



# AKUNGBA LAW JOURNAL

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# The Girl-Child's Right to Education in Nigeria: Examining the Adequacy of its Protection by the State

OSIFUNKE EKUNDAYO\*

## **Abstract**

*Education gives children, especially the girl-child, hope for life and work. The right to education for girls enables them to reach their fullest potential. Education for all is a tool for change, a way out of poverty and a way to self-discovery and personal achievement. In the case of the girls' education, not only does the problem lie in the question of discrimination as the foremost stronghold, but also of access to education due to certain limiting factors that affect girls' access to formal education. In order to access education, the girl-child must overcome a host of different barriers that stand between her and her goals. Lack of educational opportunities makes it difficult for the girl-child to enjoy other human rights, as the right to education is a basic right and a prerequisite to the enjoyment of all others. Two main issues are addressed in this paper; first, it addresses the barriers which hinder many girls in Nigeria from attending school, highlighting the benefits accrued to individuals and societies from educating girls. Second, the paper analyses the protection of this group of children and their plights in having access to free and compulsory primary education through the use of international human rights instruments and standards, their relation to national law and practice. This is aimed at improving the girls' access to education, serving as a call for Nigeria to provide education for all, especially girls who comprise the majority of out of school children in the country. Finally, it is revealed that Nigeria cannot stop the cycle of poverty, economic deprivation and poor health unless everyone has an equal opportunity to access education, most especially, its girls.*

## **1. Introduction**

"Educating a girl changes her destiny, as well as those of her future children, and ensures that she can contribute to the economic life of her community."<sup>1</sup> The high rate of illiteracy prevailing in sub-Saharan Africa countries remains an impediment

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<sup>1</sup> Ann Cotton, 'The Importance of Educating Girls and Women: The Fight against Poverty in African Rural Communities', *UN Chronicle* 49 (April 2007), available at <http://www.un.org/Pubs/chronicle/2007/issue4/0407p49.html>.

to the advancement of women and to development in the region. Kofi Annan, former Secretary General of the United Nations, declared that there is “no tool for development more effective than the education of girls.”<sup>2</sup> He compared educating girls to a long-term investment that yields an exceptionally high rate of return the benefits from which accrue to the whole society.<sup>3</sup>

Literacy of women is an important key to improving health, nutrition and education in the family and to empowering women to participate in decision-making in society.<sup>4</sup> Gender equality has been a focal point at several international summits and conferences since the 1990s,<sup>5</sup> and the elimination of gender disparity in primary and secondary education was one of the Millennium Development Goals aimed to be achieved by 2015.<sup>6</sup> Girls’ ability to enjoy their right to education depends on a wide range of interrelated circumstances, including the family into which they are born, the community in which they grow up and the situation of the country of which they are citizens.

## **2. Obstacles to Education for Girls**

The obstacles to access to education for girls are broadly grouped into two categories, first, socio-cultural barriers and secondly, the availability barrier. These are considered below:

### *2.1. Socio-cultural Barriers*

A main cultural norm which exists in many cultures in Africa is that educating girls is seen as less valuable, it is believed that girls may instead work, providing domestic services. Discrimination in girls’ access to education persists in many part of the Nigeria, owing to customary attitudes, early marriages and pregnancies. The concept of patriarchy, which buttresses discriminatory beliefs such as, that once married girls become part of another family so investment is lost, and also the opinion that with too much education a girl may have difficulty in getting a husband. Customary practices held over from traditions have relegated women to a position of inferiority. Girls’ domestic obligations are rooted in customs and traditions that afford men preferential treatment and provoke school dropout at earlier ages than boys.

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<sup>2</sup> Kofi Annan Secretary General’s keynote address at the Women’s Health Coalition in New York, January 15, 2004, <http://www.un.org/SG/SM/9118>.

<sup>3</sup> *Ibid.*

<sup>4</sup> Beijing Platform for Action. Chapter IV. B. Education and training of women, para 69,

<sup>5</sup> The 1990 World Conference on Education for All (Jomtien), Article 3(3) of the World Declaration on Education for All; the 1995 World Conference on Women (Platform for Action, Beijing (UN Doc. A/CONF.177/20/Rev.1,1996), paras 263 and 279); the 1990 World Summit for Children (Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990, para 10); and the 2000 World Education Forum (Dakar) (Articles 7(ii) and (v) and 8(vi) of the Dakar Framework for Action.

<sup>6</sup> UN Millennium Developments Goals, <http://www.un.org/millenniumgoals> [accessed on 3rd May 2013].

The difficulties facing young and teenage girls are often aggravated by other types of exclusion linked to disabilities, ethnic or geographical origin, sexual preferences, and religious beliefs among other things. When poverty combines with marriage and early motherhood, formal education becomes even more distant for girls, who have virtually no choices other than domestic work and raising their children. Early marriages and pregnancies, child labour and domestic-related tasks are among the main barriers to girls' education. Early marriages are often based on a type of socialization that reinforces the idea held by parents that the eventual aspiration for girls is matrimony. Patriarchal practices that limit female autonomy and keep young and teenage girls away from education usually involve early marriage, or unwanted pregnancies and motherhood.

Article 11(3) (e) of the African Charter on the Rights and Welfare of the Child (ACRWC) obliges State Parties to take special measures to ensure equal access of girls to education. ACRWC also highlights the entitlements of girls who become pregnant before completing their education that they should 'have an opportunity to continue with their education on the basis of their individual ability'.<sup>7</sup> In reality, when a girl who is attending school gets pregnant she is robbed of an opportunity to better her future because she will be required to quit school with little or no chance to return to school, whereas, from the provision of ACWRC, pregnancy should not terminate a girl's hope of having an education.

Culture may give meaning and value to human lives, but they may also be contexts of oppression. For example the culture whereby a girl is married off at a young age thereby prevents her from enjoying her right to primary education. Pollis points out that it is a widely held view that the "culture argument" is still eagerly exploited by States to justify repressive internal practices and to shield themselves from justifiable criticism for gross human rights violations.<sup>8</sup> An example is where culture is being used to justify discrimination against girls, whereby male children are given preference to receive education over the female children in many African countries, including Nigeria. Care must be taken not to allow cultural relativism to be deployed to shield certain harmful but well entrenched social practices from external critique, for example, child marriage which prevents a group of children especially, the girls, from having access to education.

## *2.2. Unavailability of Educational Infrastructures as Barriers to Access*

In Rights Based programming on education, availability relates broadly to the availability of an adequate number of functioning educational institutions, programmes and infrastructure for the right to be fulfilled.<sup>9</sup> Availability also refers to the provision of facilities such as sanitation and clean water, as well as enough classrooms. The indicators for availability elements are broadly, safe school

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<sup>7</sup> Article 11 (6) ACRWC.

<sup>8</sup> Pollis, A., 'Towards a New Universalism: Reconstruction and Dialogue', (1998) 16 *Netherlands Quarterly Human Rights*, 5-19 at 17.

<sup>9</sup> CESCR, *General Comments no13*, (Right to education), para 6(a), see also; Article 13(2) (e) ICESCR.

buildings, sufficient numbers of qualified teachers, and availability of schools in rural areas. The indicators would also include sufficiency of school infrastructure, sufficient blackboards, tables, desks, chairs and space per class, adequate sanitation facilities, available clean drinking water, well ventilated classrooms, canteens, and recreational facilities.

Girls face various obstacles which have adverse effects on girls' access to school and their retention in the system. Some of these are; the long distances girls must travel to get to school; to the lack of safe transport; to the sparse recruitment of women teachers; to the limited attention paid to girls with special educational needs; and lack of adequate and physically and otherwise accessible toilets for girls which is exacerbated by sexual harassment and violence by teachers and boys as major problems facing females in education. These are factors which inhibit girls' full participation at school. The resultant effect of this is that it adversely affects the retention and increase the drop-out rate of girls. The lack of specific opportunities, school infrastructure, teaching materials, qualified teachers and direct and supplementary services for exercising the right to education (such as food, health services and safety on the way to and from school) are hindrances to availability of education for girls in Nigeria. Investing in formal education and training for girls, with its exceptionally high social and economic return, has attested to be one of the best means of achieving viable development and economic growth that is both sustained and sustainable.<sup>10</sup>

Literacy of girls and women is an important key to improving health, nutrition and education in the family and to empowering women to participate in decision-making in society.<sup>11</sup> As Tomasevski rightly pointed out "education operates as multiplier, enhancing the enjoyment of all rights and freedoms where the right to education is effectively guaranteed, as opposed to depriving people ...especially girls and women ...of the enjoyment of many if not all rights and freedoms where the right to education is violated..."<sup>12</sup>

Education of girls can help break the cycle of poverty, boost the economy and improve health and affirms the human rights and dignity of women. ACRWC, in Article 11(3) (e), identifies categories of children whose educational opportunities should specifically be protected these are; pregnant, gifted and disadvantaged children. This provision is important to girl-child, who can belong to these categories. The reference to "gifted children" is a good reminder of the fact that children's capabilities and ambitions should not be judged on their sexes. In sum, education has a profound effect on girls and women's ability to claim other rights and achieve status in society, such as economic independence.

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<sup>10</sup> Beijing Platform for Action adopted September 1995. Chapter IV. B. Education and training of women, para 69.

<sup>11</sup> Mahmud, S & Amin, S 'Girls' schooling and marriage in rural Bangladesh', (2007) 5(4) ICCDR Periodicals, 4.

<sup>12</sup> Tomasevski, K 'Human Rights in Education as Prerequisite for Human Rights Education', in *Right to Education Primers*, No. 4, (Gothenburg: Lund 2001), available at [www.right-to-education.org](http://www.right-to-education.org)

### 3. Non-discrimination and Equality

The principles of equality and non-discrimination form the basis of all human rights instruments and cut across all the rights found within human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) in its article 26 prohibits discrimination in law or in any field regulated and protected by public authorities. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 ICCPR that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.<sup>13</sup>

Article 1 of Convention on the Elimination of All forms of Discrimination against Women (CEDAW) provides a definition of discrimination against women on the basis of sex.

“For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment and exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>14</sup>

Article 1 of CEDAW includes both direct and indirect discrimination.<sup>15</sup> Article 2 further highlights that the State is responsible for violations of rights within both the public and private sphere regardless of whether those violations are committed by State or non-State actors. It is noteworthy that both the CESCR and the Human Rights Committee have adopted the definition of discrimination found in article 1 of the Women’s Convention.<sup>16</sup> The principle of non-discrimination on the basis of sex is an immediate and not a progressive obligation.<sup>17</sup> The Human Rights Committee has noted that the principle should be guaranteed, including during states of emergency while any public emergency derogation should show that they are non-discriminatory.<sup>18</sup>

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<sup>13</sup> W. Vandenhoele *Non Discrimination and Equality in the view of the UN Human Rights Treaty Bodies* (Antwerp, Intersentia, 2005). See also, HRC General Comment No 18 Non-discrimination para 13.

<sup>14</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), UNTS 1249 p.13 (entered into force 03 September 1981), available in: A guide to resources for treaty research prepared by the Bora Laskin Law Library, available at: <http://guides.library.utoronto.ca/content.php?pid=163673&sid=1381603> [accessed 17 June 2014].

<sup>15</sup> See CESCR general comment 16, paras. 12 and 13 for definitions of direct and indirect discrimination

<sup>16</sup> Human Rights Committee General Comment No 18 *Non-discrimination*, para 6.

<sup>17</sup> CESCR General Comment 16 (2005) *Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, para 16, see also CESCR General Comment No 3 *The Nature of States Parties Obligations* (art 2(1) (1990).

<sup>18</sup> Human Rights Committee general comment 28, *Equality of rights between men and women* (Art 3), para. 7.



The Vienna Convention on the Law of Treaties, 1969 provides that “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>19</sup> The African Commission adopted the Human Rights Committee definition of equality from General Comment 18 noting: ‘The right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to other citizens.’<sup>20</sup> Also the Committee on Economic, Social and Cultural Rights (CESCR) General Comment 16 on Equal rights of men and women in the enjoyment of economic, social and cultural rights<sup>21</sup> and Human Rights Committee General Comment 18 on Non Discrimination<sup>22</sup> both expounded discrimination and gender inequality.

### 3.1. *Non Discrimination in Education*

The fundamental principles established in the UNESCO Convention against Discrimination in Education is aimed at ensuring that education becomes truly inclusive by effectively reaching the unreached especially the poor, marginalised and the vulnerable groups, children, young people and rural population denied of equal access to education.<sup>23</sup> Discrimination in education is a violation of rights and is proscribed by the UNESCO. The Dakar Framework for Action also emphasises the elimination of all forms of discrimination and prioritises the excluded, vulnerable and marginalised children.<sup>24</sup> The prohibition against discrimination enshrined in Article 2(2) of the International Covenant on Economic Social and Cultural Rights (ICESCR) is subject to neither progressive realisation nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.<sup>25</sup> In some circumstances, separate educational systems or institutions for groups, defined by the categories in Article 2(2), are not deemed to constitute a breach of the Covenant.<sup>26</sup> According to the Article, separate institutions can be made for different sexes, religious or linguist groups without their focus on particular groups being considered discrimination.<sup>27</sup> The bypass of what could be considered

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<sup>19</sup> Vienna Convention on the Law of Treaties, 1969, 1155 UNTS 331, art. 27. *Specific Human Rights Issues: Reservations to Human Rights Treaties*.

<sup>20</sup> *In Legal Resources Foundation v. Zambia* Communication 211/98, Decision of the African Commission on Human and Peoples’ Rights, 29th Ordinary Session, April/May 2001.

<sup>21</sup> CESCR general comment 16 E/C.12/2005/4, 11 August 2005, paras. 2, 3, 10 & 22.

<sup>22</sup> Human Rights Committee general comment 18 on Non Discrimination CCPR/C/21.Rev.1.Add1, paras. 1 & 12.

<sup>23</sup> Article 1 UNESCO Convention against Discrimination in Education 1960.

<sup>24</sup> Dakar Framework for Action, Education for All: Meeting our Collective Commitments. Adopted by World Education Forum. Dakar, Senegal 26-28 April 2000.

<sup>25</sup> Article 2(2) and 3 ICESCR, Article 26 ICCPR, Article 2 CRC and Limburg Principles at 35 & 37.

<sup>26</sup> CESCR, *General Comment no13*, para 33.

<sup>27</sup> Article 2(2) and 3 ICESCR, Article 26 ICCPR, Article 2 CRC and Limburg Principles at 35 & 37.

discrimination results from the principle enshrined in Article 2 of the Universal Declaration Human Rights (UDHR) and reproduced in the UNESCO Convention itself,<sup>28</sup> by which parents are free to choose their children's institutions other than those maintained by public authorities. However, such of institutions must conform to minimum laid down standards and must not be aimed at securing exclusion of a group.<sup>29</sup>

The principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals and irrespective of legal status.<sup>30</sup> All such discrimination are in direct contradiction with the requirements in Article 29(1)(a) of the Convention on the Rights of the Child (CRC), that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.<sup>31</sup> Article 21(1) of ACRWC aims to protect children from harmful social and cultural practices that affect children's welfare, dignity and development, "in particular customs and practices discriminatory to the child on the grounds of sex or other status". This is an important addition to the general provision of non-discrimination, as it recognises that attitudes towards certain groups of children are harmful practices that result in discrimination against them.

The principle of non-discrimination in education is an immediate obligation, and it plays a key role in empowering marginalised groups such as women and girls, and helps to combat wider discrimination within societies. Non-discrimination applies to all aspects of education including access to education, the content of education, teaching methods, the outcomes of learning, education staffing, as well as laws, policies and administrative practices. States have a minimum core obligation to ensure that resources are allocated in a non-discriminatory manner. Therefore as States develop and expand educational programmes, particular segments of the population should not be passed over and States must not direct the girl-child to an inferior standard of education.

### 3.2. *Equality*

Van Bueren has noted that the right to education on the basis of equal opportunity is so fundamental to the child's right to education that the drafters of the CRC made all other aspects of the right to education dependent upon it.<sup>32</sup> Article 28(1) places a duty on State Parties to recognise the right of the child to education with a view to achieving the right progressively 'on the basis of equal opportunity'. Verheyde has also pointed out that the principle of equality implies that special

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<sup>28</sup> Article 2(b), UNESCO Convention against Discrimination in Education 1960.

<sup>29</sup> Article 7, UNESCO Convention against Discrimination in Education 1960.

<sup>30</sup> CESCR *General Comment No 13*, para 3.

<sup>31</sup> CRC *Committee General Comment No 1*, para 10.

<sup>32</sup> Van Bueren, G. *The International Law on the Rights of the Child*, (Dordrecht: Martinus Nijhoff Publishers, 1994), pp245-248.

attention should be given to specific groups which are particularly vulnerable to discrimination in education and which consequently require special policies.<sup>33</sup> Gender equality has been a focal point at several international summits and conferences since the 1990s,<sup>34</sup> and the elimination of gender disparity in primary and secondary education was one of the Millennium Development Goals aimed to be achieved by 2015.<sup>35</sup> Article 11(3) (e) of the ACRWC obliges State Parties to take special measures to ensure equal access of girls to education. The Charter also highlights the entitlements of girls who become pregnant before completing their education and should 'have an opportunity to continue with their education on the basis of their individual ability'.<sup>36</sup> The high rate of illiteracy prevailing in sub-Saharan Africa countries remains an impediment to the advancement of women and to development in the region.

State Parties are supposed to implement immediate measures both to prevent discrimination arising and to eliminate discrimination where it has already occurred.<sup>37</sup> The measures are clearly set out: repeal any statutory, administrative instruction or practice which involves discrimination.<sup>38</sup> This includes prohibiting any form of assistance provided by public authorities to educational institutions which restrict or express preference solely on the ground that pupils belong to a particular group<sup>39</sup> and granting equal access to education to children who are residents and foreign nationals.<sup>40</sup> The CRC Committee has used the principle of non-discrimination in its General Comment on the aims of Education.<sup>41</sup>

In this Comment, the Committee gives examples of how children might be discriminated against in relation to Article 29 of the CRC, and shows that discrimination in education goes beyond denial of access. For example, gender discrimination can be manifest in curricula that are inconsistent with the principles of gender equality, or unfriendly environments which discourage girls'

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<sup>33</sup> Verheyde, M., *Commentary on the UN Convention on the Right to Education Article 28, The Right to Education*, (Leiden: Martinus Nijhoff, 2006), 40.

<sup>34</sup> The 1990 World Conference on Education for All (Jomtien), Article 3(3) of the World Declaration on Education for All; the 1995 World Conference on Women (Platform for Action, Beijing (UN Doc. A/CONF.177/20/Rev.1, 1996), paras 263 and 279); the 1990 World Summit for Children (Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990, para 10); and the 2000 World Education Forum (Dakar) (Articles 7(ii) and (v) and 8(vi) of the Dakar Framework for Action.

<sup>35</sup> UN Millennium Developments Goals, <http://www.un.org/millenniumgoals> [accessed on 3rd May 2013].

<sup>36</sup> Article 11 (6) ACRWC.

<sup>37</sup> Art 3 UNESCO Convention Against Discrimination in Education .

<sup>38</sup> Art 3(a) and (b) UNESCO Convention Against Discrimination in Education .

<sup>39</sup> Art 3(c) UNESCO Convention Against Discrimination in Education.

<sup>40</sup> Art 3(d) UNESCO Convention Against Discrimination in Education.

<sup>41</sup> CRC General Comment No1 (2001), Article 29(1), The aims of education CRC/GC/2001/1.

participation.<sup>42</sup> Non-discriminatory education benefits both girls and boys and thus ultimately contributes to more equal relationships between women and men. In sum, the principles of equality and non-discrimination are embedded throughout the human rights framework and prescribe that all rights must be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>43</sup>

#### **4. The Principle of Interrelatedness of Rights - Right to Life, Survival and Development and the Right to Education**

As reiterated in the Vienna Declaration, '[a]ll human rights are universal, indivisible and interdependent and interrelated'.<sup>44</sup> This was also affirmed in Proclamation of Teheran<sup>45</sup> as follows;

"[...], (b) The full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development as recognised by the Proclamation Teheran 1968."

This principle entails two things. First, all human rights must be given the same attention. There is no hierarchical order whatsoever between civil and political rights, on the one hand, and economic, social and cultural rights, on the other. Second, the interdependence and interrelatedness of rights entails that the protection and fulfilment of one right often depends on the protection and fulfilment of other rights. This in turn, calls for collaboration among different sectors for fruitful implementation of national programs, strategies and policies. Interdependence and indivisibility of human rights require engaging a wide range of stakeholders to promote collaboration among sectors and levels of government, and external partners.

Speaking in respect of the right to education, Tomasevski endorsed the principle by stating that the right to education embodies elements of economic, social and cultural rights as well as civil and political rights.<sup>46</sup> This thus asserts that the realization of other rights which a person is entitled to cannot be detached from the

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<sup>42</sup> CRC General Comment 1 para10.

<sup>43</sup> UDHR Article 2, ICESCR Article 2(2); ACRWC in Article 3; UNESCO Convention against Discrimination in Education, 1960, Article 1(1).

<sup>44</sup> Vienna Declaration and Program of Action adopted by the World Conference on Human Rights on 25<sup>th</sup> June 1993, UN doc.A/CONF.157/23, para. 5.

<sup>45</sup> Proclamation of Teheran of 1968, Art 1 Resolution 32/130.

<sup>46</sup> Tomasevski, Katarina *Annual Report of the Special Rapporteur on the right to education-Katarina Tomaevski*, 11 January 2001, E/CN.4/2001/52, (Annual Report 2001), p.3. See also; Katarina Tomaevski, 'Has the Right to Education a Future within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998-2004', (2005) 5 *Hum. Rts. L. Rev.* 205.

realisation of other rights to which he or she is entitled. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States regardless of their political, economic and cultural systems to promote and protect all human rights and fundamental freedom.<sup>47</sup>

Survival and life are basic conditions for the enjoyment of other rights. Article 6 of CRC sets the child's right to life and, in the "maximum extent possible", to survival and development. It is one of the general principles of the rights of the child, and it is a basic prerequisite for children's enjoyment of the right to education. It is noteworthy that decisions by courts in other jurisdictions demonstrate how they have upheld the right to education in its various dimensions even when not explicitly identified in the constitution.<sup>48</sup> For example the Supreme Court of India has considered the right to education to be implicit in the right to life, as education is basic to the dignified enjoyment of life.<sup>49</sup> In essence, Article 6 of the CRC is therefore inclusive of the girl-child as it links the right to life to both survival and development.

## 5. International legal framework

International and regional human rights laws, standards and mechanisms (including national human rights institutions) make explicit the rights and protections all human beings are entitled to, including where States are obligated to play a facilitating and protective role. Relevant provisions on education in international and regional human rights instruments include Article 26 of the UDHR, Article 1 of the UNESCO Convention against Discrimination in Education (1960), Article 13 of the ICESCR, Articles 28 & 29 of the CRC, Article 17 ACHPR and Article 11 of the ACRWC. Nigeria has ratified all the listed human rights instruments that are legally binding.<sup>50</sup> This list of instruments reveal that the child's right to education (including the girl-child) is one of the most protected rights in international law.

Furthermore, from the perspective of human rights, education is fundamental, as it enables individuals to be aware of the rights they have and empowers them to be able to demand these rights. The importance and the role of education of the girl-child cannot be underestimated; it is a principal factor in preparing her for her

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<sup>47</sup>Vienna Declaration and Program of Action adopted by the World Conference on Human Rights on 25<sup>th</sup> June 1993, UN doc.A/CONF.157/23, para 5.

<sup>48</sup> See for example; *Brown v. Board of Education*.), 347 US 483 (1954), *Unni Krishnan J.P. v State of Andhra Pradesh*, (1993) AIR SC 2178, *Mohini Jain v State of Karnataka*, (1992) AIR SC 1858 and *Government of Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

<sup>49</sup> *Unni Krishnan JP and Others v. State of Andhra Pradesh*, judgment of 4.2.19 93, (1993) 1 SCC 635, 11 and *Mohini Jain v. State of Karnataka*, judgment of 30.7.1992, (1992) 3 SCC 666, in which the Supreme Court specifically stated that "the right to education flows directly from the right to life."

<sup>50</sup> Nigeria ratified; ICESCR and ICCPR on 29/07/1993, CRC on 19/07/1991 and ACRWC on 23/06/2001 available: <http://www1.umn.edu/humanrts/research/ratification-nigeria.html> [accessed 12 January 2014].

future role in the development of her nation. Education is 'both a human right in itself and an indispensable means of realising other human rights'<sup>51</sup> Many human rights can only be accessed through education, such as the right to health, freedom of expression and freedom from discrimination, therefore education is the 'key' that unlocks other human rights.<sup>52</sup> There are some international laws with provisions that specifically addressed the protection of the right to education irrespective of sex. The ICCPR states that '[...] all persons are equal before the law and are entitled without any discrimination to the equal protection of the law'.<sup>53</sup> Also the UNESCO Convention against Discrimination in Education 1960 - The purpose of the Convention is to eradicate all forms of discrimination in education, in other words, it is aimed at ensuring the equality of opportunity for all in having access to education.

Article 1 of the Convention provides that:

"[T]he term discrimination includes any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion or other opinion, national or social origin, economic condition or birth, has the purpose of nullifying or impairing equality of treatment in education and in particular: a) Of depriving any person or group of persons access to education of any type or level; b) Of limiting any person or group of persons to education of an inferior standard;..."

The issue of non-discrimination in education is very vital to the enjoyment of the right to education for the child because there can be discrimination based on gender, ethnicity or physical disability, particularly in Africa. It is noteworthy that the Nigerian Constitution also has specific provision for the protection of the child from any form of discrimination.<sup>54</sup>

The CRC Committee in its General Comment No.1, *the Aims of Education*,<sup>55</sup> where the Committee notes in respect of Article 29 of the CRC as follows: "[t]he aims of education that it sets out, which have been agreed to by all state parties, promote, support and protect the core value of the value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights...."<sup>56</sup>

The CRC Committee, like HRC Committee and CESCR publishes its interpretation of the content of its provisions in the form of General Comments on thematic issues. General Comments carry considerable weight and serve an important function of defining and clarifying interpretation of provisions or other related topics in the instrument in order to assist and promote further the implementation

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<sup>51</sup> CESCR *General Comment 13 The Right to Education, (art13)*, E/C.12/1999/10, 8 December 1999, para 1.

<sup>52</sup> Tomasevski, K., 'Removing obstacles in the way of the right to education' *Right to education Primers No1*, (Gothenburg: Novum Grafiska AB 2009), 9.

<sup>53</sup> Article 26 of the ICCPR.

<sup>54</sup> S. 42(5) 1999 Constitution of Nigeria.

<sup>55</sup> CRC, *General Comment No1 (2001), The Aims of Education* CRC/GC/2001/1.

<sup>56</sup> *Ibid* para 1.

of the Convention. General Comments, though not legally binding, serve as important jurisprudential functions to the meaning of rights and duties under the CRC. It is important to consult the General Comment when assessing the State party's obligation in respect of a particular right because it elaborates the specific right in question.

The CRC Committee states further that Article 29 emphasises the message of child-centered education:- that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has a unique characteristic, interest, abilities and learning needs.<sup>57</sup> In other words, the goal of education is to empower the girl-child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In essence, making education accessible and available for the girl-child would enable her to develop her character and also be able to live a fulfilled life within the society.

#### **6. National Implementation: revealing the connection between theory and practice.**

While this paper argues that the right to education of girls is covered by existing legal instruments, it also gave instances of international laws protecting the right. It is thus necessary to examine whether in practice, the implementation of the right to education of girls in Nigeria leads to adequate protection for them through laws, policies and programmes. In the Nigerian constitution freedom from discrimination is a fundamental right.<sup>58</sup> Although Nigerian Constitution guarantees non-discrimination on grounds of sex, religion, ethnicity, political opinion, circumstances of birth and place of origin, however, it is noted that while guaranteeing equality before the law, it is silent on the relation between potentially discriminatory customary or religious laws and the non-discrimination provision.

Early marriage, for example, hinders a girl's chances of continuing with her education and this in turn hampers her life chances. The constitution guarantees equality, therefore the principle of constitutional supremacy should prevail. If the constitution is the supreme law of the country, one would expect that other laws such as customary and other personal laws should be in compliance therewith. In this respect, the law should prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination.

Even though the Constitution incorporates a provision of non-discrimination,<sup>59</sup> the Committee of the CRC, in its combined third and fourth reports' concluding observations on Nigeria in 2010,<sup>60</sup> raised concerns that *de facto* discrimination against children was still prevalent in Nigeria and is widely tolerated in the State

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<sup>57</sup> *Ibid* para 9.

<sup>58</sup> Section 42(2) 1999 Constitution of Nigeria provides: "No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth."

<sup>59</sup> Section 42 (2) 1990 Constitution of Nigeria.

<sup>60</sup> Committee on the Rights of the Child Concluding observation: *Nigeria CRC/C/NGA/CO/3-4*, para. 28

party. Of particular concern was vis-à-vis the girl child, children with disabilities, and street children. The Committee requested the State party to provide more information in its next periodic report on measures taken to give practical effect to the principle of non-discrimination in relation to these groups.<sup>61</sup> Education is critical to the future of all children, but especially to those who are vulnerable, that is; children such as the orphaned, street children, girl-child, children living in conflict areas and children who belong to sections of a community, such as from indigenous or minority groups or lower status.

Initiatives undertaken to increase enrolment and retention of girls have been developed by Nigerian government and are being implemented. Such initiatives include the National Strategy on Girls' Education and FGN Fender Education Project.<sup>62</sup> To boost girl-child Education nationwide, tripartite partnership programme and funding between the Federal and State Governments and UNICEF had been launched since 2011 and has commenced disbursement of funds for the training of female teachers to States Universal Primary Education Boards. Sokoto state, one of the states with poor girl-child education record, trains 800 female teachers (2012-13) with N49.5m granted to 224 school-based management committees as critical components in achieving UBE for all.<sup>63</sup> Despite all the encouraging efforts from Government, early marriage is still a big cause of school drop outs, due to the ingrained negative cultural attitude.

Early marriage is serious problem primarily, because it hinders a girl's chances of continuing with her education and this in turn hampers her life chances. Nigeria enacted the CRA as its national legislation on 16 July 2003 with the aim of giving effect to the principles of the CRC and the ACRWC. However, since its enactment, the CRA has had problems with opposition from some Northern states, where there is a large population of Muslims, on grounds that some provisions of the CRA were deemed as contrary to Islamic norms, especially the provisions on marriageable age and gender discrimination against girls.

The CRA stipulates eighteen years as the marriageable age<sup>64</sup> whereas under customary and Islamic laws, a girl child who has attained puberty is marriageable. This custom has been an impediment to the education of the girl-child for many years in Nigeria. Apart from the predominantly Muslim North of Nigeria, the South Eastern states are opposing the CRA on the ground that it is contrary to the customs, especially where daughters cannot inherit landed property from their parents. There was opposition to the enactment because the Act introduced values that were against religious and cultural beliefs of the people.<sup>65</sup> These cultural and

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<sup>61</sup> *Ibid.*

<sup>62</sup> CRC Concluding Observation of Report Submitted by Nigeria June 2010, CRC/C/NGA/Co/3-4, para 28 see also, Nigeria's 5th Periodic Country Report: - 2011-2014 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria, June 2014.

<sup>63</sup> Nigeria's 5th Periodic Country Report: - 2011-2014 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria June 2014, para 2.

<sup>64</sup> Section 21 CRA.

<sup>65</sup> Owasanoye, B., 'The Regulation of Child Custody and Access in Nigeria 39(2) *Family Law Quarterly*, 405.



religious obstacles have prevented some of the states from adopting the CRA into their state legislations.

This opposition is directly against the non-discrimination stipulated in both the CRC<sup>66</sup> and the ACRWC,<sup>67</sup> and also runs contrary to the Nigerian Constitution which provides that no child shall be discriminated against as a result of gender, religion, or circumstances of birth.<sup>68</sup> A child should be able to enjoy all the human rights laid down or proclaimed in the constitution and other legislations of the individual countries and particularly in international conventions or declarations.

## 7. Recommendations

Nigeria cannot stop the cycle of poverty, economic deprivation and poor health unless everyone has an equal opportunity to access education. Based on the summary of findings discussed above, the main recommendations of this paper are:

### 7.1. *Make education to be accessible to girls, without discrimination*

Nigeria must ensure equal access to primary education to all children of school age residing in its territory. The importance of educating the poor, the excluded children in urban slums and the rural poor and the girl-child must receive special consideration, with indisputable commitment to ensuring their access to education. In addressing issues concerning access to education of the girl child, government should have visible policy of mainstreaming a gender perspective into all policies and programmes so that before decisions are taken, an analysis is made of the effects on girls and boys, respectively.

Retention of girls must be encouraged by allocating appropriate budgetary resources and by enlisting the support of the community and parents through campaigns and incentives including scholarships, for out-of-school girls. About the attitude and approaches of parent towards education of their children, the state has an obligation to protect the child from a third party that wants to prevent the child from receiving education. So compulsory education should be emphasised and legal sanctions against erring parents should be enforced.

There is also the need for the State to adopt measures that would eliminate barriers to the implementation of relevant laws and ensure that national laws and policies that protect children are effectively implemented and enforced. Retention of girls must be encouraged by allocating appropriate budgetary resources and by enlisting the support of the community and parents through campaigns and incentives including scholarships, for out-of-school girls. Nigeria must ensure equal access to primary education to all children of school age irrespective of sex.<sup>69</sup> The attitude

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<sup>66</sup> Art.2 CRC.

<sup>67</sup> Art. 3 ACRWC.

<sup>68</sup> Section 42(2) 1999 Constitution of Nigeria. Section 10 of the CRA also prohibits discrimination against any child on grounds of gender, religion or circumstances of birth. But under Sharia law the son inherits twice what the daughter inherits. In South Eastern Nigeria, only sons can inherit landed property. This is to prevent a non-family member (i.e a son-in-law) from inheriting from the wife's family.

<sup>69</sup> CESCR *General Comment 13, The Right to Education*, E/C.12/1999/10, para.34.

and approaches of parents towards education of their children should be addressed. There is the need for the government in addition, to adopt measures that would eliminate barriers to the implementation and ensure that national laws and policies that protect the girl-child are effectively implemented and enforced. Through information and awareness-raising campaigns, government should ensure that families desist from giving preferential treatment to boys when sending their children to school. It is a well-known fact that the Nigeria cannot stop the cycle of poverty, economic deprivation and poor health unless everyone has an equal opportunity to access education.

### *7.2. Increase in Funding of Education*

It is recommended that the funding allocation for education needs to be increased because ensuring free primary education for all children in Nigeria is the foremost challenge to the country. The Government should increase the budgetary allocation to education because of its importance to the national economy, and implement safeguards, which with proper monitoring, would contribute more significantly to the empowerment of the public. The allocation of educational resources should be based on systematically worked out strategic priorities.

In addition it is suggested that it should be included in the Constitution of Nigeria, constitutional provisions for financing education, for example, the Constitution of Brazil<sup>70</sup> contains elaborate provisions in this regard which is commendable. The Brazil Constitution provides for sharing of resources and responsibility at all levels in the Brazil's federal system. 18 per cent of the tax revenue at the federal level and 25 per cent at state and municipal level are required to be allocated to education, with priority to basic education (elementary and secondary education). These constitutional provisions also cover scholarships to be provided to needy students.<sup>71</sup> This is worth emulating for Nigeria.

### *7.3. Better Management and Administration of Education*

Policies intended for implementing education should be based on accurate data and sound analysis. To achieve universal free and compulsory education for all children, accurate information collection systems need to be implemented; when the data has been collected, a suitable plan can be proposed.<sup>72</sup> There is need to improve data collection and information systems (disaggregated by variables that include sex, age, household characteristics and ethnicity) in order to identify vulnerable groups and to inform state policy and programming at all levels. Accurate data and monitoring of learning achievement are also critical, for planning and budgeting, as well as for evaluation and accountability. Without accurate and

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<sup>70</sup> 2010 Constitution of the Federative Republic of Brazil

<sup>71</sup> *Ibid*, Article 212

<sup>72</sup> Wilson, Duncan & Melchiorre, Angela, *Analysing education budgets through the lens of human rights: a two-step process*, RTE Framework for budget analysis, <http://r2e.gn.apc.org/sites/r2e.gn.apc.org/files/RTE%20framework%20for%20budget%20analysis.pdf> accessed on 14 July 2014.

reliable data, no meaningful planning can be done and it will be difficult to avoid policy breakdown at the implementation stage.<sup>73</sup>

The necessity to gather reliable data is supported by Kasper in her statement that 'applying the tenets of the CRC requires disaggregation of national data by age, gender and ethnic background so that the vulnerable group will be identified and policies developed'.<sup>74</sup> The non-availability of these statistics on Nigeria can be traced to the following factors; misunderstanding of the concept of gender, poor funding, lack of awareness of the need for gender disaggregation, non-mainstreaming of gender issues and concerns into data collection instruments.<sup>75</sup> This requires urgent attention because non-availability of reliable and comprehensive disaggregated statistics will lead to exclusion of gender issues in the formulation and implementation process of policies and programmes on education.

#### 7.4. *The State's Willingness or Political Commitment*

The exclusion of girls which has hitherto obstructed gender parity and equality in education reflects not only poverty and other structural factors, but also a lack of political will on the part the State that views education as a non-essential service, not as a human right. Political will and stronger national leadership are needed for the effective and successful implementation girls' education in Nigeria. The Government should implement laws to protect children from culture and beliefs that are prejudicial to education. They should commit to preserving the dignity girls and engage the public to accept their responsibility to protect them.

The adoption of positive measures means that not only should all discriminatory laws be abolished, but that Nigeria should also do more than enact legislation prohibiting discrimination against girls and women. This can entail combating discrimination actively, and changing the general negative perception of female group. To break with this structure of lopsidedness, calls for a complete overhaul of societies and cultures in order to encourage men and women to live together on an equal footing. As is evident from the provision of CEDAW, the elimination of prejudicial customs and all other practices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women poses the main challenge to the identification of education policies.<sup>76</sup>

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<sup>73</sup> Hinchliffe, Keith, 'Public Expenditures on Education in Nigeria: Issues, Estimates and Some Implications', *Africa Region Human Development Working Paper Series* (Human Development Sector Africa Region), (The World Bank 2002).

<sup>74</sup> Kasper, J., "The Relevance of U.S. Ratification of the CRC for Child Health" (2010) 89(5) *Child Welfare* 27.

<sup>75</sup> Nigeria's 5th Periodic Country Report: - 2011-2014 on the Implementation of the African Charter on Human and Peoples' Rights in Nigeria, June 2014, p.25, available: <http://www.achpr.org/states/nigeria/reports/5th-2011-2014/> [accessed 12<sup>th</sup> February 2015].

<sup>76</sup> Article 5 of CEDAW

There is the need for the State to do away with discriminatory attitudes and stereotypes, as well as customs and practices handed over from traditions that have consigned women to a position of inferiority. Nigeria have ratified the Protocol on the rights of women in Africa to the African Charter on Human and People's Rights,<sup>77</sup> therefore must incorporate its provisions into a national legislation. Transforming the right to education from an idea into a living reality requires national level action in line with international normative framework. To fulfil their roles as stated in article 4 of the Convention, "States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention." Investing in formal education and training for girls, with its exceptionally high social and economic return, has attested to be one of the best means of achieving viable development and economic growth that is both sustained and sustainable.<sup>78</sup>

## 8. Conclusion

This paper has endeavoured to reveal that the right to education of girls in Nigeria requires the government to address it urgently. It is established that the right can indeed be grounded on international human rights laws and the state's international obligation in that regard. The main hindrances that impinge on the implementation of girls' access to education and the various causes that exclude the girl-child from receiving education in Nigeria has been critically analysed in this paper. Overall, as with many development efforts, the complete solution to implementing free qualitative education for the girl-child will be an on-going challenge. Nevertheless, to bring Nigeria in compliance with international human rights standards on education, the State needs to be willing to constitutionally and affirmatively recognise the right to education and prioritise its resources purposefully and differently to what is currently the practice. The last sentence should appropriately be that education of girls should not only be a national issue, but also, a global priority, as the present assault on the freedom to learn and to access education by girls must end.

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<sup>77</sup> Protocol to the African Charter on Human and Peoples' Rights on the Right of Women in Africa. OAU Doc CAB/LEG/66.6/Rev.1. available at <http://www.refworld.org/docid/3f4b139d4.html> accessed August 8, 2017. Nigeria ratified the protocol on February 18 2005.

<sup>78</sup> Beijing Platform for Action adopted September 1995. Chapter IV. B. Education and training of women, para 69.