

CONSTITUTIONAL PARADOXES IN THE PROTECTION AND FULFILMENT OF RIGHTS TO EDUCATION IN NIGERIA

Osawaru, Arasomwan Endurance

Department of Educational Foundations
Faculty of Education, University of Benin

Prof. (Mrs.) B. O. J. Omatseye

Institute of Education
University of Benin

Abstract

The quest for protection of rights is often times controversial. Such controversies arise from differences in ideological and philosophical perceptions especially in the context of the universalization of human rights. This trend is quite evident in the rights to education discourse. In Nigeria the problem of section 6(6) of the constitution are non-justiciable. This unjusticiability has far reaching implications for contextualization, protection and fulfillment of rights to education in Nigeria. In this paper, an attempt was made to analyse these qualifying and similar clauses and their effects on the conceptual interpretation and protection of rights to education in Nigeria in the light of human rights to education declaration and International Convention on Economic, Social and Cultural Rights (ICESCR). Drawing on this analysis, the paper submits that the right to education can indeed be made enforceable and amendable to judicial implementation with the right legislative mechanism in place.

Keywords: Rights, Human Rights, Social Rights, Rights to Education, Constitutional Paradoxes.

Introduction

The nature of rights and associated problems have always occupied a prime position in the dialectics of jurists, historians, politicians, human rights activists, educationists and philosophers alike. There is no doubt that the struggle for social justice and resistance to oppression in all human societies represents key aspects of man's historical past as well as underpins many current social and political developments. The issue of rights in education relate dialectically to the nature and problems of rights generally with important and far-reaching implications for current thinking about its nature, content, value and measurements of rights to education. Thus, like rights itself, the right to education is often the subject of delicate internal political compromises, as their judgment is never simply a matter of legal entitlement. It depends on social structures, through which power, material resources and meaning are created and circulated. These features render its classification difficult. As Taiwo (2011) and Smith (2005) have observed, that the right to education is peculiar and defies precise classification either as a civil and political right or as social, economic and cultural rights. This in effect,

CORRESPONDING AUTHOR

Osawaru, Arasomwan Endurance

e-mail: endurance_osawaru@yahoo.com

portends that all human rights are clearly interdependent and interrelated and right to education epitomizes the indivisibility and independence of most human rights.

However, the history of human rights is generally stratified into three generations. These are the first generation rights of civil and political rights, the second generation rights of economic, social and cultural rights and third generation rights of groups or people's rights. These rights form the main content of documents such as the European Convention on Human Rights, the Human Rights Act 1998 and a variety of other international treaties and national bills of rights.

Rights to education is primarily a second generation right. It is recognized by Article 28(1) of the Convention on the Rights of the Child (CRC), 1989 and Article 13(1) and (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article. 13(1) and (3) of the additional Protocol in the America Convention of Human Rights in the area of economic, social and cultural rights and Article 4(a) of the Convention against Discrimination. The rights essentially emerged in response to the need for basic necessities for a decent living and grew out of the recognition that to live well and freely man must have at least the means requisite for living. These rights are based on the principle of social justice and public obligations and tend to be positive rights.

The first generation rights have often been given priority over second generation rights. It is generally viewed that these rights could be implemented immediately, whereas economic, social and cultural rights can be introduced only progressively (Rehman, 2010). They are held to be programmatic to be realized gradually and therefore not a matter of right (Eide, 2001).

What can be deduced from the foregoing is that there is no single answer to the problems of right to education. Moreover, when states cannot be wholly trusted to protect rights within their territorial jurisdictions. This also explains the emergence of international protection. It was more or less a means of ensuring certain minimum standard across nations. This is quite imperative in this context because once the right to education is guaranteed other fundamental human rights are more assured and secured. The first document in this regard is the Universal Declaration of Human Rights (UDHR) as issued and adopted by the General Assembly of the United Nations in December 1948. Specifically, Article 26 of the Declaration which included among man's basic rights to education proclaims:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stage. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial and religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children (p.54).

A year after the above proclamation, the United Nations Educational Scientific and Cultural Organization (UNESCO) published the results of a symposium that

enquired into the philosophical basis of human rights. Part of the outcome of this symposium is the declaration of education as a human right. This was followed by a range of other international declarations, resolutions and recommendations on right to education that has been adopted by the United Nations. According to Rabin (2000), one direct consequence of these epochal declarations is the constitutionalisation of rights to education in more than 140 countries with many others still in process of ratification. This stems from the consideration that a determinant factor in achieving the right to education, like every other human right is its constitutionalisation and national legislation (UNESCO, 2000). Even at that only few countries have provided the legislative and administrative framework to ensure the realization of these rights in practice. In some cases, the rights merely exist along with the assumption that the user should pay for those rights. This scenario undermines the true conception and philosophy of right to education as one that ought to be traditionally tied with obligation on the part of the State. That is to say, right to education like every other right can only be a right when the state recognizes and accepts it as such. As Hart (1982) succinctly puts it, it is hard to think of right except as capable of exercise. This forms the crux in this paper. It is an attempt to delineate the underlying constitutional paradoxes protection of rights to education. The expectation is that an exploration of the institutional and structural dynamics that promote or threaten the realization of the rights to education in Nigeria may provide clear insights into appropriate pathways to resolve contradictions associated with rights to education in Nigeria.

Rights and the Constitution

The relationship between rights and constitutions is as old as the practice of social contract and constitutional government. In the explanation of Henkin (2000), there are nine elements of constitutionalism which can be divided into two groups that correspond to basic functions of a liberal constitution. The first function is power construction and power lodging and the two key concepts here are separation of power and checks and balances. The second element is right protection. This right protect character of the constitution derives from the founders' belief that private rights depend upon active government and public virtue. These two groups of institutional arrangements, work together to ensure the supremacy of the constitution.

As indubitable as these roles may seem the effectiveness of constitutional limits and protection of rights has been the subject of criticism. As Rothbard (1989) argues, constitutions are incapable of restraining governments and do not protect the rights of citizens from their governments. Rothbard further contends that no constitution can interpret or enforce itself, it must be interpreted by men. It is against the same background that Ben-Bassat and Dahan (2000) describe the constitution as about who we are and what we want. The implication is that, a mere constitution cannot be said to make a country constitutional. Or still, a constitution is not merely a document introduced by the state with the title of constitution (Asian Human Rights Commission, 2012).

What seem implicit from the foregoing is that a constitution can only protect the rights of individuals if it is genuine and if adequate machinery for its enforcement is put in place. A genuine constitution, is an attempt to limit and reverse all forms of arbitrariness. This is unlike the 'mere' constitution which is adopted to protect the interest of the ruling regime. Many authoritarian governments introduce such document to justify their arbitrary rule. Of course, in a country where this is the case,

rights are rather transgressed than protected. It is indeed on this note that Asian Human Rights Commission further argues that without genuine democracy, there can be no constitutionalism. This underscores the Madisonian argument that the path to protect rights is through institutional safeguards, not entrenched constitutional rights. Agarwal (1979) in a similar conclusion posits that a declaration of fundamental rights in a constitution may not be of much avail if there is no adequate machinery for their enforcement. These safeguards or machinery, for Asian Human Rights Commission are basic principles of constitutionalism, common institutional provisions used to maintain the rule of law include, the separation of powers, judicial review, the prohibition of retroactive legislation and habeas corpus.

All of these have far-reaching implication for contextualization, protection and fulfilment of rights to education. Thus, what is true of the relationship between rights generally and the constitution holds true for rights to education, and the constitution. As O'Mahony (2008) notes recent difficulties arising from the enforcement of one of those justifiable rights, such as the rights to education have led to some debates amongst judicial and academic members of the legal community regarding the exact role to played by a written constitution in the protection of rights. This difficulty is more pronounced in the less developed countries, where the rights to education are enshrined under the Directive Principles of State Policy. Unlike the Fundamental Rights in constitutions, rights enshrined under the Directive Principles are not justiciable, as their non-compliance cannot be taken as a claim for enforcement against the state. By that provision, the actual realization of these rights are the sole concern of each state acting by itself and determining its policies within the pervading political, economic, social, cultural, legal and ideological setting, which is not the same in any two countries. Much as this self-determination respects the sovereignty of the countries and has led to multiple interpretations and implementation of rights to education in countries. This in turn substantially weakened the ability of governments in the provision and fulfillment of these rights, contrary to the Universal Declaration of Human Rights on education.

In Nigeria, the right to education is enshrined in Section 18 of the 1999 Constitution. It provides that the government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. The section further states that the government shall strive to eradicate illiteracy and shall as when practicable provide free, compulsory and universal primary education. However, it should be noted that with the right to education being categorized under fundamental objectives and directive principles of state policy, which according to sections 6 (6) (c) of the constitutions are not justiciable, the Nigerian constitution may not be said to have provided for the right to education. This, in itself is self-contradictory as the provision can hinder the effective realization of these rights; more so with the clause "as and when practicable" as earlier pointed out (in section 8 (3) of the Constitution). This is also considered conditional upon economic efficiency, implying that participation in education in Nigeria is more of a privilege than a right extended to citizens at the discretion of the State. Indeed, when the protection of any human right is at the discretion of the State, the theory of dualism holds sway. The effect is most likely to fall short of what might be reasonably expected, perhaps inevitably, a tension between different rights in education or rights and responsibilities. This seems to be an inherent contradiction between a right-based approach and the continuing control of the State in determining what constitute meaningful rights to education.

This and the inclusion of the qualifying clauses, as earlier indicated, have raised fears that they could become convenient excuses for justifying implementation of rights to education in Nigeria (Himes, 1995). It is important to explore these underlying constitutional paradoxes associated with the right to education in Nigeria. It is hoped that such will provide an insight into the meaning and content of the right to education as well as the moral basis for defense of rights to education in Nigeria, especially within the framework of acceptable international and national charters of human rights to education.

Constitutional Paradoxes in the Implementation of Rights to Education in Nigeria

As is the case with constitutional democracies, the Nigerian constitution is the supreme law of the land as is clearly declared in its Section 1 (13). In effect, any law which is inconsistent with its provisions shall be null and void. The constitution sets the tone, the spirit and the framework from which all other laws or legislation draw their legitimacy.

Traditionally, therefore constitutionalism is the term used to denote a legal model that contains institutional mechanism for the limitation and the control of power on the one hand, and protects individual rights and freedom on the other (De Hert & Somers, 2013). For Kumm (2010) the protection of rights might even be a precondition for the legitimacy of law, considering that a right is a claim which its holder must be able to fulfill. According to Asmal (2002), such a claim, must be legally enforceable. Indeed, rights in practice are defined in part by legal framework. This is the starting point for guaranteeing the rights of the people. As the preamble to the Nigerian constitution, it succinctly states:

We the People of the Federal Republic of Nigeria; having firmly and solemnly resolved: to live in unity and harmony as one indivisible and indissoluble sovereign nation under God dedicated to the promotion of inter-African solidarity, world peace international co-operation and understanding; and to provide for a constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people' Do hereby make and give to ourselves the following Constitution (p.15).

The above preamble is the binding principle of all the provisions contained in the 1999 Constitution of the Federal Republic of Nigeria (with amendments 2011). The 5th paragraph in particular is a constitutional commitment by the government to promote the welfare of its citizens and this among other things includes educational welfare. This commitment is further underscored in Section 14 (2) (b) which provides that the security and welfare of the people shall be the primary purpose of government. It is against this background and in line with the several international and regional rights to education instruments to which Nigeria is a signatory that the right to education is constitutionalized. Thus, in its Section 18 under Fundamental Objectives and Directive Principles of State Policy, as provided in Chapter II, the 1999 Constitution states:

1. *Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels;*

2. Government shall promote science and technology;
3. *Government shall strive to eradicate illiteracy and to this end Government shall as and when practicable provide free, compulsory and universal primary education;*
4. *Free university education; and*
5. *Free adult literacy programme (p.29).*

The above provision is largely derived from the United Nations' Universal Declaration of Human Rights (UDHR). As cited in The Rights to Education Project (2011), in its Article 26, the Declaration states:

1. *Everyone has the right to education*
2. *Education shall be free, at least in the elementary and fundamental stages.*
3. *Elementary education shall be compulsory.*
4. *Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit (p.1).*

In principle, almost all the governments throughout the world acknowledge these rights as the legal foundation of the right to education. The expectation is that as a party to the Declaration, Nigeria has the obligation to respect, protect and fulfill these rights. Thus, for effective realization of these obligations, the Nigeria Constitution in its Section 13 (preamble) provides:

It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this Constitution (p.27).

By this provision, the Constitution has set out the state's responsibility for the provision of Section 18 (1) (2) and 3) as stated above. Yet as lofty as these provisions and the task of realizing them may seem, the clause 'as and when practicable' in paragraph 3 is time bound with obvious and limiting implications, although this provision is in line with the progressive realization of rights language of the International Covenant for Economic, Social and Cultural Rights (ICESCR). Economic, Social and Cultural Rights are considered to impose only positive obligations conditional upon the existence of resources and therefore involving commitment to progressive realization. This is against the background that, it is not quite possible for all governments, considering their limited resources to fulfill their obligations to ensure the right to education for all children immediately and at all stages.

What can be deduced from the above approach is a concern that resource availability and possibly other internal qualifiers in Nigeria will continue to shape the right to education agenda rather than allowing funding levels and resource mobilization for education to be determined by the scope of requirements for enabling a rights approach. However, where financial and human resources are limited the principle of progressive realization requires governments to have a clear strategy and time frame for this provision. Despite decades of this constitutional provision, it has remained

consistently promissory. The question then is when shall it be practicable? Indeed this clause has been the most single reason for government's poor performance in providing free and compulsory education in Nigeria. It is on account of this that Ladan (2009) remarks that the ideals of the United Nation's Economic, Social and Cultural (ECOSOC) rights embodied in the provision of the Chapter 11 of the Constitution are couched not as rights but as duties of State. A provision of this kind does not clearly create judiciable enforcement. This is further complicated by Section 6 (6) (c) which provides 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 or 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 11 of this constitution (p.20).

The implication of the above provision is that should government fail to fulfill these rights/obligations, Nigerians shall in no way have the right to invoke the courts to find the government liable. In other words, the government has by this section exempted itself from any legal action in any court of law in Nigeria. As Onyekwere (2012) argued, the prevalent jurisprudence of taking away matters in chapter two of the Constitution from the purview of the courts stultifies the development of a scientific system of holding government to account for its basic obligations to citizens. As he further argues, this creates empty shells, ropes of sand and rights without rights holders. This is why, according to Soniyi and Bello (2012) the Belgore (Presidential) Committee on the Review of Outstanding Issues on Constitutional Conference recommended that those rights be taken out of Chapter 11 and taken to Chapter IV which contains enforcement rights. Indeed, this provision clearly adopts the Blackstonian doctrine of transformation, a theory which essentially states that international convention or treaties are not directly enforceable in national legal systems unless provisions of such treaties or conventions have been re-enacted by municipal legislative authority into domestic law (Dada, 2012). As is clearly provided in Section 12 (1) of the Constitution, no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly (p.25).

The impression is that since the right to education in Nigeria has not been enacted into law by the National Assembly it cannot be enforceable, a limitation that impairs its justiciability, hence their non-compliance cannot be taken as a claim. However, it should not be glossed over that Nigeria has not only ratified the African Charter on Human and People's Rights but has also domesticated it as part of our national laws. To this effect, it is beholden to Nigeria to ensure the fulfilment of all obligations under the Charter. This is in addition to such other laws as the Child Rights Act and Free, Compulsory and Universal Basic Education Act which create entitlements on basic education, although without necessarily providing enforcement mechanisms for beneficiaries of these rights when they are violated (Onyekwere, 2012).

If these rights cannot be enforced as it were, with all these laws in place, then their constitutionality can be said to be mere political rhetoric that is based on neither legal nor moral principles. It is indeed in this regard that Diala (2015) asserts that the provision is a mere ploy on the part of the Nigerian government not to commit itself to

the educational needs of the citizens. So for him they are mere cosmetic declarations to garnish the constitution. Eso (2003) has perhaps most poignantly described this scenario when he remarked that:

One cosmetic passage in the present constitution, the 1979 Constitution, is its Chapter II. It deals with Fundamental Objectives and Directive Principles of State Policy. As the chapter stands, there is no doubt that it constitutes or rather, provides a good essay, with a Montesquieu touch. It is, however, a toothless provision with no profitable yield in its nine years of existence. It is most unfortunate that such highly classed provisions are mainly left to be decorative of the constitution rather than effective (p.41).

Although, Eso (2003) has based his criticism on the 1979 constitution, same provision is applicable to the 1999 constitution. This constitutional lax raises a paradox and in the main, holds strong implication for the protection and fulfilment of rights to education in Nigeria. For Diala (2015) who describes this lax as attitude of indifference, it accounts to a great extent why the educational system has continued to experience untold decadence.

According to UNICEF, the global figure for out-of-school children is estimated at 121 million, 65 million of those school children being girls. Over 80% of these girls live in Sub-Saharan Africa with one out of four living in Nigeria. Evidence also shows that less than 10% of adults of the poorest rural female can read (Adesulu, 2016), girls access to basic education, especially in the Northern States has remained low. Only 20 percent of women in the North-West and North-Eastern parts of the country are literate and have attended school. As the reports further indicate there is a net enrolment ratio (NER) of 80.6% suggesting that a substantial proportion (19%) of primary school age population (6-11 years) is not enrolled in primary school nationwide. This represents about 5 million Nigerian children aged 6-11 years old that do not have access to primary education. At the tertiary level, the trend is not different. According to the report, only 6% were enrolled in tertiary education in 2014. The result of this trend is high inequality. These predictions are ominous; they speak volumes on the state of rights to education in Nigeria.

Besides, the fact that there has never been any fiscal year the Federal Government allocated up to 26% of the total annual budget to the education sector as the standard recommended by UNESCO casts doubt as to the sincerity of government at all levels of ensuring that these obligations are met (Agu, 2011). With funding levels below what is required to provide all children of school age with quality and equitable standards of education, the states are by implication increasingly paving way for private sector organizations thereby encouraging financial contributions from citizens towards education funding.

Indeed, in a context where private schooling is on the increase, as is the case today, it is clear that the constitution permits exclusion of private schools from the responsibility of providing free and compulsory education to children. This ultimately exempts them from the wider public policy framework of education and emphasizing the divergence between private and public schools.

Considering also that these private schools do not receive any form of public subsidy and other benefits, it is practically problematic that they have been left out of

the remit. This seems to create a contradiction between a rights-based approach and the increasing rise of unbridled privatization, coupled with changing economic conditions and the continuing control of the State in determining what constitutes meaningful education. This links to the continuing dominance of the human capital approach to education, which views education solely in terms of individuals investing in their future productivity, and thus isolate analysis of education from perspectives which see it as a resource or entitlement embedded in a wider range of entitlements and opportunities in the lives of people. These problems constitute a violation by the Nigerian government to fulfill the minimum core of the right to education, and indeed against the moral principle that there is an intrinsic value in every individual which can only be developed through education, as well as the satisfaction of the greatest number as propounded by utilitarian philosophers.

Regardless of the notion of progressive realization, it is posited that this provision does not diminish the clear obligation on the state parties to fully realize the right at the end (Taiwo, 2011). According to the Committee on Economic, Social, and Cultural Rights (CESCR) these core content, as provided in article 13 (3) and (4) of the ICESCR, include, an obligation to ensure the right of access to public educational institutions and programmes on a nondiscriminatory basis; to ensure that education confirms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental (basic) education; and to ensure free choice of education without interference from the state or third parties subject to conformity with minimum educational standards.

The above obligations constitute the minimum core content which a member state has to ensure to satisfy, at the very least, the minimum essential level of these rights. It forms the basis or foundation on which the implementation of the right to education is assessed. According to the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights, a failure by a state party to comply with an obligation contained in this International Covenant on Economic, Social and Cultural Rights is, under international law, a violation of the ICESCR; the provision 'progressive realization of the rights', notwithstanding, as earlier pointed out.

Perhaps, this explains why the Committee on Economic, Social and Cultural Rights provides for progressive realization and acknowledges the constraints due to the limits of the available resources and at the same time imposes an obligation of immediate effect through the wording, "the undertaking to guarantee that relevant rights will be exercised without discrimination" (Abebe, 2011:24). Or in the event that full realization of relevant rights is delivered progressively, steps towards that goal must be taken within a reasonable short time after the covenant entered into force for that state concerned. That is to say, states shall even under hard and unpropitious circumstances maintain the four broad standards (the 4-A scheme) as the basis for assessing the achievement of the right to education. As earlier noted, the standards include:

- *Availability: ensuring free and compulsory education for all children and respect for parental choice of their child's education.*
- *Accessibility: eliminating discrimination of access to education as mandated by international law.*

- *Adaptability: ensuring that education responds and adapts to the best interest and benefit of the learner in their current and future context (Wikipedia, 2011).*

The above 4 typologies constitute the irreducible minima that guarantee the right to education in its true framework, both in quantity and in quality.

It remains to be argued, however, that even if the rights to education in Nigeria do not necessarily translate into a legally binding right as a result of which these obligations cannot be fulfilled, as a member state to the ICESCR, it can draw its legal foundation from binding human rights covenants across the globe (Hannum, 1984; Kirchmeier, 2006; Theoha, 2011). In other words the rights can be declared by the court from decisions from similar jurisdictions. This approach works from the position that international human rights standards place obligation and duty on governments to ensure that their plans, policies and processes uphold and promote these rights. Such an approach places the focus on rights rather than on need. Corroborating this, the Human Rights Council (2013) argues that since the right to education is an internationally recognized right, any or all of its dimensions are justiciable. It is on this premise that a suit was filed at the ECOWAS Court in 2009 in Abuja by the Registered Trustee of Socio-Economic Rights and Accountability Project (SERAP) against the federal government of Nigeria and the UBEC alleging the violation of the rights of Nigerians to quality education, dignity of the human person, and the right of people to their wealth and natural resources as well as the right to economic and social development guaranteed under the African Charter on Human and Peoples Rights (ACHPRS).

In defense of the above suit, the Federal government and UBEC claimed that the right to education is non-justiciable, being a right under Chapter II of the Constitution. The ECOWAS Court held that irrespective of non-justiciability of the right to education under the Nigerian constitution, the government is bound by the African Charter on Human and Peoples Rights, which guarantees the right to education and the fact that these rights are domesticated in the municipal law of the Federal Republic of Nigeria cannot oust the jurisdiction of the court. The question of progressive realization clause was ingeniously dealt with, not referred to as a snag in the fulfilment of the rights (Falana, 2011).

As laudable as this ruling is, in addition to the undeniable pre-eminence given to education by United Nations Declaration and copious other international, and regional instruments, including the African Charter to which Nigeria is a signatory as well as domestic human rights instruments that also provide and ideally should serve as safeguard to the right to education the implementation of the judicial order remains a mirage. This, no doubt, has far-reaching consequences on the protection and fulfillment of rights to education in Nigeria. As a result, more than 5 million Nigerian children of school age still roam the streets and have no access to primary education; 11.5 million adults are illiterate. Nigerian children still lack the access to quality primary education in Nigeria.

This scenario has left a trail of questions on issues relating to contextualization of rights to education as a public good in Nigeria. The question also remains as to whether the right to education in Nigeria is a genuine legal right. If, as Hoffman and Graham (2009) have argued on human rights generally the rights to education equates to certain legal rights enjoyed by individuals through international law, then disputes

If indeed there is any substance in a citizen's right to education in Nigeria, it must surely embrace legal redress for a failure to provide or protect it. The pertinence of this argument lies in the fact that education cannot be a right and at the same time a privilege in Nigeria. As it were, this has created a constitutional dualism which has not only taken international law and domestic law as separate legal systems in Nigeria but has also exposed tensions, real or apparent to both systems. The effect is as obvious as the inability of the government to promote, protect and fulfill the rights to education in Nigeria.

Conclusion

Despite this undeniable pre-eminence given to education by the United Nations Declaration and copious other International and Regional Human Rights instruments that provide for education as a fundamental human right, to which Nigeria is a signatory, the implementation of judicial orders remains problematic. It is more of a situation where the courts have the judgment, but no enforcement machinery. Till date, there is hardly any known efforts by the government to the full force of law. The implication is that Nigeria practices dualism, and as such takes international law and domestic law as separate legal systems. This has far-reaching consequences. As Falana (2011) pointed out:

Since the judgment was delivered in November 2010, the government and the UBEC have neither acknowledged the judgment nor taken steps to implement the letter and spirit of the judgment... more than 5 million Nigerian children of school age as a result still roam the streets and have no access to primary education; 115 million adults are illiterate. Nigerian children still lack access to quality primary education in Nigeria.

This scenario has left a rail of questions and constitutional paradoxes on issues relating to contextualization and fulfilment of rights to education in Nigeria. Indeed there seem an active tension between economic consideration and the desire to fulfill the much needed rights to education for the citizenry. This in turn raises the question as to whether the right to education in Nigeria reflects a genuine legal right. The pertinence of this question lies in the fact that education cannot be a right and at the same time, a privilege in Nigeria. In essence, education in Nigeria is more of a privilege, not a right.

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