

# The Right to Education as a Catalyst for Economic Development

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## **Abstract**

*This study examines the effect of the enjoyment of the right to education on economic development. The study focuses on the role the right to education has to play in economic development. The study makes enquiries on the scope and content of the right to education and the correlation between the enjoyment of the right to education and economic development. The author finds that the enjoyment of the right to education produces a more educated society. To remain competitive in the contemporary and global marketplace and in the light of technological advancement, Nigeria needs to ensure that the right to education is assured. This will translate into an effective and competitive workforce. The study reveals that the Nigerian educational system is in dire need of reform, reform that will drive economic growth and educational advancement. Investing in national education has not been a top priority for different succeeding Nigerian governments for many years. Challenges include scarcity of textbooks, large classes, inadequate teaching materials, low staff morale and lack of competent teaching staff. This paper concludes that revitalising the education sector is a viable option for economic development in Nigeria.*

## **1.1 Introduction**

This paper examines and explores the role of education in the economic development of a nation. The contemporary market place requires a competitive and innovative workforce that must excel in science, information technology, and the humanities. Nigeria needs an educational system that will drive the economy, and administrative efficiency. It is generally agreed that Nigeria's educational system is in dire need of the kind of reform that will drive economic growth and educational advancement. In most primary, secondary and tertiary institutions across the country, education is not supported with adequate funding and infrastructure. This paper argues that revitalising the education sector is a viable option for economic growth in Nigeria. Investing in national education has not been a top priority for different governments for many years. Challenges include scarcity of textbooks, large classes, inadequate teaching materials, low staff morale and few competent teaching staff.

This paper focuses on the role the enjoyment of the right to education has to play in economic development. This enquiry is from the legal perspective. This author approaches education from the perspective that education is both a human right and a public responsibility by the government. There is no doubt that there exists an abundance of authoritative statutory provisions on the right to education.<sup>1</sup> This paper analyzes the content of the right to education with a view to providing a claim-based assessment for the benefits of claim holders. These provisions cut across the existing divide between civil and political rights on the one hand and socio-economic rights on the other hand. The right is also capable of being protected through both individual and collective adjudication in a court of law. The focus of this paper is to analyse a right-based approach to the realization of the right to education. It examines how right-holders (children, students, and parents) can claim their rights and how duty-bearers (states) are to fulfil and protect the obligation to realize the right to education. The paper draws a correlation between the enjoyment of the right to education and economic development.

While drawing on local, regional, and international jurisprudence and statutory provisions; and on the scope and the content of the right to education, this paper will mainly be concerned with the provisions of the Nigerian 1999 Constitution, ICESCR and the UN Human Rights Charter. It examines the provisions of Chapter II of the Nigerian Constitution. It analyses the CESCR General Comment 11

and 13 on the right to education. It focuses on article 13 and 14 of the ICESCR and Article 24 of the ICCPR as well as Article 26 of the UDHR and other relevant human rights treaties.<sup>ii</sup>

### 1.1.1 The Role of Education in National Economic Development

The role of education as an instrument of social control, economic development and poverty alleviation is profound<sup>iii</sup> Education teaches the virtues of obedience, discipline, and endurance. It gives empowerment to pupils via acquisition of knowledge and skills. Knowledge is undoubtedly power. Knowledge gives the power of elevation from ignorance and poverty; it provides access to gainful employment. Education is a condition precedent to a civilized way of living. Research has consistently revealed that educated people are more likely to influence and have control over government policies that affect their lives.<sup>iv</sup> “...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”.<sup>v</sup> Tomasevski observes that:

[T]he importance of the right to education reaches far beyond education itself. Many individual rights are beyond the grasp of those who have been deprived of education, especially rights associated with employment and social security. Education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated.<sup>vi</sup>

Whilst voicing its support for the right to education, Amnesty International argues that “the right to education encompasses the right to free and compulsory primary education, and increasing access to secondary, technical, vocational and higher education. It cuts across the false divide between human rights, as it has civil, cultural, economic, political and social elements. Realizing people’s right to education reduces their vulnerability to child labour, early marriage, discrimination and many other human rights abuses. It also increases their opportunities to realize other human rights, including the right to health and the right to participate in public affairs.”<sup>vii</sup>

Tomasevski further argues 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.<sup>viii</sup>

However, despite the benefits inherent in education and the protection of the right to education as guaranteed under different and diverse statutory provisions, there still exist a host of obstacles militating against the effective realization of the right to education in Nigeria

### 1.1.2 Defining Education

Education refers to the right of every child to be given a quality education that protects the child’s dignity and that promotes the child’s development.<sup>ix</sup> Education that protects the child from all forms of violence, intimidation and education that ensures the child’s discipline is administered in a manner that is consistent with the child’s discipline.<sup>x</sup> “Education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.”<sup>xi</sup> The Supreme Court of Kentucky highlighted seven objectives that a robust educational system must satisfy:

We concur with the trial court that an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favourably with their counterparts in surrounding states, in academics or in the job market.<sup>xii</sup>

This paper now proceeds to consider the scope and content of the rights to education. Over 140 countries of the world have given constitutional recognition to the right of education.<sup>xiii</sup> Another unique feature of the right to education is its capacity to cut across the divide between civil and political rights and socio-economic rights. It consists of the right to choose a school within available schools. The right to choose between public and private schools,<sup>xiv</sup> and the right of parents to educate their children at home<sup>xv</sup> are all elements of the right to education. This is necessary so as to respect the freedom of the individual to choose the best form of education that suits his individual psychological, cultural and religious convictions and the desire to protect these convictions.

Chapter II of the Nigerian 1999 Constitution provides for educational objectives and urges the government to “direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels”.<sup>xvi</sup> It encourages the government to strive to promote science and technology; and to strive to eradicate illiteracy through the provision of primary, secondary, and university education.<sup>xvii</sup> Section 2 of the Compulsory Free Universal Basic Education Act<sup>xviii</sup> guarantees the right to free, compulsory, and Universal Basic Education of every child of primary, and junior secondary school age. Also, Article 17 of the African Charter provides that “every individual shall have the right to education”<sup>xix</sup>.

The *travaux préparatoires* of Article 13 ICESCR reveals that one of the essential aims of the right to education is “the full development of the human personality”.<sup>xx</sup> Article 26 of the Universal Declaration of Human Rights (UDHR)<sup>xxi</sup> provides:

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 equally be available to all on the basis of merit.

Parents have a prior right to choose the kind of education that shall be given to their children. Article 13 (1) of the ICESCR provides:

Primary education shall be compulsory and available free to all; Secondary Education shall be made generally available and accessible to all by appropriate means, and in particular by the progressive introduction of free education; Higher Education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education

Article 13(2) provides:

Fundamental education shall be encouraged and intensified as far as possible for those persons who have not received or completed the whole period of their primary education.

State Parties obligations on the right of access to education can be summarized as follows:

Provide free and compulsory primary education; Develop forms of secondary education that are available and accessible to everyone, and introduce measures to provide free education and financial assistance in cases of need; Provide higher

education that is accessible on the basis of capacity by every appropriate means; Provide accessible educational and vocational information and guidance; Introduce measures to encourage regular attendance and reduce drop-out rates; Provide education on the basis of equal opportunity; Ensure respect for the right to education of any kind on any grounds; Ensure an inclusive educational system at all levels; Provide reasonable accommodation and support measures to ensure that children with disabilities have effective access to and receive education in a manner conducive to achieving the fullest possible social integration; Ensure an adequate standard of living for physical, mental, spiritual, moral and social development; Provide protection and assistance to ensure respect for the rights of children who are refugees or seeking asylum; Provide protection from economic exploitation and work that interferes with education.<sup>xxii</sup>

While some state parties have adopted the right to education as contained in the international instruments into domestic laws as enforceable rights<sup>xxiii</sup> others, like Nigeria, have merely recognised education as an element of directive state policy.<sup>xxiv</sup>

## **1.2. Content and Scope of the Right to Education**

Next this paper will analyse the content and scope of the right to education, with a view to recommending appropriate solutions to making it more effective

### *1.2.1 Non-Discrimination within the Right to Education*

The right to non-discrimination in education is subsumable under S. 42 (1) of the Nigerian Constitution 1999, also S. 18(1) of the same Constitution provides for educational objectives; Article 17 of the ACHPR also guarantees the right to education in Nigeria. The right to equal and non-separate education is advocated by the Committee on Economic Social and Cultural Rights (CESCR) in General Comments 11 and 13, and is also protected under all international instruments protecting the right to education. The rationale for this is founded on the importance of education. First, education gives riches and powers which must not be concentrated in the hands of a few or a particular class of the society. Second, accessing education on an equal basis will give the minority the opportunity to enter the mainstream of the economy and political institutions. Third, the society at large benefits from the contributions that will come from every and all those that have been exposed to benefit from acquisition of knowledge through educational provisions. Fourth, non-discriminatory and inclusive education has the potential to remedy institutional discrimination of the past against the minority.

It is important for state parties to guarantee the provision of education on non-discriminatory basis because inequality in the provisions of educational facilities has been one of the most fundamental problems confronting the right to education.<sup>xxv</sup> State parties are therefore required to take affirmative steps to ensure access to education by all. For example, Article 29 (2) (c) of the South African Constitution 1996 provides: “the state must consider all reasonable educational alternatives, including single medium institutions taking into account... the need to redress the results of past racially discriminatory laws and practices”. This exemplifies the steps to be taken by state parties to protect the right to education. Protection of the right to education on non-discriminatory basis must be assured at the highest legislative level. The inclusion of provision of education on non-discriminatory basis in the constitution provides a ground for lawyers, activists, and educationists to argue in favour of any victim of discriminatory practices in relation to education.

The US Supreme Court affirmed in the case of *Brown v Board of Education*<sup>xxvi</sup> that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms”.<sup>xxvii</sup>

In Nigeria, there is an increasing widening gap between the poor and the rich not only in terms of access to qualitative education but also in terms of access to opportunities and social integration; while the poor attend underfunded, ill-equipped and largely unsafe public schools, the children from elite and rich families attend well equipped schools staffed by highly motivated teachers. The identified disparity and segregation is a violation of the right of education of citizens from poor background. Thus,

Nigeria is fast breeding an army of disgruntled and unemployable youths. This portends a bleak and retrogressive economic regression for Nigeria. Developed and industrialised economies, such as USA, UK, India, and China, place a high premium on qualitative technical and vocational education for the citizens<sup>xxviii</sup>.

### 1.2.2 *Free and Compulsory Primary Education*

This encompasses the right of everyone within the jurisdiction of the state to receive free and publicly funded primary education. Unlike some other socio-economic rights, Article 13 (2) (a) of the ICESCR states that primary education 'shall be' compulsory and free.<sup>xxix</sup> This confers on State parties' obligations that are immediately enforceable. Unlike the engagement of the phrase 'secondary and higher education shall be made available and accessible', which confers a progressive obligation under Article 13 (2) (b) and (c), on the State parties<sup>xxx</sup> Article 14 ICESCR confirms the urgent nature of the duty concerning primary education:<sup>xxxi</sup>

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 14 recognizes the essential nature of primary education and places a limit to its progressive realization because "the main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community."<sup>xxxii</sup>

Primary education has to be free because children are prohibited from working, they cannot afford to pay. For example, in its Concluding Observation on Cameroon the CESCR 'notes with deep concern that there is no legislation in Cameroon which provides for free primary education. The Committee regrets the requirement of a parental contribution in the form of compulsory fees levied by primary schools which, in view of high levels of poverty, greatly restrict access to primary education, particularly for girls'.<sup>xxxiii</sup> Moreover, it will be difficult to make primary school compulsory if parents cannot afford to pay.<sup>xxxiv</sup>

State parties should work towards cost-free education. All charges on primary school pupils must be eliminated by state parties. No child should be made to pay any charges to access primary education; there should be prohibition on Parent-Teacher Association fees, uniform fees, text-book fees, registration fees, transport fees, meal fees, etc. So that irrespective of financial background all children should be able to access school unhindered. 'Primary education is an investment with no immediate return and is part of public law. Public investment yields economic returns with much delay, and then only in combination with other assets. Moreover, education is not only about the transmission of knowledge and skills. Education is a public good because it represents the most widespread form of institutionalized socialization of children'. The CESCR comments:

The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardise its realisation. They are also highly regressive.<sup>xxxv</sup>

Compulsion on the child to attend and receive primary education needs further explanation because coercion in the field of human rights is ordinarily antithetical to human dignity. However, this is a positive coercion. The CESCR comments:

The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education. Similarly, the prohibition of gender discrimination in access to education, required also by articles 2 and 3 of the Covenant, is further underlined by this requirement. It should be emphasised, however, that the

education offered must be adequate in quality, relevant to the child and must promote the realisation of the child's other rights.<sup>xxxvi</sup>

Primary education is compulsory because the child is legally incapable of making an articulated choice in this regard. It is therefore incumbent on the State Party to protect all children and guide them to make the right decision in this regard. Children are vulnerable and are at the mercy of their parents or guardian. Such a fiduciary relationship requires regulation and supervision from the State. For example, in Africa, some parents will rather send their children to the farm or to hawk on the streets than send them to school. In some other countries female children are not sent to school at all because of the belief that sending them to school will make them promiscuous and reduce the dowry that will be paid on them. For these reasons it is good practice for state parties to regulate and make primary education free and compulsory in the overall interest of the child. Besides, all international treaties on human rights provide that primary education be made compulsory. It can safely be argued therefore that state parties are merely complying with their obligations under these treaties by making primary education compulsory.

It is significant that education not only should be free but also must meet the minimum national standards. In Nigeria, primary school education is free and compulsory in public primary schools up to junior secondary school,<sup>xxxvii</sup> but it remains highly substandard. Teachers are not well trained and remunerated. Education is given in dilapidated buildings that do not meet requisite health and safety standards. There is a dearth of textbooks and the majority of schools cannot boast of any library facilities. For example, evidence of the decay and ruin of primary education lies in the fact that, in a country of 130 million people, no single child of top government functionaries or senior public servants attends public primary schools. Public servants and government functionaries take their children to private schools that charge fees beyond the reach of the ordinary Nigerian parent. On this issue, Ogbunwezeh posits that:

This is to say that they know that the Nigerian educational system suffers compound dysfunctionality due to what they and their predecessors did to scuttle education in Nigeria. The same could be said of every other sector of our economy and national life. The kids of Nigerian governors and public officials do not study in Nigeria. How can they do that after their parents have succeeded in destroying every public utility and source of social legitimacy? They are soaking the best of western education on public funds. Our president buys his paracetamol at the HSK hospital Pharmacy in Wiesbaden, Germany. The legislators check their blood pressures in Paris, Washington, New York and some other Western capital. Why wouldn't they? Their visionless squandermania, incompetence and primitive thievery have succeeded in forestalling the articulation of any healthy policy for our health system, and destroyed any policy that showed some potential of success.<sup>xxxviii</sup>

In this respect Nigeria is violating the right to education. Education must be made available to the marginalized and the most vulnerable in the society to 'overcome the educational disadvantage associated with poverty and exclusion'.<sup>xxxix</sup>

Katarina Tomasveski has rightly observed that failure of State Parties to realize the right to primary education is not derived from inadequate or lack of resources but a combination of other factors; lack of political will and determination; corruption; and misplacement of priority. In most of the countries that lag behind in the realization of free and compulsory education, military spending and expenditure exceed total spending on education 'many governments and intergovernmental agencies are not committed to education as a human right for all children. Military spending far exceeds investment in education around the world; there are at least 150 soldiers for every 100 teachers in the world. Only 2% of educational funds come from international aid. Compulsory education is not supported in global education strategies as this would define education as a public service and a public responsibility'.<sup>xl</sup>

### 1.2.3 *The Right to Secondary Education*<sup>xli</sup>

The CESCR defines secondary education to include technical and vocational education which aims to provide a "...basic education and consolidation of the foundations for lifelong learning and human development"<sup>xlii</sup>

It is necessary to ensure the protection of the right to secondary education because potentially secondary education can prevent under age working and child labour. In its Concluding Observation on Gambia the CESCR noted that 'as a result of the paucity of secondary school opportunities, most children complete their formal education at the age of 14 and informally enter the work force'<sup>xliii</sup> while lack of access to secondary education has the potential to contribute to lack of gainful employment. The CESCR noted in its Concluding Observations on Jamaica that the CESCR 'is concerned that 75 per cent of the unemployed reported that they have no recognised educational or vocational qualifications, thus diminishing their chances for employment.'<sup>xliiv</sup> The CESCR recommended to Jamaica to provide access to vocational training to facilitate employment opportunities.<sup>xliv</sup> Deprivation of secondary education may also encourage early pregnancy. For example in its Concluding Observation on Honduras the Committee noted that 'the high rate of teenage pregnancy'<sup>xlvi</sup> was responsible for the high dropout rate in secondary school. Also the CESCR noted that the dropping out of girls is particularly alarming, as their access to education is being curtailed by a revival of early marriage, and a decrease in the prestige of having a formal education.<sup>xlvii</sup>

#### 1.2.4 *Technical and Vocational Education (TVE)*

This right is defined in the Covenant as part of the right to secondary education. The UNESCO Convention on Technical and Vocational Education (1989) provides that TVE consists of "all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life" (art. 1 (a)). This type of education is particularly important because it allows the student to acquire important vocational skills such as plumbing, carpentry, and building works. It is suitable for students that are willing to acquire vocational skills but may not be prepared to go to the university. This type of education is increasingly playing vital roles in boosting the economies of many countries.<sup>xlviii</sup> This type of education is virtually not in existence in Nigeria; the few available TVE institutions do not have up-to-date equipment. Thus, Nigeria is in dire need of competent artisans like technicians, plumbers, electricians, builders and plumbers. It is a shame that Nigerians now employ artisans from neighbouring countries because Nigerian artisans have been found to be incompetent.

#### 1.2.5 *The Right to Higher Education*<sup>xlix</sup>

This is education at an advanced level, which is a progression from the completion of secondary education. States are not under any obligation to generally make higher education available.<sup>1</sup> The available slots must however be allocated on the basis of capacity and on non-discriminatory basis.

A top-tier qualitative higher educational system is critical to Nigeria's development because the universities produce and supply human and intellectual resources to create and sustain economic development. Ozturk rightly states:

Clearly the educational provisions within any given country represent one of the main determinants of the composition and growth of that country's output and exports and constitute an important ingredient in a system's capacity to borrow foreign technology effectively. For example: health and nutrition, and primary and secondary education all raise the productivity of workers, rural and urban; secondary education, including vocational, facilitates the acquisition of skills and managerial capacity; tertiary education supports the development of basic science, the appropriate selection of technology imports and the domestic adaptation and development of technologies; secondary and tertiary education also represent critical elements in the development of key institutions, of government, the law, and the financial system, among others, all essential for economic growth. Empirical evidence at both micro and macro levels

further illuminates these relationships. At a micro level, numerous studies indicate that increases in earnings are associated with additional years of education, with the rate of return varying with high level of education<sup>li</sup>

#### 1.2.6 *Development of the School System*<sup>lii</sup>

The fulfilment of the obligation to maintain a schools system is programmatic. It is a continuous and progressive realization of the right to education. Each State Party is expected to allocate maximum resources to the realization of a complete system of education. Hence, the ability of State Parties to meet this requirement is dependent on the availability of resources. However feasible and genuine steps must be taken by State Parties to realize this obligation. State Parties are to build new schools from primary to university; they are to maintain good libraries; recruit competent staff and generally ensure high quality education. The CESCR has condemned a situation in Nigeria where there are no desks and chairs in schools and primary school pupils have to bring their desks and chairs from home. The CESCR has also condemned the deplorable state of buildings and infrastructure in Nigeria.<sup>liii</sup>

#### 1.2.7 *The Right to Educational Freedom*<sup>liiv</sup>

The way in which children are provided with the opportunity to learn is as important as what they learn. Traditional models of schooling that silence children and perceive them as passive recipients are not consistent with a rights-based approach to learning. There should be respect for the agency of children and young people, who should be recognized as active contributors to their own learning, rather than passive recipients of education. There should also be respect for the evolving and differing capacities of children, together with recognition that children do not acquire skills and knowledge at fixed or predetermined ages. Teaching and learning must involve a variety of interactive methodologies to create stimulating and participatory environments. Rather than simply transmitting knowledge, educators involved in creating or strengthening learning opportunities should facilitate participatory learning. Learning environments should be child-friendly and conducive to the optimum development of children's capacities.<sup>liiv</sup>

#### 1.2.8 *Discipline in School*

Discipline in schools is necessary to train children to become responsible citizens. Discipline must be administered in a manner consistent with the child's physical and personal integrity. Discipline must be mild and appropriate, taking the child's age and wellbeing into consideration. Discipline in schools should not include any form of corporal punishment<sup>livi</sup>, torture, and other forms of degrading and derogatory treatment. For example, caning and horse whipping of pupils are a common practice in some part of Africa.<sup>liiii</sup> This practice is not only cruel but barbaric and inimical to the realization of the right to education by the pupils. Findings have revealed that violence and abusive treatment of children is one of the key reasons for high drop-out rates in schools.<sup>liiii</sup> Humiliating treatment is also harmful to the development, health and safety of the child. Abusive treatment diminishes self-esteem and confidence of the child.<sup>lix</sup> Violent treatment against the child promotes the impression that violence is an acceptable standard in the society. It is unfortunate to note, however, that violence against children in schools is still widespread<sup>lx</sup>.

This practice is unacceptable, and for the right to education to be realized, contributing factors to violence and harmful practices against children must be eliminated by State Parties. Some of the issues to be addressed by state parties are religious and cultural acceptance in some countries that violence is an appropriate disciplinary measure against children; poor and inadequate teacher training; ignorance and lack of knowledge of the advantages of positive discipline.<sup>lxi</sup> A robust approach to tackling these barriers by state parties will improve the learning experiences of children and will make the schools very attractive to children. Consequently, the right to education will be better realized. In many jurisdictions State Parties and the judiciary have placed prohibition on the application of corporal punishment both in schools and at home<sup>lxii</sup>



### 1.2.9 Academic Freedom

This right is protected in several countries.<sup>lxiii</sup> It is the right to expose students to different ideologies and schools of thought on any discipline.

One professor of public health in North Africa published findings showing infant mortality at rates much higher than government figures. He was imprisoned. A political scientist from Southeast Asia and another from Europe published articles condemning violence by separatist movements in their respective countries and calling for public rejection of violence and promotion of nonviolent conflict resolution. The former was assassinated outside his university; the latter survived an attempt on his life when a bomb planted in his car detonated too early. A sociologist from the Middle East conducted election monitoring with results strongly suggesting election fraud by the ruling party. He and more than a dozen colleagues were arrested, tried and imprisoned. In each case, the message of the scholar's work was effectively repressed, at least within the scholar's home country.<sup>lxiv</sup>

Academics are entitled to enjoy the freedom as scholars to disseminate knowledge in an objective manner without fear of intimidation, the risk of losing their jobs or death. Academics should be free to engage in research activities and be equally free to publish their findings without any fear. This is justified on the basis that students will be exposed to rich reservoirs of knowledge and will have the benefits of choosing between two or more often contradicting and compelling schools of thought. Academic freedom should however be exercised within internationally acceptable limits. It should be limited to communication on the academic findings and speciality area. It will amount to abuse of the academic freedom for academics to make political statements without any justifiable academic grounds.

The CESCR condemned the Nigerian military government when it observed that the "military authorities have found...university professors and university students to be easy targets for repression or persecution on the pretext that they constitute the most vociferous and dangerous political opposition... there is also a brain drain in the academia, as a result of political and academic instability".<sup>lxv</sup>

## 2.0 Violation of the Right to Education by State Parties

### 2.1.1 Retrogressive and Repressive Legislation

Retrogressive and repressive legislation is inimical to the realization of socio-economic rights to education. It varies in dimensions and practice across the globe. In the US the Supreme Court ruled in *Rose v Council for Better Education*<sup>lxvi</sup> that legislation promoting allocation of financial resources in favour of schools located in rich neighbourhoods to the disadvantage of the schools located in poor neighbourhoods is retrogressive and should be abolished immediately for promoting inequalities. In the Taliban Afghanistan girls were barred from schools by reason of State legislation preventing girls from attending school. It is also repressive and a violation of the right to education to categorize certain people as uneducable, without giving them the opportunities to learn.

### 2.1.2 Violation of the Four As

Failure to meet the set criteria under adaptability, accessibility, availability, and acceptability as discussed above and as recommended by the UN Special Rapporteur on the right to education will amount to a violation of the right to education by the State Party.<sup>lxvii</sup>

### 2.1.3 Failure to Regulate and Maintain Educational Standards

A state party that neglects or fails to regulate and maintain standards in schools will have violated an obligation required in the Covenant. This obligation has a negative aspect which is the enactment of laws to ensure that both public and private education providers comply with the standards required of them. State parties are required to also provide schools, train teachers, set implementation and supervisory bodies that will ensure that standards are maintained. These require funding and may be considered as a positive obligation. Failure of government to fund education may amount to a violation

of the obligation to fulfil the right to education which is a progressive and programmatic obligation. Judicial review of such a violation will be subjected to the reasonable test as espoused in *Associated Picture House v Wednesbury*<sup>lxviii</sup>, and developed and applied in *Government of South Africa and Others v Grootboom*<sup>lxix</sup>. However, if discriminatory practice can be established the otherwise non-justiciable obligation to fulfil the right to education becomes actionable.

Persistent teachers' strikes, closure of schools, and high teacher turn-over are violations of the State Parties' obligations to protect the right to education. For example, the African Commission on Human Rights suggested that it is a violation of the right of access to education for Zaire to have closed universities and secondary schools in Zaire for a period of up to two years.<sup>lxx</sup>

#### 2.1.4 *Arbitrary Closure of Schools*

Arbitrary closure of schools is a significant violation of the right and entitlement to the right to education. Arbitrary closure of schools is very rampant in the developing countries. For example in Nigeria, the Universities are often shut for up to six months in one academic year. 'In the recent past the Academic Staff Union of the Nigeria Universities (ASUU) had called for several strike actions. The actions lasted for so many months and at times more than a session. For instance, there were strikes in August, 1993, February, 1996; April, 1996; November, 1996; to mention a few. One of the reasons that necessitated such strike actions by the Academic Staff Union of Universities in Nigeria was inadequate science equipment and facilities such as laboratories and chemicals with which the students could be taught effectively'.<sup>lxxi</sup> This was more frequent during the military rule. At times the universities are closed because students demand improved educational facilities or that tuition be reduced. The schools are also closed during elections, with utmost disregard to the school calendars. This is to prevent students from being used as political thugs by politicians. At other times the demand by the lecturers that more resources be allocated to the Universities for research purposes; that more classrooms be built and that the salaries of academics be increased are not met. The failure of the military government to enter into meaningful dialogue with the lecturers often resulted in prolonged strikes and widespread disruption of academic programmes.<sup>lxxii</sup> The adverse consequences are: some lecturers lose their jobs, while others leave for better opportunities in the developed countries; a host of other lecturers enter into part-time jobs to make ends meet while the strike continues (because their salaries are unpaid during the strike), and when the strike is called off most of them still hold on to these part-time jobs. Interest is lost in the academic jobs; students and parents often lose interest as a result of undue delay in completing the programme; some female students get pregnant and family responsibilities may prevent them from completing their programmes.

#### 2.1.5 *Failure to Prevent Violation by Non-State Actors*

It is the responsibility of the State Party to ensure that non-state parties do not violate the right to education within its jurisdiction. The imposition of high tuition fees; the application of corporal punishment by schools; discrimination and unequal treatment to the minority, people with disabilities and the vulnerable; are some of the ways by which non-state parties can violate the rights to education. The State Party must ensure that adequate steps are taken to tackle this. The need to protect the realization of the right to education against the violation by third parties is paramount in today's world, as education is being privatized in most parts of the world. From the perceptions of the investors, education is a commodity and any investments must bring immediate returns. In that vision, education should be traded just like any other service and its financing by a government would be defined as an illegal state subsidy. In contrast, human rights advocates portray in their writings the right to education as defined in international human rights treaties whereby most, if not all education, would be provided or at least financed by government. The human rights literature is couched in terms of 'should' rather than 'is' because most countries have moved away from definitions of the right to education in older human rights treaties, especially from a guarantee that all education should be provided free of charge. In the world as it is today, education is described in terms of market shares and competitive prices, with university education, in particular, traded like any other service'.<sup>lxxiii</sup>

It is therefore the responsibility of State Parties to regulate charges levied by education providers so that education will be more accessible to the majority of the people. It is also necessary for

State Parties to ensure that private education providers conform to set standards. Competent and experienced teachers must be engaged to impart knowledge in a professional and positive manner.

#### 2.1.6 *Violation by Parents*

Parents have an enormous responsibility to ensure that their children have access to school. The home must be made conducive to learning. The parents must ensure the registration of the child in school; maintain dialogue with the school authorities and the local education authorities; and show genuine interest in the development of the child. The parents must ensure that the child attends school on time and safely too. The State Parties have the responsibility to ensure that there is an adequate legislative framework in place to prevent parents from violating the right of the child in this regard. This statement is corroborated by Tomasveski when she argues that the right of the child to education is too sensitive and essential to be left entirely to the absolute discretion of the parents without state regulation:

The extent to which education is designed to reflect or obliterate societal fault lines is a political choice made by adults and imposed upon children. The rights of the child represent an indispensable corrective for such adult choices. The contents and methods of teaching have been profoundly altered with the advent of the rights of the child. The introduction of sex education or the prohibition of corporal punishment generated precedent-setting international human rights jurisprudence under the European Convention on Human Rights, which neither did nor could include the rights of the child when it was adopted 40 years ago. These changes would not have been possible through electoral or parental choice, and they highlight the importance of government human rights obligations owed to children. Government human rights obligations encompass guaranteeing the right to education, safeguarding human rights in education, and enhancing human rights through education. The right of the State to regulate education gains heightened importance in the current emphasis on the values underpinning education in measuring its quality. Education policy is operationalization of values since public education creates a public.<sup>lxxiv</sup>

### 3.0 **Conclusion and Recommended Remedies for Violation of the Right to Education**

This author listed some of the essential features of education at the beginning of this paper and the author will add that education also bridges social and economic gaps and can be used as an instrument of social cohesion and stability. In a class-based society, education can be used to bridge tensions between the lower and upper classes. Where children have access to qualitative education, the knowledge acquired can be used to resolve tension and diffuse conflict in a multi-cultural, multi-ethnic, and multi-religious society. To achieve this aim Nigeria must ensure that its education system is based on non-stereotyped, objective and inclusive learning. The lags identified above hinder growth and economic development.

It is therefore necessary by reason of the numerous benefits inherent in education that entitlement to education be accessed from a right-based approach. In the past, education was a duty imposed on government, now education is a right. Everyone is entitled to demand his right of access to education. The right to education is a legitimate claim that is amenable to individual and collective adjudication; in particular, the negative aspect of state responsibility and the minimum core can be made available on demand. One may ponder on the adequacy of litigation as a means of realizing the benefits of the right to education. “What can litigation on the right to education accomplish in countries where all-encompassing public education has not been universalised? This thesis is of the view that it can accomplish a great deal. It cannot provide funding (where none is available) or instantly create a country-wide educational infrastructure where none exists. What litigation can do is to seek and to obtain an authoritative finding that a government has violated the right to education. This is a powerful lever for change and, also, an excellent method of human rights education”.<sup>lxxv</sup>

Next, this paper will consider and analyse the benefit of adjudication to the enjoyments of the right to education. Specifically, it will consider and analyse specific reliefs available to a claimant in the event of a violation of his right under the Covenant.

### 3.1.2 Individual and Collective Claims

In the landmark case of *SERAP v Federal Republic of Nigeria and Universal Basic Education Commission*<sup>lxxvi</sup> The claimants alleged a violation of their right to qualitative education as protected under the Nigerian Constitution and other international treaties, most of which Nigeria is a state member. The respondent asserted that the Economic Community of West African States (ECOWAS) court lacked jurisdiction, as the right to education was merely protected under the Directive Principles, which were neither justiciable nor enforceable in a court of law, and that the claimants did not have the locus standi to institute the action. The court held that under Article 9 (4) of the Supplementary Protocol, the Court had jurisdiction to adjudicate on human rights violations in any member state, in the instance under consideration, violation of the right to education.. The court further held that under Article 4(g) of the revised Treaty of ECOWAS, Member States of ECOWAS had committed themselves to adhere to the provisions of ACHPR. And being a signatory to both the ACHPR and the ECOWAS treaties, Nigeria came under the jurisdiction of the ECOWAS court. On whether the claimants had locus standi, the ECOWAS court ruled:

[P]ublic international law in general, which is by and large in favour of promoting human rights and limiting the impediments against such a promotion, lends credence to the view that in public interest litigation, the plaintiff need not show that he [or she] has suffered any personal injury or has a special interest that needs to be protected to have standing.

[T]he court is satisfied that at this stage prima facie facts have emerged in support of the case that the plaintiff has proper standing to bring the action and that the matter is justiciable in this court.<sup>lxxvii</sup>

After dismissing all the preliminary objections by the respondent, the ECOWAS court declared that all Nigerians were entitled to education as a legally enforceable human right. This case confirms that individual and collective cases can be brought to challenge any violation of the right to education.

An aggrieved party may also bring an application before the court for any of these reliefs: Judicial Review, Injunction, Mandamus, Declaration (PIL in India)

### 3.1.3 Declaration

In *Unnikrishnan v State of Andhra Pradesh* <sup>lxxviii</sup> the Supreme Court of India declares that ‘right to education is implicit in and flows from the right to life guaranteed under Article 21... a child has a fundamental right to free education up to the age of fourteen years’<sup>lxxix</sup> The government of Indian in compliance with the declaration by the Supreme Court amended the Indian Constitution by inserting Article 21-A, which provided for free and compulsory education for children between ages 6 and 14

In *Rose v Council for Better Education*<sup>lxxx</sup> the Supreme Court of Kentucky rules that it is not a violation of the principle of separation of power for the court to examine whether allocation of financial resources to schools have been done on discriminatory and unequal basis and does not amount to a violation of the principles of separation of separation of power for a court to declare a discriminatory allocation as unlawful:

We have declared that the power to legislate belongs to the General Assembly, and the power to adjudicate belongs to the judiciary. It is our goal to honor both the letter and spirit of that constitutional mandate. Our functions are to determine the constitutional validity and to declare the meaning of what the legislative department has done... the system of common schools to be unconstitutional. It is now up to the General Assembly to re-create, and re-establish a system of common schools within this state which will be in compliance with the Constitution. We have no doubt they will proceed with their duty.<sup>lxxxi</sup>

The Supreme Court also held that it is within the Court’s jurisdiction to make a supervisory order, pursuant to the declaration of unlawful allocation of financial resources to the schools. The Court is entitled to maintain the case on its list pending compliance with the Court’s order.

The Education Reform Act 1990 was enacted pursuant to this judgment. Albisa and Schultz observe, ‘since Rose, Kentucky schools have steadily improved. For the first time, Kentucky students in all three grades tested in 2001 matched or exceeded the national average on a basic skills assessment’.<sup>lxxxii</sup>

#### 3.1.4 *Non-Judicial Remedies*

The obligations to fulfil may not be suitable for court adjudication. I have argued in Chapter Two that, by reason of the nature of these obligations, they are not justiciable. They are programmatic in nature. It will be almost impossible for a court in developing countries to order the government to build more schools, employ more teachers, reconstruct schools to make them accessible to students with disabilities, update the libraries, etc. It will be inappropriate for the court to second-guess government action on policy issues.

#### 3.1.5 *Lobbying*

Lobbying is the process of influencing the decisions of law makers and the government.<sup>lxxxiii</sup> It is a legitimate way of getting a favourable decision from those in government in civilized countries. It can take a variety of forms: letter writing; presentations; seminars; campaigns; and rallies. Anyone can engage in lobbying. Lobbying is a potent tool that can be used by stakeholders, parents, pupils, NGOs and other pressure groups to make State Parties realize their obligations to fulfil the right to education, which is mainly a programmatic obligation. In the face of limited resources and competing interests, lobbying has been proved to produce positive results.<sup>lxxxiv</sup> For example, Tomasveski comments on her efforts in lobbying for the fulfilment of the right to education:

One of the joys I have experienced in the past five years has been the roll-back of school fees in primary education in Africa. Malawi led in 1994, Uganda abolished fees in 1997, Tanzania followed in 2002, and Kenya in 2003. The enthusiasm following the abolition of the hated school fees carries me on to help in the battle for free education there and elsewhere. I made free primary education one of the foci of my mandate and relentlessly challenged the World Bank until it changed its policy. Now it opposes the charging of fees in primary education. My ‘dialogue’ with the World Bank was an example of the need to expose and oppose abuses of power which obliterate the ability of many indebted and impoverished countries to meet any obligations except those of servicing their debts. My mission to Uganda, just after it had abolished primary school fees, showed me how irrelevant human rights law is where the pressure of debt repayments reigns. Showing that the World Bank introduced school fees into African primary education in 1983 led to my recommendation that the Bank carry out an in-house survey of the charges in the countries where it works, which it did. Numerous meetings (both at the World Bank headquarters and in the field) and extensive correspondence helped the process of change, which is far from finished. What has proved to work is naming-and-shaming. Although the target has not been a government, the violation, violator and remedy have been clear. We have not secured remedies for all those who were deprived of schooling because they were too poor to pay, but the roll-back of fees demonstrates that change is possible.<sup>lxxxv</sup>

This author urges all stakeholders and claim holders to explore non-judicial means to enforce the obligations of State Parties that are dependent on huge resources because ‘enforceability of the right to education is indeed a challenging task. It primarily depends upon the national legal system. This and other key issues were addressed during the Dialogue on the Right to Education and Follow-up to the World Education Forum, organized by CESCR in co-operation with UNESCO (May 2002). Several challenging tasks need to be attended to in emerging areas of work. These include review and comparative analysis of national laws, defining their core contents; advocacy for creating greater awareness among policy makers, public authorities and the public at large of the importance of the right to education as being essential for the exercise of all other human rights; raising public debate on the

questions of critical importance in the field of the right to education; and encouraging and supporting research and studies by way of collaboration with the intellectual community'.<sup>lxxxvi</sup>

This paper has shown that the right to education is of paramount importance and given justifications for its protection as human rights. The paper has shown as well that, in its present form, the texts of the ICESCR do not offer great protection. Hence, there is need to reformulate Article 11 and 13. This paper concludes that, while the obligations to respect and protect under the right to education are amenable to judicial adjudication in its present form, there is need for improvement. Victims might also explore non-judicial means as discussed above, particularly in the developing countries.

### *Proposal for the Reformulation of the Right to Education in Nigeria*

In India, the Right of Children to Free and Compulsory Education Act, 2009<sup>lxxxvii</sup> stipulates the procedure to be adopted for the provision of free and compulsory education. Some of the highlights of the Right of Children to Free and Compulsory Education Act include the following:

- education is legally guaranteed for children between the age of six to fourteen;
- 25% of available seats in private schools is to be reserved for children from low income families;
- government must establish good neighbourhood schools;
- established schools must be of good standard;
- no child must be deprived of the rights to school by reason of inability to pay prescribed fees;
- grievances may be made to the local authorities at no cost, and administrative bodies set up to monitor standard.

This model is capable of addressing some of the problems already discussed previously. For example, in Nigeria children have access to free primary education but there is no quality in these schools. Teachers often go on strike for about six months in a year. Public functionaries do not send their children to state schools and children from low-income families cannot afford good private schools. If the India approach is adopted children from poor families will be able to access private schools free of charge while quality in state schools will improve; pupils and parents can easily lodge any grievance with the local authority.

In conclusion, enjoyment of the right to education, qualitative education, is a catalyst to national development. Research has shown that education generates and sustains a quality and effective workforce<sup>lxxxviii</sup>; it makes a country's export sector more competitive; it promotes the reception and sustenance of foreign technological transfer.<sup>lxxxix</sup>

It is acknowledged that the enjoyment of the right to education does not solely guarantee economic development. The government has in addition to encourage and promote an enabling environment. There must be an effective legal framework and an efficient and user-friendly judiciary in place, and corruption must also be reduced to the minimum. Appropriate economic policies must be formulated and implemented.

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