THE LAW AS A TOOL TO GUARANTEE THE INCLUSIVE EDUCATION OF THE NIGERIAN CHILD

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Educating a child with special needs or disability in Nigeria continues to raise concerns of a lack of quality. While education is provided for in the 1999 Constitution of Nigeria, it is seen as more of an obligation than a right by the majority of Nigerians. From the Nigerian child with a hearing impairment to the one with vision or mobility challenges, the question of their rights in education remain violated and neglected. The absence of equal treatment affects the dignity of the Nigerian child.

It is on the above premise that the authors adopt a multidisciplinary approach to analysing the education of children with special needs in Nigeria. The study draws from international and national legal frameworks and argues that more needs to be done to ensure quality in education. In addition, the study advances the legal basis for holding governments accountable for failing to meet its obligations in the education of the Nigerian child. The paper is structured in different sections which deal with the legal framework, conceptual clarifications, and the advancement of the basis for demanding equal and quality education for the Nigerian child. Finally, the paper makes some conclusions and recommendations.

Keywords: *education, child, disability, courts, constitution, inclusive*

1. Introduction

The importance of education and its role in the development of any nation cannot be overemphasised. To paraphrase the words of Mandela, education is a tool through which the child of a peasant farmer can become a teacher, a leader, and possibly even the president of a nation (Exley, 2013). Fafunwa (1974) sees education as a means of transforming a society, while Nduka (1975) sees education as a means of preserving the culture and way of life of a people. Obayan (2003) describes the continuum to post-functional literacy as basic education.

While the above captures the essence of education, it is noted that defining education is not as simple. Authors like Fafunwa (1974) have defined education as the totality of the process of a life from cradle to grave. One can deduct from Fafunwa's concept that education can be divided into several strata- formal, informal and non-formal. Aside the sphere of formal, informal and non-formal education, Nigerian education is divided into four phases of pre-basic, basic, secondary and tertiary education (UBE Act, 2004). The focus of this paper is on the basic phase of the education of the Nigerian child, with particular reference to the child with disabilities. Certain factors influence the education of a child; these could be divided into the areas of accessibility, affordability, availability, adaptability (Tomaševski, 2004).

While education is hugely premised on policies, the law as a regulatory instrument is central to how a society is determined and run. For instance, Nigeria is run according to the Constitution of the Federal Republic of Nigeria (CFRN, 1999) alongside other Acts of the National Assembly (Duze, 2012). It is also to be noted that aside from national laws, Nigeria also has obligations under international law. Nigeria has entered into several treaties that it must strive to follow and not violate. Some of these include the African Charter on Human and Peoples' Rights (ACHPR), the African Charter on the Welfare and Rights of a Child (ACWRC), the UN Covenant on the Rights of Peoples with Disability (CRPD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR), among others (Anyanwu & Onuora-Oguno, 2013).

Despite the abovementioned national and international laws, statistics show Nigeria to have about 10.5 million children out of school (UNESCO, 2013). The Nigerian government, through

the minister for education, claim that the figure has recently been reduced to 8.6 million children (The Nigerian Guardian Newspaper, 2018). Aside from this, the quality of education has remained a major worry. Corruption in the education sector remains high, depriving millions of children from accessing basic education and moreover, basic education of a high quality. Most severely affected in this matrix are children living with disability. While special education is well captured in the policies, the level of access and availability remain at its lowest ebb. With the emerging concept of inclusive education, it is therefore pertinent to examine what role the law is able to play in guaranteeing the inclusive education of the Nigerian child in Nigeria.

On the basis of the above, this paper examined the question of the 4A's in Nigeria's basic education in line with examining the question of quality. The paper discusses inclusive education and its applicability to Nigerian education, examined the role that the law can play in guaranteeing the education of the child with disability in Nigeria, and finally, makes conclusions.

2. The 4As in Nigerian Basic Education, in Line with Examining the Question of Quality

The theory of the 4As was development by a former United Nations Special Rapporteur on education. The 4As are identified as:

- Accessibility
- Availability
- Affordability
- Adaptability

The question of accessibility deals with the ability of a child to easily access schools within a particular circumference from his/her place of dwelling. Therefore, if a child has to travel more than 5km to access a school, it is said not to be accessible (General Comment No 13,199). When we talk of accessibility, the question of how easy it is for school children to access the school also comes into play. Access for the blind, deaf, and crippled are all parameters for monitoring the

level of availability of education. In addition to the aforementioned parameters, the availability of brails, learning aids and reasonable accommodation are some other parameters that could inform access for persons with disability

With regards to availability, the question is to what extent schools are available in the community. When they are available are they sufficiently accessible in terms of the necessary infrastructure? What, for example. are the sanitary conditions of the school like to ensure the protection of the girl child? The question of availability therefore goes beyond having physical structures place. It also pertains to the quality of the available infrastructure. In this situation, the more disadvantaged situation of the girl child and those including those living with some form of disability is noted by the authors (World Bank, no date).

The third A speaks of affordability. What costs does the child have to bear to access the available education? Calculating affordability has to contend with the challenges of transportation, labour and other unseen costs that a pupil has to bear, either directly or indirectly (Woolman and Fleisch, 2009). In some Nigerian communities, the Parent Teachers Association (PTA) is tasked with employing what are now called PTA teachers. The parents must bear the cost of this and a child whose parents are unable to bear such cost will not have access to school.

The fourth A deals with the question of adaptability. Considering places described as hard to reach in some areas of Nigeria, to what extent is the curriculum and calendar able to adapt to their peculiarities? It has been found, for instance, that deviating religious ideologies have affected and continue to affect the level of acceptability of education to the northern part of Nigeria (Fafunwa, 1974). Again, the conflict between the Western concept of education and the African concept has created a dysfunctional premise which affects the level of access to education (Hansungule and Onuora-Oguno, 2013). The question of adaptability also speaks to the ability of schools to ensure the elimination of all forms of discrimination that might be capable of eroding the dignity of a child (Hansungule and Onuora-Oguno, 2013; Fafunwa, 1974; Adetutu, 2010). The Almajiri and fisherman style of education are good initiatives lauded in Nigeria in this direction, however, the question of efficiency and curriculum relevance looms large.

The interplay of the 4As in the education sector discussed above is intended to ensure the quality of education., however according to recent statistics by UNESCO, Nigeria remains the nation with the highest number of out-of-school children. This statistic implies an absence of either one or all of the 4As. Having discussed this, this paper proceeds to perform a conceptual analysis of inclusive education and its applicability to Nigerian education.

3. Inclusive Education and its Applicability to Nigerian Education

According to Kavale and Forness (2000), the process of ensuring that schools conform to standards and meet the requirements of any child is inclusive. The approach of inclusion in education began in the aftermath of the Salamanca Summit in 1994. The idea was to ensure that the hitherto special educational structure was discouraged. The main reason for this was the argument that a child trained in a special education school would not be living in a 'special' society but rather an inclusive one (Serges-Alain, 2013). The underpinning factor here is that every child (regardless of their ability) must have adequate access to education. Vislie (2003), on another hand, sees inclusive education as a process and not a state. Rose (2001) further stresses the need to have the relevant teachers to be able to drive inclusive education in Nigeria as this will help to curb the challenges of discrimination and enhance quality in curriculum interpretation and implementation.

The applicability of inclusive education is grounded in both the national and international laws previously mentioned. On a national front, Section 18 of the CFRN (1999) provides the main basis for the education of the Nigerian child. This is provided in Chapter 2 of the Constitution, however, which to a great extent makes it a mere aspiration, excluding it from the watchful eyes of the law via the courts. In addition to the CFRN, the National Policy on Education (NPE, 2013) further provides for inclusive education. However, it does not clearly mark out the difference between special education and inclusive education, with the latter embracing the former in its approach to learning (Ghergut, 2012). The Universal Basic Education Act (UBE Act, 2004) is another pivotal policy document in the realisation of basic education in Nigeria, yet its description and prescription of inclusive education is incomprehensive to say the least as it simply makes mention of the term without giving content to it.

Despite the paucity of provisions in local legislation for inclusive education and the position of education as a fundamental human right, international law can provide succor to the Nigerian child. Article 26 of the UDHR, articles 13 and 14 of the International Covenant on Economic,

Social and Cultural Rights (ICESCR), Article 28 of The Convention on the rights of the Child (CRC), and Article 11 of the African Charter on the Rights and Welfare of the Child (ACHRWC), are all examples of international law instruments that are applicable to education in Nigeria. While the above instruments speak generally to the question of the child's access to education, the Covenant on the Rights of Peoples with Disability (CRPD) specifically covers the challenge of inclusive education.

Article 24 of the CRPD states that parties should ensure that:

a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
c) Reasonable accommodation of the individual's requirements is provided;
d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
e) Effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

The paper now proceeds to examine how the applicable laws discussed can be leveraged to guarantee inclusive education in Nigeria.

4. The Role the Law Can Play in Guaranteeing the Education of the Child with Disability in Nigeria

The use of the word 'law' in this paper represents both the letter of the law and legal institutions. Two of such institutions discussed in this paper are the Nigerian courts and the Nigerian National Human Rights Commission. In determining the roles the two institutions can play, examples will be drawn from their counterpart institutions in South Africa and India.

4.1 The Courts

The first challenge the Nigerian courts have in using the law to guarantee access to education in general is has been identified as the placement of Section 18 of the in Chapter 2 of the CFRN. This chapter has been deemed to be non-justifiable by virtue of section 6(6)(c) of the CFRN. According to Egbewole and Onuora-Oguno (2012), however, this challenge can be overcome by relying on the obligations of Nigeria to various international law treaties. Furthermore, the role the law can play via the courts has been shown in South Africa and India respectively. According to Skelton (2013), the courts have the power to provide direction for the legislation in the implementation of policies that affect availability and access to education.

In the *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* case, the courts held that the onus to ensure the provision of education lies more on the state than individuals. The court consequently ordered the state to increase the funding of a private NGO that catered for the education of children with disabilities. Commenting on the importance of the case, Murungi (2011) reiterated that the case was important and timely as it exposed the obligation of states to honor its obligations under international law. The impact of this case means that in Nigeria, various homes that are run on a philanthropic basis may be able to get some form of subvention from the government to aid the continued and effective running of the homes.

In another case which hinged on availability, the courts found that the destruction of an educational institution without providing for adequate alternatives is not in the best interest of the child. The *Juma Musjid Primary School and others v Essay NO and others* case highlighted both the negative and positive right content of the right to education. In application to Nigeria,

it is imperative that the law is able to bear down on activities in the various private-owned schools that have been notorious for violating both the rights to and in education (Jjuko and Kabonesa, 2007). Another challenge that has been noted by several scholars in Nigeria relates to the availability of teachers (Fredickson, no date). The law, however, can be used to ensure the resolution of this challenge. In the *Centre for Child Law and others vs The Minister of Basic Education and others* case, the courts reversed the dismissal of about 4000 teachers based on the finding that the budget must not be used as a premise to violate constitutional and international law obligations of the state.

Examples from India represent the perception of the central and intrinsic role of education to every child. The India situation represents the essence of understanding that denying a child education is equal to denying such a child life (Unnikrishnan J.P. v. State of Andhra Pradesh, 1993).

The above examples have demonstrated that the law, as exercised by the courts, has a very important role to play in guaranteeing access to education and therefore can be engaged by Nigerians towards realising the rights of the child to basic education.

4.2 National Human Rights Institutions (NHRI)

Generally seen as a quasi-judicial body, the NHRI was created based on the Paris Principles to enable the realisation of human rights in nations. During the Military Juanta of Abacha, Nigeria established its NHRI; however, its operation was poor due to the general suppressive nature of the military regime.

The National Human Rights Commission Act (NHRC Act, 2004), places an obligation on the Commission to, among other things, ensure that they:

a) monitor and investigate all alleged cases of human rights violation in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance;
b) assist victims of human rights violations and seek appropriate redress and remedies on their behalf;
c) undertake studies on all matters relating to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights;
d) publish regularly reports on the state of human rights protection in Nigeria.

From the mandate stipulated above, the NHRC is an institution that can be relied on by stakeholders in Nigerian education (especially those in the area of inclusive education) to create awareness of the on-going neglect and rot in the sector. While the NHRC must be strengthened to realise its full potential, it provides a promise that can be utilised. In both South Africa and India, NHRIs alone have served as tools in the hands of the law to assist in realising of the right to education.

In *The Head of Department: Department of Education, Free State Province v Welkom High School & Harmony High* (The Welkom Case), for example, the South African Human Rights Commission was admitted as an amicus. Consequently, if the NHRC utilises its promotional mandate, it is envisaged that it can collaborate with bodies like the Nigerian Union of Teachers (NUT) and other bodies to guarantee the right to the inclusive education of the Nigerian child.

5. Conclusion

The paper has attempted to conceptualise education from the perspective of various Nigerian scholars. In addition, it examined the various legal instruments that regulate education in Nigeria. The study found that education in Nigeria remain at its lowest ebb in terms of access and quality. In examining the role the law can play in enhancing access to inclusive education,

the paper concludes that the despite the shortcomings of Nigerian laws, international law places an obligation on Nigeria to ensure the proper implementation of policies. It is also concluded that in countries like South Africa and India, the law has been effectively used to ground the realisation of education.

Finally, it is concluded that the courts and the National Human Rights Institutions are important bodies that will aid in realising access to an inclusive education in Nigeria. The paper concludes by recommending enhanced cooperation between the various organisations involved in education in Nigeria and that they use the law as a viable tool to realise inclusive education in Nigeria.

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