



THE RIGHT TO EDUCATION IN NIGERIA: AN  
ANALYSIS OF LAW AND POLICY

BY

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## **ABSTRACT**

Right to education is a recognised right within the context of the International Human Rights Instruments. Basic education is also considered a fundamental right of children in most of those instruments. Nations were therefore on this ground encouraged by the United Nations to consider right to basic education a fundamental right by domesticating the Convention on the Rights of the Child (CRC) in order to advance the promotion of children's right to basic education in their respective domestic levels. For this reason, Nigeria as one of the signatories to the CRC has domesticated the convention by passing the Child Rights Act 2003 (CRA) at the national level, for all states of the federation to replicate. However, despite the passage of the CRA and the availability of other legislations and a blueprint educational policy, basic education is not yet a recognised fundamental right under the Nigerian law and consequently not enforceable. This thesis assesses the legal and policy framework on education in Nigeria to see how effective they are in promoting and protecting the right to basic education as a fundamental right of the Nigerian child. To achieve this, qualitative legal research methodology is adopted, by which the thesis analyses the available laws relating to the provision of basic education and the available educational policy in that regard. The same methodology is used to analyse the adequacy or otherwise of the law and policy and semi-structured interview approach is also used to gain the research objectives through responses from the interviewees. Through the analysis of the legal framework, this study finds that the law is weak and inadequate for the recognition of education generally and basic education in particular as a fundamental right, hence, it affects the availability of and accessibility to basic education in Nigeria. The thesis therefore concludes that right to basic education is not recognised under the Nigerian law as an enforceable fundamental right. The thesis also finds that instability and improper implementation of educational policy also affects the provision of compulsory basic education. The thesis further finds that among other factors precluding the protection and promotion of this right are legislative and judicial factors. As a result of these findings, the thesis recommends constitutional reforms, legislative amendments and judicial re-orientation in order to strengthen the legal framework and ensure proper implementation of policy for the recognition, promotion and protection of basic education as fundamental right in Nigeria.

## خلاصة البحث

الحق في التعليم هو حق معترف به ضمن سياق أدوات حقوق الإنسان الدولية، ويعتبر التعليم الأساسي كذلك من حقوق الأطفال في معظم تلك الأدوات، ومن هذا المنطلق، قد حثت الأمم المتحدة دول العالم على اعتبار الحق في التعليم حقاً أساسياً بواسطة تدجين اتفاقية حقوق الطفل من أجل تعزيز حق الأطفال في التعليم الأساسي في كل من المستويات المحلية. ولهذا السبب، فإن نيجيريا من إحدى الدول التي وقعت على هذه الاتفاقيات وقد قامت بتطبيقها من خلال تسنين قانون حقوق الطفل لعام 2003 على المستوى الوطني في جميع المحافظات، وعلى الرغم من إقرار قانون حقوق الطفل وتوفير التشريعات الأخرى وخطط السياسة التعليمية فإن التعليم الأساسي لم تكن معترفاً به كحق جوهري فلم يكن حتى الآن داخلاً في حيز النفاذ. فهذه الرسالة تقيم الإطار القانوني والسياسي في التعليم لمعرفة مدى فاعليتها في تعزيز وحماية الحق في التعليم الأساسي باعتباره حقاً أساسياً من حقوق الأطفال النيجيريين. ولتحقيق هذا الهدف، تبنى البحث منهج البحث القانوني النوعي، حيث قام البحث بتحليل القوانين المتاحة المتعلقة بتوفير التعليم الأساسي والسياسة التعليمية المتاحة في هذا الاعتبار، وذلك من خلال إجراء مقابلات شبه مهيكلة للحصول على أهداف البحث عن طريق الاستجابات من المقابلات. ومن خلال تحليل الإطار القانوني وجدت هذه الدراسة أن القانون ناقص وأضعف ما يكون للاعتراف بالتعليم عموماً والتعليم الأساسي كحق جذري بصفة خاصة وبالتالي فإن ذلك يؤثر على توافر وسهولة الوصول إلى التعليم الأساسي في نيجيريا. فقد استنتج البحث أن الحق في التعليم الأساسي في نيجيريا غير معترف به باعتباره حقاً أساسياً واجب النفاذ، ووجد البحث أيضاً أن عدم الاستقرار وسوء تنفيذ السياسة التعليمية يؤثر على توفير التعليم الأساسي الإلزامي، لقد وجد البحث كذلك أن العوامل التشريعية والقضائية من العوامل التي تستبعد حماية وتعزيز الحق في التعليم، وبناء على هذه النتائج، فإن البحث يقترح الإصلاحات الدستورية والتعديلات التشريعية وإعادة التوجيه القضائي من أجل تعزيز الإطار القانوني وضمان التنفيذ السليم للسياسة العامة من أجل تعزيز الإطار القانوني وضمان التنفيذ السليم للسياسة العامة من أجل الاهتمام الخاص وحماية التعليم الأساسي كحق أساسي في نيجيريا.

## **APPROVAL PAGE**

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## DECLARATION

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*All praise is due to Allah the Most High. May the peace and blessings of Allah be further bestowed upon the Holy Prophet Muhammad (S. A. W). This thesis is wholeheartedly and sincerely dedicated to my beloved Father, Mu'allim and Murshid, Sheikh Alhadj Ahmad 'Abdullah Folorunsho (Hamaaullah, "Baba-n-Faagba").  
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International Labour Organisation Convention Concerning Indigenous and Tribal  
People in Independent Countries (Convention No. 169) 1957  
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Universal Declaration of Human Rights 1948  
Universal Islamic Declaration of Human Rights, 1981  
West African Examination Council (WAEC) Act  
Western Region Education Law 1955  
World Declaration on Education for All (WCEFA) 1990

## LIST OF ABBREVIATION

ACHPR	African Charter on Human and Peoples' Rights
ACHPR	African Court on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AEC	African Economic Community
A-G	Attorney-General
ASUU	Academic Staff Union of University
AU	African Union
CDE	Convention Against Discrimination in Education
CEDAW	Convention on the Elimination of Discrimination Against Women
CFRN	Constitution of the Federal Republic of Nigeria
CMS	Church Mission Society
CRA	Child Rights Act
CRC	Convention of the Rights of the Child
CYPA	Children and Young People's Act
DPSP	Directive Principles of State policy
ECCDE	Early Childhood Care and Development Education Centres
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
F.R.E.P.R	Fundamental Rights (Enforcement Procedure) Rules
FHC	Federal High Court
GDP	Gross Internal Product
HRE	Human Rights Education
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
JAMB	Joint Admission and Matriculation Board
LFN	Laws of the Federation of Nigeria
NCLR	Nigerian Constitutional Law Report
NECO	National Examination Council
NGO	Non-Governmental Organisations
NHRC	National Human Rights Commission
NLR	Nigerian Law Report
NPE	National Policy on Education
NUC	National University Commission
NWLR	Nigerian Weekly Law Report
OAU	Organisation of African Unity
OIC	Organisation of the Islamic Conference
OPC	Oodua People's Congress
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgment
SERAP	Socio-Economic Rights and Accountability Project
SSS	State Security Service
SSSE	Senior Secondary School Examination



SUBEB	State Universal Basic Education Board
UBE	Universal Basic Education
UBEC	Universal Basic Education Commission
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDHRE	United Nations Declaration on Human Rights Education
UNESCO	United Nations Education, Science and Cultural Organisation
UNICEF	United Nations Children's Fund
UPE	Universal Primary Education
WAEC	West African Examinations Council
WCEFA	World Conference on Education for All
WCEFA	World Conference on Education for All

# CHAPTER ONE

## INTRODUCTION

### 1.1 INTRODUCTION

Human rights are one of the world's fastest growing concepts theoretically and in practice, within the political,<sup>1</sup> academic and legal circles. It is a concept that empowers the people towards the knowledge of what they are entitled to as of rights. The concept is as old as the human creation. It is therefore noteworthy that, after the passage of the United States Bill of Right and issuance of Magna Carta,<sup>2</sup> human rights concept gained more strength by metamorphosing into binding, operational and enforceable law by the advent of the Universal Declaration of Human Rights (UDHR) in 1948.<sup>3</sup> This is the mother of other human rights documents through which legal efficacy was given to various rights of mankind by way of guarantee, preservation, observation, implementation and protection. Further developments subsequently paved way for other instruments at the international,<sup>4</sup> regional<sup>5</sup> and national<sup>6</sup> levels.

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<sup>1</sup> David P. Forsythe, *The Internalization of Human Rights*, (Toronto: Lexington Books, 1991), 20.

<sup>2</sup> Art. 12, USA Bill of Rights and Magna Carta 1215, for International Bill of Rights see United Nations, *Human Rights, A Compilation of International Instruments*, (New York: United Nations, 1993), 1.

<sup>3</sup> Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Oxford: Clarendon Press., 1995),1-29. Between the 7th to 10th of May, 1948 a meeting was convened by the Congress of Europe, attended by about 1,000 people from the Europe with participants from the United States and Commonwealth. The consequent of the meeting was the issuance of a declaration known and referred to as the Universal Declaration of Human Right. The document was eventually adopted on the 10<sup>th</sup> of December, 1948.

<sup>4</sup> Haniff Ahamat, "International Human Rights Instruments: Hard and Soft Law", in *Human Rights Law, International, Malaysian and Islamic Perspectives*, edited by Abdul Ghafur Hamid @ Khin maung Sein (Sweet & Maxwell Asia, 2012), 26-35. For example International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, International Covenant on Civil and Political Rights (ICCPR), 1966, Convention on the Elimination of All forms of Racial Discrimination, 1965, Declaration Against Intolerance and Discrimination Based on Religion, 1981, Convention on the Elimination of Discrimination Against Women (CEDAW), 1979, Convention on the Rights of the Child, 1989, UNESCO Convention Against Discrimination in Education, 1960, UNESCO Convention on Technical and Vocational Education, 1989, International Labour Organisation Convention No. 169 of 1989.

By adoption and domestication, all member states became duty bound to give effect to the provisions of the laws and under the obligations to as well give effect to the rights therein contained by way of preservation and protection. Among other human rights as contained in different instruments across the globe is right to education.<sup>7</sup> This right is essential and it is the signboard to other rights.<sup>8</sup> This is because education is the process through which information about other rights is disseminated, and that is why some scholars are concerned about human right education.<sup>9</sup>

Education is a catalyst to human and societal developments.<sup>10</sup> This could be verified by observing various development of different societies and countries of the world. Knowledge is an instrument of human superiority over and above other creatures.<sup>11</sup> In the year 1973, the Nigerian Government felt it was necessary to have a documentary guideline for the educational goals and objectives of the country, a seminar of expert was therefore convened consequent upon which a policy document was produced known as the National Policy on Education. This document sets out among other things, the philosophy and goals of education in Nigeria and guidelines

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<sup>5</sup> See African Charter on Human and People's Rights, 1981 and African Charter on the Rights and Welfare of the Child, 1990.

<sup>6</sup> See the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Child Rights Act, 2003, National Policy on Education, 2004, Education Act, 2004 and the National University Commission Act, 2004.

<sup>7</sup> Fon Coomans, "Content and Scope of Right to Education as a Human Right and Obstacles to its Realization", in *Human Rights in Education, Science and Culture, Legal Developments and Challenges*, edited by Yvonne Doders & Vladimir Volodin (UNESCO Publishing, Ashgate, 2007), 183-185.

<sup>8</sup> Grover Sonja, "Why aren't these Youngsters in School? Meeting Canada's Charter Obligation to Disadvantaged Adolescents", *The International Journal of Children's Rights*, 10, (2002) 1-37.

<sup>9</sup> Manfred Nowak, "The Right to Education," in *Human Rights in Education, Science and Culture, Legal Developments and Challenges*, edited by Asbjorn Eide, Catarina Krause & Allan Rosas (London: Martinus Nijhoff Publishers, 1995), 189-211.

<sup>10</sup> Dakuku Peterside, (The Punch: Nigerian Newspaper), Monday December 3, 2012, page 20.

<sup>11</sup> Olugbile Segun, Olunike Asaolu reported in (The Punch) Friday December 17, 2010, page 3. Where a Chinese Proverb was quoted saying; "if you are planning for tomorrow, sow rice; if you are planning for a decade, plant trees; if you are planning for a life time, educate people."

for the accomplishment of the said educational goal.<sup>12</sup> But the document as elegantly composed by the experts has not been given the expected attention in the area of implementation.

Nigeria as a country<sup>13</sup> is member of the United Nations and a signatory to most of the international treaties and conventions. By this status, Nigeria is under the obligation to give effect to the ratified International Instruments on human rights<sup>14</sup> which recognised various rights, and must work towards granting and protecting these rights as committed by the relevant instrument.<sup>15</sup> Educational right as an integral part of those expectedly guaranteed rights which need serious attention in the area of enforcement.

Nigeria became a single entity as a country when it was given the name “Nigeria” in 1914, this was sequel to the amalgamation of the Northern and Southern protectorates by the British Colonial Masters.<sup>16</sup> Since a hundred years ago, education

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<sup>12</sup> National policy on Education, 4<sup>th</sup> Edition, 2004. In the year mentioned above, experts were drawn from various interest groups ranging from the voluntary agencies and external bodies outcome of which the draft of the document was produced. After due consideration of same vide comments from interest groups across the nation, the final document was fashioned i.e the National Policy on Education first published in 1977, the 2<sup>nd</sup> and 3<sup>rd</sup> editions were published in 1981 and 1998 respectively. The current edition which is the 4<sup>th</sup> edition was published in the year 2004.

<sup>13</sup> Abikan, Ibrahim Abdulqadir, “Islamic Banking under the Existing Laws in Nigeria: Problems and Prospects,” (Ph.D. thesis, International Islamic University Malaysia, 2007), 1. Where the writer gave the description of Nigeria as a country located on the west coast of Africa, its land mass covers 356,943 square miles (about 923,78000 square kilometres); it shares boundary with Niger and Chad republic to the North, Benin Republic to the West, Gulf of Guinea to the South and Cameroon to the East.

<sup>14</sup> A.H Folorunsho, “Judiciary and Human Rights Protection: A Case Study of Nigeria,” (Masters dissertation, International Islamic University Malaysia, 2010), 6.

<sup>15</sup> Ibid., 7.

<sup>16</sup> Prior to 1914 particularly between 1900 and 1914 there was no singular country called Nigeria, the British Colonial Masters met two different administrative and two parallel cultural system in what is today called Nigeria and was named the Northern Protectorate and the Southern Protectorate headed by the Governor General Fredrick Lugard. On the 1<sup>st</sup> of January, 1914, by the declaration of the then Governor General Sir Fredrick Lugard, the Southern Protectorate and the Northern Protectorate was merged together to form a single government and a unified country now called Nigeria. Before the Independence in 1960, Nigeria was a three Region Country namely; Northern, Southern and Eastern regions, in 1967, states were created and the Nation was divided into 12 states. Subsequently in 1976 seven new states were created making it 19 states of the Federation. Also in 1987 two new states were added to it to make it 21 states. The idea of a new federal Capital had been conceived but eventually executed in 1991 and that was when the present Federal Capital Territory (Abuja) was established and in the same year, another nine states were added to the existing 21 to make 30 states. Lastly, the latest

has been one of the expected rights of Nigerians to be taken care of by the successive governments. An important question that informs the conduct of this research goes thus; “how effective are the policy and legal frameworks in Nigeria for the protection of right to education in terms of availability, accessibility adaptability and acceptability.”

The major legal framework on Educational Right in Nigeria is the Constitution of the Federal Republic of Nigeria 1999.<sup>17</sup> Nigeria also formulated a policy referred to as “National Policy on Education” in which policies relating to the accomplishment of the educational objectives of the country are spelt out. Education is to be seen as a right to be guaranteed and protected by the law. Despite the documentary proposition of guaranteeing the educational rights of Nigerians,<sup>18</sup> implementation and giving efficacy to the available policy and legal framework has remained a dream. Hence the standard of education in Nigeria is becoming more worrisome as the day breaks. Some of the recently unfolding development in Nigeria, where two<sup>19</sup> of the thirty six states of the federation declared free education for the indigenes of their respective states from primary to tertiary institution. This movement is another motivational reason to carry out this research. This enables the researcher to find out the available legal

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amendment was effected in 1996 which consequently resulted in the present 36 states of Nigeria and the Abuja (The federal Capital Territory).

<sup>17</sup> See Chapter II Section 18 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) where right to education is been classified under the Fundamental Objectives.

<sup>18</sup> Ibid. (CFRN) 1999 (as amended), also National Policy on Education, Child Rights act etc.

<sup>19</sup> First is Imo state, one of the East Central States created on 17<sup>th</sup> march 1976. Presently has Owelle Rochas Anayo Okorochoa as the State Governor whose tenure of office began on 29 May, 2011 to date. The second is Kano State which is located in North-Western Nigeria. It's the largest State of the Federation, created on 27 May, 1967. The State has Rabiu Musa Kwankwaso as the present Governor from May, 2011 to date. The Governor on Tuesday 24<sup>th</sup> December 2013 on the occasion of presentation of 2014 Budget Proposal to the State House of assembly declared as follows; “... in our collective resolve to drive a knowledge based economy, government has already concluded arrangement to adopt a free education for all indigene at all levels: primary, secondary and tertiary institutions in the state. This is in addition to sponsoring of Kano indigenes to pursue their various degree programmes locally and internationally...”

framework and policy on education in Nigeria with a view to analyse the position of the children's right to basic education and their efficacies.

From the perspective of Islam, knowledge is the premise upon which the religion of Islam is built, and its regulation is Islamic Law. It is therefore obligatory for everyone that prophesises the Islamic faith to seek for knowledge. Also in Islam, among the duties of parent is to train the child by giving him or her good and sound education (not limited to Islamic education). The significance of knowledge in Islam makes education among others, a very fundamental right of every Muslim which must be protected by all means through the governmental and societal efforts. This is evident by the provisions or verses in the Qur'an and Hadith of the Prophet (SAW), most of which have been acknowledged in various articles contained in the Islamic human rights instruments.<sup>20</sup> As important as educational right is to mankind, it could be found in the scripture of Islam that after the right to life, the next most important right accorded mankind by Allah (the creator) is the right to education with which man is dignified.<sup>21</sup> And as a symbol of importance, Allah commenced the message of Islam with the concept of reading and learning.<sup>22</sup> The above reasons and others make educational right an essential right which must be protected from the perspective of the Islamic law. Its protection signifies the protection of Islam itself as a religion and culture generally and preservation of human dignity in particular.

Furthermore, this research looks into the provision of primary and secondary education in Nigeria vis-à-vis the rights of children to education. Also goes further to

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<sup>20</sup> See The Cairo Declaration on Human Rights, 1990, and the Universal Islamic Declaration of Human Rights, 1981.

<sup>21</sup> Al-Baqarah: 30-34. the impulse of these verses of the Holy Qur'an is that Allah the Giver of all rights, after the creation of the father of Mankind (Prophet Adam), the next time Allah did was to educate him personally where Allah said "And He taught Adam all the names, then showed them to the angels, saying: inform Me of the names of these, if ye are truthful." It is in this historical episode that Allah established the superiority of Mankind over and above other creatures, the Angels inclusive.

<sup>22</sup> Al-'Alaq:1-5 where Allah commanded the Prophet Muhammad to read via the revelation through angel Jibril.

examine the factors responsible for the failure of the law and policy in the provision of education and suggest necessary/possible reform of the legal framework and policy to make Nigeria meet the demand of adequately protecting the Educational Rights of children in Nigerians. It could be deduced from the above that, there exist legal framework and policy, but no effect of such is felt by ordinary Nigeria in the provision of primary and secondary education in the country.

It should be noted that many factors are responsible and are serving as hindrance to the workability of the recognition of right to education and provision of basic education in Nigeria, including but not limited to judicial/legal, political, socio-economic, and security<sup>23</sup> but this research will be focusing on the judicial/legal political factors as the major challenges. Few other challenges will be referred to because most of the problems are interrelated and interconnected. Examination of the hindering factors through this study is necessary to find out if the educational goal is achieved and to what extent if at all it is. The above therefore justify the conduct of this study and as such it is timely.

## **1.2 OBJECTIVES OF THE RESEARCH**

The objectives of the research are:

1. To identify legal and policy framework on right to basic education in Nigeria.

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<sup>23</sup> The security challenge in Nigeria presently does not assist in making education available and accessible in some part of the country. Especially at the Northern part of Nigeria where it was reported that on the 25<sup>th</sup> February, 2014 unknown gunmen suspected to be terrorists stormed a school (Federal Government College, Buni Yadi, Yobe State) at midnight where about 59 male student were gruesomely murdered and a good number their female counterparts abducted. This is the fourth of the said similar attack on Yobe State in the recent time. In 2013 such attack were lunched at GSS Damaturu, GSS Mamudo and College of Agriculture Gubja where hundreds of innocent students were assassinated by suspected terrorists.

2. To identify and analyse the adequacy or otherwise of legal framework on right to basic education in Nigeria.
3. To identify the challenges towards recognising right to basic education as a fundamental right.
4. To suggest for improvement or reform on the current law, legal framework and policies on right to basic education.

### **1.3 STATEMENT OF PROBLEM**

Right to education is not enforceable under the Nigerian law, consequently, the provision of basic education is suffering serious dilapidation and set back. Provision of basic education is expected to be one of the primary responsibilities of a government.<sup>24</sup> The right to education has therefore, been entrenched as a substantive right in several international human rights treaties. Nigeria has signed and ratified many of these instruments, especially the Convention on the Right of the Child and the African Charter on the rights and Welfare of the Child. The country has further enacted a Child Right's Act at the Federal level in 2003. Many Federating States are however, yet to enact their own Child Right's Law. Notwithstanding the enactment of the CRA 2003 and the Child Rights Law passed by few States, it still does not appear that the right of Nigerian Children to basic education has been recognised as a substantive right in the Country. For instance, it was reported in a 2012 UNICEF Report that around 60% of school age children are out of school.<sup>25</sup>

This deficiency in the provision of basic education is due to some reasons such as unavailability of educational infrastructures. Apart from this, the Constitution of the Federal Republic of Nigeria 1999 also does not recognise the right to education as one

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<sup>24</sup> United Nations, *Global Initiatives on Out-of-School Children* (Abuja: UNICEF Nigeria, 2012), 2.

<sup>25</sup> *Ibid.* iv, xi.