

THE PROVISION OF BASIC EDUCATION IN NIGERIA. CHALLENGES AND WAY FORWARD

Mini-dissertation submitted in partial compliance of the degree LLM

(Multi-disciplinary Human Rights)

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DECLARATION

I declare that this dissertation is my original work and that it has not been submitted for the award of a degree at any other University of institution.

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DEDICATION

To the almighty God who gives the ability to turn ideas into reality and my entire family who have undertaken this journey with me through prayers and other means. Thank you

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Right
ACRWC	African Charter on the rights and welfare on the Child
AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRF	Consolidated Revenue Fund
ECOWAS	Economic Community of West African States
HIV	Human Immune Virus
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
IECD	Integrated Early Child Development Programme
NCE	Nigerian Certificate in Education
NCNE	National Commission for Nomadic Education
NPE	National Policy on Education
NUT	Nigerian Union of Teachers
SERAC	Social Economic Rights Action Centre
SERAP	Social Economic Rights Accountability Project
SPEB	State Primary Education Board

UBE	Universal Basic Education
UBEC	Universal Basic Education Commission
UDHD	Universal Declaration on Human Rights
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNICEF	United Nations Children’s Fund (formerly United Nations International Children’s Emergency Fund)

ABSTRACT

The importance of education to human beings has been one of the highly emphasized issues in international documents. Education is a Human Right that should be accorded to human beings solely by reason of being human. There are a lot of International human rights instruments that provide for education as a fundamental human right. These include the Universal Declaration of Human Rights (1948) and the International Covenant on Economic Social and Cultural Rights (1966) among others. Nigeria is well aware of the commitments laid down by these international instruments and has taken steps to either sign, accede or ratify these instrument to show its commitment to adhering to the contents laid down in these instruments. This mini-dissertation focuses on the provision of basic education in Nigeria. It examines the contents of various international documents to which Nigeria is party and looks into the role Nigeria should play in providing education. In other words the extent of state parties obligation to provide education to their citizens. As commendable as these programmes and policies may be towards providing basic education, some social vices hinder the successful implementation of these programmes there by resulting in the inadequate provision quality basic education in Nigeria. Most importantly this mini-dissertation takes into consideration the extent of Nigeria's commitments to the obligation to respect, protect and fulfill the right to education stated in the general comment No. 13 on the right to education stated in article 13 of the International Covenant on Economic Social and Cultural Rights. It takes into account, the extent to which Nigeria has adhered to the provision of article 13 of the ICESCR. The laws in Nigeria have also been found wanting with regard to international instruments which state the fact that education is a right which should be justiciable in various courts of law and not just a directive principle of state policy which is not justiciable. This mini-dissertation criticizes this notion of directive principle of State policy in the Nigerian Constitution and proffers some legal and non legal recommendations which can enable the Federal Government of the Federal Republic of Nigeria provide better quality education throughout the country. Finally, the private sector in Nigeria is examined as it also thrives to provide private schools as a multidisciplinary measure to fill in the lacunas left by the Nigerian Government in the area of providing basic education to the typical Nigerian who wants to acquire basic educational knowledge.

CHAPTER ONE

1.1 Background and problem statement

Nigeria's educational system has experienced many changes in policies and programmes. Some of the changes have appeared desirable to people on paper, but in terms of initiation and implementation, there has been high level of uncertainty regarding meaningful planning. This can be very detrimental especially as the future of Nigerians is based on the level of quality education her citizens acquire. Nigeria is party to various international treaties and covenants like the International Covenant on Economic, Social and Cultural Rights and African Charter on Human and Peoples' Rights which state the importance of education. These treaties establish the fact that every person has a right to basic education.¹ In Nigeria, "basic education" is said to be education from the primary level up to the first three years of secondary school.²

Nigeria as a party to these international treaties owes a duty to its citizens to promote and provide education.³ Over the years, attempts have been made to make education free and accessible to the common Nigerian. Past Nigerian governments have tried to provide basic education but due to poor implementation and execution, the provision of basic education is said to be stagnant.⁴ Examples of such programmes are the Universal Primary Education (UPE scheme) of 1976 and the Universal Basic Education (UBE scheme) of 1999 introduced by the then Obasanjo administration. The primary aim of these programmes was to provide basic education to every Nigerian person who needs to go to school within the basic education range.

¹ Article 13 International Covenant on Economic Social and Cultural Rights

²R.O.A Aluede 'Universal Basic Education in Nigeria: Matters Arising'
http://www.krepublishers.com/02_Journals/JHE/JHE_20_0_000_2006-web/JHE_20_2_000_000_2006 (accessed 11 January 2011)

³ CESCR

⁴ B. Olupohunda 'Nigeria at 47: Educational sector at a Crossroad'
www.nigeriansinamerica.com/articles/2112/1/Nigeria-at-47-Education-sector-at-a-crossroad/page.html (accessed January 11 2011)

Unfortunately such programmes did not see the light of day because of corrupt officials and poor implementation.⁵

It should be known that in Nigeria, the right to education, although very present in the Nigerian Federal Constitution, is not enforceable based on the fact that these rights are provided for as directive principles of state policy. Section 18(3) of the Constitution determines that the government shall make efforts to reduce the level of illiteracy by providing education as soon as when practicable. This means that it is up to each state government to provide basic education to its citizens based on availability of resources within the individual state.⁶ In order to fulfill the provisions of Section 18(3) of the Nigerian Constitution, annual budgetary allocations are provided by the Federal Governments to the states. Amongst other objectives, these budgetary allowances are supposed to be used by states to develop and provide quality education to the people. While some states make efforts to provide education, some states are lacking behind in the provision of basic education. Consequently, there have been many and extreme cases of violation of the right to basic education in various states of the federation of Nigeria. Some of these states make the provision of basic education to their indigenes the least of their priorities by not paying attention to the educational needs of its people. While some of these states are making attempts at providing basic education, it is sad to note that other states are lagging behind and are doing nothing to salvage the situation. Some students in primary and secondary schools still study in deplorable conditions such as studying under trees and dilapidated buildings and structures and the state government does not deem it fit to take this problem seriously.⁷ The need for the Federal and State Government to rise up to the responsibility of addressing issues of maintaining and providing basic quality education to its citizens is imperative.

1.2 Research question

My aim in this dissertation is to analyze the provision of the right to basic education in Nigeria. I take into consideration the various local legislations, international treaties and conventions Nigeria has signed, accessed or ratified in order to uphold the right to education. In other words,

⁵ R.O.A Aluede 'Universal Basic Education in Nigeria: Matters Arising' http://www.krepublishers.com/02_Journals/JHE/JHE_20_0_000_2006-web/JHE_20_2_000_000_2006 (accessed 11 January 2011)

⁶ Section 18(3) 1999 Constitution of the federal Republic of Nigeria

⁷ 'Adamawa School Where Classes Hold Under Trees' *Weekly Trust* 26 February 2011

a brief legislative review which focuses on the steps taken by the Nigerian government to give effect to the right to basic education shall be carried out

This research examines the obligation of State parties to these international treaties. These obligations are outlined in details in order to provide a frame work which state parties are to follow in providing of basic education. Basic education, in my opinion can be said to be as important as civil and political rights which are termed fundamental human rights by the Nigerian Constitution. I take into consideration two states in the Federal Republic of Nigeria: one where the state government is making efforts to improve the provision of basic education (Lagos State) and another where such provision of basic education is seriously lacking (Adamawa State).

Furthermore, the study examines the land mark case of the *Social Economic Rights Accountability Project (SERAP) Vs Federal Republic of Nigeria and Universal Basic Education* which can be said to create a positive direction in the area of providing basic education in the midst of inadequate attention given to this particular right (education). The case sends a clear message to Nigeria and indeed African countries that are in denial of human rights to its citizens will not be tolerated by the international courts.⁸

I also examine the present state of basic education in Nigeria in order to ascertain the level of achievement attained in terms of providing basic education to its citizens. I also consider to what extent these International treaties and domestic laws have protected the right to basic education. In order to be specific I take into consideration Lagos and Adamawa state in order to analyze the level of improvements achieved in terms of providing basic education to its indigenes by the state governors in compliance with the provisions of international treaties and domestic laws.

Finally, I proffer possible recommendations from the legal point of view in order to help Nigeria provide quality and better mode of basic education. The main question this research paper seeks to answer is:

⁸ *Registered trustees of the Socio- Economic Rights Accountability Project (SERAP) v Federal Republic of Nigeria & another* (ECOWAS 2009) suit no ECW/CCJ/0808, 27 October 2009

To what extent has the provision of basic education been achieved in the lives of Nigerians. In proffering solutions to this research question the following question shall be answered in the course of this research.

- (a) To what extent have the laws of Nigeria protected the right to the provision of education which basic education is part of?
- (b) What are the legal provisions both domestic and international protecting the right to education?
- (c) What are the sociological factors/ challenges preventing the realization of adequate provision of basic education and what can be done from the legal perspective to improve on the education sector of Nigeria, focusing on the states of Lagos and Adamawa?

1.3 Definition of Key Concept of Basic Education

Education composes all the series of instructions and disciplines which are intended to enlighten the understanding, correct the temper and develop the manner and habit of individuals there by preparing such persons for usefulness in future endeavors.⁹

Another definition of education can be said to be “any act or experience that has a level of effect on the mind, character or physical ability of an individual. A practical definition of education may be said to be the process by which society deliberately transmits its accumulated knowledge, skill and values from one generation to the other”.¹⁰

Basic education in the Nigerian concept can be said to be the provision of education from the primary up to and including the first three years of the secondary level of education.¹¹ This means that education should be available to citizens who are willing to participate or benefit

⁹ ‘Education in Nigeria’ <http://www.design-your-homeschool.com/Definitions-of-Education.htm> (accessed on 18 January 2011)

¹⁰ ERNWACA researchers ‘Quality basic education in Nigeria: An annoyed bibliography from 1992-2002’ http://www.rocare.org/Quality_basiceducation_Nigeria.pdf (accessed on 18 January 2011)

¹¹ Section 3 (16) National Policy on Education 2004

from the primary level which normally begins at the age of 6 for majority of Nigerians.¹² At this level, students are expected to spend at least six years and finish with a primary school leaving certificate and then take a common entrance examination in order to qualify for admission into the Federal or State Government Secondary schools in the country. At the secondary level a student is expected to spend 3 years in the junior secondary level (JSS) and another 3 years in the senior secondary level (SSS).

The Primary and the Junior Secondary levels of education are said to be what consists in the Nigerian government's promise to provide basic education to its citizens. With this idea in mind, the government made attempts to make basic education free by starting the Universal Basic Education scheme to cater for the basic educational needs of its citizens.

Universal Basic Education can be said to mean the transmission of free, basic and fundamental knowledge as a right to all facets of the Nigerian society from one generation to the other.¹³

“Universal” as the word implies means for all levels of people in the Nigerian society. This goes on to mean the poor, the rich and the physically challenged, who are ready to benefit from education. The term “basic” can be said to mean important, foundation, spring board type of education needed by the Nigerian citizen in order to prepare him for the advanced type of education, such individuals will receive or acquire later on in such person's life time. This shows that basic education is the starting point in the acquisition of knowledge. Without basic education, higher education will be difficult to acquire.

1.4 Literature Review

Many authors have cited poor implementation by the Nigerian government as a major hindrance of the provision of basic education in Nigeria. In an article by U Aviomoh, E.E Okoh and E. Omatseye titled “Universal Basic Education in Nigeria: an appraisal”, dated 22nd June 2007,¹⁴ it

¹² R.O.A Aluede ‘Universal basic education in Nigeria: Matters arising’
http://www.krepublishers.com/02_Journals/JHE/JHE/20_0_000_2006_web/JHE_20_2_000_000_2006
(accessed on 19 January 2011)

¹³ B. Olupohunda ‘Nigeria at 47: Educational sector at a Crossroad’
www.nigeriansinamerica.com/articles/2112/1/Nigeria-at-47-Education-sector-at-a-crossroad/page.html (assessed on 11 January 2011)

¹⁴ ‘Universal basic education’ 22 June 2007
http://www.accessmylibrary.com/coms2/summary_0286_32454903_ITM (accessed on 18th January 2011)

was stated that poor planning is one of the major problems in the implementation of the provision of basic education. It was remarked that the government failed to project the accurate number of citizens that are supposed to gain from the scheme in order to make provision for facilities and manpower required to implement the scheme in Nigeria.¹⁵ These issues are clearly elaborated upon in this dissertation.

Another issue talked about by a lot of authors is the establishment of schools in order to provide basic education to its citizens. It has been observed that the federal government created two secondary schools in each state of the federation. These schools are called Federal Government colleges which are directly funded by the Federal government through the ministry of education.¹⁶ The tuition fee is said to be very low and affordable to citizens at a hundred dollars (USD \$100). When converted to the Nigerian local currency, the Naira, it is equivalent to about N15, 000 (Fifteen Thousand Naira) which in my view is still very difficult for a lot of Nigerian parents to pay as tuition fees for their kids. This in my view defeats the purpose of free basic education which the government has pledged to the people of Nigeria. Furthermore, the number of schools created by the federal government in order to cater for the right to basic education has been criticized by many authors. The majority are of the view that the number of schools created by the federal government is not enough to cater for the educational needs of the Nigerians who are willing to go to school.¹⁷ These issues definitely pose a serious problem which needs to be addressed.

Section 18 of the Nigerian Constitution makes us understand that the government of every state of the federation shall as and when practicable, make basic education free and accessible to every Nigerian citizen.¹⁸ In this dissertation, two states of the federation of Nigerian which are Lagos and Adamawa are examined in order to know what steps have been taken by each state to improve the right to basic education and why section 18 of the Nigerian constitution has made the development of basic education very slow because of its contents and implications.

¹⁵ R.O.A Aluede 'Universal Basic Education in Nigeria: Matters Arising' http://www.krepublishers.com/02_Journals/JHE/JHE_20_0_000_2006-web/JHE_20_2_000_000_2006 (accessed 11 January 2011)

¹⁶ O Igbuzor 'Financing basic education in Nigeria' <http://www.dawudu.com/Igbuzor14.htm> (accessed on 27 January 2011)

¹⁷ T Moja 'Nigerian Education Sector Analysis: An Analytical Synthesis of Performance and Main Issues' (2000) http://siteresources.worldbank.org/NIGERIAEXTN/Resources/ed_sec_analysis.pdf. (assessed on 9 July 2011)

¹⁸ The constitution of the Federal republic of Nigeria 1999 Sec 18

1.5 Research Methodology

The methodology used in this study is analytical and comparative. The comparative approach is employed when I compare the provision of basic education in two states in the Federal republic of Nigeria namely Lagos and Adamawa state. The purpose of this is to clarify the fact that while some states are making efforts to rapidly improve the provision of basic education other states are pretty slow in providing this right which reveals the uneven distribution of basic education to citizens in Nigeria. The analytical approach is used to (i) examine the policies the Nigerian Government has put in place to enhance basic education in Nigeria, (ii) the level of success the Nigerian Government has achieved and (iii) determine what can be done to further improve the provision of basic education in Nigeria from a legal perspective.

The analytical approach is also used to examine the various international treaties and conventions the Nigerian Government has signed, ratified and domesticated into its laws in order to show its support for the right to basic education and its commitment to abiding by these international laws. In order to achieve this, library research, desk top literature is applied and this takes the form of accessing internet information and employing relevant legislation. Applicable text books and articles on socio economic rights generally and the right to education in particular are also consulted for purposes of this research.

1.6 Proposed Structure

Chapter One: This chapter covers the introduction which is the background to this mini dissertation, the problem statement, an overview of the concept of basic education, the research question, research methodology and the literature review

Chapter Two: This chapter examines some domestic laws and that have been enacted by Nigeria in order to uphold its commitment to the provision of basic education. Various International treaties are also analysed in order define what is required of State parties to these conventions. I also examine section 18 of the Nigerian Constitution and how it hinders individuals from taking

legal actions against the Nigerian Government because of the directive principle of state policy the Constitution has adopted. This means that the Constitution gives the Government the ability to avoid its responsibility to provide basic education. In this chapter I further analyze the landmark case of the *Socio Economic Rights Accountability Project (SERAP) vs Federal Republic of Nigeria & Universal basic Education* which was brought before the Economic Community of West African States (ECOWAS) Court concerning gross violation of the right to education in Nigeria.¹⁹

Chapter Three: In this chapter I examine the measures the Nigerian governments at various levels have put in place to provide basic education in Nigeria in fulfillment of the various domestic laws and international treaties of which Nigeria is a party. I also take into consideration the level of seriousness the Nigerian government is willing to attach to the provision and improvement of basic education to its citizens and this covers policies like tuition fees, grants and scholarships. In order to achieve this, a detailed comparison between two states in the federal republic of Nigeria (Lagos and Adamawa state) in order to examine the steps employed by the governments of these states to make quality basic education available to its citizens. Most importantly some sociological factors and challenges hindering the adequate provision of basic education are discussed.

Chapter Four: This chapter examines Nigeria's commitment to providing education to the Nigerian people in line with the obligation to respect, protect and fulfill stated in Paragraph 46 of the General comment No. 13. This chapter further examines various legal and constitutional recommendations that can better the education sector of Nigeria, which can be said is in serious need of improvement. I also provide a brief outlook at the provision of basic education in South Africa and explore areas where the Nigerian government can emulate in order to improve basic education.

Chapter five: This chapter serves as the conclusion where I examine some multidisciplinary approaches to solving the issues of the provision of education in Nigeria.

¹⁹ *Registered trustees of the Socio- Economic Rights Accountability Project (SERAP) v Federal Republic of Nigeria & another* (ECOWAS 2009) suit no ECW/CCJ/0808, 27 October 2009

1.7 Scope and Delineation of Study

This dissertation focuses on Nigeria's education sector as it strives to provide basic education to its citizens. I also in part explore the legal provision of basic education in South Africa, Ghana and India in order to identify solutions that can aid in the improvement of basic education in Nigeria. The dissertation examines only legal and sociological factors deterring the realisation of adequate provision of basic education in Nigeria.

CHAPTER TWO

2.1 INTRODUCTION

Education can be said to be the key to that empowers people especially when it comes to the provision of Socio- Economic rights. This is because it is geared towards the realization of these sets of rights which are of utmost importance in a developing country like Nigeria. In order to be able to access other Socio-Economic rights like the right to adequate standard of living or the right to life and food supply. Individuals have to be educated on how to secure these rights. This is where education has to be attained in order to acquire these basic needs. It can be said that the enjoyment of both generation of rights will be massively facilitated by the protection of the right to education which basic education comprises.

Education has been viewed by many as both a human right in itself and an indispensable means of realizing other human rights. It is the primary vehicle through which adults and children can alleviate poverty and participate fully in the activities of their communities.²⁰ Education can be used to empower women and children so that they can be able to avoid economic exploitation, hazardous labor and sexual exploitation. It promotes human rights, democracy and protects the environment.²¹

On paper, it can be said that Nigeria has done well in terms of signing, ratifying and domesticating international treaties and conventions, in order to take a stand that every citizen should have a right to education. These treaties, conventions and charters are examined in order to outline the duties of the state (Nigeria) to its citizens concerning the provision of education.

2.2 Universal Declaration on Human Rights

The Universal Declaration on Human Rights was adopted by the United Nations general assembly in Paris on 10th December 1948. This was as a result of the Second World War which

²⁰ Rapporteur on the Right to Education <http://www2.ohchr.org/english/issues/education/rapporteur/index.html>
(accessed on 18 March 2011)

²¹ n 20 above

claimed so many lives. The Universal Declaration on Human rights can be said to represent the first global expression of human rights. Nearly all international human rights instruments elaborate principles set out in the Universal Declaration of Human Rights.²² Though it was not a binding document, it was a statement of common aspirations. The Universal Declaration can be said to be the first document in the international bill of human rights. The right to education was one of the priorities of the member nations to the declaration because it saw the right to education as very important and essential in the lives of human beings. Article 26 of the Universal Declaration of Human rights clearly states that education shall be free in the elementary and fundamental stages.²³ Other modes of education which are technical and professional were further mentioned to be made available. Higher education was stated to be equally accessible to all on the basis of merit.

Article 26(2) further defines the relevance of education where it was acknowledged that education shall be geared towards the full development of the human personality and respect for human rights and fundamental freedom.²⁴

The right to education in the UDHR is to be used to promote understanding, tolerance and friendship among all nations of the United Nations for the maintenance of peace. The UDHR marked the beginning of the recognition of the rights of humans and from this document, subsequent covenant were created. It is very interesting to know that education forms part of the UDHR which means the right to education was seen as very important as back as the 1940s.

2.3 THE INTERNATIONAL SYSTEM

2.3.1 INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to education falls under the category of socio - economic rights which have been identified as an important category of human rights especially in Africa.²⁵ Economic Social and Cultural Rights are termed “second generation rights” as noticed from the emergence of socialist

²² RKM Smith *Text book on International Human Rights* (2003) p38

²³ Article 26(1) Universal Declaration of Human Rights

²⁴ Article 26(2) UDHR

²⁵ M Scheinin ‘Characteristics of Human Rights Norms’ in C Krause & M Scheinin *International Protection of Human Rights: A textbook* (2009) p22

ideas in the late nineteenth and early twentieth century.²⁶ The reason for the separation between the two generations of rights was because of the conflict of interest pursued by member countries during the drafting of the covenant.²⁷ The Soviet Union on the one hand insisted that economic social and cultural rights were the aims of the socialist society while the west believed that civil and political rights are the foundation of liberty and democracy of the free world.²⁸ This conflict thereby gave birth to the two separate instruments which later became the Covenant on civil and political Rights and the International Covenant on Economic Social and Cultural Rights. For the purpose of this dissertation, I examine the International Covenant on Economic Social and Cultural Rights which the right to education comprises.

Article 13 of the ICESCR deals with the right to education and states that parties to the Covenant are obligated to acknowledge the fact that education shall be directed towards the full development of the human personality. In other words, education should be made accessible to everyone in order to ensure development mentally which makes the reasonable human being have the ability to participate effectively within his society at large.²⁹

Article 13(2) goes on to state that education should be made free at the primary stage while the other levels which are the secondary and tertiary institutions should be made accessible and available to all and if possible these levels of education should be made free by state parties in order to progressively realize the right to education.

The Covenant goes on further to instruct state parties to make education very important in order to accommodate everybody including those who have not received or completed primary education which is the basic foundation of education.

Article 13 (e) of the ICESCR can be said to be interesting as it encourages state parties to develop a system which is favorable to teaching staff of schools. This can be said to be a good development because it recognizes the fact that without the teaching staff, the education sector will be handicapped. The ICESCR therefore makes provision for the condition of teaching staff to be continuously improved because once teachers become uncomfortable and their needs are

²⁶ KD Beiter *The Protection of the Right to Education by International Law* (2006) p48

²⁷ Beiter n26 above p51

²⁸ Beiter n26 above p65

²⁹ Article 13 (1) International Covenant on Economic Social and Cultural Rights

not met by the state, teachers might result to other means like industrial strikes in order to drive across their point and this will definitely unsettle the educational sector. This provision can be said to be very commendable because the teaching staff are the mechanism that drive the education sector.

The general comments No. 13 on the implementation of the ICESCR specifically outlines the obligation of state parties concerning the right to education. It instructs state parties to provide quality education based on certain features.³⁰

The first feature is the fact that the right to education shall be made accessible by state parties to their citizens by making sure there is no discrimination based on race, sex or disability. The general comment also attaches importance to the fact that education should be physically accessible. In other words an individual should be able to come in contact with a school within his or her physical reach and convenient geographic location. Economic accessibility is also very important because it obligates state parties to provide quality education which is affordable to all.

The second feature stated in the general comment is the fact that the type of education being taught in schools must be acceptable to the individual. It also explains the type and substance of education being imparted into individuals.³¹ The general comments make us understand that such a mode of education must be accepted by the student. The way a module or subject is being taught in the class room must be done in such a way that is suitable to the student. This helps develop the student's ability to assimilate and understand such subject. This in my opinion is very important as the method of teaching is essential to the students understanding of such subject.

Lastly, the mode of adapting to the educational needs of the child is taken into consideration. The general comments point to the fact that state parties are obligated to provide education that can adapt to the needs of the changing environment of such individual.³² The diversity in socio-cultural needs of individuals should be taken into consideration in order to make education adaptable.

³⁰ BG Ramcharam *Judicial Protection of Economic Social and Cultural Rights* (2005) p193

³¹ General comments No. 13 CESCR on the Right to Education

³² Ramcharam n30 above p196

Based on these features, the general comments make us understand that education in the primary and secondary level is the most important part of basic education. Primary education should be made compulsory and available free to all³³. Secondary education should have a flexible delivery system in order to respond to the needs of different students.³⁴ In other words secondary education should have alternative means of transferring knowledge in order to cater for every student's needs.

Paragraph 43 of the general comments outlines the obligations of state parties concerning the right to education stated in the ICESCR. The general comments instruct state parties to guarantee that the right to education will be provided without any form of discrimination. Steps shall be taken towards the realization of the contents set out in Article 13 of the ICESCR. The ICESCR acknowledges that some of the rights may be difficult in practice to achieve in a short period of time and that states may be subject to resource constraints such as funds to execute the provision of education. Nevertheless, the ICESCR requires state parties to act as best as they can and within their means to provide quality education to their citizens.

Paragraph 46 of the general comment also states the fact that the right to education imposes on state parties, the duty to respect, protect and fulfill the right to education of its citizens. State parties are saddled with the duty to refrain from violating the right to education, take necessary steps to realize the right to education such as creating legislations to protect the right to education and adequate budget appropriations in order to develop the education sector. These words respect, protect and fulfill are used to stress the importance of education to the individuals and urges state parties to constantly make education available to its citizens and at no time should the right to education be denied.

The ICESCR and the general comment No.13 on the right to education have given an elaborate explanation on how state parties should go about the provision of education to its citizens. Nigeria acceded to the ICESCR on the 29th of July 1993.³⁵ It is also observed that the general comment gives a lot of importance to primary education than any other level of education. It states that primary education should be made compulsory and available free to all while other

³³ Article 13 (2) (a) CESC

³⁴ Article 13 (2) (b) CESC

³⁵ Ratification of International Human Rights Treaties-Nigeria
<http://www1.umn.edu/humanrts/research/ratification-nigeria.html>. (accessed on 26 April 2011)

levels of education should be made available and accessible to all by every appropriate means.³⁶ This therefore stresses the importance of basic education because this basic level education which is the primary school, prepares an individual to withstand the rigors of the other levels of education.

2.3.2. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION.

In 1965, the International Convention on the Elimination of all forms of Racial Discrimination was adopted as an international agreement. Article 5 of the convention states the fact that state parties are obliged to prohibit and eliminate any form of racial discrimination and to guarantee that everyone not withstanding race, is equal before the law.³⁷ Article 5 goes further to enumerate these rights. It is clearly stated that the right to education is one of the right recognized by the ICERD specifically in Article 5 (e) (v). Nigeria acceded to the ICERD on the 16th of October 1967.³⁸

2.3.3. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD.

The United Nations Convention on the Rights of a Child was adopted in the 20th of November 1989 and was entered into force on the 2nd of September 1990.³⁹ The convention was largely directed towards supplementing and expanding the UDHR. The UDHR had no binding effect on state parties but the convention is a largely binding document and its intension is to set out the rights of the child. Article 28 of the convention clearly stipulates that state parties recognize the right of the child to education. In order to achieve this right, state parties are to make primary education free and available to all. Like the ICESCR, article 28 also states that all forms of secondary and tertiary education shall be made available and accessible to every child. The CRC also makes us understand that state parties shall take appropriate measures such as the introduction of free education and offering financial assistance to needy individuals.

³⁶ Ramcharam n31 above p205

³⁷ L Holmstrom *Concluding Observations of the UN Committee on The Elimination of Racial Discrimination* (2002) p 780

³⁸ Ratification of International Human Rights Treaties-Nigeria
<http://www1.umn.edu/humanrts/research/ratification-nigeria.html>. (accessed on 26 April 2011)

³⁹ KD Beiter *The Protection of the Right to Education by International Law* (2006) p115

Article 28 (1) (d) introduced a provision not seen in past conventions where it obligates state parties to make education and vocational information and guidance available to all children. Another interesting obligation to state parties can be seen in article 28 (1) (e) where it requires state parties to take measures to encourage regular attendance at school and make efforts to reduce the number of drop outs in individual members country. The CRC also instructs state parties to take all appropriate measures to implement the right of the child especially when it comes to socio economic rights which education is a part. State parties must do so to the maximum extent of their available resources and if the need arises seek assistance from international co-operations.⁴⁰

This is well elaborated in article 4 of the CRC. The right to education does not entail the provision of education to the child alone. It makes provision on the manner in which a child should be disciplined. Article 28 (2) directs state parties to take appropriate steps to make sure the child is disciplined in a manner consistent with the child's human dignity. The provision of article 28(2) intends to protect the child against cruel inhuman and degrading disciplinary measures in schools⁴¹. Article 28 (3) further encourages state parties to co-operate in matters relating to education. In other words state parties should contribute to the elimination of illiteracy throughout the world and encourage modern teaching methods. Article 29 of the CRC sets out the positive objectives the right to education sets to achieve in the life of every child which are;

- (i) The development of the child's personality, talent, mental and physical abilities,
- (ii) The respect of human rights and fundamental freedom,
- (iii) The development of respect for the child's parents, cultural identity, language, values and the country of his or her origin,
- (iv) The preparation of the child for reasonable life in the spirit of understanding, peace, tolerance, equality of sexes and friendship among people and cultures.⁴²

It can be said that the right to education forms a very integral part of the development of a child. This is very well stated in the CRC. Article 28 and 29 of the CRC thoroughly outlines this fact in

⁴⁰ Article 28 Convention on the Rights of a Child

⁴¹ Article 4 CRC states, "States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. With regard to economic, social and cultural rights, states parties shall undertake such measure to the maximum extent of their available resources and where needed within the framework of international co-operation".

⁴² Article 29 (1) (a-e) CRC

details. It should be known that the CRC was signed by Nigeria on the 26th of June 1990 and further ratified on 19th April 1991.⁴³

2.3.4 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 10 of the Convention on all forms of Discrimination against Women (CEDAW) also makes provision for women's right to education. Article 10 states that state parties should take steps in making sure women are afforded the same educational opportunities as their male counterparts. This provision ensures equality in the education sector between men and women. These opportunities include conditions for career and vocational guidance, access to the same curricular activities, examination and teaching staff.⁴⁴ The convention also encourages a co-educational system of learning. This is a situation where by a school comprises of both male and female students. It can be said that this system of education affords women the same educational opportunities as their male counterparts not only in the classroom but in other educational fields such as access to educational information and programmes of continuing education to physical education on a lighter mode.

Article 10 CEDAW basically aims at protecting and promoting equal opportunities and treatment for women in the exercise of the right to education. It is also directed at changing the stereotyped views of the role of men and women in a society such as Nigeria.

Though CEDAW can be said to be gender based, it emphasis the right to education which women should be accorded. It is a well known fact that Nigeria ratified the convention on the 13 of June 1985.⁴⁵ This places an obligation on her to make sure the provisions of article 10 CEDAW are adhered to. In some parts of Nigeria, women are restricted from obtaining any sort of education because the notion is that women are limited to the kitchen or the farm.⁴⁶ CEDAW was promulgated by the United Nations in order to give women equal opportunities in the provision of economic social and cultural rights which education consists of.

⁴³ Ratification of International Human Rights Treaties-Nigeria

<http://www1.umn.edu/humanrts/research/ratification-nigeria.html>. (accessed on 26 April 2011)

⁴⁴ Article 10 Convention on the Elimination of All Forms of Racial Discrimination Against Women

⁴⁵ n43 above

⁴⁶ SA Kano "Failing to End Discrimination Against Women" <http://www.ipsnews.net/news.asp?idnews=49454> (accessed on 15 June 2011)

2.4 THE AFRICAN SYSTEM

2.4.1 THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

The African Charter on Human and Peoples Rights has been domesticated and now forms part of the Nigerian laws. The ACHPR Clearly states in article 17 (1) that every individual shall have the right to education.⁴⁷ But the charter did not proceed to explain in details, the content of the right. It is hoped that article 17 shall be read in line with article 60 of ACHPR which states that the commission shall draw inspiration from international laws on human and people's rights, particularly from the provisions of the UDHR and other instruments adopted by the United Nations and by African countries in the field of human and peoples' right.⁴⁸ It is safe to say that the ACHPR can draw interpretative guidance from the provisions of the ICESCR which has detailed explanations in article 13 concerning the right to education.

2.4.2 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

Another charter where the right to education is well elaborated in the African Charter on the Rights and Welfare of the Child and article 11 of the ACRWC makes us understand that every child has the right to education which shall be directed to the development of the child in all aspect which includes personality, talent, mental and physical potential.⁴⁹ The ACRWC goes on to explain that the right to education shall be geared towards the strengthening of positive African morals, traditional values and culture which means that the child shall have the right to education which is aimed at preserving his or her African morals, traditional values and culture.⁵⁰ The ACRWC goes further to explain the advantage of having education where it states that education shall go a long way in preparing the child for a responsible life in a free society in the spirit of understanding tolerance, dialogue, mutual respect and friendship among people

Article 11 (3) of the ACRWC goes on to explain the fact that state parties should take measures with a view to achieving the full realization of the right to education by developing the

⁴⁷ F Ougougoz *The African Charter on Human and Peoples' Right. A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (2003) p189

⁴⁸ Article 60 African Charter on Human and Peoples' Rights

⁴⁹ Article 11 (2) African Charter on the Rights and Welfare of The Child

⁵⁰ Article 11 (2) © CRWC

educational sector. In order to achieve this objective, state parties are obligated to make basic education free and compulsory.⁵¹

Unlike the CRC which instructs state parties to make primary education free and available, the ACRWC mandates state parties to provide free and compulsory basic education. In other words the ACRWC expanded the scope of free primary education to free basic education which comprises of primary education and the first three years of secondary education.

Article 11(4) of the ACRWC also ensures state parties to the charters shall provide education in order to groom the child to become well shaped for the society at large. To show that the right of the African child to education is well detailed in the charter, it included the fact the parents of the child should ensure legal guidance in terms of choice of standard of education which the child can cope with.⁵²

Lastly Article 11 also makes provision for children who are physically challenged or abused. It instructs state parties to take appropriate measures to make sure the child is disciplined with respect thereby maintaining the dignity of the child. In terms of physically abused children, the ACRWC makes provision for this category of people by obligation state parties to provide the type of education that will suit their abilities.⁵³

It can be said that the ACRWC has taken a cue from the CRC to give a detailed description of the contents of the right to education of the African child which is meant to increase the rate of change in the quality of education which state parties provide to their citizens.

2.4.3. PROTOCOL ON THE AFRICAN CHARTER ON HUMAN AND PEOPLES

RIGHT ON THE RIGHTS OF WOMEN IN AFRICA.

The protocol also views education as being very important to women and can be similar to article 10 of CEDAW in terms of content. The objective of article 12 of the protocol is to eradicate discrimination against women and to make sure there are equal opportunities available to women in the domain of education and training. However, the protocol falls short of mentioning the aspects where equality between men and women should be ensured as noticed in

⁵¹ Article 11 (3) (a) CRWC

⁵² KD Beiter *The Protection of the Right to Education by International Law* (2006) p217

⁵³ Article 11 (6) CRWC

article 10 of CEDAW⁵⁴. Though the protocol has not been in force, this protocol should be treated as a matter of urgency considering the persistent problems of denial of education to the girl child and women in Africa.⁵⁵

Article 12 of the protocol is aimed at instructing state parties to take steps to protect the girl child from any form of abuse in school and offer remedies to females who have suffered such abuse. A careful study by Klaus Dieter Beiter reveals that education should achieve the following set out goals in the lives of women;

- (i) It should modify the social and cultural pattern of conduct of women and men with a view to achieving the elimination of harmful cultural and traditional practices.
- (ii) It should in the form of peace education, educate, eradicate elements of belief which legitimize violence against women.
- (iii) It should create awareness regarding harmful practices which negatively affect the human rights of women.
- (iv) It should sensitize everyone on the rights of women
- (v) It should in the form of health and family planning education, promote the health, including the sexual and reproductive health of women.⁵⁶

I quite agree with the above study because in a continent like Africa where women are subjected to a lot of harmful cultural and traditional practices such as female genital mutilation, there is a need for girls and women to be generally educated in order to take steps in dealing with issues affecting them. The protocol will serve as a source of empowerment to African women if eventually it comes into force. Nigeria signed the protocol on the African Charter on human and people's rights on the rights of women in Africa on the 16th of December 2003.⁵⁷

⁵⁴ Article 10 (a) states "The same conditions for career and vocational guidance for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre- school, general, technical, professional and higher technical education, as well as in all types of vocational training".

⁵⁵ UNICEF: "High Proportion of Girls Denied Education" <http://www.scoop.co.nz/stories/WO0404/s00211.htm>

⁵⁶ KD Beiter *The Protection of the Right to Education by International Law* (2006) p215

⁵⁷ Ratification of International Human Rights Treaties-Nigeria
<http://www1.umn.edu/humanrts/research/ratification-nigeria.html>. (accessed on 26 April 2011)

2.5 THE DOMESTIC SYSTEM

2.5.1 THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

The Nigerian Constitution enumerates its fundamental rights in chapter 4. These rights are said to be naturally accruable to every person by virtue of his or her existence as a human being. These rights include the right to life, right to dignity of the human person and the right to personal liberty.⁵⁸ However, there are rights under chapter 2 of the Constitution which are not termed rights but are referred to by the Constitution as fundamental objectives and directive principles of state policy. These fundamental objectives include the provision of free and compulsory education. The fundamental objectives stated in chapter 2 of the Constitution are however non justiciable which means these rights are not enforceable in the courts. These rights are said to be aspirations attainable if and when the state has the resources. Education unfortunately falls within the fundamental objectives stated in chapter 2 of the Nigerian Constitution and one wonder why there is a separation between these two sets of rights in this present day. It is the belief of a lot of scholars that civil and political rights and economic social and cultural rights are both fundamental and complement one another. For instance, of what use is the freedom of life if one has no means of sustaining life through feeding perhaps gainful employment in order to sustain and preserve life. It can be said sec 18 of the Constitution only expresses the states commitment to provide education it its people. It does not view education as a right that should be provided to its citizens as a matter of importance.⁵⁹ Nigeria is at the forefront of the activities of the African Union. It has also domesticated the ACPHR. Though the right to education was not elaborately explained in the charter, it can be noticed that there are no separations of rights. All rights are stated as fundamental rights. This definitely raises some curiosity as Nigeria has signed, accessed or ratified the relevant international conventions which do not discriminate or distinguish rights on the basis of importance. Coming back to the domestic level, Nigeria finds itself separating rights based on fundamental rights and fundamental objectives. Considering the legal implication of the domestication of the ACHPR and the supreme court's decision in the case of *General Sanni Abacha & others Vs Chief Gani*

⁵⁸ Constitution of The Federal Republic of Nigeria 1999 Sec 18

⁵⁹ Chapter 2 of The Nigerian Constitution: Fundamental Objectives and Directive Principles of State Policy

Fawehinmi where it was stated that treaties which had been ratified and embodied as a statute of domestic law had higher authority than other national laws and based on that statement the court ruled that the provision of the ACHPR are directly applicable for interpreting domestic laws.⁶⁰ Going by the ruling in the *Sanni Abacha* case, it can be asserted that the right to education and other socio economic rights can be found justiciable notwithstanding the provision of sec6 (6) © of the Nigerian constitution which declares the fundamental objectives non justiciable.⁶¹ Having stated the above, the right to education was outlined in very brief terms in article 17 of the ACHPR.⁶² It provides no details as to its content. The very short provision of article 17 strongly contrasts with the very detailed wordings of article 13 of the ICESCR which guarantees the right to education in great detail.⁶³

Another case that stresses the importance of the right to education and imposes the fact that education should be treated with a lot of importance by the state is the case of *Socio Economic Rights Accountability Project (SERAP) Vs Nigeria & Universal Basic Education (UBEC)*. In that case, the registered trustees of SERAP filed an application against Nigeria and UBE alleging the violation of the right to quality education guaranteed under article 17 of the ACHPR among other rights. The relevant issues raised by the plaintiff were whether the Economic community of West African States (ECOWAS) community court has jurisdiction to handle the matter before it and more importantly, whether the right to education is justiciable and can be litigated before the ECOWAS community courts. On the issue of jurisdiction, it was stated that article 9 (4) of the supplementary protocol clearly asserts jurisdiction to the ECOWAS Courts because it clearly gives the Courts the power to adjudicate over applications concerning the violation of human rights that occur in member states of ECOWAS.⁶⁴ Also, the fact that Nigeria is a signatory to the ACHPR which has been domesticated, it cannot oust the jurisdiction of the ECOWAS Court.

On the issue of whether the right to education was justiciable and if it can be litigated before the court, it was held that it is a known fact that the ECOWAS Courts is empowered to apply the

⁶⁰ Supreme court of Nigeria, *Abacha v. Fawehinmi*, 29th may 2000, SC 45/1997 <http://www.nigeria-law.org/General%20Abacha%20v%20Chief%20Gani%20Fawehinmi.htm> (accessed on 19 June 2011)

⁶¹ Nigerian Constitution Sec 6

⁶² Article 17 CHPR

⁶³ Article 13 CDESCR

⁶⁴ ST Ebobrah & A Tanoh *Compendium of African Sub-Regional Human Rights Documents* (2010) p299

provision of the ACHPR and article 17 thereof guarantees the right to education.⁶⁵ Also the rights guaranteed by the ACHPR are justiciable before the ECOWAS Courts. The plaintiff's application was based on the right to education within the provision of the ACHPR and not the Nigerian constitution which sees the right to education as a directive principle of state policy and not a justiciable right. The defense rendered by the counsel to the second defendant was overruled and in favor of the plaintiff that ECOWAS Court is satisfied that facts have emerged in support of the case that the plaintiff has proper standing to bring an action of the violation of the right to education before the ECOWAS Court as it is justiciable before it. Judgment was given in favor of the plaintiff (SERAP) and Nigeria was ordered to provide as of right, free and compulsory education to every Nigerian child. It is also important to note in one the rulings given by the ECOWAS Court, it mentioned the fact that the second defendant (UBEC) had failed to discharge its legal duties and responsibilities as a fundamental instrument to monitor how states manage resources in order to better the education sector.

The efforts of the ECOWAS Courts are highly commendable because it has shown courage in its role in bringing to a possible end, the violations of human rights especially in the area of education. This judgment can be said to be very promising for a lot of Nigerian children who are denied their legally enforceable right to education because of the provisions of sec 18 of the Nigerian Constitution.⁶⁶

2.5.2 COMPULSORY, FREE UNIVERSAL BASIC EDUCATION ACT

Sec 2 of the act states that every government in Nigeria should provide free, compulsory and universal basic education for every child of primary and junior secondary school age. The Government in this context refers to the thirty six different state governments in Nigeria.⁶⁷ In other words, it is the duty of the state Government to provide basic education to its citizens

The act goes on to state that the parents of the child should make sure that the child attends and completes his primary and junior secondary school education which is the embodiment of basic

⁶⁵ *Registered trustees of the Socio- Economic Rights Accountability Project (SERAP) v Federal Republic of Nigeria & another* (ECOWAS 2009) suit no ECW/CCJ/0808, 27 October 2009

⁶⁶ Movement For The Survival of The Ogoni People (MOSOP) "Shadow Report on Nigeria's Compliance With The UN Convention On The Elimination of All Forms of Racial Discrimination"
http://www.mosop.org/02_MOSOP_Show_Report_on_Nigeria_Compliance_with_UN_Convention_Racial_Discrimination_022005.pdf (accessed on 12May 2011)

⁶⁷Compulsory, Free Universal Basic Education Act Sec 2 (1)

education. It is also noticed in the act that there are consequences for parents who contravene the duty of ensuring that the child benefits from the provision of basic education. The parent shall be liable to a fine of Two Thousand Naira (N2000.00) or imprisonment for a term of one month or to both.⁶⁸

These are the notable provisions of the Compulsory, Free Universal Basic Educations Act concerning the provisions of the basic education but one cannot help but notice the provision of sec1 of the same act where it states that the Federal Government's intervention under the act shall only be an assistance to the state and local government.⁶⁹ In my opinion this contravenes the federal government promise to provide education in sec18 of the Nigerian constitution. If the Federal Government has promised to provide education as soon as when practicable in the Constitution, why does it not reaffirm its commitment in the Compulsory, Free Universal Basic Educations Act?

2.6 CONCLUSION

Nigeria as a country has shown commitment to the provision of education by acceding and ratifying these international instruments. Nigeria also domesticated the ACHPR which gives a lot of importance to the right to education. It is therefore important to note that on paper Nigeria has done well to acknowledge that the right to education as important. In terms of implementing this right by providing structures and quality based education, the next chapter examines how Nigeria has fared in the area of providing quality basic education. Going by the various international treaties and laws, the Nigerian Government owe a duty to the citizens to ensure that the educational goals and targets are realized. This means that the State has an obligation to ensure that all citizens have the opportunity to meet their basic learning needs. All children must have the opportunity to fulfill their right to quality education in schools or alternatives programmes at whatever level of education is considered basic.

In my view, some of the elements which make up the core content of the right to education may be inferred from Article 13. First, the essence of the right to education means that no one shall be denied a right to education. In practice, this means an individual right of access to available

⁶⁸ Compulsory free Universal Basic Educations Act Sec 2 (2)

⁶⁹ Compulsory, Free Universal Basic Educations Act Sec 1

education, or in more concrete terms, the right of access to the existing public educational institutions in a nondiscriminatory way. The primary education should be adequately available, compulsory and free. Primary education is so fundamental for the development of a person's abilities that it can be rightfully defined as a minimum claim. A second element of the core content of the right to education is free choice of education without interference by the State or a third person, in particular, but not exclusively with regard to religious or philosophical convictions. These elements undoubtedly constitute the very essence of the right to education as a human right. Violation of one or more of these elements by the State would entail that the right would lose its material and intrinsic value. An example of such a violation is the arbitrary closure of existing public educational institutions without justification as prescribed in article 4 of the ICESCR.

CHAPTER THREE

3.1 INTRODUCTION

Chapter Two gave a brief analysis of the provision of the rights to education by international, regional and domestic instruments. It also examined the articles in these instrument that outline the right to education and instructions given to state parties concerning their commitment to providing education to their citizens. Nigeria as stated before has reiterated its promise of providing education to its people by signing, accessing or ratifying these instruments at the international and regional level. An example being the domestication of the African Charter on Human and Peoples' Rights (ACHPR) into its local laws. This chapter examines the efforts Nigeria has made in order to provide quality basic education to its citizens. These efforts are assessed based on the various laws Nigeria has promulgated and its commitment to upholding international treaties, policies aimed at providing adequate infrastructures and funding of the education sector in order to make basic education available to citizens who are willing to utilize these facilities. Furthermore, some sociological challenges hindering the Nigerian Government from providing quality basic education are examined. The Compulsory, Free Universal Basic Education Act serves as a guide line on how the Federal Ministry of Education through the Universal Basic Education Commission is meant to go about the provision of quality basic education to citizens.

3.2 ACHIEVEMENTS OF THE NIGERIAN GOVERNMENT

In its effort to make basic education available to it s citizens, Nigeria embarked on the creation of commissions which are responsible for handling some aspects of basic education. Some of these commissions are the Universal Basic Education commission and the National Commission for Nomadic Education. These commissions were established by the Federal Government to look into the handling of different basic education needs of the Nigerian people. These commissions also formulate policies which are directed towards creating different medium of basic education

needs the diverse Nigerian people are comfortable with. Some these commissions recorded some level of achievements.

The relaunch of the Universal Basic Education (UBE) scheme in 1999 by the Obasanjo Administration was aimed at providing free education for all in order to enable citizens acquire appropriate level of education and communication skills. The intension of the UBE was to provide nine years of compulsory education that would include primary and secondary levels of education. It should be highlighted that a student can access the UBE through different spheres of learning like adult education for the elderly, science and vocational training. Amongst its many, UBE is responsible for widening access to basic education and bridging the gap in terms of quality education between the rural and urban areas in the country. The UBE programme was signed into law in 2001 at the federal level and was further domesticated by the 36 states of the Federation.⁷⁰ This move was to make sure that the various levels of government at the federal, state and local levels are involved in driving the Universal Basic Education process and provide effective collaboration with each other in delivering quality basic education. The Compulsory, Free Universal Basic Education Act in Sec 11 (a) provides for two percent of Consolidated Revenue Fund (CRF) to be used to execute the delivery of basic education.⁷¹ Seventy percent of the total allocation is to be designated for the use of infrastructural development which is the building of various schools that will accommodate various students.⁷² Fifteen percent is to be used for instructional materials like text books, writing materials and other stationeries while the remaining fifteen percent is to be used for the remuneration of care givers, teachers and the professional development of teachers.⁷³ According to the Federal Ministry of Education, some notable achievements have been recorded. In 2008/2009, it revised and restructured the nine year basic education curriculum which was implemented in the same year. Also, the book policy which states the minimum ratio of text books, play equipments, charts and computers for basic education was approved by the National council for Education.⁷⁴ One of the objectives of the

⁷⁰ Education Sector Analysis Unit of the Federal Ministry of Education ‘Nigerian Education Sector Diagnosis’ (May 2005) <http://planipolis.iiep.unesco.org/uploed/Nigeria/Nigeria%20Education%20Sector%20Diagnosis.pdf>.

⁷¹ The Federal Ministry of Education for the Forty- Eight Session of the International Conference on Education (ICE) ‘The Development of Education National Report of Nigeria (November 2008) http://www.ibe.unesco.org/National_Report/ICE_2008/nigeria_NR08.PDF. (assessed on 6 July 2011)

⁷² n 71 above

⁷³ n 71 above

⁷⁴ n 70 above

Universal Basic Education Commission (UBEC) was to provide every pupil with textbooks in relevant subjects. In one of the publications of the Federal Ministry of Education, it claimed to have procured and distributed over 9,189,592 (Nine Million, One Hundred and Eighty Nine Thousand, Five Hundred and Ninety Two) textbooks since 2005 to different primary and secondary schools.⁷⁵ The Federal Ministry also went on to grant 30% of education funds to the development of primary education. These educational funds are usually derived from public revenue, taxation, federal taxes and duties on petroleum and profits from oil imports and exports.⁷⁶ The UBEC was also able to get the Federal Government to allocate two percent of its annual budget in funding education of the physically and mentally challenged. This saw all thirty six states in the Federal Republic of Nigeria being allocated the sum of N10,706,754 (Ten Million, Seven Hundred and Six Thousand, Seven Hundred and Fifty Four Naira) each for providing building and instructional materials for special education schools. This occurred in the year 2005. The funds were later increased the following year to N11, 302,313.52 (Eleven Million, Three Hundred and Two Thousand, Three Hundred and Thirteen Naira, Fifty Two Kobo).⁷⁷

In terms of formulating policies to monitor the enhancement of quality education programmes, the Federal Ministry of education in fulfilling its commitments stated in sec 9 (a) of the Compulsory, Free Universal Basic Education Act, through the Universal Basic Education Commission adopted the National policy on HIV and AIDS for the education sector in Nigeria.⁷⁸ This was inspired by the rapid growth and impact of the disease on the teaching personnel.⁷⁹ The need for the formulation of this policy was as a result of the negative impact the disease was having on the education sector. This was characterized by the reduction in productivity of the teachers owing to illness and absenteeism.⁸⁰ It was also noticed that it was causing a reduction in students and teachers populations. This situation lead to the increasing rate of school dropout and

⁷⁵ The Federal Ministry of Education for the Forty- Eight Session of the International Conference on Education (ICE) 'The Development of Education National Report of Nigeria (November 2008)

http://www.ibe.unesco.org/National_Report/ICE_2008/nigeria_NR08.PDF. (assessed on6 July 2011)

⁷⁶ n 75 above

⁷⁷ The Federal Ministry of Education for the Forty- Eight Session of the International Conference on Education (ICE) 'The Development of Education National Report of Nigeria (November 2008)

http://www.ibe.unesco.org/National_Report/ICE_2008/nigeria_NR08.PDF. (assessed on6 July 2011)

⁷⁸ Compulsory, Free Universal Education Act Sec 9

⁷⁹ n 77 above

⁸⁰ n 77 above

reduction in access to education. These were some of the reasons that prompted the formulation and application of the National Policy on HIV and AIDS for the Education Sector in Nigeria in relation to basic education. The aim of the policy was to promote awareness and educate teaching, non teaching staff and students on HIV, AIDS and other sexually transmitted infections (STIs). The policy also aimed at creating a supportive work and learning environment for infected staff and learners. Another land mark reform process of basic education according to the Federal Ministry of Education was the launch of the National policy on Gender on Basic Education which was aimed at ensuring that gender is systematically incorporated into all spheres of the education sector.⁸¹ By the formulation of this policy, Nigeria reaffirms its commitment to several international instruments like the CRC, CEDAW to which it is party. Some of the objectives of the Nigerian Government were also to enact State policies and laws against early girl child marriages and betrothal, enforcing laws against sexual abuse and exploitation of children who beg for arms and hawk various items on streets.⁸² The need for this policy came as a result of the level of gender gap of rural household children at the primary school level. It was noticed that the girl child was not afforded the same opportunity as their male counterparts in terms of accessing primary schools in rural areas.

Furthermore, the policy seeks to make provision for midday meals in primary schools and the award of scholarship programmes for girls. This intends to address the dropout rates within the basic education range which is the primary schools and the junior secondary schools.⁸³

3.2.1 NATIONAL COMMISSION FOR NOMADIC EDUCATION (NCNE)

The Nigerian government introduced the nomadic education program through the NCNE to combat the chronic illiteracy level among the Fulanis who are a mobile ethnic population of Nigeria dominant in the Northern part of the Country. This is in line with some of the functions of the Universal Basic Education Commission stated in Sec 9 of the Compulsory, Free Universal Basic Education Act. The provision of Sec 9 (n) states that the commission shall carry out mass

⁸¹ T Moja 'Nigerian Education Sector Analysis: An Analytical Synthesis of Performance and Main Issues' (2000) http://siteresources.worldbank.org/NIGERIAEXTN/Resources/ed_sec_analysis.pdf. (assessed on 9 July 2011)

⁸² M.A. Y Rahji 'Primary School Enrollment and Gender Gap of Rural Households' Children In South Western Nigeria' <http://www.saga.cornell.edu/saga/educconf/rahji.pdf>. (assessed on 9 July 2011)

⁸³ The Federal Ministry of Education for the Forty- Eight Session of the International Conference on Education (ICE) 'The Development of Education National Report of Nigeria (November 2008) http://www.ibe.unesco.org/National_Report/ICE_2008/nigeria_NR08.PDF. (assessed on 6 July 2011)

mobilization and sensitization of the general public and enter in to partnership with communities and all stake holders in basic education with the aim of achieving the overall objectives of the act.⁸⁴ It was noticed that less than ten percent of the men and two percent of women Fulani are literate and the style of acquiring knowledge was through koranic education.⁸⁵ In order to eradicate the high level of illiteracy, the Nigerian Government introduced the Nomadic education programme to bridge the literacy gap between the Fulani and the rest of the society, raise the living standards of the rural community in the northern part of the country and harness the potential of the Fulani people. The nomadic education programme started functioning in January 1990 with a total of Two Hundred and Six schools and One Thousand Five Hundred and Ninety Nine Teachers.⁸⁶ This was followed by the distribution of books worth N72, 930 (Seventy Two Thousand, Nine Hundred and Thirty) and the invention of the first prototype of a collapsible mobile classroom, manufactured by the Federal Science Equipment Manufacturing Center.⁸⁷ This mobile classroom equipment is carried around in trucks which follow nomadic pupils wherever they are located in order to educate them. Locations areas include places with water where fishermen can be found and land where cattle herders or herdsmen can be found. In 2008, the National Commission for Nomadic Education accounted for the establishment of about 2,526 (Two Thousand Five Hundred and Twenty Six) nomadic schools with a total of 8,665 (Eight Thousand, Six Hundred and Sixty Five) teachers which cater for about 303,518 (Three Hundred and Three Thousand, Five Hundred and Eighteen) students.⁸⁸ These schools comprise of semi settled schools for nomadic groups that use partial and mobile form of collapsible structures for pastoral nomads and boat schools for migrant fishers. This step in my opinion can be said to be a remarkable achievement by the Federal Governments because it has taken into consideration the plight of the poor nomads in the Northern part of Nigeria. The nomads view education as not important but the establishment of project like nomadic schooling can be said to improve the perception on the importance of education at the basic level.

⁸⁴ Compulsory, Free Universal Education Act sec 9

⁸⁵ I Ismail 'Nomadic Education and Education for Nomadic Fulani'

http://nigerdeltaworldcongress.org/articles/nomadis_education_a.pdf (assessed on 15 July 2011)

⁸⁶ M.A.Y Rahji 'Primary School Enrollment and Gender Gap of Rural Households' Children In South Western Nigeria' <http://www.saga.cornell.edu/saga/educconf/rahji.pdf>. (assessed on 9 July 2011)

⁸⁷ R. A Aderinoye, K. O Ojokheta, A. A Olojede 'Integrating Mobile Learning into Nomadic Education Programmes in Nigeria: Issues and Perspectives' <http://www.irrodl.org/index.php/irrodl/article/view/347/919> (assessed on 28 July 2011)

⁸⁸ n 87 above

3.2.2 EARLY CHILDHOOD AND PRE- PRIMARY EDUCATION

The Compulsory, Free Universal Basic Education Act has an expanded scope that includes programmes, policies and initiatives for early childhood education and development. One of such policies is The National Policy on Education. Section 2 (11-14) of the National Policy on Education outlines the responsibilities of the Nigerian government concerning pre-primary education which forms part of the basic education structure. The policy states that the Nigerian government shall be responsible for the promotion and training of qualified pre-primary school teachers in sufficient numbers and see to the establishment of pre-primary sections in existing public schools.⁸⁹ Section 13 of the NPE also goes on to state the importance and purpose of pre-primary education which includes effecting a smooth transition from the home to the school. It also prepares the child for the primary level of education and promotes adequate care and supervision for the children while their parents are at work. Other purposes of the pre-primary schools are; to learn good habits, especially good health habits and teach the rudiments of numbers, letters, colours, shapes and forms through play.⁹⁰ The aim of this provision in the NPE was to see to the general development of children below the age of 5 years. It also aimed at addressing the situation of Nigerian children who do not have access to a pre-primary education experience. The federal government in one of its publication was quoted as having achieved some level of success in providing quality education to children when in 2003 statistics rendered by UBEC showed an increase in participation in early years programme with more than 1.4 million young children enrolled nationwide.⁹¹ Furthermore, the intervention of United Nations Children's Fund (UNICEF) in supporting 111 (One Hundred and Eleven) Local Government areas of the federation in childhood care and development especially in rural parts of the country. This can be seen as a huge achievement for the Federal ministry of Education.⁹² However a large proportion of Nigerian children still lack access to early years development programmes in the country prevalent especially in the rural areas. Another credible effort made by the Federal

⁸⁹ E. D Nakpodia 'Early Childhood Education: Its Policy Formulation and Implementation in Nigeria Educational System (February 2011) <http://www.academicjournals.org/ajpsir/PDF/pdf2011/March/Nakpodia.pdf> (assessed 28 July 2011)

⁹⁰ The Federal Ministry of Education for the Forty- Eight Session of the International Conference on Education (ICE) 'The Development of Education National Report of Nigeria (November 2008) http://www.ibe.unesco.org/National_Report/ICE_2008/nigeria_NR08.PDF. (assessed on 6 July 2011)

⁹¹ UNESCO International Bureau of Education 'Nigeria Early Childhood Care and Education (ECCE) Programmes' (2006) <http://unesdoc.unesco.org/images/0014/001472/147201e.pdf> (assessed on 19 July 2011)

⁹² n 91 above

Government in improving the quality of education of children is the development of a standard curriculum of activities used to educate and develop the child in order to ensure the maximum level of understanding and development needed of the child. In order to achieve this objective, an attempt is being made at introducing capacity building and training of the various operators, teachers and care givers on the use of the programme known as the Integrated Early Child Development programme (IECD). The IECD is being integrated into teacher training curriculum in order to ensure the production of quality teachers to implement the IECD programme. There is an agreement between the UBEC and the Nation Commission of Colleges of Education on incorporating IECD as a course in teacher training.⁹³ This can be said to be a positive move by the Federal Government because this effort will go a long way in producing individuals who are experts in educating children below the age of 5 years and preparing them for the next level of education which is the primary school. The challenge envisaged in this effort in my opinion will be making these experts available to local areas like the rural parts of the country where their expertise is highly needed. Again how this effort will translate to benefit communities and schools in rural area is somewhat unclear. In conclusion it can be said that the various commissions created by the Nigerian Government have put in place some good policies which have provided basic education for Nigerians with diverse basic education needs. An example is the mobile classroom equipment meant for the nomadic Fulanis in the Northern part of Nigeria. A number of Nigerian people have also benefited from these basic education programmes which can be said to be commendable effort on the part of the Nigerian Government.

3.3 CRITICISIMS AND THE CHALLENGES FACING BASIC EDUCATION IN NIGERIA

Despite the efforts and achievements of the Federal and State Governments in providing basic education to its citizens, majority of the Nigerian masses insist that the Government is not doing enough to provide quality basic education which the people clamor for. Various authors have described the Nigerian educational sector as being in a deplorable state citing the lack of

⁹³ UNESCO International Bureau of Education 'Nigeria Early Childhood Care and Education (ECCE) Programmes' (2006) <http://unesdoc.unesco.org/images/0014/001472/147201e.pdf> (assessed on 19 July 2011)

maintenance of education facilities and lack of funding as some of the major causes of the dwindling quality of basic education in Nigeria. Some of the sociological issues associated with the inability of the Government to provide adequate basic educational facilities to the citizens can be attributed to Government Funding of the education sector, Qualified Teachers, Remuneration of teachers and Corruption.

3.3.1 FUNDING

Funding of the basic level of education can be said to be neglected by the government at the Federal, State and Local levels because the National Policy on Education states that financing basic education should be the collective responsibility of these various tiers of Government. An analysis of the federal government's annual budget allocation to education revealed that the government is in the habit of allocating low amounts of money to the educational sector. This is very evident in the year 2000 in which the percentage budgetary allocation to education was set at 8.36%, it decreased to 7% in the year 2001. It then increased to 8% in 2002 and then decreased to 7% in 2003. It rose considerably to 12% in 2004 only to fall back to 11% in 2005 up until 2007. In 2008, 13% of the budget allocation was given to education. Although this is said to be the highest percentage given to the education sector which has been commended by some Nigerians, it is still a far cry from the 26% recommended by the United Nations Education, Scientific and Cultural Organization (UNESCO).⁹⁴ As a result of the limited resources in the education sector, the issues of inadequate infrastructure like classrooms and under paid teaching staff become issues of concern.⁹⁵ The infrastructure and facilities remain inadequate for coping with the rapidly growing number of children aspiring to go to school daily. The school environment is therefore generally not conducive for learning due to the physical condition of most schools. Most primary and secondary schools in Nigeria are in terrible condition with leaking roofs, cracked walls, no writing desks, no writing materials, no libraries, no laboratories, no furniture for teachers to sit on. Some schools even go to the extent of asking students to provide their own tables and writing materials knowing that most of the pupils are poor and

⁹⁴ O J Nzekwe 'Public Education in Nigeria at The Crossroad' (2008) <http://nigeriaworld.com/articles/2008/may/023.html> (assessed on 19 July 2011)

⁹⁵ O Igbuzor 'The State of Education in Nigeria' (2007) <http://www.dawudu.com/igbuzor14.htm> (assessed on 20 July 2011)

cannot provide these amenities.⁹⁶ The poor funding of basic education has also led to the inadequate maintenance of existing facilities and has also slowed down the process of building new facilities which cannot keep up with the increased enrolment of children. This definitely leads to overcrowded classrooms which make it difficult for children to assimilate due to the uncomfortable nature of the classrooms. The National Policy on Education prescribes that the teacher-pupil ratio should be 1:40 but practically, a lot of primary schools have operated with teacher pupil ratio of 1:76.⁹⁷

3.3.2 QUALIFIED TEACHERS

What constitutes the quality of primary school education is based significantly on the type of the teacher education programme available for preparing primary school teachers. Therefore one of the problems faced by the primary schools in Nigeria is the poor quality of teachers produced from the various teacher training colleges.⁹⁸ The Nigerian Certificate in Education (NCE) is the minimum teaching qualification in Nigeria.⁹⁹ This means that no primary school teacher in Nigeria is expected to possess any teaching qualification lower than the NCE. This could be regarded as a bold move in order to improve the quality of teachers who will be able to impart the type of education the Nigerian children need. One of the serious challenges basic education faces is the shortage of qualified teachers in the primary school level. It is reported that 23% of the over 400,000 teachers employed in the nations primary schools do not possess the Teachers grade Two Certificate even when the NCE is said to be the minimum educational requirement an individual should possess to teach in the nations primary schools.¹⁰⁰ This is definitely a challenge because the difficulty in transferring knowledge from the so called “half baked” teachers becomes an issue. This undermines the purpose of the provision of basic education because the government needs to train the required number and improve the quality of teachers

⁹⁶ O J Nzekwe ‘Public Education in Nigeria at The Crossroad’ (2008)

<http://nigeriaworld.com/articles/2008/may/023.html> (assessed on 19 July 2011)

⁹⁷ D A Olaniyan, O E Obadara ‘A Critical Review of Management of Primary Education in Nigeria’ (2008)

<https://ojcs.siue.edu/ojs/index.php/ijaaas/article/view/103/163> (assessed on 21 July 2011)

⁹⁸ O Akinbote ‘Problems for Teachers Education for Primary Schools in Nigeria: Beyond Curriculum Design and Implementation (2007) <http://www.usca.edu/essays/vol222007/akinbote.pdf> (assessed on 21 July 2011)

⁹⁹ n 98 above

¹⁰⁰ L Yusuf ‘The State of Education in Nigeria and The Health of the Nation’ (2010)

<http://9jaedu.blogspot.com/>(assessed on 21 July 2011)

needed to successfully implement the provision of basic education. This fact was further exposed in Osun State where the State Primary Education Board (SPEB) officials explained that some of the teachers recruited do not possess the minimum NCE certificate. These teachers were said to be recruited in order to address youth unemployment problems at the time.¹⁰¹ However, these categories of teachers are not considered as regular teachers and are on a fixed low income. Teachers who possess qualifications lower than the NCE are awarded the Pivotal Teachers Certificate (PTC) and are employed in State Primary Schools as voluntary teachers. Most of these set of teachers are secondary school leavers with little or no formal teacher training skills.¹⁰²

I will commend the Osun State Government for making an effort to address the level of youth unemployment in the State by employing youths as teachers. However these youths are not experienced enough to impart quality basic education to children. Due to the level of qualification these PTC teachers have attained, they find it difficult to effectively teach children in order for them to understand. This therefore defeats the purpose of basic education because little knowledge is passed to the child because of the caliber of teachers used to execute such teaching programmes.

3.3.3 REMUNERATION OF TEACHERS

Teacher's salaries have always been a cause of concern in the education sector. It is a known fact that the issue of poor salaries has been the biggest demotivation for teachers in recent times. Poor remuneration of teachers in the country has turned the teaching profession that used to be the envy of all into a profession of ridicule which youths are now skeptical of going into. Students no longer fancy education as a study course because the remuneration of public school teachers is poor. This situation impacts negatively on the smooth running of primary schools. The motivation and personal welfare of teachers as professionals can be described as very poor. It often takes the Nigerian Union of Teachers (NUT) some days of work boycott in order to get

¹⁰¹ M A Adelabu 'Teacher Motivation and Incentives in Nigeria' (2005)
http://www.dfid.gov.uk/r4d/PDF/Outputs/PolicyStrategy/3888Teacher_motivation_Nigeria.pdf. (assessed on 22 July 2011)

¹⁰² n 101 above

primary school teachers paid whenever there is a salary delay.¹⁰³ This has certainly affected the effective performance and morale of the teachers which therefore lowers the quality of education that is being passed down to the children. On occasions teachers in different parts of the country have demonstrated their displeasure concerning neglect of the government to the plight of the teachers by embarking on teachers strikes in order to make their intentions known. An example was the situation in Delta state where the Nigeria Union of Teachers (NUT) in Delta State directed primary school teachers in the State to embark on an indefinite strike, complaining of what they called the Governments nonchalant attitude towards their welfare.¹⁰⁴ The teachers strike began after an ultimatum given to the State Government of Delta State to improve the welfare of teachers had lapsed. Also the nonpayment of the increased salary of primary school teachers had not been met¹⁰⁵. Another recent strike incident occurred in Abuja, the Federal Capital Territory where Teachers boycotted their respective classroom because the teachers had not been paid the teachers monetization arrears which they been promised for six months.¹⁰⁶ The remuneration of primary school teachers is very important in order to boost the motivation of teachers to effectively impart quality knowledge to the students. It is bad enough if teacher's salaries are said to be low, but when the low salaries are not paid on time or are left in arrears, it definitely agitates the teachers and dampens their morale to teach in the class rooms. It also affects the learners in the long run and therefore poses a huge challenge to the effective running of the Universal Basic Education Programme.

3.3.4 CORRUPTION

The discovery of oil and natural gas is one of the major events to have led to the high level of corrupt practices in the country. Over the years, Nigeria has seen most of its wealth squandered by political and military leaders with little to show in terms of the standard of living conditions of the average Nigerian.¹⁰⁷ A lot of attitudes like greed, ostentatious lifestyles and ethnicity have

¹⁰³ T Olori 'lack of Resources Threaten UBE' (2005)

http://www.newsfromafrica.org/newsfromafrica/articles/art_9114.html (assessed on 22 July 2011)

¹⁰⁴ 'Primary School Teachers in Delta State go on Strike' *Daily Times ng* 9 June 2011

<http://dailytimes.com.ng/articles/primary-school-teachers-delta-go-strike> (assessed on 22 July 2011)

¹⁰⁵ n 104 above

¹⁰⁶ 'FCT Primary School Teachers set to Call Off Strike' *Nigerian Pilot* 26 February 2011

<http://nigerianpilot.com/?q=content/fct-primary-school-teachers-set-call-strike-%E2%80%A6fg> (assessed on 22 July 2011)

¹⁰⁷ 'Corruption in Nigeria' http://en.wikipedia.org/wiki/Corruption_in_Nigeria (assessed on 22 July 2011)

been known to be the cause of corruption but the practices of political leaders in the country have been known to be the major cause of corruption in the country. Corruption is now a high profile issue in Nigeria and those in political power are the main culprits. News of corrupt practices by individuals holding political office are often reported or brought to the notice of the president but so far very little has been done to curb this habit. Political officials often engage in frivolous overseas trips while civil servants like the primary and secondary school teachers go for months without getting their monthly remuneration.¹⁰⁸ In a lot of cases these political leaders enroll their children in schools abroad because they are aware of the dwindling quality of education in the country. Most of the past administrations have been marred with corrupt practices. This was very evident in the military era of General Ibrahim Gbadamusi Babangida and General Sani Abacha. The regime of General Babangida was seen as the body that legalized corruption. His administration refused to give an account of the gulf war windfall which was estimated to be about \$12.4 billion.¹⁰⁹ Sadly he has never been arrested for these corrupt practices and lives freely in his home town of Niger state in the Northern part of Nigeria.¹¹⁰

The death of General Sani Abacha revealed the level of political corruption in the country. Investigations of bribes paid to government officials to ease the award of a gas construction in Nigeria revealed the high level of corruption in the country. This led to the freezing of foreign accounts worth millions of dollars.¹¹¹ Two years after the death of General Sani Abacha, a Swiss banking commission report indicted Swiss banks for failing to follow compliance process in allowing family and friends of Abacha access to accounts worth billions of dollars stashed away in various accounts in Europe.¹¹² One wonders if these loots taken by these officials were used to improve the education sector as a whole. It is my opinion that the educational challenges Nigeria faces today would have been a thing of the past because with these funds, there would have been adequate infrastructure to conveniently cater for the growing education needs of the Nigerian people. Remuneration of teachers will be attractive which will boost the commitments of the teachers to impact knowledge of a high standard to the learners.

¹⁰⁸ 'Corruption in Nigeria' http://en.wikipedia.org/wiki/Corruption_in_Nigeria (assessed on 22 July 2011)

¹⁰⁹ 'General Ibrahim Badamosi Babangida- The Evil Candidate' *Sahara Reporters* 17 September 2010
<http://sharareporters.com/article/general-ibrahim-badamosi-babangida-evil-candidate> (assessed on 27 July 2011)

¹¹⁰ n 109 above

¹¹¹ 'General Sani Abacha' http://en.wikipedia.org/wiki/Sani_Abacha (assessed on 27 July 2011)

¹¹² 'Asset Recovery Knowledge Centre' <http://www.assetrecovery.org/kc/node/52f770df-a33e-11dc-bf1b-335d0754ba85.0;jsessionid=9001162989E778B48E2C6731B59E5B73> (assessed on 27 July 2011)

The 36 States of the Federation are not left out in these corrupt practices as they are equally to blame for their conducts towards public funds which are supposed to be used for the purpose of delivering amenities to the Nigerian people. Recently, the former Resident Electoral Commissioner of Adamawa State, Alhaji Suleimon Bello faces an eight count charge for alleged corrupt enrichment of about N11.2 million.¹¹³ The Independent Corrupt Practices and Other Related Offences Commission (ICPC) accused the former commissioner of allegedly soliciting the said amount from the State governor in respect of some frivolous allowance to be paid to state government staff.¹¹⁴ Furthermore he and two former top officials of the Adamawa State government are also being arraigned by the ICPC over their alleged involvement in a N268 Million bribe scam.¹¹⁵ One wonders why such huge amounts of money can be siphoned by state Government officials when serious attention needs to be paid to the education sector of the State. Some rural areas in Adamawa State like Gawi, Mayo-Mbullo and Bura-Tola which are in the southern part of Adamawa State are seriously in serious need of basic education assistance.¹¹⁶ Some of the areas in the State have primary school students learning in very deplorable conditions. Students are seen learning under the cover of tree branches which luckily shield them from the harsh weather. In Jada Local Government area of Adamawa State, there are situations where students have to use stones as chairs and have to use their laps as desks for writing. This is made worse because they don't even have writing materials to use.¹¹⁷ It is a very sad situation that in the mist of the terrible state of education in the State of Adamawa, State officials can still be seen carting away large sums of money when basic education facilities are not available in parts of the state.¹¹⁸ This was made very evident when the Adamawa State Basic Education Research (ASBER) in collaboration with the centre for International Education (CIE) stated that despite the progress made by the State in extensively erecting school building and provision of free school uniforms for female students, a State of emergency in the education sector of

¹¹³ 'Nigeria: Corruption-Govt Takes Over Minister's Prosecution' *All Africa.com* 1 February 2011
<http://allafrica.com/stories/201102010706.html> (assessed on 28 July 2011)

¹¹⁴ n 113 above

¹¹⁵ n 113 above

¹¹⁶ 'Face to Face with pupils Learning Under Tree in Adamawa' *Sunday Trust* 27 September 2009
http://sunday.dailytrust.com/index.php?option=com_content&id=1364:face-to-face-with-pupils-learning-under-tree-in-adamawa&catid=36:sunday-trust-investigation&Itemid=30 (assessed on 30 July 2011)

¹¹⁷ n 116 above

¹¹⁸ n 116 above

Adamawa State had to be declared.¹¹⁹ This spells out the huge educational neglect the State of Adamawa is experiencing especially at the primary school level.

3.4 LAGOS STATE

Unlike Adamawa State, the Governor of Lagos state has taken steps to ensure that education is made available to the people of Lagos state. These efforts are in conformity with the provisions of the Compulsory, Free Universal Basic Education Act. This is well noticed in its efforts to making education free in the state at the primary and secondary level. It is reported that the Lagos State Government had since forbidden illegal collection of fees by teachers from learners and took steps to providing textbooks and infrastructures to public schools.¹²⁰ In the last two years the Lagos state government had not only concentrated on the construction of school buildings but had also spent more funds on the provision of facilities, teaching aides and tools for public school pupils and teachers.¹²¹ It was also reported that the Lagos state government has spent over N2.1 Billion naira on Secondary schools structures across the states. These provisions are in line with the promise of the Lagos State Governor's vision of providing quality education in schools around the state and affirming that education is the most potent weapon against ignorance and poverty.¹²² The efforts of the Lagos State Governor can be said to be commendable because these efforts without any doubts have been noticed by some international organizations like the World Bank who in appreciation of the governor's efforts, backed the Lagos State Government with a donation of N13.5 Billion in order to further address diverse challenges confronting public schools in the State.¹²³ This is not to say that the Lagos State Government does not have its share of education challenges which it faces but the fact that Lagos

¹¹⁹ 'University of Sussex: Adamawa State Basic Education Research (ASBER)
<http://www.sussex.ac.uk/education/research/cie/rprojects/asber> (assessed on 30 July 2011)

¹²⁰ 'Re:Free Education in Lagos and Akwa Ibom State' *The will* 11 May 2010
<http://thewillnigeria.com/opinion/letters/4468-FREE-EDUCATION-LAGOS-AND-AKWA-IBOM-STATE.html>
(assessed on 30 July 2011)

¹²¹ K Awosiyen 'Realising Free Education in Lagos' *Nigerian Tribune* 22 April 2010
<http://www.tribune.com.ng/index.php/education/4363-realizing-free-education-in-lagos> (assessed on 30 July 2011)

¹²² Fasola 'Future of Lagos State Depends on Children's Education' (2011)
<http://www.lagosschoolsonline.com/more.php?id=22> (assessed on 30 July 2011)

¹²³ 'Re:Free Education in Lagos and Akwa Ibom State' *The will* 11 May 2010
<http://thewillnigeria.com/opinion/letters/4468-FREE-EDUCATION-LAGOS-AND-AKWA-IBOM-STATE.html>
(assessed on 30 July 2011)

State Government is making efforts to address the education needs of the people in compliance with international provisions on the right to education can be said to be commendable.¹²⁴

3.5 CONCLUSION

It is my opinion that the Nigerian Government at different levels has made efforts in providing basic education to the people but the efforts of the Government are said to be suffering due to the fact that these education project are either poorly funded or the funds get into the possessions of corrupt officials who use these funds for their personal gains rather than for the development of basic education. This hideous act definitely frustrates the efforts of the government. The Government in turn needs to create a mechanism where it can monitor the activities of its education projects. This mechanism should include monitoring the disbursement of funds, supervising the various education projects these funds have been disbursed to finance and bringing corrupt officials in charge of these education projects to face the law in situations where corruption is suspected. This will entails getting corrupt free officials to oversee these affairs. It is very clear that the Nigerian Government needs to pay a lot of attention to the attainment of the adequate provision of basic education as it is clear basic education in the country is in need of serious attention. So far the Lagos state Government is the only state that has evidently made efforts in providing free quality basic education and its efforts have been applauded by a lot of individuals both within and outside the country. The Governments at the federal and state level should borrow a leaf from the efforts of the Lagos State Government.

The next chapter will examine some major recommendations from the legal perspective in order to proffer possible solutions which Nigeria can explore and utilize in order to revive the severely declining state of basic education in Nigeria. The next chapter also takes into account Nigeria's legal obligation to uphold the right to education stated in International documents.

¹²⁴ 'Lagos State Government Press Briefing By Her Excellency, Princess Sarah Adebisi Sosan, Deputy Governor, Lagos State' (April 2008)
<http://www.lagosstate.gov.ng/index.php?page=subpage&spid=949&mnu=sub=ministry&mpid=27> (assessed on 2 August 2011)

CHAPTER FOUR

4.1 INTRODUCTION

The analyses of Chapter 3 shows that the Nigerian Government has embarked on making educational policies aimed at providing basic education to the Nigerian people. The aim of these policies is to create and see to the possible implementations of basic education that will best suit every Nigerian person who will like to benefit from these policies. This ranges from the little child who has to start acquiring education from a tender age to the adult Nigerian who intends to acquire basic educational knowledge. This chapter examines the Nigerian Government's commitment to meeting its obligation in providing basic education to its citizens in line with the General comments No. 13 on the right to education enshrined in article 13 of the ICESCR. This chapter also examines some possible legal recommendations which if implemented, will recognize the importance of socio- economic rights which the provision of basic education comprises.

4.2 THE OBLIGATION TO RESPECT, PROTECT AND FULFILL

Paragraph 6 of the general comments elaborately states the features of the right to education which include availability, accessibility, acceptability and adaptability.¹²⁵ On the issue of availability, it is stated in the general comment that functional educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What the right to education requires to function in any country depends upon numerous factors, including the developmental context within which they operate. For example, all institutions and programmes are likely to require buildings, sanitation facilities for students, safe drinking water, and trained teachers.¹²⁶ The general comment provides an implicit and contemporary interpretation of article 13 of the ICESCR. It also serves as a guideline to which State parties

¹²⁵ BG Ramcharan *Judicial Protection of Economic, Social and Cultural Rights (2005) Volume 22* Pg 195

¹²⁶ F Coomans 'Clarifying the Core Elements of the Right to Education'
<http://131.211.11.45/faculty/leg/NL/organisatie/departementen/departementrechtsgeleerdheid/organisatie/onderdelen/studieeninformatiecentrummensenenrechten/publicaties/simspecials/18/Documents/18-03.pdf> (assessed on 7 October 2011)

should adhere strictly to in order to progressively realize the right to education. The question this chapter examines is embodied in its commitments to the provisions of International instruments like the ICESCR, CEDAW, CRC and ACHPR on the right to basic education. An important question in this regard is whether Nigeria is meeting its legal obligation towards providing basic education to the Nigerian people? This chapter examines this question in line with the provision of paragraph 6-8 of the general comment No.13. In other words I examine Nigeria's effort to respect, protect and fulfill the obligation to provide education stated in paragraph 46 of the general comments No. 13.

The obligation to respect requires state parties to avoid measures that hinder or prevent the enjoyment of the right to education.¹²⁷ This obligation prohibits the State itself to act in contravention of recognized rights and freedoms. This means that the state must refrain from interfering with the exercise of such rights and freedoms. According to Article 13(3), State parties undertake to have respect for the liberty of parents to choose schools other than public schools for their children. The obligation to respect can also be seen in other International instruments such as the ICCPR and the Convention against Discrimination in Education. Initially this obligation was thought to have only the negative meaning which is a protection against State interference.¹²⁸ It can be said that the obligation to respect can be interpreted in a positive sense as well because it requires a tolerant attitude from the State towards the religious and philosophical convictions of parents. For instance in a case where a State decides to introduce certain subjects in public Schools, a positive way to respect parent's convictions is the granting of exemption for certain subjects. In its effort to respect the right to education, Nigeria has taken some commendable steps in this regard. Over the years, State owned or public schools have created the option for students to choose the subject they prefer especially in regard to religious subjects.¹²⁹ For example students are at liberty to choose between Christian Religious knowledge (CRK), Islamic Religious Knowledge (IRK) or be exempted from both subjects if they do not

¹²⁷ BG Ramcharan *Judicial Protection of Economic, Social and Cultural Rights (2005) Volume 22* Pg 205 also see my detailed analyses of the general comment No. 13 on the right to education stated in article 13 and 14 of ICESCR in chapter 2

¹²⁸ F Coomans 'Content and scope of the right to education as a human right and obstacles to its realization' in Y Donders, V Volodin (ed) *Human Rights in Education, Science and Culture Legal Developments and challenges* (2007) p189

¹²⁹ UA Ajidagba 'Factors Influencing Students' choice of Islamic Studies in the Nigerian Secondary Schools in Ilorin Emirate, Nigeria' <http://www.khulafau.org/publications/Factors-influencing-students-choice-ISS.pdf> (assessed on 7 November 2011)

want to take part in any of the mentioned religious subject. The obligation to respect the right to education has also seen the State Government create primary and secondary Institutions which are religion based. An example is the creation of Islamic and theological schools.¹³⁰ This gives parents the liberty or option of choosing the type of school they prefer their children to attend in order to ensure conformity with religious convictions. It also affords an individual the liberty of choosing the type of basic education he desires to obtain, whether academic or religious based. The obligation to respect the right to education in Nigeria has also seen the creation of a lot of private owned schools in Nigeria.¹³¹ These private owned schools range from primary to tertiary level. The creation of these private owned schools gives parents the opportunity to source for other education options if the parents feel the quality of education in public schools is not up to the standard or quality they desire for their children. The obligation to respect is such that it ensures a domain which is free from state interference as noticed in article 13 (3). It is my opinion that to a very favourable extent the Nigerian Government upholds this commitment to respect this right.

One of the obligations of protecting the rights to education requires the State to adopt appropriate legislative measures towards the full realization of the right to education.¹³² The implication is that the realization of human rights becomes the object of these laws aimed at improving these rights. Not only should the laws and policies in place not violate the right to education, they should take these rights into account as an extended concern. Laws and policies must be put in place explicitly in order to make progress towards the full realization of fulfilling these rights. As stated in the third chapter of this dissertation, Nigeria had formulated policies directed at providing education at the primary level which is a positive effort.¹³³ In terms of enacting domestic laws in line with its obligations stated in article 13 of the ICESCR and other international documents, Nigeria has been found wanting. Apart from the Nigerian Constitution which prohibits the Judiciary from presiding over matters concerning provision of economic social and cultural rights in Chapter 2 of the Constitution, the Compulsory, Free Universal Basic

¹³⁰ BA Lemu 'Religious Education in Nigeria- A case study' <http://folk.uio.no/leirvik/OsioCoalition/AishaLemu.htm> (assessed on 7 November 2007)

¹³¹ n 130 above

¹³² OD Schitter *international Human Rights Law cases, materials and commentary* (2010) pg 461

¹³³ See 'the achievements of the Nigerian Government' in chapter 3

Education Act which is the law that backs basic education also has its short comings.¹³⁴ As stated before, the Nigerian Constitution and the Compulsory, Free Universal Basic Education Act does not state clearly which level of Government is responsible for the funding and administration of basic education in the Country. The Compulsory, Free Universal Basic Education Act clearly states in section 1 of the act that the Federal government shall act as assistance to the State and Local Government. The provision of section 1 of the act spells the fact that the Nigerian Government is shying away from an issue as important as providing basic education. Its commitment towards upholding the obligation to protect the provision of basic education in its domestic laws is somewhat questioned in the provisions of section 1 of the Compulsory, Free Universal Basic Education Act. It is my opinion that Nigeria has done well in making policies which have yielded some degree of success at providing basic education to the Nigerian masses as seen in the Federal Ministry of Education report.¹³⁵ However, in order to effectively uphold its obligation to provide basic education as required by International Instruments, It has to be more resourceful in progressively realizing the provisions of basic education throughout the federation. The Nigerian Government has to take more responsibility in the provision of basic education and not leave it solely in the hands of the Universal Basic Education commission. Perhaps The Federal Government should not just award grants to the commission as stated in section 9 (b) of the act but also be responsible for the monitoring of the manner in which these basic education grants are disbursed in order to provide basic education to Nigerians. This will create a form of accountability of funds by the commission to the Federal Government. The obligation to protect goes beyond just creating a commission responsible for basic education as seen section 7 of the Basic education Act. The Federal Government should be highly involved in the monitoring of progress made in providing basic education by the commission and laws should be enacted in order to give effect to the role of the Federal Government in this regard. This will go a long way in reinstating the federal Government commitment to upholding the obligation to protect the right to education. The Nigerian government has formulated policies like the National Policy for Integrated early Childhood Development in Nigeria which is aimed at addressing the critical issues of access, completion

¹³⁴ See my analyses of the Nigerian Constitution in chapter 2

¹³⁵The Federal Ministry of Education for the Forty- Eight Session of the International Conference on Education (ICE) ‘The Development of Education National Report of Nigeria (November 2008) http://www.ibe.unesco.org/National_Report/ICE_2008/nigeria_NR08.PDF. (assessed on 6 July 2011) also see my analyses of the implementation of various education policies in chapter 3

and quality of basic education.¹³⁶ As laudable as these policies have been, the issue of making these policies beneficial to every eligible and deserving Nigerian comes into question. As noticed in Chapter 3 Adamawa State lacks the basic educational facilities which are desirous of any State in Nigeria. This shows that though the Nigerian Government is making efforts to provide basic education, the issue of availability and equal distribution of basic educational needs throughout the Country still remains an obstacle.¹³⁷ Perhaps this is due to the methods of planning and implementing these educational policies and programmes. One wonders why Lagos state has taken commendable steps in order to make education available to people while other states in the federation especially Adamawa are lacking when it comes to providing basic education¹³⁸. This predicament definitely does not comply with the obligation to protect the right to education stated in the general comment No.13 on the right to education. Perhaps the problem of uneven distribution of basic education can be traced to the fact that the responsibilities of administrative and finance aspects of basic education are still shared by the 3 levels of government (Federal, State, and Local) and not the sole responsibility of one, which in my opinion should be solely the Federal Government.¹³⁹ It is important for the Nigerian Government to find a permanent solution to this problem of uncertainty. There Nigerian Government should be specific in its provision or declare in clear terms the legislative list upon which the control and management of basic education is placed.

According to paragraph 47 of the general comment no. 13, the obligation to fulfill requires state parties to take positive measures that enable and assist individuals and communities to enjoy the right to education.¹⁴⁰ In other word the obligation to fulfill can be understood to mean the creation of programmes that will provide the appropriate quality of education to the Nigerian citizen. In order for these programmes to be properly implemented it will require a high level of

¹³⁶ The Federal Ministry of Education for the Forty- Eight Session of the International Conference on Education (ICE) 'The Development of Education National Report of Nigeria (November 2008) http://www.ibe.unesco.org/National_Report/ICE_2008/nigeria_NR08.PDF. (assessed on6 July 2011)

¹³⁷ General comments No. 13 CESCR on the Right to Education

¹³⁸ 'Face to Face with pupils Learning Under Tree in Adamawa' *Sunday Trust* 27 September 2009 http://sunday.dailytrust.com/index.php?option=com_content&id=1364:face-to-face-with-pupils-learning-under-tree-in-adamawa&catid=36:sunday-trust-investigation&Itemid=30 (assessed on 30 July 2011)

¹³⁹ E. D Nakpodia 'Early Childhood Education: Its Policy Formulation and Implementation in Nigeria Educational System (February 2011) <http://www.academicjournals.org/ajpsir/PDF/pdf2011/March/Nakpodia.pdf> (assessed 28 July 2011)

¹⁴⁰ BG Ramcharan *Judicial Protection of Economic, Social and Cultural Rights (2005) Volume 22 Pg 205*

commitment and financial input on the part of State parties in order to see the full realization of these educational programmes. The provision of basic education in Nigeria requires the Government to commit a lot of finances towards the steady growth of basic education in the country. These finances will be utilized towards the provision of school building facilities, training teachers appropriately, adequate remuneration of teachers and the provision of reading and learning materials for students. This notion seems to be upheld by the United Nations Educational, Scientific and Cultural Organization (UNESCO) where it placed the annual allocation to education at 26% of the annual budget of a country.¹⁴¹ Over the years the Nigerian government has funded a lot of educational programmes with the aim of providing education to its citizens. By doing this it has considerably acknowledged the obligation to fulfill the right to education stated in paragraph 47 of the general comments. However the duty to progressively realize the right to education leaves so much to be desired. As stated in chapter 3, the annual allocation to education has been far less than the 26 % recommended by UNESCO.¹⁴² In the year 2010, the annual allocation to education was a meager 6.4% of the total annual budget of the country which is a far cry from the 13% given in the year 2008.¹⁴³ This does not uphold the obligation to fulfill the right to education in this regard. In order to make sure that educational policies are effectively implemented so that it is well circulated throughout the federation, optimum funding is needed in order to fulfill the objective of these educational policies. The budget allocated to education in my opinion is low and should be looked into by the Nigerian Government because it is not enough to challenge the huge development projects of the education sector. One wonders why the budget on education is that low yet 25% of the nation's annual budget goes into paying the salaries of National assembly members.¹⁴⁴ One wonders why 25% of the country annual budget should be used to pay the salaries of law makers whose numbers don't make one percent of the Nigerian population whereas funds are needed to employ and pay salaries of more public school teachers. More funds should be directed to the education sector to cater for the employment of more teachers so that the 1:97 ratios of teachers to student

¹⁴¹ O J Nzekwe 'Public Education in Nigeria at The Crossroad' (2008)

<http://nigeriaworld.com/articles/2008/may/023.html> (assessed on 19 July 2011)

¹⁴² n15 above also see my analyses of the criticisms and challenges facing basic education in Nigeria in chapter 3

¹⁴³ Pointblank news 'We reject 2010 budget. We demand 26% budgetary allocation to education'

<http://www.pointblanknews.com/pressrelease543.html> (assessed 3 November 2011) also see my analyses concerning funding the Nigerian education sector in chapter 3

¹⁴⁴ GA Paul 'Nigerian law makers are the highest paid in the world' http://travel.wikinut.com/Nigeria-lawmakers-are-the-highest-paid-in-the-world/2fpmxk_a/ (assessed on 3 November 2011)

in a class room can be reduced.¹⁴⁵ The Nigerian Government needs to reconsider its priorities when it comes to allocating funds. Allocating more funds to the education sector will yield far more benefits because more public school buildings will be erected, salaries of teachers will be more attractive and paid on time and it will go a long way in reinstating the Federal Government's commitment to fulfilling the right to education. As stated in Chapter 3, Lagos State can be commended for having prohibited the collection of fees in the state as this is a step to fulfilling the obligations stated in article 13 (2) (a) which is elaborated in the general comment.¹⁴⁶ However it should be said that Lagos state is just a small portion of Nigeria and the obligation of providing education cannot be fully complied with if there are parts of the Federation who still lack the right to primary education as noticed in Adamawa State.¹⁴⁷

As analyzed in Chapter 3, it is clear that Nigeria has embarked on some project in its efforts to providing basic education to its citizens. This has seen the Nigerian Government provide different means of encouraging citizens to go to school and the provision of funds to develop the education sector. The different levels of Government (The Federal, State and Local) have gone ahead to formulate policies which will foster the provision and maintenance of the standard of basic education in the country. Despite its efforts, it is a well known fact that basic education still suffers because of lack of transparency and accountability which undermines the possibility of making progress in the education sector and other areas of national life. The Nigerian Constitution has also not helped in making basic education available to the Nigerian citizens. This is seen in Sec 6 (6) (c) of the constitution.¹⁴⁸ The section prevents any person or organization from bringing an action against the Nigerian Government concerning chapter two of the Nigerian Constitution to any court of law in Nigeria.¹⁴⁹ The right to education unfortunately

¹⁴⁵ D A Olaniyan, O E Obadara 'A Critical Review of Management of Primary Education in Nigeria' (2008) <https://ojcs.siue.edu/ojs/index.php/ijaaas/article/view/103/163> (assessed on 21 July 2011)

¹⁴⁶ 'Re:Free Education in Lagos and Akwa Ibom State' *The will* 11 May 2010 <http://thewillnigeria.com/opinion/letters/4468-FREE-EDUCATION-LAGOS-AND-AKWA-IBOM-STATE.html> (assessed on 30 July 2011)

¹⁴⁷ 'Face to Face with pupils Learning Under Tree in Adamawa' *Sunday Trust* 27 September 2009 http://sunday.dailytrust.com/index.php?option=com_content&id=1364:face-to-face-with-pupils-learning-under-tree-in-adamawa&catid=36:sunday-trust-investigation&Itemid=30 (assessed on 30 July 2011)

¹⁴⁸ Sec 6 (6) © of the Nigerian Constitution states that 'The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act of 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 2 of this Constitution;'

¹⁴⁹ Chapter 2 of the Nigerian Constitution 'Fundamental Objectives and Directive Principles of State Policy'

falls within this ambit of non justiciable rights. Corruption seems to be the sociological issue that needs to be addressed because large sums of money which are supposed to be used to provide, develop and maintain the education facilities to cater for the growing number of Nigerians who are willing to engage in basic education are diverted by political and business elites as kickbacks and bribes.¹⁵⁰

4.3 RECOMMENDATIONS

4.3.1 COSTITUTIONAL AMENDEMENT

In Nigeria, the current Constitution was made in 1999. It came into force in May 1999 and is said to be the supreme law of the land. The content and nature of a Constitution is always the product of its originators. In the case of the Constitution of Nigeria, it is evident that it is a product of the military.¹⁵¹ Although it seems to be the constitution of the Nigerian people, it does not originate from a mandate of the Constituent Assembly elected for that purpose. The 1999 Constitution abridges the judicial powers of the courts. Although the Constitution vest judicial powers in the court by virtue of sec 6(1) (2), the judiciary's powers are somewhat truncated by sec 6 (6) (c-d).¹⁵² Sec 6 (6) © provides that the judiciary shall not or otherwise provided by the Nigerian Constitution, extend any issue or question as to whether any act of 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 2 of the Constitution.¹⁵³ In other words, the judiciary has been barred by the Constitution from adjudicating over issues concerning Chapter 2 which interestingly contains the provision of economic social and cultural rights to the Nigerian people.

Sec6 (6) (d) provides that the judicial powers vested in the courts shall not, as from the date when the section came into force, extend to any action or proceedings relating to any existing law made on or after the 15th January 1966 for determining any issue or question as to the

¹⁵⁰ O. Eze *Study of the Right to Education In Nigeria: Shelter Rights Initiative* (1998) P24

¹⁵¹ CA Obiozor 'The Constitution Vesting of Judicial Powers in the Judicature in Nigeria- The Problem with Section 6 (6) (d) of the Constitution of 1999' <http://nials-nigeria.org/pub/C.A.pdf> (assessed on 20 September 2011)

¹⁵² n 151 above

¹⁵³ Section 6 (6) © The Nigerian Constitution

competence of any authority or person to make any such law. The provisions of Sec 6 (c-d) are not totally unexpected considering the *modus operandi* of the military before the promulgation of the 1999 Constitution. The provision is also a mere re-statement of the tradition of the military regime in Nigeria to muzzle any form of challenge of its authority by the use of ouster clauses in Decrees.¹⁵⁴ It is therefore worrisome that this trend is still maintained even in the era where civilians control the affairs of the state and are said to be more sensitive to the plights of the people than the military. Twelve years after the Nigerian military organised elections and handed over power to the Obasanjo administration, there has been no known bill passed by the National Assembly to oust sec 6 (6) (c-d) of the Constitution which impedes the powers of the judiciary. In my view, the Judiciary should be given absolute power to preside over every matter concerning the State, any Organization and any person without any form of interference or hindrance from legislations or the executives. The doctrine of separation of powers should not only be a provision in the content of the Nigerian constitution, it should actually be implemented and continually practiced in the running of the affairs of the Nigerian Government.

Unfortunately, the provisions of sec 6 (6) (c-d) excludes the judiciary from presiding over matters regarding the provision of economic social and cultural rights provided in chapter 2 of the Constitution as directive principles of State policy. The provision of basic education is provided for in chapter 2 of the Constitution and I can conclude with all certainty that basic education suffers its present predicament because of the provisions of sec 6 (6) ©. Its provisions give political and government officials the audacity to siphon and mismanage funds meant for the provision and development of economic social and cultural rights in which basic education consist. This is because they know that their authority cannot be questioned by any person or group and if questioned, such issues cannot be taken to courts of law because the judiciary has been barred by the provisions of sec 6 (6) © of the constitution.

Nigeria acknowledges the provisions of the International Covenant on Economic Social and Cultural Rights by accessing it. On the contrary however, Nigeria does not comply with the provisions of the ICESCR in terms of implementation because of the provisions of sec 12 (1) of the Nigerian Constitution which states that no treaty between Nigeria as a Federation and any

¹⁵⁴ CA Obiozor 'The Constitution Vesting of Judicial Powers in the Judicature in Nigeria- The Problem with Section 6 (6) (d) of the Constitution of 1999' <http://nials-nigeria.org/pub/C.A.pdf> (assessed on 20 September 2011)

other country shall have no force of law to the extent of which any such treaty has been enacted into law by the National Assembly.¹⁵⁵ The provisions of sec 12 (1) gives the Nigerian Government the option of not complying with the provisions of International instruments like the ICESCR. This is because these instruments are not enactments of the National Assembly.

The provisions of Sec 18 (3) (a) are somewhat questionable as earlier stated in Chapter 2 of this dissertation.¹⁵⁶ International and regional instruments have moved past the era of ‘providing’. Most International instruments state that the provision and accessibility of education should be a right accrued to a person. This view has also been incorporated by some countries like Ghana and South Africa.

4.3.1.1 GHANA

Nigeria can draw some inspiration from the Constitution of Ghana. The Constitution of Ghana has the right to education expressly stated in both its Directive Principles of State Policy and in the Fundamental Rights Chapter which can be seen in Sec 25 and 38 respectively.¹⁵⁷ Sec 25 (1) (a) of the Ghanaian Constitution states that all persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realisation of that right shall make basic education free, compulsory and available to all.¹⁵⁸ The structure in which the Ghanaian government can be held accountable for efforts made in providing education can be seen in Sec 38 where its Constitution imposes an obligation on the State to take concrete steps within two years after parliament first meets. In a situation where the Ghanaian Government fails to enforce the obligation provided for in Sec 25 and 38, some people or groups with an interest may bring an action to court compelling the Ghanaian Government to carry out the duties stated in these sections. Sec 34 of the Ghanaian Constitution provides that the directive principles shall amongst others guide the judiciary in applying or interpreting the constitution or any other law and in taking and implementing any policy decision for the establishment of a just and free society.¹⁵⁹ It is very clear that the Ghanaian Constitution does not expressly State that the directive principles of state policy are non justiciable rather it is more like a frame work the

¹⁵⁵ Section 12 (1) of The Nigerian Constitution

¹⁵⁶ Section 18 (3) (a) of The Nigerian Constitution provides ‘Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide free, compulsory and universal primary education;’

¹⁵⁷ O. Eze *Study of the Right to Education In Nigeria: Shelter Rights Initiative* (1998) p38

¹⁵⁸ Section 25 (a) Ghana Constitution

¹⁵⁹ Section 34 Ghana Constitution

Ghanaian government is meant to follow in order to achieve the realization of basic human rights which education comprises. Consequently, even if the right to education had not been expressly provided for in Sec 25, it could be derived from and be additional to other rights expressly guaranteed in Sec38 of the Ghanaian Constitution.

4.3.1.2 SOUTH AFRICA

The concept of basic education varies from country to country however, it is important to note that the definition of basic education evolves from time to time and cannot be the same for all countries at all times. South Africa is not left out as the term basic education continues to evolve which takes into consideration the changing requirements of a technologically advancing society.¹⁶⁰ It is interesting to note that the right to education in the South African Constitution does not contain the words “within available resources” or “progressive realization of the right” as is found in the socio economic rights provision of the Nigerian Constitution.¹⁶¹ This means that the right to basic education in South Africa is an immediate right. Unlike the right to further education which is subject to available resources as well as progressive realization.¹⁶² In other words it will seem to mean that the provision of Sec 29 (a) implies that resource constraints would not be applicable in determining the content of the right to basic education. That means the right to basic education is unconditional. Based on the provisions of Sec 29 of the South African Constitution, an individual or organization can bring an action on infringements of the right to basic education to the constitutional court. Currently there are plethora of cases before the Constitutional courts concerning the right to education in South Africa. Examples are the case of *Governing Body, Mikro Primary School, and Another Vs Minister of Education, Western Cape and Others* where an action was brought against the applicant who was an Afrikaans-medium pupils school which upon application, had declined to admit forty grade one pupils to the school and provide them with tuition in English.¹⁶³ The issue of the right to basic education

¹⁶⁰G Bekker ‘ The Right to Education in The South African Constitution: An introduction’ in LV Mashava (ed) ‘*Compilation of essential documents on the right to education*’ Economic and Social Rights Series Volume 2 (2000) p7

¹⁶¹ Section 29 (1) (a) South African Constitution

¹⁶² Section 29 (1) (b) South African Constitution

¹⁶³ *Governing body, Mikro Primary School and Another v Minister of Education, Western Cape and others* 2005 3 SA 504

of the child was deliberated upon in one of the rulings. The case of *Heystek Vs Heystek* is another case where the right of a child to basic education was elaborately discussed.¹⁶⁴ One of the rulings stated is that the husband has to provide maintenance for the wife even if portions of the maintenance fee is used for the wellbeing of the wife's children which included the right to basic education enshrined in sec 29(1) of the South African Constitution. The South Africa law might have some flaws in terms of enforcing judgments rendered by the Constitutional courts concerning providing basic education but the fact that that any individual can bring an action for an infringement of his or her right to basic education which is provided for by the Constitution is definitely a step to the right direction. It is my opinion that this trend should be followed by Nigeria if it intends to genuinely uphold the right to education of its people.

The provisions of sec 6 (6) (c-d) of the Nigerian Constitution should be amended because limiting the power of the judiciary to adjudicate over certain matters without any concrete reason or explanation gives rise to the fact that the custodians of the other arms of government (Legislature and Executive) harbor ulterior motives which can be seen in the case of Nigeria.

Sec 12 (1) of the Nigerian Constitutions also needs to be examined in relation to international laws.¹⁶⁵ Sec 12 (1) does not give the National Assembly which is the body responsible for making laws any legal role in the ratification of treaties. Rather, the National Assembly is only involved in the implementation or domestication of treaties. In Nigeria, a treaty may be ratified by the president without the National Assembly because it still operates the inherited system from the United Kingdom whereby the executive is able to ratify a treaty without the Parliament.¹⁶⁶ If we are to go by legal principles, it is the job of the legislature to make laws. This includes ratification and domestication of international treaties. One wonders why the role of ratification of treaties should be taken over by the executive when this is exclusively a law making issue. It is my opinion that once section 6 (6) © is repealed and education is recognized as a right as provided in the Constitution of Ghana and South Africa, it places more commitment on the part of the Nigerian Government to see to the provision of educational facilities to the Nigerian people. The Judiciary will be able to make orders in respect of cases brought before

¹⁶⁴ *Heystek v Heystek* 2002 2 SA 754 T

¹⁶⁵ Section 12 (1) of the Nigerian Constitution

¹⁶⁶ E Egede 'Bakassi: The Green Tree Agreement (GTA) and Section 12 of the 1999 Constitution'

http://works.bepress.com/cgi/viewcontent.cgi?article=1007&context=edwin_egede&sei-redir=1#search=%22comment%20section%2012%201999%20constitution%22 (assessed on 20 September 2011)

them concerning non provision of education. This is because of the fact that section 6 (6) © will not prevent the judiciary from presiding over matters that have to do with the provision of basic education.

4.3.2 JUDICIAL ACTIVISM

Judicial activism was made popular in India which can be credited to its Public Interest Litigation (PIL). Generally, before the court takes up a matter for adjudication, it must be satisfied that the person who approaches it has sufficient interest in the matter. In other words the doctrine of *locus standi* is examined.¹⁶⁷ Judicial activism has introduced a new dimension regarding judiciary's involvement in public administration. In this case the doctrine of *locus standi* and its procedural complexities are side tracked in the causes brought before the courts through Public Interest Litigation.¹⁶⁸ Initially, Public Interest Litigation was confined only to improving the disadvantaged section of the society who by reason of their poverty and ignorance were not in a position to seek justice from the courts and therefore, any member of the public was permitted to maintain an application for appropriate directions. The Indian judiciary has set an example regarding Directive Principles of State Policy in an expansive model of interpretation for economic, social and cultural rights. It identifies an undeniable link between justiciable civil and political rights and supposedly non-justiciable economic, social and cultural rights. The Courts expand civil and political rights to include economic, social and cultural rights.

Part 3 of the Indian Constitution contains fundamental rights which consist of mainly civil and political rights. These rights like the provisions of the Nigerian Constitution are enforceable in the respective Courts.¹⁶⁹ Chapter 4 of the Indian Constitution also embodies the Economic Social and Cultural rights provisions. Like Chapter 2 of the Nigerian Constitution, these rights are termed Directive Principles of State Policy and are not justiciable. This means the non-compliance of these sets of rights cannot be taken as a claim for enforcement against the State. The Constitution of both Countries expressly bars the Courts from enforcing the provisions of

¹⁶⁷ locus standi means the right to bring an action, to be heard in or to address the court on a matter before that court.

¹⁶⁸ MP Perumal 'Judicial Activism in India' <http://www.lawyersclubindia.com/articles/JUDICIAL-ACTIVISM-IN-INDIA-604.asp> (2009) (assessed on 21 September 2011)

¹⁶⁹ Part 3 of the Indian Constitution

the Directive Principle of State Policy. The Indian Courts stuck to this distinction of rights until the case of *Maneka Gandhi Vs Union of India*.¹⁷⁰ The Supreme Court introduced an interesting method of interpreting economic social and cultural rights by expanding the guarantee of the right to life in article 21 of the Indian Constitution to include within it and recognize a whole range of socio economic rights.¹⁷¹ The same principle guided the Courts in the case of *Unni Krishnan JP v State of Andhra Pradesh*.¹⁷² This case reveals an interesting development in the jurisprudence of India in its approach to the right to education. It involved a challenge by certain private educational facilities to the constitutionality of state laws regulating capitation charged by such institutions. The Supreme Court held that the right to education is implied by the fundamental right to life stated in article 21 of the Indian Constitution and should be read in conjunction with the directive principle of education stated in article 41 and 45 of the Indian constitution.¹⁷³ Article 45 of the Indian Constitution provides that the State should endeavour to provide, within a period of ten years from the commencement of the Constitution, free and compulsory education for all children under the age of 14 years.¹⁷⁴ It was further held that the passage of 44 years since the enactment of the Constitution has effectively converted the non-justiciable right to education of children under 14 into one enforceable by law. An interesting point elucidated by the courts in this case was the fact that in order to treat a right as fundamental one, it is not necessary that it should be expressly stated as one of part 3 of the Constitution (Fundamental rights). The provisions of part 3 and 4 are supplementary and complementary to each other.¹⁷⁵ The Court rejected that the rights reflected in the provision of part 3 of the Indian Constitution are superior to the moral claims and aspirations reflected in the provisions of part 4.¹⁷⁶ This point was once again reiterated in the case of *M. C Mehta v State of Tamil Nadu & Ors*. In this case, the plaintiff, M.C Mehta sued the State of Tamil Nadu to improve the working conditions of children and to provide children rescued from hazardous labour with an education. One of the orders made by the Court in this instance was that the State Government must ensure

¹⁷⁰ *Maneka Gandhi v Union of India* (1978) SCR 2 621 <http://www.crin.org/Law/instument.asp?instID=1515> (assessed on 7 August 2011)

¹⁷¹ n 170 above

¹⁷² *Unni Kirshnan JP v State of Andhra Pradesh* (1993) AIR 217 www.escri-net.org/caselaw/caselaw_show.htm?doc_id=404182 (assessed on 2 August 2011)

¹⁷³ See article 45 of the Indian Constitution on provision for free and compulsory education for Children.

¹⁷⁴ Article 45 of the Indian Constitution

¹⁷⁵ *Unni Kirshnan JP v State of Andhra Pradesh* (1993) AIR 217 <http://www.right-to-education.org/node/678> (assessed on 2 August 2011)

¹⁷⁶ n 175 above

that factories meet their responsibilities to provide recreation, medical care and compulsory insurance of children.¹⁷⁷ The court also went on to instruct the Government on the importance of a child's education among other rights thus affirming a child's right to an education.¹⁷⁸ The aforementioned cases lead to the fact that although the Indian Constitution does not guarantee economic social and cultural rights, judicial reasoning can either negate those rights or uphold them. Credit should be given to the judges who interpret the laws that have restrictive meaning to the fundamental rights in the Constitution. Especially, when it concerns the education of the child which is very important.¹⁷⁹

The Nigerian judges should emulate this bold step taken by the Indian judiciary. No one can dispute the fact that judicial activism in public interest litigation remains one of the veritable tools to bring about quality accountability in governance. Many public interest cases in Nigeria have been lost or dismissed in the past as a result of some limitations and challenges to the realization and successful prosecution of public interest cases. The Nigerian Judges should cease from interpreting laws based on the restrictive meaning or within the meaning of *locus standi*. Instead, cases should be adjudicated based on the interest and benefit of the public. In adopting the doctrines of judicial activism, the scope and content of human rights will be expanded and all encompassing.

4.3.3 THE ECOWAS COURT AND THE AFRICAN COMMISSION

The Economic Community of West African States (ECOWAS) Court and African Commission (AC) have both rendered judgments concerning the rights of citizens in Nigeria in two different cases. These cases are *Social Economic Rights Accountability Project (SERAP) v Nigeria & Another* and *Social Economic Rights Action Center & the Center for Economic and Social Rights (SERAC) v Nigeria* respectively. While the former dealt entirely with the right to education of the Nigerian citizen, the latter dealt with different human rights issues particularly the right to a generally satisfactory environment favourable to citizens' development.¹⁸⁰ In the *SERAC case*,

¹⁷⁷ *M C Mehta v State of Tamil Nadu & Ors* (1996) 6 SCC 756 <http://www.crin.org/Law/instrument.asp?instID=1515> (assessed on 7 August 2011)

¹⁷⁸ n 177 above

¹⁷⁹ V Sripati 'Freedom from Torture and Cruel Inhuman or Degrading Treatment of Punishment: The Role of the Supreme Court of India' in M Gibney, S Frankowski 'Judicial protection of human rights myth or reality?' (1999) p116

¹⁸⁰ *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001)

the communication alleged that the military government of Nigeria was guilty of, amongst other things, violations of the right to health, the right to dispose of wealth and natural resources, the right to clean environment and family rights all entrenched in the African Charter on Human and Peoples Rights.¹⁸¹ This was due to the way the Nigerian Government was handling matters concerning oil exploration by oil corporations in Ogoni land, an oil rich area in the Niger Delta region of Nigeria. The Commission ruled that the Ogoni people had suffered violations of their right to health, right to a general satisfactory environment favourable to development which was due to the Nigerian Government's failure to prevent pollution and ecological degradation.¹⁸² It held further that the State's failure to monitor oil activities and involve local communities in decisions violated the right of the Ogoni people to freely dispose of their wealth and natural resources.¹⁸³ The commission issued orders to cease attacks on the Ogoni people, investigate and prosecute those responsible for the attacks, provide compensation to victims, prepare environmental and social impact assessment in the future and to provide information on health and environment risks on the Ogoni people when engaging in oil transactions with corporations in the future.¹⁸⁴

The ECOWAS Court and the African commission have taken steps in making positive rulings in favour of the people's rights that have been violated. This can be seen as a positive step at upholding economic social and cultural rights which eluded the African people for so long. However I must point out that despite the progressive nature of these decisions, there has not been any effective mechanism for enforcing the ECOWAS Court and the African Commission's decision on both cases. Years after the commission's decision in the *SERAC case*, there has not been any concrete impact on the condition of the Ogoni people on whose behalf the complaint was brought.

A future situation with an effective enforcement mechanism put in place by the ECOWAS Court and the African Commission that encourages State parties to fulfill their duties stated in orders or judgments made by the Court and Commission would be desirable. For example after passing an

¹⁸¹ n 44 above

¹⁸² J Cassel 'Enforcing Environmental Human Rights: Selected Strategies of us NGOs'
<http://www.law.northwestern.edu/journals/jihr/v6/n1/4/> (assessed on 22 September 2011)

¹⁸³ n 182 above

¹⁸⁴ *Social and Economic Rights Action Center (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001)

order that the Nigerian Government should provide, as a right, education to the Nigerian people in the *SERAP* case, it will be commendable if there is an enforcement mechanism by the ECOWAS Court that can encourage the Nigerian government to provide the necessary amenities that will make quality basic education available to the Nigerian people. Also an effective enforcement mechanism that can monitor the progress of the Ogoni people in terms of the provision of shelter for people displaced from their land because of the oil exploration by corporations. I believe that developing a clear mechanism to enforce internationally accepted norms is a breakthrough for the future of human rights. I would like to state that the enforcement mechanisms should be understood as those methods by which negotiations can encourage compliance by state parties.

4.3.4 FUNDING AND MONITORING OF THE EDUCATION SECTOR

As stated in chapter 3, funding of the education sector has always been an issue associated with the low level of progress made in the education sector. With the huge amount of income coming from the sale of crude oil daily, one will think that a lot of funds will go into the funding of the education sector.¹⁸⁵ The contrary is the case as a lot of funds go into frivolous expenses instead of directing these funds towards important needs such as the renovation of public school buildings and the prompt payment of teachers' salaries. Countries like Ghana and Kenya are making significant efforts in funding the education sector.¹⁸⁶ It is baffling to know that these countries allocate more funds to education than Nigeria yet Nigeria generates more income annually than these Countries.¹⁸⁷ Perhaps one of the reasons for the poor funding of education in the Nigeria was the fact that 25% of its annual income went into funding the National Assembly while 6.4% was allocated to education in 2010.¹⁸⁸ The basis for allocating that much to pay salaries of law makers is absurd considering the amount of funds needed to improve the

¹⁸⁵ I Izeze 'Between Lukman and Barkindo: Who can tell us how much Nigeria produces?' <http://www.pointblanknews.com/artopn1759.html> (assessed on 4 November 2011)

¹⁸⁶ PO Okunamiri, EC Okoli, MC Okunamiri 'Implications of poor funding of tertiary education in Nigeria' <http://www.unilorin.ng/ejournals/index.php/ijem/article/view/142/60> (assessed on 5 November 2011)

¹⁸⁷ n 186 above

¹⁸⁸ Pointblank news 'We reject 2010 budget. We demand 26% budgetary allocation to education' <http://www.pointblanknews.com/pressrelease543.html> (assessed 3 November 2011) also see my analyses on the issue of corruption in chapter 3

dwindling education sector in most parts of the Country.¹⁸⁹ Nigeria should take a cue from countries like Cuba which spend a generous amount of the Countries earnings on financing the education sector annually.¹⁹⁰ In my view, more funds are needed if Nigeria is serious about taking steps to developing the quality of the education sector especially primary and secondary level which make up basic education.

It is not enough to only disburse adequate funds to develop the education sector. A very effective monitoring system is highly needed to make sure that funds being allocated to embark on certain education projects are judiciously used to fund such projects. These independent monitoring mechanisms should be saddled with the duty of making sure funds are used specifically for what they have been disbursed for. Perhaps one of the reasons why corruption thrives in the Federal and State levels of Government is the fact that there are no monitoring mechanisms put in place to check the utilization of funds by political officials. In other words there is no accountability of funds allocated for this purpose. As a result, large sums of money meant to develop projects are embezzled by political officials.¹⁹¹ The presence of an effective independent monitoring system will reduce the rate of corruption not only in the education sector but in the various sectors of Nigeria. Political officials will know better than to convert public funds when they know for a fact that public funds are being monitored.

4.4 CONCLUSION

Several factors militate against the realization of the promise of the right to education in Nigeria. Besides the fact that this right is not justiciable, there are problems of corrupt and inept leadership. Based on the above recommendations, it is vital that the Nigerian Government allows for the implementation of the doctrine of separation of power. By so doing, the duty of the Nigerian legislative arm of Government to develop laws that favour the rights of the Nigerian people especially in the area of education would be realized. Also an enquiry into the possible

¹⁸⁹ Pointblank news 'We reject 2010 budget. We demand 26% budgetary allocation to education'
<http://www.pointblanknews.com/pressrelease543.html> (assessed 3 November 2011)

¹⁹⁰ Nationmaster.com 'Education statistics> Education spending (% of GDP) (most recent) by country'
http://www.nationmaster.com/graph/edu_educ_spe-education-spending-of-gdp (assessed on 4 November 2011)

¹⁹¹ 'Nigeria: Corruption-Govt Takes Over Minister's Prosecution' *All Africa.com* 1 February 2011
<http://allafrica.com/stories/201102010706.html> (assessed on 28 July 2011) also see my discuss on past military heads of State in Nigeria stated in chapter 3

amendment of the provisions of sec 6 of the Nigerian Constitution by the legislature will be seen as a positive effort to enhance the rights of the Nigerian people.

CHAPTER FIVE

5.1 INTRODUCTION

Based on the analyses rendered in previous chapters, it is safe to say that despite the efforts made by the Nigerian Government at different levels to provide basic education to its people, many Nigerian still find it hard to gain access to this socio economic right. Legally Nigeria has acknowledged International instruments that give effect to the right to education of which basic education consists. Regionally, Nigeria domesticated the African Charter on Human and People's right which states a human beings right to education in Article 17¹⁹². Domestically, apart from the Nigerian Constitution which states in section 18 (3) (a) that the Nigerian government shall provide education as soon as when practicable, the Compulsory, free Universal Basic Education Act serves as a legal frame work on how the Nigerian Government is meant to go about providing the right to basic education. These laws are meant to be strictly adhered to in order to satisfy the growing demands of the Nigerian people to access education at the basic level. Based on these international, regional and domestic instruments, it is the responsibility of the Nigerian Government to continuously provide basic education to the masses. Unfortunately it can be said that the Nigerian Government is not living up to the expectations of the people in terms of adequately providing basic education and maintaining old educational facilities. Corruption seems to be the negative influence that prevents the Government from performing its responsibilities not only in the area of basic education but in the general provision of socio economic rights which the Nigerian people so desperately need.

5.2 THE PRIVATE SECTOR AS A MULTIDISCIPLINARY REMEDY

In the absence of the Nigerian Governments ability to provide adequate basic education to every citizen, private organization and individual have tried to cater for the growing educational needs of Nigerians by establishing privately own primary and secondary schools that provide the necessary basic education needs of individuals. Examples are schools established by religious

¹⁹² Article 17 (1) African Charter on Human and Peoples' Rights

organisation like churches within and outside the country¹⁹³. These privately owned schools are said to be better in terms of building facilities and the caliber of teaching personnel¹⁹⁴. A vast number of private primary and secondary schools in Nigeria offer their teaching staff attractive remuneration in order to adequately motivate them to impart high level of knowledge to the student. Owners of private schools make teachers work. Although teachers in private schools are not more qualified as those in public schools, they are motivated to perform, whereas teachers in public schools, controlled by the government are not as motivated because in most cases teachers in public schools are not well paid¹⁹⁵. This situation tends to lead to public school teachers getting frustrated and the desire to impart knowledge is somewhat defeated. Over the years, the emergence of private schools at the primary and secondary level has been seen as a welcome idea by the vast Nigerian public. Majority of Nigerian parents will rather enrol their children in private schools because teachers in these schools hardly ever embark on strike actions in the form of boycotting classrooms. A situation well known in state owned public schools¹⁹⁶. Private organisations have seen the need for quality basic education which to an extent has been given little recognition by the Nigerian Government and the Nigerian Constitution. It can be said that the emergence of private schools has given the Nigerian public the option of choosing the type of school and the quality of education they as parents feel is appropriate for their children. This is in line with article 13 (3) of ICESCR which provides that parents and legal guardians are in the position to choose the type of schools their children or wards attend as long as the private schools conform with the minimum standards as may be laid down and approved by the State¹⁹⁷.

Private schools have no disruption in academic calendar because as fee paying schools, they strive to give their students good value for the money paid. Proprietors of these private schools realize that they have the reputation of the school to protect and uphold therefore they strive to maintain a very high standard of education in their various schools. Maintaining a good standard

¹⁹³ 'Blessed with Wealth' *Mail & Guardian* 23 to 29 September 2011

¹⁹⁴ F Olukemi 'Private vs Public Schools. The Gulf Between' *Nigerian Tribune* 22 September 2010
<http://tribune.ng/index.php/features/11377-private-vs-public-schools-the-gulf-between> (assessed on 5 October 2011)

¹⁹⁵ n 194 above

¹⁹⁶ 'FCT Primary School Teachers set to Call Off Strike' *Nigerian Pilot* 26 February 2011
<http://nigerianpilot.com/?q=content/fct-primary-school-teachers-set-call-strike-%E2%80%A6fg> (assessed on 22 July 2011)

¹⁹⁷ K English, A Stapleton *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights* (1997) pg 182

of education definitely means putting a good word out to the public about the schools. This attracts students to the school and in turn leads to profit making in such private school.

The emergence of private schools over the years can be seen as a positive development by the Nigerian public. This is because of the fact that majority of Nigerians are not satisfied with the quality of education being disseminated by State owned and public schools. It is the desire of every parent to acquire the best quality of education for their children. It is also the desire of an individual to access basic education of the highest quality. The preference of private schools to public schools by Nigerians only goes to show the extent to which Nigerians will go in order to acquire good education which legally is the responsibility of the Nigerian Government.

It is my opinion that the private sector has contributed immensely to the provision of quality basic education in the country. However, my concern is the high rate of tuition fee being charged by these private primary and secondary school. It is the desire of a lot of Nigerians to acquire a sound foundation of education which international Instruments like the ICESCR and the CRC clamour. It is also the right of every individual to have access to primary education. What then happens to the set of Nigerian people who can't afford the fees demanded by these private schools? This has always been an issue because a lot of Nigerians cannot afford the high tuition fee demanded by a lot of these private schools. I will like to see a situation where by the government can help this category of Nigerian people by granting subsidies to individuals who can't afford the tuition fees these private schools demand. This will reinstate the Nigerian Government commitment to providing basic education.

5.3 CONCLUDING REMARKS

Basic education is so fundamental for the development of a person's abilities that it can rightfully be defined as a minimum claim. Major educational transformations are required in the Nigerian education system. The tasks ahead are numerous and daunting. It is quite clear that it will be impossible for these tasks to be tackled by the Government of Nigeria alone or with the help of a few international partners. The involvement of major Nigerian stakeholders, complemented by multiple partnerships with international agencies, NGOs, foundations, will be essential if the provision of adequate education is to be realized. The experience already gained through the implementation of various projects by the World Bank in the educational sector,

particularly with the involvement of local stakeholders. Lessons learnt from past experiences should inform future plans in the reform and development of basic education in Nigeria. Nigeria has the potential to play a major role in the development of the continent of Africa. The transformation of its education system will have far reaching benefits throughout the Continent. Nigeria has played a leadership role through the West African peacekeeping force as part of international efforts to restore peace in Liberia and Sierra Leone¹⁹⁸. It is also viewed as an educational reference point by many neighboring countries. One of the great tragedies of the last decades is the collapse of an education system which was founded on sound developmental goals¹⁹⁹. The education system in Nigeria once boasted top class schools like the Federal Government Colleges²⁰⁰. These have now deteriorated to such an extent that overseas institutions often have to put Nigerian graduates into remedial classes for them to cope with under graduate studies in tertiary institutions. Given the hostility of the Military government towards education, the return to democracy should create an opportunity to reform of the entire education system. In the present Universal Basic Education programme, the responsibilities of administration and financing primary education are still shared among the three tiers of government. It is very important for the Nigerian government to find a permanent solution to the issue concerning the control and management of primary school education. The government should be specific in its provision or declare in clear terms the legislative list upon which the control and management of primary education system is placed. The management of primary education by the Local Government is a very big task that needs serious commitment before much could be achieved. It could be suggested that the control and management of primary school education in Nigeria should be the joint responsibility of both Federal and Local Governments. The local government should be involved because it is the government closer to the Nigerian masses while Federal Government overall monitoring and funding is necessary in order to maintain a uniform standard of primary education throughout the country. As stated earlier, the Government's failure to provide qualitative primary education as a result of poor management and funding has necessitated the increased privatization of primary education system in Nigeria. The intervention of Federal Government is needed to rescue public primary school, which is the hope of the poor

¹⁹⁸ The Journal of Humanitarian Assistance 'ECOWAS and the Subregional Peacekeeping in Liberia' <http://sites.tufts.edu/jha/archives/66> (assessed on 13 September 2011)

¹⁹⁹ ME Aluko 'Public Private Partnership (PPP) and the 102 Federal Unity Schools: An Appeal by Prof Sam Aluko' <http://www.ngex.com/news/public/article.php?ArticleID=385> (assessed on 2 August 2011)

²⁰⁰ n 198 above

in giving education to themselves and their children. More so, the Federal Government should establish a minimum standard requirement for both the public and private primary school. In order to successfully implement the Universal Basic Education Scheme, there is a need to develop sound implementation plans. This would have to be preceded by a survey of the existing resources and capacity of the national and local planning structures to implement the plan and monitor progress made in order to detect problem areas and address them at an early stage. Strategic planning and implementation are essential to the success of the basic education programme. Failures in the past cannot be blamed entirely on low levels of funding but also on lack of adequate planning and implementation of the basic education scheme at both national and local levels of Government. National structures such as the Planning Division of the Federal Ministry of Education would need to be strengthened to ensure that there is capacity in those structures to monitor the implementation plan as well as to provide assistance to the local structures. Finally, lessons learnt from past experiences should inform future plans in the reform and development of education in Nigeria.

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