

## An examination of some factors militating against right to education in Nigeria

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### Abstract

The adoption of the Universal Declaration of Human Rights Convention by Nigeria signified the country's willingness to give citizens right to education. However, the Nigerian Constitution does not provide for right to education. If right to education is eventually constitutionalised, there are other factors that could serve as impediment to the actualization of this right. This article examines these factors with the aim of canvassing for their eradication.

**Keywords:** right, education, Nigeria, foreign, jurisdiction, factors, militating, eradication

### 1. Introduction

The colonization of Nigeria by the British brought with it a new development in education in Nigeria. Hitherto, Nigeria had its own system of education based on tradition. With the advent of the British colonialist, new policies on education were introduced into the country through the efforts of missionaries and direct government intervention. These approaches went through several changes until Nigeria became an independent country in 1960. After Nigeria's independence, several laws had been enacted and policies formulated with a view to improving educational standards in Nigeria and making it possible for Nigerian citizens to have right and access to education. The adoption of the Universal Declaration of Human Rights Convention is clear evidence that Nigeria is ready to join the comity of nations to give effect to right to education. As a member of the United Nations Educational, Scientific and Cultural Organisation, UNESCO, Nigeria is expected to give full effect to right to education.

However, Nigeria has not been able to give effect to this objective because of several militating factors on the actualisation of right to education. This article attempts to examine several factors militating against right to education in Nigeria. In conclusion, the writer will make recommendations aimed at improving educational standard in Nigeria and making it possible to actualise right to education by citizens.

### 2. Factors Militating Against Right to Education

#### 2.1. The Nigerian Constitution

It is a general knowledge that right to education is not justifiable under the 1999 Nigerian Constitution (as Amended). This is so because Chapter IV of the Nigerian Constitution which relates to fundamental rights did not provide for right to education. To this extent, one cannot rely on a chapter that did not make provision for right to education to claim such right as education is nowhere mentioned in Chapter IV of the 1999 Nigerian Constitution. The only part of the Nigerian Constitution where education is mentioned is in Chapter II which relates to Directive Principles of State Policy. Here, right to education is not provided for. In a rather conflicting manner, Chapter II shifted right to education to an indeterminable future. The

constitution of any country is the source of all rights and where no particular right is expressly provided for in any constitution, such as right to education under the Nigerian Constitution, it simply means that such right is not available and therefore not claimable. One could therefore state that Chapters II and IV of the Nigerian Constitution have made it impossible for Nigerians to assert any right to education. To this extent, the absence of a justifiable provision in 1999 Nigerian Constitution is a militating factor against right to education.

The constitution of any country is the organic law from which everyone including the government derives their rights and powers. The supremacy of the Nigerian Constitution is provided for in Section 1 which provides as follows:

*This constitution is Supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.*

In *Ransome Kuti v. A.G. Federation*<sup>[1]</sup>, Eso JSC posed a question and also provided the answer thus: But what is the nature of fundamental right? It is a right which stands above the ordinary laws of the land. these are rights that are justiciable.... It follows that while all rights enjoyed and asserted by human persons may be described generally as human rights, not all human rights can be termed fundamental under our classification unless they are entrenched in the constitution. (underlined is for the purpose of emphasis).

In the light of the above, education is a human right and not fundamental as it is not provided for in the Nigerian Constitution.

#### 2.2. Inadequate Funding

Education is an expensive project which requires adequate funding. It has been discovered that inadequate funding of education is not because some countries like Nigeria lack the necessary fund but because of misplaced priority, Nigerians were shocked to read in the newspapers how several billions of Naira meant as security vote found their way into private pockets. This sum would have gone a long way in improving educational standard in Nigeria.

<sup>1</sup> *RansomeKuti v A.G Federation (1985) 2 NWLR pt 6 at 211*

In spite of the abundant resources in Nigeria, the country has refused to implement the United Nations Educational, Scientific and Cultural Organization UNESCO's recommendation of 26 percent of the country's budget to education.

According to Favour Nnabugwu, the lingering crisis in the nation's educational sector is due to long years of neglect and poor-funding due to non-implementation of 26 percent budget to education. It is disheartening that unemployment had been on the rise by the day while the nation's universities churn out unemployable graduates...

The President of Zambia National Union of Teachers, Mr Henry Kapenda stated that, there is the urgent need for the leaders in the continent to prioritise education as key to achieving meaningful development.

It is a cheering news to note that in faraway Sokoto State, the Governor, Aminu Tambuwal has surpassed the United Nations Education, Scientific budgetary standard by committing 29 percent of the State's budget to education. According to UNESCO "governments should commit at least 6 percent of gross national product to education and spend at least 20 percent of the State's budget on education.

The inadequate funding of education in Nigeria, contrary to UNESCO recommendation is also a militating factor against right to education in Nigeria.

### 2.3. Cultural Practices

Culture is the characteristic of a particular group of people. The culture of the people could be classified into several aspects such as social habits, e.g. marriage or religion among others. It is a people's way of life, i.e. fundamental ways of doing things common to a people. Some of these cultures are out of tune with civilization and should be discarded because of their negative influence on education.

### 2.4. Occupation of Nomadic Cow Rearing

In the Northern part of Nigeria, cattle-rearing is the main occupation of some tribes, particularly the Fulanis. A successful cattleman, who has a large number of cows, would want his children to partake of this occupation. To this end, under aged children are drafted into the occupation thus preventing them from acquiring formal education. This is another factor against right to education.

In an attempt to arrest this situation, the Federal Government introduced, Nomadic Education which requires that mobile educational facilities are moved to the cattlemen in the bush. This effort is commendable but it has not yielded any meaningful result as the fathers of these under-aged children, being uneducated, see nothing wrong in depriving their children of education. Another reason why this policy has not succeeded is because there is no provision for enforcement by law.

The most affected rights of this under aged children are their rights to human dignity, life and personal liberty. Human rights education will go a long way in sensitizing the men to appreciate their children's education.

### 2.5. Early Marriage of Girls

Early marriage refers to marriage of under aged person below the age of 14 years and is practiced in different parts of Nigeria but more in the Northern part of Nigeria (among the Muslims). These young girls are given out in marriage for various reasons, which include' economic, maintenance of chastity and maintenance of family name.

Early betrothal of under-aged girls or their marriage in accordance with the culture and religion of certain tribes, particularly in the Northern part of Nigeria is inhuman and violates the child's right to education. This is because such a girl child would not be allowed by the man she is betrothed or married to seek for education for fear that the child might decide to pull out of the relationship after being educated.

### 2.6. Federal Character and Quota System

Since 1979 to date, Nigeria has adopted the principle of federal character and quota system both in appointments and admission to schools. Federal character and quota systems mean that appointments and admission to schools should reflect state of origin instead of performance by the candidate during interview or examination. We therefore have a situation in which an applicant who performed below average is employed at the detriment of an applicant who performed excellently during the interview. We also have a situation in which a candidate in an examination who scored 70 percent is dropped and the one who scored 40 percent which is the least past mark is admitted. This is not only an injustice but a breach of right to education of the student who scored a higher mark but was not admitted, or appointed.

There are a few persons who are advocates of Federal character and quota system including Dr. S.O. Ogbomudia, who was at a time the Military Administrator of Mid-West State and later a civilian Governor of Bendel State. Paul I. Adujie, also cherishes this policy. They are of the view that Federal Character and Quota System is a good policy. According to Dr. S. O. Ogbomudia; "...education is integral to the life of man, and as such, why restrict access to it"? Why impose conditions and erect hurdles and barriers on its way? A situation where a candidate in an examination with credit is not admitted and the one with a pass is admitted cannot be explained as the best policy or system. To this end, such practice is a factor that militates against right to education.

On his part, Paul Adujie, another advocate of this policy, is of the view that, all Nigerians should in good faith advocate how we do business to reflect our essential composite make-up as Nigerians, from local government to state and federal levels. Nigerians see the policy generally as a political policy. It encourages academics and professional mediocrity as against merit for political reasons.

### 2.7. Educational Policies

Educational policies are meant to improve standard of education. Sometimes, they turn out to be counter-productive to the extent that they constitute restraint to right to education.

*In Arch Bishop Okogie v A. G Lagos State* <sup>[2]</sup>, the attempt by the Lagos State Government to abolish Private Primary Education in Lagos was declared null and void even though the plaintiff in his writ stated that such attempt was in breach of the right to freedom of expression and of the press under section 36 of the 1979 Constitution of Nigerian.

The Court held that;

*Parents and guardians of children of Lagos State have a right to send their children to any private elementary schools not owned by the Government of Lagos State for the purpose of receiving ideas and information as part of*

<sup>2</sup>

Arch Bishop Okogie vA. G Lagos State (1981) 1 NCLR 337

education.

One wonders why the Court in *A. G Bomu State v Rev. Joshua Adamu and Drs* <sup>3</sup>, did not decide this case along the decision in Arch Bishop Okogie's case.

### 2.8. Non-Access to Education as a Factor

It is very easy to determine when citizens are not allowed to exercise their right to education particularly when such right is not provided for in the Country's Constitution. A case in point is Nigerian Constitution.

Access to education cannot be achieved expect schools is made available at a possible, easy and accessible distance. Books must be made available, and discrimination in whatever form should be avoided.

People with physical disability or HIV positive have the same right of access to education as other students. People with HIV are protected against discrimination not only in school but in many other public places as stores, museums and hotels. People with HIV are not a threat to anyone else's health because the AIDS virus cannot be spread through casual contact. This is a medical fact.

Right to education does not mean right to education in the ordinary sense, it means right to education in the real sense. It means equality of access to education. It means right of equal opportunity to high standard education.

Right to education may not be achieved even if it is provided for in a constitution of a country under the following circumstances.

### 2.9. Location of School

If the school is too far, such that the pupils cannot reach it in time to start their lessons.... In such a situation, such right has some constraints which render it unachievable.

### 2.10. Lack of Teachers/Qualified Teachers

Where there are not enough teachers and the few available are made to teach courses, they have no background knowledge in, the right by the pupils is an empty right from which they cannot derive any benefit.

### 2.11. Lack of Educational Materials

This factor was well considered in the South African case of Limpopo Text Book Crises.

In February 2012, an interest group discovered that children in Limpopo schools, a rural province in Northern South Africa had high level of poverty, unemployment and some of the worst performing Schools in the Country due in part to gross mismanagement and corruption in the provincial government. Many schools do not have access to key components of the right to basic education, such as: toilets, drinking water, desks, papers, chalks and even classrooms to ensure a conducive learning environment. These conditions disrupt teaching and learning under the South African Constitution, as provided for under Section 29 and 195 and Article 4 of UNESCO Convention as adopted by South African which provides for right and quality education.

In addition, the South African School Act and various policy documents and statements, adopted in conformity with the constitution guarantee that each learner will have his or her own text books for each subject.

On the basis of these combined provisions, the Interest

Group went to Court to challenge the South African Government for its omission or refusal to supply text books to the pupils.

The court gave judgment to the Interest group emphasizing on the fact that failure of the government to supply the pupils with necessary books was a violation of the right to education. According to the court, the failure of the South African Government to deliver textbooks to Limpopo schools is a violation of the right to receive quality education.

The court went on to state that;

*Adequate teaching materials, including textbooks, are essential for effective teaching and learning and therefore form part of right to quality education. In addition, because most learners in other South African provinces received their textbooks on time, failure to deliver text books to Limpopo learners is also a violation of the right to equality in education.*

The Nigerian educational system is not different from that of South Africa. Although the Nigerian Constitution does not provide for right to education but by regulations and policies put in place by the Federal Government, primary and basic education is supposed to be free. Fees are still being collected from primary school pupils under whatever disguise. Pupils buy their books, there are not enough and qualified teachers. Schools and colleges are not enough and are located far away from pupils and students. No water supply, no toilets and yet we claim to operate free primary and basic education. All the basic components that would sustain right of access to education are absent. To this end, there is no such thing as free primary and basic education in Nigeria.

### 3. Conclusion

The facts and judgments in some of the cases cited in this paper cover almost all aspects of freedom to right of education and the factors that can cause restraints on the attainment of right to education. It also highlights the fact that the constitution of a country is the main source to right of education. The same constitution may not provide for such right and to this extent the constitution becomes a factor against right to education. Again, it is possible for the right to education to be provided for in a constitution, but several restraints as highlighted in the South African Limpopo case will make such right unachievable.

It is therefore, recommended that the government should take urgent steps to address this militating factor against right to education so that citizens can exercise their right to education without hindrance.

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