sufficient quantities and parents are usually coerced to key into the extortionists scheme through the P.T.A. levies and contributions⁴. Consequently, regardless of the prevalence of robust laws and legislative measures towards ensuring the right to education in Nigeria, access to education in Nigeria is still a chimera (Afonja, 1996, pp, 138-139). There is therefore, no doubt, that the government and other role-players have engaged in blatant violations of the Nigerian government's obligation to provide accessible education for all.

3.2. International Instruments

International instruments are the laws that bind nations across the globe. They are the instruments which protect the right to education across the nations. At the global level, instruments have generally been prepared by the United Nations. For the purpose of this work, we shall examine the UDHR and the ICESCR because of their direct relevance to right to free basic education.

3.2.1. Universal Declaration of Human Rights 1948.

The watershed of all human rights instruments is the Universal Declaration of Human Rights (UDHR) 1948⁵. The instrument constitutes a significant watershed in the protection of human rights and prescribes a set of standards and a template for countries to follow. The Declaration provides for right to education. Article 26 of the Declaration guarantees the right to free and compulsory elementary and fundamental education. While elementary education refers to a formal schooling for children of primary school age, fundamental education depicts education for

¹ See Section 3 (2) of the Act.

² See also S. 15 (1) of the Child Rights Act, Cap C. 50 LFN, 2004.

³ Ogbeni Rauf Aregbesola complied with the prescription when he was the Executive Governor of Osun State. He is currently the Minister for the Interior. It is observed that his successor in office, Mr. Gboyega Oyetola has jettisoned the lofty programme.

⁴ PTA is the Parent/Teachers' Association.

⁵ Adopted by the UN's General Assembly on 10 December, 1948. See UNGA Resolution 217A (ii) of 10 December, 1948.

children, youth and adults who did not have the opportunity to undergo or complete primary education and it is offered outside the regular primary education system (Beiter, 2006, pp, 90-91). The Declaration also requires that state parties shall make available vocational and professional education. This refers to education which requires, in addition to acquiring general knowledge, the study of technologies and vocational skill acquisition, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life (Beiter, *ibid*, p. 91). The instrument also requires parties to make tertiary education acceptable to all on the basis of merit (Smith, 2005, p. 45).

The major challenge about the Declaration is that it is not a treaty and as such, it is argued that it is not a legally binding instrument as such. (Smith, *ibid*). Nonetheless, the Declaration has its importance beyond merely being of historical significance (Dugard, 1994, p. 173). It has been regarded by some jurists as part of the 'Laws of the United Nations.' (Coetzee, 2010, p.483) It has also been contended that it is binding under customary international law. (Coomas, 1995, pp. 14-15)

3.2.2. The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.

The ICESCR is one of the two treaties drafted to turn the principles of the UDHR into a binding instrument. The ICESCR is an international agreement which imposes legally binding obligations on the state parties. Article 2 of the covenant made the realization of the rights guaranteed under the covenant dependent on the availability of resources for their implementation¹.

Articles 13 and 14 guarantee the right to education. By virtue of Article 13 (1), everybody's right to education is guaranteed. The provision proceeds to set out the aims of education. It refers to development of human personality and the sense of its dignity. Secondly, it states that education should enable all persons to participate effectively in a free society. Article 13 (2) elaborates on Article 26 (1) of the UDHR, which also stipulates that primary education should be compulsory and free to all. Article 13 (2) (b) provides that secondary education should be made generally available and accessible to all, while Article 13 (2) (c) requires that higher education be made accessible to all, on the basis of capacity. Article 14 enjoins the state parties to ensure the realization of compulsory and free education in their territories. However, there is a restriction on the time frame within which

¹It is submitted that positive implementation required for the actualization, render the rights less capable of judicial determination, thereby divesting the right of the garb of justiciability.

state parties should draw up their plan of action towards the attainment of such goal¹.

3.3. Regional Instruments

The right to education is also protected by the instruments that are adopted at the regional level. Some examples are instruments adopted in Europe, America and Africa, *inter alia*. This discourse shall focus on the two instruments adopted at the African regional level, viz; ACHPR and ACRWC.

3.3.1. The African Charter on Human and Peoples' Rights, 1981

The African Charter on Human and Peoples' Rights, also known as the Banjul Charter, was adopted in Banjul, the Gambia on the 1st of June, 1981 and came into force on the 21st October, 1986². The Charter has four chapters and 63 Articles and has extensively provided for civil and political rights, as well as economic, social and cultural rights as it relates to Africans³. The Charter also recognizes other rights such as the rights to development, self-determination and a satisfactory environment⁴. The institutional organs of the African Charter are the African Commission on Human and People's Rights and the African Court on Human and Peoples Rights.

Article 17 (1) provides that every individual shall have the right to education and that every individual may freely take part in the cultural life of his community. In Article 25, the charter enjoins state parties to promote and ensure the respect for the rights and freedoms contained in the charter through teaching, education and publication.

3.3.2. African Charter on the Rights and Welfare of the Child 1990 (ACRWC).

Article II of the Charter⁵ provides for the educational rights of the child comprehensively. Article 17 provides for citizens' right to education and the right to

¹ <http://www.ihrda.org/2012/10/african-charter-and-peoples-right-2> accessed 27 January 2020.

² The Organization of African Unity (O.A.U.) has been rechristened African Union (AU).

³ See Articles 3 – 14 on Civil and Political Rights and Articles 15 – 18 on Economic, Social and Cultural Rights.

⁴ See Articles 19 – 24 on Peoples' Rights. (Dugard, 1914, p. 188)

⁵ O.A.U. Doc. Cab/LEG/24/9/49 [1999], entered into force Nov. 29, 1999. <<http://www.africanunion.org/en/docs/>> accessed 10 December, 2019.

participate freely in the cultural life of their community. It also enjoins the states to educate people about their rights under the Charter¹.

Article 11 (3) imposes duties on the member states to take appropriate measures with a view to achieving the full realization of the right which in particular include; (a) provision of free and compulsory basic education; (b) encourage the development of secondary education in its different forms and progressively make it free and accessible to all (c) make higher education accessible to all on the basis of capacity and ability by every appropriate means; (d) take measures to encourage regular attendance of schools and the reduction of drop-out rates; (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

Another important segment of the charter is Article 11 (6) which enjoins state parties to ensure that children who become pregnant before completing their education are not deprived of opportunity to continue with their education after delivery. This provision is spectacular in view of the fact that most African schools expel pregnant girl-child from school which usually has a devastating effect of precluding her from continuing her education after delivery (Beiter, 2006, p. 219).

4. The Role of the Courts in the Realization of the Right to Basic Education in Nigeria

Laws and legislations are essential and necessary for implementing the right to education. However, legislation alone is not sufficient, without effective implementation. Effective actualization of the right to education will also require concerted non-legislative measures supported by good government policies and political will. One of such non-legislative measures is the judiciary which has an important role to play in protecting and enforcing the right to education as an entitlement (Singh, 2008, p. 425).

4.1. The Obstacle: (Non- Justiciability)

The traditional view of the state of law was that socio-economic rights like the right to basic education are not justiciable in Nigeria (Ogunniran, 2020). This view was informed by the constitutional bar imposed on the enforcement of these rights.²

¹The Charter has been domesticated by Nigeria and has even been pronounced upon by ECOWAS Court of Justice in *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission ECW/CCJ/APP/08/08*, 27 October, 2009. Tagi, 2018, p. 219).

² See Section 6 (6) (C) CFRN 1999 (as amended) Ibid.

Quite unfortunately, the Supreme Court gave judicial imprimatur to this view in the case of *Archbishop Olubunmi Okogie & Ors v. Attorney General of Lagos State*¹ where, in response to a question before it, on whether a circular issued by the Lagos State Government in respect of private schools was in violation of section 13 of the 1979 Constitution, the court held *inter alia*:

Whilst section 13 of the Constitution makes it the duty and responsibility of the judiciary amongst other organs of government, to conform to and apply the provisions of Chapter two, section 6 (6) (c) of the same constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of the government has acted or is acting in conformity with the fundamental objectives and directive principles of the state policy. It is clear therefore that section 13 has not made chapter two of the constitution justiciable.

It must be admitted that as a result of our court's lethargic disposition towards expanding the jurisprudential frontiers for the justiciability of chapter II of the Constitution, the Nigerian judiciary is facing a legitimacy crisis as to whether it really deserves such epithets as 'the fountain of justice', 'the last hope of the common man', 'the bastion of human rights' and 'the watchdog of the Constitution.' In the words of Honourable Justice Oputa:

While it is true that the courts cannot right wrongs overnights, it is also true that the reaffirmation of the directive principles by the courts will build up a body of public opinion which may compel all the persons and institutions enumerated in section 13 of the Constitution to make up and do what is expected of them. Also, in its judgement on justiciable issues like the right to life, the courts can call on the legislature to actualize the expectation in the directive principles by passing appropriate and enabling laws (Okeke, 2007, p. 5).

Sequel to the foregoing, it becomes imperative that the courts need to interpret the Constitution with a view of securing a concrete basis for the justiciability of socio-economic rights, especially, right to basic education. The courts must shed the toga of legal formalism and legal justice so as not to manacle social justice.

4.2. The Emergence of Miracle (Justiciability)

While the provisions of section 6 (6) (c) of the 1999 Constitution is still the same on the non-justiciability of chapter II provision of the Constitution, it was cheering that the Supreme Court breathed a new life into what was hitherto thought to be

¹ [1981] 2 NCLR 337. Also, see *Adewole v. Jakande* [1981] NCLR 264 and *Olagbegi v. A. G. Ondo State* [1983] 2 FNR 6.

dead in respect of the enforceability of socio-economic rights in Nigeria in the case of *Attorney General of Ondo State v. Attorney General of the Federation & 35 Ors*¹. The court held that all these rights are enforceable in instances where the government has enacted statutes meant for their actualization. This was indeed, a leeway.

Admittedly, it took the Supreme Court a resort to extra ordinary judicial activism and a direct borrowing from the Indian jurisprudence to arrive at this ground-breaking decision. This conviction could be gleaned from the dictum of Uwaifo JSC, thus:

As to the non-justiciability of the fundamental objectives and directive principles of state policy in chapter II of our constitution, section 6 (6) (c) says so. While they remain mere declarations, they cannot be enforced by legal process but would be seen as a failure of duty and responsibility of state organs if they acted in clear disregard of them, the nature of the consequences of which having to depend on the aspect of the infringement and in some cases, the political will of those in power to redress the situation. But the directive principle (or some of them) can be made justiciable by legislation.... By this, it simply means that all the directive principles need not remain mere or pious declarations. It is for the executive and the national assembly, working together to give expression to any of them through appropriate enactment as occasion may demand.

Subsequent to this Supreme Court decision, the ECOWAS Court also held that the right to free basic education is justiciable under the African Charter of Human and Peoples' Right², in the case of *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria & Universal Basic Education Commission*³. In the celebrated case, which leaned towards the direction of an expansive interpretation, the ECOWAS Court held that in terms of Article 17 of the African Charter on Human and People's' Right, 1981, every Nigerian has the right to free basic education.

Armed with the decision of the Supreme Court in *A.G Ondo State v. A. G. Federation & 35 Ors*⁴, a non-governmental organization (NGO) named Legal Defence and Assistance Project (LEDAP), approached the Federal High Court,

¹[2002] 9 NWLR (Pt. 772), 222.

²The Charter has been ratified and domesticated by Nigeria and as such, has domestic enforceability. See *Ogugu v. The State* [1994] 9 NWLR (Pt. 366) 1, where the Supreme Court held that the African Charter was applicable and enforceable in Nigeria in the same manner with the domestic laws and Constitution.

³(Suit No ECW/CCJ/APP/12/07). Judgment No: ECW/CCJ/JUD/07/10, delivered at Abuja, Nigeria on 30 November 2010, para 26.

⁴(Supra).

Abuja, seeking the following reliefs amongst others, against the Federal Ministry of Education:

A declaration that the constitutional provisions on the right to free, compulsory and universal primary education to junior secondary school for all Nigerian citizens under section 18 (3) (a) of the Constitution of the Federal Republic of Nigeria (1999) (as amended), is an enforceable constitutional right by virtue of the Compulsory, Free Universal Basic Education Act, 2004¹.

The main question before the court in the case, as formulated by His Lordship, Honourable Justice T. J. Tsoho is:

Whether by the combined effect of section 18 of the 1999 constitution and section 2 (1) of the Compulsory, Free Universal Basic Education Act 2004, the right to compulsory and universal primary education and free junior secondary education for all qualified Nigerian citizens are enforceable rights in Nigeria.

Relying on and quoting copiously from the decision of the Supreme Court, per Uwaifo JSC in *AG Ondo v. AG Federation & 35 Ors.*,² his Lordship answered the question in the affirmative thus:

Having been guided by the pronouncements of the Supreme Court in the case of *AG Ondo State v. AG Federation*, I hold that with the enactment by the National Assembly of the Compulsory, Free Universal Basic Education Act, 2004, the specific provisions covered by that Act have become justiciable or enforceable by the Courts.

This decision is a landmark one, though it still awaits appellate confirmation. It is safe to say for now, that the right to basic education in Nigeria is enforceable, until the apex judicial authority in the land says otherwise. Nevertheless, without pre-empting the apex court, it is easy to see where the pendulum of the appeal will swing, granted the fact that the decision of the lower court was predicated on the authority of the Supreme Court itself. It is submitted that the state of the law as at date is that the right to basic education in Nigeria is justiciable through the combined interpretation of section 18 of the 1999 Constitution and section 2 (1) of the Compulsory, Free Universal Basic Education Act, 2004.

¹ Legal Defence and Assistance Project (LEDAP) Ltd/Gte v. Federal Ministry of Education & Anor (Unreported) Suit No FHC/ABJ/CS/978/15.

²Supra

5. Lessons from South Africa And India

5.1. South Africa

The Constitution of South Africa¹ contains a solid foundation for the enforcement of relevant socio-economic rights. As pointed out by Ebadolahi:

South Africa's Constitution is celebrated around the world for integrating socio-economic and cultural rights into its Bill of Rights, thereby declaring such rights generally justiciable and as such, developing a sophisticated jurisprudence interpreting socio-economic rights (Ebadolahi, 2008, p. 1565).

In the case of *Governing Body of the Juma Muzjid Primary School & Ors v. Essay N. O. & Ors*², the Constitutional Court expanded the scope of right to basic education in South Africa by taking it beyond the bounds of internal limitation. The court distinguished between 'basic education' under section 29 (1) (a) of the Constitution from 'further education' contained in section 29 (1) (b) of the Constitution and held that while the former is immediately realizable, the latter is to be 'progressively available and accessible.' The import of the judgment is that the right to basic education is justiciable in South Africa.

In the *Governing Body of the Juma Musjid Primary School & Ors v. Ahmed Asruff Essay N. O. and Ors*,³ the Constitutional Court, also relying on section 29 of the South African Constitution, set aside the judgement of the High Court and held that the government has a positive obligation to provide access to schools in fulfilling the right to basic education. Also, in *Section 27 & Ors v. Minister of Education and Anor*,⁴ where the applicants, a human rights organization and others, applied for an order declaring the failure of the respondents to provide textbooks to Limpopo schools, at the beginning of the year unconstitutional, the court held that the provision of textbooks was an essential component of the constitutional right to basic education.⁵

¹Chapter 2, South African Constitution, Ibid.

²2011 (7) BCLR 657 (CC); BCLR 446 (CC).

³2011 ZACC 13; 2011 (8) BCLR 76 (CC).

⁴2013 (2) SA 40 (GNP).

⁵In the case of *Tripartite Steering Committee & Anor v. Minister of Basic Education and Ors*. [1830/2015] [2015] (5) SA 107 (ECG); (25 June 2015), the High Court held that the right to education is meaningless without transport to and from school at state expense in appropriate cases and that the failure of the state to provide means of transportation violated the student's right to basic education pursuant to section 7 (2) of the South African Constitution.

5.2. India

The Indian Constitution, like its Nigerian counterpart, also divides constitutional rights into two broad categories viz: civil and political rights, which are referred to as fundamental human rights on the one hand and economic and social cultural rights on the other hand. The latter species of rights are couched as the Directive Principles of State Policy (DPSP) under part IV of the Indian Constitution. As applicable to Nigerian Constitution, the (DPSP) are also not enforceable in India.¹ In the case of *Madras v. Champakam*², the Indian Supreme Court held that the Directive Principles have to conform to and run subsidiary to the chapter on fundamental human rights.

However, the enforcement of rights under Part IV of the Indian Constitution has benefited from a long history of judicial activism, which has used expansive and liberal interpretative approach in the interpretation of such rights to safeguard them. Hence, with specific reference to right to education, the Indian court has shown its deep concern for providing free and compulsory education to all children below the age of 14 years (Manoj, 2008, p. 188). The Indian apex court was able to declare the right to free primary education a fundamental right by employing the theory of 'complementarity nature' of the rights in parts III and IV of its Constitution.

The reasoning employed by the court is that the Directive Principles, which are fundamental in the governance of the country, cannot be extricated from the fundamental rights. Hence, without making Article 41 of the Indian Constitution enforceable, the fundamental rights under Part III shall remain a smokescreen to a large majority, who are illiterates³.

In the case of *Mohim Jain v. State of Katamaka*⁴, the Indian Supreme Court invalidated a state law which permitted medical colleges to charge exorbitant admission fees on the ground that it discriminated against the poor and in effect, curtailed the right to education which is essential to the right to life.

In *UPSE Board v. Harri Shanker*,⁵ the Court reaffirmed that the right to education is an intrinsic part of the right to life. The court observed that though, it cannot enforce the observance of the principles, they are nevertheless bound to evolve,

¹See Article 37 of the Indian Constitution which provides that the Directive Principles of State Policy shall not be enforceable by any court. These genre of rights include the right to education.

²AIR 1951, SC 226

³ See *Mukti Morcha v. Union of India & Ors* [1997] 10 SCC 549.

⁴ [1992] AIR SC 1964.

⁵ [1999] AIR SC 65.

affirm and adjust principles of interpretation which will further and not hinder the goals set out in the Directive Principles.

India has taken it a notch higher when the free and compulsory education to children was added to the constitution by the Eighty Sixth Amendment Act, 2002. The purpose of this amendment is that full time elementary education is now provided for every child in a formal school¹.

6. Conclusion

This paper has brought to the fore, the historical antecedents of the right to basic education. The author also examined the legal framework thereby reviewing the instruments at the municipal, regional and international levels. We also endeavoured in this work to interrogate the justiciability of the right to free basic education in Nigeria across the cases whilst a comparative overview of right to free basic education in South Africa and India was also embarked upon.

Findings in this research work revealed that the right to education is classified as a specie of socio-economic and cultural rights and it is ordinarily non-justiciable by virtue of Nigerian Constitution. We also observed that the right to free basic education is given a cogent recognition across the jurisdictions, such that in India, where it is not ordinarily justiciable, the courts, through activism have over the years made copious pronouncements to actualize the enforceability of the right, even before the Eighty Sixth Amendment Act of 2002.

The research also revealed that Nigeria has moved from obstacle to miracle in its quest to engender the justiciability of the right to free basic education with the decision of Hon Justice Tsoho of the Abuja Federal High Court, which is yet to be set aside hitherto. This decision is commendable because it was based on the combined interpretation of both the Nigerian Constitution and the specific enactment aimed at actualizing the right to free basic education.

Sequel to the foregoing, the following recommendations are hereby proffered:

(i) Granted that Nigeria has a plethora of robust legislations and policies on free and compulsory basic education, which exist side by side with the Constitution, our judges should drop the garb of timidity and embrace activism like Honourable Justice Tsoho², in making the right to basic education enforceable through the combined interpretation of the

¹The amendment was inserted into the Indian Constitution through Article 21A. See also *Islamic Academy v. State of Karnataka*. AIR SC 3724. This case was decided after the Eighty-Sixth Amendment Act, 2002.

² In the case of *LEDAP v. Federal Ministry of Education & Anor* (Supra).

Constitution and the other specific enactments guaranteeing the right to free basic education.

(ii) Nigeria should take a cue from South Africa by gravitating further from mere activism to making conscious efforts through the legislative body to incorporate the right to basic education and other indispensable socio-economic rights into the Bill of Rights under Chapter IV of the Constitution

(iii) The general review of the national Policy on Education and attendant mechanisms should be put in place for proper implementation of the policy and enforcement of the extant laws.

(iv) It is finally recommended that the natural endowments of Nigeria should be properly harnessed, such that, there will be sufficient funds to make the arms of government to perform their duties and responsibilities to the citizens. This will go a long way in obviating the quagmire which engenders the non-realization of the citizens' right to free and compulsory basic education in Nigeria.

References

Books

Afonja, S. (1996). The Right of the Child to Education. In Ayua I. A. & Okagbue I. E. (eds). *The Right of the Child in Nigeria* (NIALS, Lagos, 1996), pp. 66 – 67.

Aguda, A. O. (2000). *Understanding the Nigerian Constitution of 1999*. MIJ Professional Publishers, pp. 87 – 88.

Aguda, T.A (1993). 'Judicial Attitudes to Individual Rights in Nigeria'. In Ajomo M. A. & Owasanoye, B. (eds). *Individual Rights under the 1989 Constitution*. Nigerian Institute of Advanced Legal Studies, Lagos, p. 68.

Akingbehin E.O. (2017). Death Row Phenomenon: A Violation of a Condemned Prisoner's Right to Freedom from Torture, Inhuman or Degrading Treatment in Africa? 6 (1) *International Journal of Legal Studies and Research*, 3.

Akingbehin E. O (2018). The Jurisprudential and Legal Polemics on the Derogability of the Right to Life in Nigeria: Lessons from South Africa, Hungary and India. In Atsenuwa, A. V.; Oni, B. A.; Sanni, A. & Ilobinso, I. K. (eds). *Criss Crossing Law and Jurisprudence: Festschrift for Prof. Akindele Oyebode*, University of Lagos, p. 366.

Beiter, K. D (2006). *The Protection of the Right to Education by International Law*. Martinus Nijhoff Publishers, pp. 90 – 91.

Brand, D. (2005). Introduction to Socio-Economic Rights in South African Constitutio. In Brand D. & Heynes C. (eds). *Socio-Economic Rights in South Africa*. Pretoria University Law Press, p. 1.

Chegwe, E. N. (2000). Legalism and Realization of the Right to Life', 2 (1). *Nigerian Journal of Public Law*. A Publication of the Department of Public and Private Law, University of Nigeria, p. 241.

- Coetzee, S. (2010). Discipline in Nigerian Schools within a Human Right Framework, 10 (2). *African Human Rights Law Journal*, pp. 483.
- Coomans, F. (2007). Content and Scope of the Right to Education as a Human Right and Obstacles to its Realization. In Donders, Y. & Volodin, V. (eds). *Human Rights in Education, Science and Culture*. Legal Developments and Challenges. UNESCO Publishing/Ashgate, p. 183.
- Cranston, M. (1973). What are Human Rights *What are Human Rights?* The Brodley Head 21 and Osita Eze. *Human Rights in Africa: Selected Problems*. Macmillan, p. 5.
- Dall, F. P. (1995). Children's Right to Education: Reaching the Unreached' in Himes, J. R. (ed), *Implementing the Convention on the Rights of All the Child*. Martinus Nijhoff Publishers, The Hague/London/Boston, p. 143.
- Dugard J. (1994). International Human Rights', in Van Wyk, Dugard, J., de Villiers B & Davis D. (eds), *Rights and Constitutionalism: The New South African Legal Order*. Juta & Co, p. 173.
- Ebodolahi M. (2008) 'Using Structural Interdicts and the South African Commission to Achieve Judicial Enforcement of Economic, Social and Cultural Rights', 83. *New York University Law Review* 1565 – 1606.
- Eze Osita (1984) *Human Rights in Africa: Selected Problems* (Macmillan, 1984), 5.
- Govindjee A. & Taiwo E. A. (2012). Globalization and its Effects on the Emerging Jurisprudence on the Right to Education in South Africa and Nigeria. In Addicott, J. F.; Bhuiyan, J. H & Chowdhury M.R (eds). *Globalization, International Law and Human Rights*. Oxford University Press, India, pp. 111-146.
- Hausermann, J. (1992). The Realization and Implementation of Economic, Social and Cultural Rights. In Beddard, R. & Hill, D. M (eds). *Economic, Social and Cultural Rights: Progress and Achievement*. Macmillan Academic and Professional Ltd, pp. 47.
- Hogson, D. (1988). *The Human Rights to Education*. Ashgate/Dartmouth, pp. 1.
- Ibadapo-Obe, A. (2005). *Essays on Human Rights Law in Nigeria*. Concept Publications Limited, p. 30.
- Malemi, E. (2012). *The Nigerian Constitutional Law*. Princeton Publishing Company, p. 106.
- Manoj, K. S. (2008). Right to Education; India and International Practices' 48 (2). *Indian Journal of International Law*, pp. 188 – 207.
- McConnachie, C. & Skelton, A. (2017). *The Constitution and the Right to Basic Education*. <<https://eelawcentre.org.za/constitution-right-basic-education-authorire-chris-mcconnachie-rhodes-university-ann-skelton-centre-child-law-cameron-mcconnachie-legal-resources-centre>> accessed 24 January, 2020.
- Mill J.S (1974). *On Liberty*. <https://plato.stanford.edu/entries/mill>, accessed 9 January, 2020.
- Miamingi, R. (2009). Inclusion by Exclusion?: An Assessment of the of Socio-Economic Rights Under the 2005 Interim National Constitution of Sudan', 9 (1). *African Human Rights Law Journal* 76 – 102 @ 77.
- Mubangizi, JC. (2004). *The Protection of Human Rights in South Africa: A Legal and Political Guide*.

https://books.google.com.ng/books/about/Theprotectionofhumanrightsinsouth.html?id=MLJLP.2yM8YcC&redir_esc=Y> accessed 9 March, 2020.

Nwaowu, F. (2008). The Role of Universal Primary Education in Development: Implementation Strategies and Lessons from Past Mistakes' 37 (4), *Africa Insight*, pp. 138 – 139.

Nwatu, S. I (2012). Legal Framework for the Protection of Socio-Economic Rights in Nigeria. *Judicial Review*, 10, 22.

Nweze, C. C. (2001). Education of the Concept of Socio-Economic Rights in Human Rights Jurisprudence: International and National Perspectives. 1 (1), *NBJ* 79.

Ogunniran, I. (2020). Enforceability of Socio-Economic Rights: Seeing Nigeria through the Eyes of Other Jurisdictions. <http://www.ajolinfo/index.php/naujilj/article/view/138181>. Accessed 24 February, 2020.

Olowu, D. (2006). Human Right and the Avoidance of Domestic Implementation: The Phenomenon of Non-Justiciable Constitutional Guarantees, 69 (1), *Saskatchewan Law Review*, pp. 39 – 78.

Olowu, D. (2007). The Right to Social Security in Nigeria: Taking up the Gauntlet, 1 (2), *CALS Review of Nigerian Law and Practice*, pp. 91 – 107.

Okeke C. (2007). *Towards Functional Justice: Seminar Papers of Justice Chukwudifu A. Oputa* (Gold Press Ltd., p. 5.

Oni, S. O. & Oyewo, A. T. (2019). A Critical Appraisal of the Fundamental Objectives and Directive Principles of State Policy in Nigeria, 2. *Redeemer's University Law Journal*, p. 244.

Plant, R. (1992). A Defence of Welfare Rights. In Beddard R. & Hills D. M. (eds), *Economic, Social and Cultural Rights: Progress and Achievements*, Ibid, 22.

Shehu, A. T. (2013). The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience, 2 (1). *Journal of Sustainable Development, Law and Policy*, pp 102.

Singh, K. (2008). Right to Education and Equality of Opportunity in Education: An Analysis of Constitutional Obligations in African States, 16, *African Yearbook of International Law*, p. 425.

Smith, R. K. M. (2005). *Textbook on International Law Rights*, 2nd ed. Oxford University Press, p. 45.

Tagi, S. M. (2018). Towards an Enhancement of the Legal Regime for Access to Primary Education in Nigeria, 9 (2). *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, p. 148.

Taiwo, E. A. (2013). A Review of the Legal Instruments Protecting the Right to Education in Nigeria, 1 (1), *Afe Babalola University, Ado-Ekiti Law Journal*, p. 72.

Cases.

A.G Ondo State v. A. G. Federation & 35 Ors.

Adewole v. Jakande (1981) NCLR 264.

Archbishop Olubunmi Okogie & Ors v. Attorney General of Lagos State (1981). 2 NCLR 337.

Badejo v. Federal Ministry of Education (1996). 8 NWLR (pt.464) 15 S.C.

Brown v. Board of Education 347 US 483 1954.

- Cape Breton (regional Municipality) v. Nova Scotia (Attorney General) 2008 NSSSC III.
- Governing Body of the Juma Muzjid Primary School & Ors v. Ahmed Asruff Essay N. O. & Ors (2011) ZACC 13; 2011 (8) BCLR 76 (CC).
- Governing Body of the Juma Muzjid Primary School & Ors v. Essay N. O. & Ors 2011 (7) BCLR 657 (CC); BCLR 446 (CC).
- Islamic Academy v. State of Karnataka AIR SC 3724.
- Legal Defence and Assistance Project (LEDAP) Ltd/Gte v. Federal Ministry of Education & Anor (Unreported) Suit No FHC/ABJ/CS/ 978/15.
- Madras v. Champakam AIR 1951, SC 226.
- Mohim Jain v. State of Katamaka (1992) AIR SC 1964.
- Mukti Morcha v. Union of India & Ors (1997) 10 SCC 549.
- Ogugu v. The State (1994) 9 NWLR (Pt. 366) 1.
- Olagbegi v. A. G. Ondo State (1983) 2 FNR 6.
- Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria & Universal Basic Education Commission (Suit No ECW/CCJ/APP/12/07). Judgment No: ECW/CCJ/JUD/07/10, delivered at Abuja, Nigeria on 30 November 2010, para 26.
- Section 27 & Ors v. Minister of Education and Anor 2013 (2) SA 40 (GNP).
- SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission ECW/CCJ/APP/08/08, 27 October, 2009. *Tagi*, 2018, p. 219).
- Tripartite Steering Committee & Anor v. Minister of Basic Education and Ors (1830/2015) (2015) ZAECGHC 67; 2015 (5) SA 107 (ECG); (2015) 3 All SA 718 (ECG) (25 June 2015).
- Ukaegbu v. A. G. Imo State (1983) 1 SCNLR, 1.
- UPSE Board v. Harri Shanker (1999) AIR SC 65.