

**CRITICAL ANALYSIS ON THE RIGHT OF CHILDREN TO EDUCATION UNDER
INTERNATIONAL LAW: A CASE STUDY ON NIGERIA**

BY

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ZARIA, NIGERIA.**

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DECLARATION

I declare that this Thesis entitled: **A critical analysis of the right of children to education under International and Domestic law: A case study of Nigeria** has been carried out by me in the Department of Public Law, Faculty of Law Ahmadu Bello University Zaria and that it is a record of my own research work, which work has never been presented, to the best of my knowledge anywhere before. All ideas, quotations and references from previous writers are duly acknowledged. I bear responsibility for all views expressed and errors therein.

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CERTIFICATION

This Thesis entitled: **A critical Analysis of the Right of Children to Education under International and Domestic Law: A case study of Nigeria** by UgwushimeChinyereIKPE meets the regulations governing the award of Master of Laws Degree – LLM of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

I dedicate this research work first and foremost to my heavenly Father and secondly to my dear Husband Pastor Ifeanyi Martins Ikpe and my wonderful children Esther and Joshua Ikpe for their consistent support and encouragement all through this academic adventure.

ACKNOWLEDGEMENTS

This research work could not be accomplished without the timely contribution of several respectable people, who in one way or the other contributed immensely towards the success of this research work. However the following people deserve my express gratitude due to their profound and immense contributions to the successful completion of this research work.

First, I acknowledge with deep appreciation, the painstaking effort, input and research materials contributed to this work by my Supervisor: DrI.F. Akande, who despite her tight schedules supervised this work to its logical conclusion. Indeed words cannot express my gratitude to her invaluable contributions to the content and form of this research work. I also appreciate her for her unwavering guidance and counseling to my postgraduate adventure in Ahmadu Bello University, Zaria in her capacity as Deputy Dean Postgraduate, Faculty of Law A.B.U Zaria.

My profound gratitude also goes to DrK.M. Danladi for his perseverance to guide me on this work with his academic experience and legal acumen. His contribution added to make this work a whole piece.

I also extend my unreserved gratitude to Prof J.A. Audi, DrA.R. Agom and my able Faculty Officer Barr Ameh for their contributions to the success of this Research work.

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ABSTRACT

The importance of children education in any given society is very critical to the social and economic development of that society particularly for its future attainment, advancement and development. To deny the child its right to education is to deny the Nation its critical development economically, socially and otherwise. The need of the child ranging from feeding, clothing, accommodation and capacity hangs on the shoulder of adults, parents, guardians and the Government. Because of their vulnerability they cannot cater for themselves hence they must be provided guidance, training and care for meaningful contribution in the society. This task of educating the child for critical thinking and development lies on the society. It was in recognition of this, that the right of children education has been entrenched in several International and Domestic legal Instruments. However, there is the problem of implementation and enforcement of these extant laws as there are still so many uneducated, unfed and tattered children in the street engaged in hawking, child labour, begging and so on. And the resultant effect of this is that the social and economic landscape of the future generation in Nigeria cannot be guaranteed. In this regard therefore the objective of this paper is to bridge information gap by advocating adequate grassroots sensitization on the existence of this laws, make case for reforms of these enabling laws, and provide foundational research for further research in the knowledge area. The methodology of the research adopted is both doctrinal and empirical research methods. In the course of this research the finding of the research is that the various constitutive Instruments though adequate however, lack proper mechanism for effective enforcement and implementation of the provisions of the instruments and also the scourge of poverty renders most parents incapable of sustaining their wards through basic education. The research work recommends the provision of enforcement machinery that will ensure implementation, adequate grassroots sensitization on the childrens' right to education and the need to address the issue of poverty by empowering the rural and urban poor through the provision of soft loans. It also recommended constitutional amendment to include child's right to education as a fundamental right.

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TABLE OF ABBREVIATIONS

ACRWC-----	AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHT 1999
CRC-----	CONVENTION ON THE RIGHT OF THE CHILD 1990
CEDAW-----	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 1981
EFA-----	EDUCATION FOR ALL
ICESCR-----	INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHT 1966
ICCPR-----	INTERNATIONAL COVENANT ON CULTURAL AND POLITICAL RIGHT 1966
MDG-----	MILLENNIUM DEVELOPMENT GOALS
SERAP-----	THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT
UBEC-----	UNIVERSAL BASIC EDUCATION COMMISSION 2003
UDHR-----	UNIVERSAL DECLARATION OF HUMAN RIGHT 1948
UN-----	UNITED NATIONS
UNICEF-----	UNITED NATIONS CHILDREN'S FUND. 1953
UNESCO-----	UNITED NATIONS EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANISATION

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The childhood years have been identified as the most vulnerable years of one's life, as the child¹ to a very large extent depends on its parents or guardians for survival. Any omission or commission on the part of the parents or guardian can make or mar the child for life. Under Public International law, the child is recognized as among the vulnerable persons whose rights must be protected and one of such rights that must be promoted and protected is the right to education².

It has been said that education and enlightenment are two nuclei to a proper understanding of what human rights are and the modus operandi in their enjoyment. So for a person to understand and appreciate the entirety of his rights as a human he must be educated first. To deny a person education especially in his early years is akin to denial of life.

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1. A child has been defined by the Article 1 of the Convention on the Right of the Child 1989 as well as Child Right Act as a person under 18 years. So teenagers are included.
 2. Article 1 of the World Declaration on the Right of the Child to Education 1990
 3. Arinze – Umobi, D. C., *The Nigeria Girl - Child, Right to Education and the Nexus with National Development*. [http://www.right-to-education in Nigeria.co.org/html](http://www.right-to-education.in Nigeria.co.org/html) accessed 21/11/12

It is also said that education is the greatest force that can be used to bring about change and also the greatest investment that a nation can make for the quick development of its economic, political, sociological and human resources⁴. A nation whose citizenry are

majorly uneducated is sure to be under developed and stagnated. Illiteracy has been traced as the major root cause of poverty and education is identified as the surest route out of poverty especially for most children in the developing countries.

Public international law recognizes children's right to education as a fundamental human right which guarantees the full enjoyment of all other rights as contained in international legal instruments⁵.

In fact under international law every individual, irrespective of race, gender, nationality, ethnic or social origin, religious or political preference, age or disability is entitled to a free elementary education⁶. This right was explicitly enunciated in the Universal Declaration of Human Rights (UDHR) 1948 which stated thus, "Everyone has the right to education. Education shall be free at least in the elementary and fundamental stages, Elementary education shall be compulsory...⁷,

4. International law and the Right to Education/Report to education www.right-to-education.org/nude/234 accessed 13/2/13

5. International legal investment for example: Universal Declaration on Human Right 1948 (UDHR), International Covenant on Economic, Social and Cultural Right (ICESCR) 1966, International Covenant on Cultural and political Right (ICCPR) 1966

6. Article 1 UDHR 1948

7. Ibid,

This instrument recognized the critical importance of education especially at the rudimentary and foundational stages of human life. It is believed that the UNDR actually set the pace for the development and the recognition of the right to education under International law.

Also the landmark Convention on the Rights of the Child among other things enjoins state parties to recognize the right of the Child to Education with a view to achieving the Right progressively and on the basis of equal opportunity by making primary education compulsory ,available and free for all⁸.

The various Legal Instruments that contain this right have gained universal acceptance at both regional and domestic levels and It is expected that Countries which have ratified and domesticated these Conventions, Treaties, Covenants etc should incorporate them into their local Laws and ensure adequate implementation. However, in reality these Laws have become mere paper tigers with little or no practical relevance. For instance, Nigeria as a Nation has at both the Federal and State level domesticated, incorporated and enacted into laws the Convention on the Right of the Child which embodies the children right to education. There is the Child Right's Act of 2003 and the various State Edicts on the Child's Right.

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8. Article I of the Convention on the Right of the Child (CRC) 1989. Note that the Declaration on the Right of the Child 1924 and 1959 were precursor to the Convention on the Right of the Child.

Yet, there are no visible effects of implementation in the society. In fact there are no clear cut legal mechanisms set up to ensure implementation of these laws nor is there any such provision in the Constitution of the Federal Republic of Nigeria.

It is a truism that the Constitution of every state is the fundamental law of the country, reflecting the underlying and unifying values of the society, spelling out the basic rights of each person; it also serves as a framework for all other laws and policies in any given state⁹. In other words the constitution of any country places the limit to which values and rights can be respected, promoted and protected in any given society thus where a lacuna is created by the constitution itself no other law can effectively fill that gap¹⁰.

The state on the other hand is the central actor to any claim that borders on the rights of its citizens; it is the prime duty-bearer and the prime implementer of the Constitution. It is the guarantor of the rights provided in the Constitution and it is the state's signature vis-à-vis the international norms and standards which binds it to respect, protect and fulfill these rights, particularly the right to education¹¹. So where the state lacks the political will to implement and enforce its own laws, the society is helpless.

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9. United Nation on right to education www.unesco.org/new/en/education/themes/leading-the-intl accessed 13/2/13
 10. Section 1 (1 & 3) of the 1999 constitution of the Federal Republic of Nigeria, Cap C 23 Law of the Federation of Nigeria 2004
 11. International law and the Right to Education/Right-to-education. Project www.right-to-education.org 13/2/13

The drafters of the 1999 Constitution of the Federal Republic of Nigeria in order not to over burden the Government, cleverly exonerated the State from enforcing certain rights which are recognized in international Law (right to education inclusive) by

including it in Chapter II on Fundamental Objectives and directive Principles of State Policy which are essentially not justiciable¹².

Paradoxically, section 6 (6) (c) of the same Constitution ousted the powers of the Court to question Government on any act or omissions relating to Chapter 11. Consequently, chapter 11 are clearly non-justiciable and thus the practicality of the provision that 'Government shall strive to eradicate illiteracy 'as provided in section 18 has been termed as mere rhetoric with no legal relevance¹³.

Herein lays the bone of contention which this research work is set to find a solution. Indeed there are plethoras of international documents guaranteeing and protecting children and their rights especially to education which the Nigeria Government is signatory to that are just dormant and in operative in the face of glaring abuses¹⁴. Governments have come and gone yet none has mustered enough political will to implement these laws, thus it is the objective of this research work to unravel the seeming challenges and proffer achievable solutions as to the way forward.

12. Section 18, Constitution of the Federation Republic of Nigeria (CFRN) 1999 as amended.

13. Ibid

14. World Declaration on the Rights of Child to Education 1999, Universal Declaration on Human Right 1948, Convention on the Right of the Child 1989 Act.

1.2 Statement of the Problem

The problem of this research work is principally centered on how to ensure implementation of these relevant international and domestic instruments on the subject matter. Although lack of political will on the part of the leaders to enforce the implementation of enacted laws has been identified as a major hindrance yet several other issues constitute obstacles to effective implementation in Nigeria.

Secondly, religious dogmas is also a major concern, although there is no single religion that forbid education yet the misinformed always hide under the cloak of religion to deny their wards the right to education. Also lack of adequate grass root sensitization on the right of the child to education further buttress this fact.¹⁵

The third concern is the patriarchal nature of most societies in Nigeria that discriminates against the girl-child. The major worry here is that the boy – child is better preferred to the girl – child. It is believed that the boy – child is there to preserve the family line while the girl – child’s education will eventually end in her husband’s kitchen.¹⁶The following are identified as the factors that further encumber the position of the Girl – Child:

15. NAPTIP(General) Annual Report2010/2011.

16. Arinze-Umobi, D.C., *The Nigeria girl-child Right to Education and the Nexus with National Development* [http/www. Right-to Education in Nigeria co. org. html](http://www.Right-to Education in Nigeria co. org. html) accessed 21/11/12

- i. Traditionally ingrained negative and obnoxious practices, for example: female circumcision, early marriage.
- ii. Girls are often pawned and used for unremunerated and invisible jobs.
- iii. Girls are channeled towards informal courses for home keeping and child rearing and bearing. Girls' training is regarded as bad investment as they would eventually be married off. Thus a greater number are illiterate, uninformed, vulnerable, disadvantaged in the labour market and invariably poor and unempowered economically.

The fourth concern, is the provision in the constitution that captured the obligation of Government toward education as under chapter 2 on fundamental objective and directive principles of state policy which are not fundamental and inalienable rights.

Fifthly, is the fact that although international instruments are recognized by the Nigeria constitution yet its applicability is not automatic as in the Namibian Constitution where the constitution has recognized and made public international law part of the constitution but has to be subjected through the rigors of the National Assembly.¹⁷

17. Namibia constitution 1990, [http://www.Superior,court.org.na/supreme court/ Namibia constitution html](http://www.Superior,court.org.na/supreme%20court/Namibia%20constitution.html) accessed 11/3/13

In Nigeria's situation these instrument has to be incorporated and enacted as national laws first before it can be implemented. But the problem which this research work is set

to provide some answers is that after these laws have been enacted as local laws actual implementation becomes another story entirely.

Besides all these, is the lack of appropriate economic mechanism for enforcement. Although this Right has been provided for in the enabling laws there is no mechanism for enforcement, thus violations and abuses go unchecked.

1.3 Scope of the Research

This research shall be confined to the following areas of study:

- a) A critical analysis on the right of children to education under international Law with focus on domestic implementation in Nigeria.
- b) The analysis of the nature and extent of the legal framework for the protection and promotion of the Right of the Child at domestic, regional and international level.

1.4 Objectives of the Research

The objectives of this study, is to examine the right of children to education under international, regional and local instruments vis a vis the adequacies or otherwise of such Laws with a view to identifying the challenges of the institutions and to proffer practical measures, where possible, needed to enhance enforcement in various jurisdiction in international Law with particular reference to domestic implementation in Nigeria through the study of the following issues:

- a) to bridge information gap

- b) to make case for reforms.
- c) to provide foundation research for further research in the knowledge area,

1.5 Justification of the Study

The justification for this study is that the concept of the right of children to education is yet to receive wide publicity; most people are ignorant of the existence of the international, regional and domestic instruments containing this right. So there is the need to sensitize the people on the existence of the right and the need for an enforcement mechanism, all of these shall be addressed in this thesis.

Also, this thesis will serve as a medium to persuade the Government especially the Legislature and the Judiciary to step up actions toward making these laws enforceable as well as creating awareness for the need to create a platform for the enactment of laws abolishing all forms of violation against children's right particularly, the right to education.

This thesis will serve as a medium to sensitize the society on the need to uphold these laws and to protect the Nigeria child from all forms of violations regarding his right to education. Moreover, this thesis will serve as a medium to sensitize the children themselves that they have a right to be protected by the State. For example this will encourage the participation of children in policies, programme and decisions affecting them. Furthermore, it is expected that this study will foster further collaboration

between researchers, policy makers and practitioners working on areas related to the wellbeing of children.

1.6 Research Methodology

The methodology of the research to be adopted here shall be both doctrinal and empirical research methods¹⁸.The doctrinal research method otherwise known as the library based research sees law as a normative science and humanity requiring the analysis of cases and statutory provision by the use of the power of reasons¹⁹It also means theorizing without considering the practical consequences, which means in this study we shall wade through both primary and secondary sources.²⁰

18. Akande, I. F., *Analysis on the Right to Democratic Governance under International Law. A case study of Domestic implementation in Nigeria*, PHD Thesis (Unpublished), Faculty of law ABU Zaira, (2008) P. 31-32

19. Gasiokwu, M.U., *Legal Research Methodology. The A – Z of Writing Thesis and Dissertation in a Nutshell*, Fab Arich (Nig) Ltd 1993, P 13 – 16

20. Aboki Y. *Introduction to Legal Research Methodology* 2nd Edition, Temaza, Publishing Company Ltd. 2009 P. 60

Primary sources include Acts, Decrees and Edict of the Legislature. It also includes decision of superior courts of records as well as decisions of government agencies that have formal adversarial hearings. While Secondary sources include books, journals, commentaries and e-materials.²¹

While, the empirical research method is the acquisition of knowledge based on an experience, experimentation and observation of experts learned in the field of children's rights under international²². This shall involve the collection of facts and data through interviews, questionnaires etc from target groups. Implementation and non – implementation of the right of children to education together with the prospects and challenges therein in Nigeria shall be based on empirical method. In this wise, questionnaires and interviews shall be administered in the area of children's right to education under international law.²³

21. 20.*Aboki Y. op.citp.10*

22. Black, H.C.,(1990) *Black's Law Dictionary,6th EditionWest Publishing Company.U.S.A. p.15*

23. Akande I. F. op.Citp.10

1.7 Literature Review

Over the years, since the Universal Declaration of human right came to the scene in 1948, human rights advocates have made a lot of contributions in the field, however the concept of children's right in general gained ascendancy with the land mark Convention on the Right of the Child which embodies the right of children to education. Since then advocates have sought to persuade State parties to give credence to these legal instruments in order to benefit the ordinary child and the society in general. The Nigerian situation is even more disturbing because despite the fact that Nigerian Government has passed the Child's Right Act 2003 and over 20 states have enacted into laws this Acts yet implementation and enforcement has been a different story entirely. This situation has raised a lot of responses from international institutions and the civil societies.

In this study we shall look into some articles, journals, books written by both local and international experts, advocates and international organisations.

In Ezeilo, 2006 in her book titled: "Women and Children Rights in Nigeria" outlined in the third chapter of the book, the rights and duties of children as encapsulated in the Convention on the Rights of the Child 1989 viz a viz the Child Rights Act. The writer observed certain inadequacies in the Act in comparison with the Convention. Although the writer did not lay particular emphasis on children right to education as separate from the other rights provided in Convention or the Act, however the writer's comment on non-implementation is all encompassing.²⁴The writer noted that even where laws

exist implementation is often fraught with difficulties and that a wide gulf exists between the actual provisions of the law and their practice. This is indeed very true, however the writer did not proffer any recommendation. It is my humble belief that this study will proffer some answers that will help correct this anomaly.

In Christopher, 2008 and the Right to Education Project in a paper titled Millennium Development Goals on Education stressed that world leaders must reaffirm education as a human right and as a major driver of economic and social development²⁵. They wrote that about 72 million children worldwide remain out of school and almost half are in Sub-Saharan Africa. They further said that the poorest countries are the least able to scale up their school system so that all can be enrolled. They observed that girls make up far more than half of these numbers and with two-thirds of the world's 780 million illiterates being women, the need to meet the MDG 2 (Universal primary education and 3 (gender equality) is very critical.

24. Ezeilo J. Women and Children Right, Children and women Right <http://www/CRC/org.925> accessed 11/10/12.

25. Christopher, C., Unterhalter, E. The Right to Education Project, 'Millennium Development Goals on Education' (2008) <http://www.right-to-education.org/node/948> accessed 13/2/13

The writers also emphasized on the numerous economic and social benefits that flow from providing access to education.²⁶

However, the writers did not aver their minds to the relevant international and regional instruments that guaranteed the children right to education and on the need for the world leaders who are signatories to these instruments to ensure implementation and enforcement in their respective countries, which this research work shall consider. Yet, the paper is of relevance to this research as it extensively dwells on the understanding of the right to education as a human right issue in International Law.

In Arinze-Umobi D.C 2011 in her article titled: "The Nigeria Girl-Child, Rights to Education and The Nexus with National Development" laid emphasis on the right of the girl – child to education. She noted the relevance of girl – child's education toward national development. She sought various definitions on the Child and the Girl – Child, while enumerating the various factors encumbering full implementation as guaranteed under international and local instruments²⁷. Although the concern of the writer is justified especially in a patriarchal society like Nigeria where the male-child is still preferred to the girl-child still the object of this research shall be more holistic as regard protecting and advocating the right of children (as a target group) to education.

26. Christopher, C, Unterhalter E, .op.cit. p 13

27. Arinze – Umobi D. C. op.Citp.8

In Global Movement for Children, 2012 a Non- Governmental Organisation published an article titled: " Nigeria: Child Rights Act – Non-Implementation Worries UNICEF". In the article the United Nations Children's Fund (UNICEF) at a function held in Bauchi, Nigeria on 22nd December 2010 appealed to Governments and Non-Governmental Organisations (NGOs) in the country to give maximum support for the promotion of Child rights. UNICEF expressed worry over some state Governments' alleged refusal in setting up implementation committee on the Child Rights Act as required by the law²⁸. Indeed this is one of the major challenges to actual implementation of these laws in the various state of the federation as some state Government even after enacting this law locally still lack the political will to implement the provisions of the law. The above comments was made by UNICEF through its communication officer Mr Samuel Kaalu who pointed out that, ' Our children deserve these rights in view of their limited capacity to grow by themselves, but depend totally on not only their parents,

28. United Nation on Right to Education.
[www.unesco.org/new/en/education/themes/leading-the-inter-accessed 13/2/13](http://www.unesco.org/new/en/education/themes/leading-the-inter-accessed%2013/2/13)

care givers, or where not available government”. He stressed that free education amongst others are supposed to be the rights of children, but to his dismay thousands of children under the age of 18 have been deprived of these privileges. He noted that no fewer than ten million children are out of school, adding that UNICEF alone cannot cater for these challenges unless Government, NGOs and stakeholders join hands²⁹.

Indeed the assertion of UNICEF here is highly commendable but it would be better if UNICEF had first made this appeal to the Federal Government particularly the legislature persuading them to pass a law that would make implementation enforceable not just to worry that implementation committees are not set up having regards to the political nature of such bodies³⁰. However, this paper work is of relevance to this research as it has brought to the fore the efforts of the UNICEF in advancing free education as a critical right of children to must be promoted.

29. United Nation on Right to Education.

www.unesco.org/new/en/education/themes/leading-the-inter-accessed 13/2/13

30. Ibid

In conclusion, the writer of this research work, while acknowledging the efforts of the works of the writers considered above would present a detailed analysis on the Nigerian perspective on the right of the child to education while setting out a practical recommendations that will ensure that the wide gulf that exist between laws and actual implementation and enforcement is bridged to a very large extent.

1.9 Organisational Layout

Chapter One contains the General Introduction to the study, Statement of problem, Aims and Objectives of the study, Scope of the study, Methodology, Literature Review, Justification and Organisational Layout.

In Chapter Two, the Researcher will delve into conceptual analysis of child's Rights, by defining the meaning and nature of Right, Child Education and historical development of the right of a child.

In Chapter Three, the study shall examine the legal framework for the protection and promotion of the Right of a child by x-raying International, Regional and local instrument on the right of a child, the constraints to enforcement as well as the impact of International Organisations and Civil Societies.

In Chapter Four, the researcher goes further to identify the factors militating against the protection and promotion of the right of a child in Nigeria viz: Educational

Factors, socio-economic factors, political and religious factors, communal factors and environmental factors.

Finally in Chapter five which is the last chapter of this study, the researcher shall summarize the study after which conclusion will be drawn based on analysis and discussions in chapter two, three and four of this study. This study shall also proffer recommendations on the way forward. Thereafter, a comprehensive list of materials and authorities cited shall be presented as references.

CHAPTER TWO

CONCEPTUAL ANALYSIS OF CHILD'S RIGHTS.

2.1 Introduction

For the purposes of clear understanding of terms sought to be frequently used in this research work it seems necessary to begin at this chapter conceptual clarification of terms such as right, child, education and international as well as the historical development of the children's right as it relates to education. Firstly the concept of 'right' has been given wide and narrow definition over the years, so this research shall be looking at the word 'right' in its broad and narrow senses by analyzing theorists' postulations on the concept and apply it where relevant to child right to education.

For the purpose of this research work we shall adopt the definitions of a child as provided by the relevant national and international instrument. However, the study shall delve further into conceptual analysis as well as the current global attitude towards the child.

Furthermore, we shall define the concept of education, the right to education and the term international Law. We shall analyze the legal basis for the right to education, the current global trend in education and history of education in Nigeria. Finally we shall examine the historical development of the children right to education.

2.2 The Legal Meaning and Nature of the Word "Right"

The Black's Law Dictionary the ninth edition defines Right among others to mean

- i. Something that is due to a person by just claim, legal guarantee, and moral principles,
- ii. a power, privilege or immunity secured to a person by law,
- iii. a legally enforced claim that another will do or will not do a given act,
- iv. a recognized and protected interest the violation of which is a wrong,

The Black's Law Dictionary further classified right inter alia in terms of perfect and imperfect rights, Legal right, positive and negative rights, natural right and absolute rights viz¹ :

- a) perfect right , meaning right that is recognized by the law and is fully enforceable while imperfect right is one though recognized by law but is not enforced.

1. Black, H.C (2009)*Black's Law Dictionary*, 9th Edition Thomson Reuters, Minnesota, U.S.A. p1267

- b) positive right, entitles a person to have another do some act for the benefit of the person entitled and
- c) negative right is one entitling a person to have another refrain from doing an act that might harm the person entitled.
- d) Legal right is that which is created or recognised by law.
- e) absolute right is a right that belong to every human being such as the right to personal liberty etc.
- f) natural right is a right that is conceived as part of natural law and that is therefore thought to exist independent of right created by government or society such as the right to life, to liberty etc².

Ayn Rand in 1990 introduced the observation-based rights. She maintains that rights are moral concept. It is the concept that provides a logical transition from the principles guiding an individual's action to the principles guiding his relationship with others. A right, Rand continues is a moral principle defining and sanctioning a man's freedom of action in a social context.³

2. Black, H.C (2009)*Black's Law Dictionary*, 9th Edition Thomson Reuters, Minnesota, U.S.A. p1267
3. Rand, A.(1990) *Introducing Objectivism*, in the voice of Reason Meridan, New York

According to her school of thought, there is only one fundamental right (all others are consequences or corollaries). That is the right to life and that life is a process of self-sustaining and self-generated action. Rand's theory holds that rights are not inherent but that they are objective, not that they are inborn but they are a conceptual identifications of the factual requirements of human life in a social context. In other words rights under-guards human relationship with others⁴.

In 1924, Norman Wilde in his book, "The Meaning of Right" said,

Any theory of the state must come to an understanding with itself on the subject of rights, whether in affirmative or denial, it must raise the question of their existence, define their nature and considers their supposed basis. For it is by relation to the idea of right that the state itself gets its definition and status⁵.

Norman Wilde, further states that it is pertinent to determine whether rights are created or conditioned by the state or whether they are inherent absolutely in humans. He held that if the first is correct then the state assumes the role of political providence in whose hands rest the fortunes and happiness of its individuals but if the latter is

4. Rand, A.(1990) *Introducing Objectivism*, in the voice of Reason Meridan, New York

5. Wilde, N. The meaning of Right, *International Journal of Ethics* ,Vol 34 No 3 University of Chicago Press, (1924) p 283-293. [http:// www.Jstor.org/sable/2377314](http://www.Jstor.org/sable/2377314). Accessed 20/3/13

correct then the state is a secondary product with powers strictly limited by reference to the rights in which it has its basis. The above proposition is set to clarify the basis for the existence of right in any given society.⁶

Furthermore, the Proponents of natural right theory maintain that an individual enters into society with certain basic rights and that no government can deny these rights. It is believed that the modern idea of natural right grew out of the ancient and medieval doctrine of natural laws, which maintains that some laws are basic and fundamental to human nature and are discoverable by human reason without reference to specific legislative enactment or judicial decision. They further asserts that right may be viewed as an entitlement to something, whether to concept like justice and due process or to ownership of property or some interest in property, real or personal. It is generally considered necessary that a right should be understood by the holder of that right, thus right may be recognized on behalf of another, such as children right or right of people declared mentally incompetent to understand their rights.⁷

6. Wilde, N. op,cit, p.20.

7. International Journal of Ethics Vol 34, Theory of the State , <http://www.jstor.org/stable/2377114>. Accessed 20/0/3/13..

For the purposes of this study, it is safe to assert that rights as regards children rights to education are creations of statute, in other words, the state promotes and protect their existence, although due to their vulnerability, it may be correct to assume that the State is bound by natural conscience to protect their right. However rights must be understood by someone in order to have legal existence, so the understanding of right is a social prerequisite for the existence of right. It is the purpose of this work to elicit such understanding so that people may adequately press for what is duly guaranteed to them by the laws of the state.⁸

2.2.1 Theorists Analysis of Rights

The Hohfeldian Analytical System. Hohfeld, an American legal theorist discovered four basic components of right known as the Hohfeldian incidences. The four basic elements are 'the privilege', 'the claim', 'the power' and 'the immunity'. Hohfeld defined right as a privilege when A has a right to (for example) pick up a shell that he finds on the beach. i.e A has a privilege to do if and only if A has no duty not to.⁹

8. Ferlex.FreeDictionary,<http://encyclopedia2thefreedictionary.com/natural+rights> Accessed 20/3/13.

9. Meaning and Nature of right, Standford Encyclopedia of Philosophy. Per.Wesley Hohfeld (1879 – 1918) <http://plato.stanford.edu/entries/right>, accessed 20/3/13

So A will not be violating any duty not to pick up the shell should he decide to do so, Privilege – right mark out what their bearer has no duty not to . Second Hohfeldian basic element of right is claims. This he exemplified in a contract relationship between employer and employees which confers on the employee a right to be paid his wages. This right, he asserts confers a claim, thus in this instance any claim – right correlate to a duty in (at least) one duty- bearer.¹⁰

Hohfeld maintains that, what is distinctive about claim right is that a duty bearer’s duty is “directed at” or “owed to” the right – holder. But not all claim – right are created by voluntary action like signing a contract and not all claim right correspond to duties in just one agent. For example, a child’s claim – right against abuse exist independently of any ones action and the child’s claim – right correlate to a duty in any other person not to abuse her.

Other Hohfeldian incidences include power and immunities. The Hohfeldian power is the incidence that enables agents to alter primary rules. Primary rules were defined by Hart in 1961 to mean privilege and claims, which are rules requiring that people perform or refrain from performing particular actions.¹¹

10. Stanford Encyclopedia of Philosophy. op.cit p. 22.

11. Ibid.

Thus Hohfeldian power is expressed when A has a power if and only if A has the ability within a set of rules to alter her own or another's Hohfeldian incidences, (claims, privileges). The fourth and final Hohfeldian incident is the immunity. When A has the ability to alter B's Hohfeldian incidences, then A has a power. When A lacks the ability to alter B's Hohfeldian incidents, then B has immunity. Thus B has immunity if and only if A lacks the ability within a set of rules to alter B's Hohfeldian incidents.

For the purpose of this research work, it may be safe to state that the children right to education embodies the above Hohfeldian incidences, i.e. claim, privilege, power and immunity. It is a claim – right as it is contained in both local and international instrument, placing a duty on the state to enforce and implement it. It is also a privilege which places no restraint on children, whether to go to school or not, i.e. it is not a crime if they chose not to.¹²

12. Ibid.

Some, Hohfeldian analysts: Lyon in 1970 and Narveson in 2001 also mapped out the distinction between active and passive rights. They were of the opinion that, the privilege and the power rights are “active” rights that concern their holder’s own actions. The claim and the immunity are “passive” rights that regulate the actions of others. A distinction was also made between negative and positive rights. The holder of a negative right is entitled to non – interference, while the holder of a positive right is entitled to provision of some good or service. A right against assault is a classic example of a negative right, while a right to education under International law is a prototypical positive right.¹³

From the above distinction, it is clear that both negative and positive rights are passive rights according to the Hohfeldian theorists. They assert that some rights are neither negative nor positive. Privileges and power rights cannot be negative rights; and privileges, power, and immunities cannot be positive rights.¹⁴

They further maintain that sometimes negative rights are easier to satisfy than positive rights. Negative rights can be respected simply by each person refraining from

13. Meaning and Nature of right, Stanford Encyclopedia of Philosophy.
<http://plato.stanford.edu/entries/right>, accessed 20/3/13

14. Ibid.

interfering with each other, while it may be difficult or even impossible to fulfill everyone's positive rights if the sum of people's claims outstrips the resources available¹⁵.

However, when it comes to the enforcement of rights, this difference disappears as Holmes and Sunstein put it, in the context of citizens' rights to state enforcement, all rights are positive. Moreover, the point is often made that the moral urgency of securing positive rights may be just as great as the moral urgency of securing negative rights.¹⁶ Be that as it may, the points that can be gleaned from the theorists perspective is that all rights whether passive or active, negative or positive are all enforceable and should be protected as regard the overall wellbeing of citizens.

2.2.2. The Legal Evolution of the Concept of Rights

Intellectual over the years have argued over the origins of rights. These debates are sometimes framed in terms of when "the concept of a right" emerged. Yet insofar as it is really the emergence of the *concept* of a right that is at issue, the answer goes way back. Thus, it is believed that even the most primitive social order included rules specifying that certain individuals or groups have special permission to perform certain actions.¹⁷

15. Meaning and Nature of right, Standford Encyclopedia of Philosophy. Op.cit. p 26

16. Ibid.

17. Ibid.

Indeed, the most rudimentary human communities had rules specifying that some persons are entitled to tell others what they must do. Such rules ascribe rights. The genesis of the concept of a right was simultaneous with reflective awareness of certain social norms. The more productive characterization of the debate as to the origin of right within intellectual history concerns when a *word* or phrase appeared that has a meaning close to the meaning of our modern word. This debate turns on when in history the pre-modern “objective” sense of “right” came also to bear our modern, “subjective” sense of “a right.”¹⁸

“Right” in its older, objective sense means “what is just” or “what is fair.” Aristotle uses *dikaion*, for example, to indicate that a society is “rightly ordered”: that it displays the correct structure of human relationships “Right” in this objective sense can also be attributed to individuals.¹⁹ The Roman jurist Ulpian, for instance, held that justice means rendering each his right (*ius*). In this sense, a person's “right” is what is due to him given his role or status. This objective sense of “right” is not the same as our modern idea of “a right.” For instance, Ulpian noted that the *ius* of a parricide was to be sewn into a sack of snakes and tossed into the Tiber.²⁰

18. Meaning and Nature of right, Stanford Encyclopedia of Philosophy. Op.cit. p 26

19. Ibid.

20. Ibid.

The scholarly inquiry into when our modern, subjective sense of “a right” became established as a meaning of some word or phrase has proved long and divisive. The ancient authors often used words imprecisely, and smeared their meanings across and beyond the Hohfeldian categories. The intellectual historians themselves have occasionally congested the discussion by taking different features of rights as definitive of the modern concept. Moreover, the scholarly debate has sometimes accepted over-optimistic assumptions about the sharpness of conceptual boundaries.²¹

Nevertheless, two broad trends in the scholarly discussions are clear. The first is to push the origins of a term indicating a modern, subjective sense of “a right” back further into history: from Locke to Hobbes to Grotius in the seventeenth century, then to Gerson in the fifteenth century, Ockham in the fourteenth, perhaps even to Gratian in the twelfth.²² The second and related trend has been to establish that terms referring to active rights (what we would call privilege-rights and power-rights) predate terms referring to passive rights (what we would call claim-rights and immunity-rights).²³ It appears that the earliest debates using recognizably modern rights-language concerned topics such as whether the pope has a (power-) right to rule an earthly empire, and

21. .Stanford Encyclopedia of Philosophy op.cit.p4

22..Ibid.

23. Ibid.

whether the poor have a (privilege-) right to take what they need from the surplus of the rich. So we can safely say that the concept of right emerged in the medieval Europe.

2.3 Meaning and Nature of “Child”:

The United Nations Convention on the Rights of the Child defines a child as “ a human being below the age of 18years unless under the law applicable to the child²⁴, majority is attained earlier. The United Nations Declaration on Human Rights 1948 recognized the importance of children in some of its provisions such as, Article 1, which states that all human beings are born free and equal in dignity and right, and emphasizes that motherhood and childhood are entitled to special care and assistance²⁵. The relevance of this recognition is the emergence of several international instruments which has culminated in the general acceptance of children into the categories of vulnerable persons whose right most be promoted and protected to curb excessive and incessant abuse.

Under Public International Law children fall under category of Vulnerable Group. According to Collins dictionary vulnerability is defined as being susceptible to injury or attack.²⁶Also, the Council for International Organizations of Medical Sciences (CIOMS)

24. Section 1 of the Child Right Act 2003, Universal Declaration on the Human Right 1948 and International Covenant on Economic, Social, and Cultural Right(ICESCR) also affirm this age.

25. Article 25 UDHR 1948. See International Covenant on Economic, Social, and Cultural Right .

26. Collins English Dictionary (1993) Great Britain, Hurper Collins Publishers, p300.

defines vulnerable people as, those who are relatively or (absolutely) incapable of protecting their own interests because they may have insufficient power, intelligence, education, resources, strength, or other needed attributes to protect their own interests".²⁷ If one is to go by these definitions then individuals who would fall under the umbrella of vulnerability would be any one who either falls into a minority group or anyone without legal and financial power. This naturally includes, Children or youths under the age of 18.²⁸

Biologically, a child is anyone between birth and puberty or in the developmental stage of childhood, between infancy and adulthood. Children generally have fewer enforced rights than adult and are classed as unable to make serious decisions and legally must always be under the care of a responsible adult.²⁹

Recognition of childhood as a state different from adulthood began to emerge in the 16th and 17th centuries in Europe. Childhood was not always seen as a precious and special time before the 20th century. Childhood was seen as more of a transition between infancy and adulthood. By the 20th century, European society began to relate to the child not as a miniature adult but as a person of a lower level of maturity needing adult protection, love and nurturing.³⁰ This change can be trace in paintings; in the

27.Ibid.
28.Ibid.
29.Ibid.
30.Ibid.

middle ages children were portrayed in art as miniature adults with no childish characteristic. But by the 16th century, images of children began to acquire a distinctive childish appearance. From the late 17th century onwards, children were shown playing toys and literature for children also began to develop at this time.³¹

The man usually credited with or accused of creating the modern notion of childhood is Jean Jacques Rousseau. Building on the ideas of John Locke and other 17th century liberal thinkers, Rousseau formulated childhood as a brief period of sanctuary before people encountered the period of perils and hardships of adulthood.³² “why rob these innocents the joys which pass so quickly”, Rousseau pleaded, why fill with bitterness the fleeting early days of childhood days which will no more return for them than for you.” This plea resounded in emergence of literatures for children; example Oliver Twist by Charles Dickens³³

2.3.1 Current Social Attitude towards Children

The current social attitudes toward children differ around the world in various cultures. These attitudes have changed over time³⁴. A 1988 study on European attitudes toward

31. Collins English Dictionary, op.cit p 31.

32. Powerful Words, Meaning of Vulnerable Persons, <http://www.powerfulwords.co.uk/sample.assignment/social-work/vulnerable.people-in-Australia-society> PH PH1X22 2psBIKGKC accessed 11/4/13.

33. Ibid.

34. Ibid.

the centrality of children found that Italy was more child – centric and the Netherlands less child – centric, with other countries, such as Austria, Great Britain, Ireland and West Germany falling in between.³⁵ However, in most developing countries decades ago, (Africa) children are mostly treated as properties, the wealth of a man is measured in terms of the number of children he has sired. They are to be seen and not heard. They are regarded as weak, dependent and most times merely tolerated especially the girl – child,³⁶ although this fact has declined rapidly with modern civilization and awareness.

In China, the one- child policy forces some couple to have not more than one child. The implementation of this policy has led to abortion and forced sterilization and where the child is allowed to live the parents must pay a large fine for every day the child lives. This also is not the present case in China today as most of these Laws and policies have been reviewed and what is obtainable now is social welfare rather than any special child tax.

The age at which children are considered responsible for their society – bound actions (marriage, voting, contract, etc.) has also changed overtime, and this is reflected in the way they are treated in courts of law. In Roman times, children were regarded as not culpable for crimes, a position later adopted by the Church.³⁷ In the 19th century, children younger than

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35. De Mauseil, Hortihr die, (1982), The History of Childhood: The Psycho history Press New York, Module 16- <http://www/.umn.edu/humanist/edumat/1HRP/circle>. Accessed 11/4/13.
 36. Ibid.
 37. Rachel K, Brayfield, J (1997), Life's greatest Joy: European Attitude toward the centrality of Children, Social Forces, Vol 75, No 4, Chapel Hill CarilinaUSA, pp, 239-269.

Seven years old were believed incapable of crime.³⁸ Children from the age of seven forward were considered responsible for their actions. Therefore, they could face criminal charges, be sent to adult prison, and be punished like adults by whipping, branding or hanging. Today, in many countries like Canada and the United States, children twelve and older are held responsible for their actions and may be sent to special correctional institutions, such as juvenile hall.³⁹

The Nigeria Criminal Code Act provides that, " A person under the age of seven years is not criminally responsible of any act or omission."⁴⁰

2.3.2 The Emergence of Children's Rights

Early European notions of what would now be recognized as children's rights emphasized both children's need for special protection and their place in society within families and schools, but not in the workplace. Although these ideas were current throughout the nineteenth century (in child labor reform for example) the first identification of children as subjects of rights, rather than objects of concern, is usually associated with the work of Eglantyne Jebb, she was known for this statement." All war are waged against children."⁴¹

38. Rachel, K. Brayfield J, op. cit, pp 32

39. Ibid.

40. Section 30, Criminal Code Act, 1916 Cap C38 Laws of Federation of Nigeria 2004.

41. The History of Children Right. <http://childrenrightportal.org/Children-right-History/...> accessed 15/8/13

Jebb was the prime mover behind both the Save the Children Movement and the International Peace Union. The former organisation, set up in 1919, was dedicated to child protection and operated under a Declaration of Child Rights. This was the first global charter protecting the rights of a particular section of the community focused on children.⁴² It was taken over almost without alteration by the League of Nations in 1924 as the Geneva Declaration of the Rights of the Child, and with some additions and amendments by the UN in 1959.

Children had already been mentioned in the 1948 UN Universal Declaration of Human Rights. Other Declarations and Covenants, both of the UN and of other inter-governmental bodies, such as the Council of Europe, the erstwhile Organisation of African Unity and the Pan-American Organisation, have echoed this concern about protection, which is based on the perceived developmental immaturity of young children.⁴⁴ Indeed, the original 1924 Declaration was based on ideas of child welfare, rather than child rights, assuming that children require adult protection in order to ensure the exercise of their rights. These ideas persisted through the re-drafting of the Declaration during the lifetime of the League of Nations, as well as in the 1959 UN Declaration of the Rights of the Child.

42. The History of Children Right. <http://childrenrightportal.org/Children-right-History/...> accessed 15/8/13.

43. Article 25, Paragraph 2 of the Universal Declaration

44. Olakanmi J., Children and Allied Laws Hand Book. Lawlords Publication, Abuja. (2014) Pp, 1,301,585,611.

Thus children continued to be seen as objects of international human rights law and not as subjects of rights.⁴⁵ However, it became apparent by 1979 during the UN international year of the child to go beyond mere protection to considering children as subject of human right including right of self-determination.⁴⁶ It was at this convention that the UN commission considered the proposal of Polish Government for the adoption of what would later become The Convention of the Right of the Child which was adopted in 1989.⁴⁷

2.4 Meaning and Nature of Education

Education as a genetic of civilization is any conversation of added educational value which nurtures human capacity to understand, identify problems, issues and solve them.

The new Webster's Dictionary defined education to mean," Instruction or training by which people (generally young) learn to develop and use their mental, moral and physical powers; and the art of giving such training.⁴⁸ It can also be defined as a process of receiving or gaining systematic instruction, especially at a school or university. Education narrowly refers to formal institutional instruction.

45. The History of Children Right. Op.cit. p 36.

46. The History of Children Right. op. cit. p.36

47. Ibid.

48. The New Wester Dictionary of the English Language (2004), international Edition Lexicon International, Publishers quild group New York, NY. USA. P.298.

General International Instruments use the term in this sense and the right to education, as protected by International human rights instruments, refers primarily to education in a narrow sense. The 1960 UNESCO Convention against Discrimination in Education defines education as: “all types and levels of education. (including) access to education, the standard and quality of education and the conditions under which it is given.”⁴⁹

In the wider sense education is about building mental ability to reinvent oneself in the bid to make progress in a very challenging circumstance.

The wider meaning of education has been recognized in UNESCO’s 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms. The article states that education implies: “ the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge.”⁵²

50. The New Webster’s Dictionary of the English Language,(2004) International Edition, Lexicon Int’l, PublishersQuild group,NewYork,U.S.A.,p298.

51. Burnett,N, Felsman,C,.(2012), Post.2015 Education MDG,<http://www.edi.org.uk/site/edi.ukfiles/odi-assets/publications/opinion.files/7776.pdf>.accessed 16/11.13

52..` Article 1(a) of UNESCO’s 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Free

The European Court of Human Right has defined education in a narrow sense as “teaching or instructions...in particular to the transmission of knowledge and to intellectual development” and in a wider sense as “ the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young”.⁵³

Education has been regarded in all societies and throughout human history both as an end in itself and as a means for the individual and society to grow and develop. It has been said that education and enlightenment are two central nuclei to a proper understanding of what human rights are and the modus operandi in their enjoyment. Its recognition as a human right is derived from the indispensability of education to the preservation and enhancement of the inherent dignity of human person⁵⁴. In the mind of the researcher, education is a critical essence for human survival and overall development. Hence a proper definition for education should comprise all form of training, development and learning whether formal or informal .

2.4.1.The Legal basis of the Right to Education.

The Right to education is a universal entitlement to education, a right that is recognized as a fundamental human right by the United Nations. Several International, Regional and National legal instruments recognize the right to education.

53. Burnett, N, Felsman, C. op.cit. 38.

54. Ibid.

The Universal Declaration of Human Right (UDHR) 1948 articulate that everyone has the right to education and that education shall be free, at least in the elementary and formative stages. It also provides that elementary education should be compulsory, technical and professional education should be made generally available and higher education shall be equally accessible to all on the basis of merit.⁵⁵

It further enjoined States to ensure access to education as a precondition for full realization of the right to education because without access, it is not possible to guarantee the right to education.⁵⁶

UDHR recognize that the quality of education is the other side of coin. Providing access to schools secures only one part of the right to education. Once in school, children can be subjected to indoctrination (e.g., in communist countries). Thus UDHR further stipulate in the same article that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among racial or religious groups⁵⁷.

55. Article 26 of UDHR 1948.

56. Article 25 UDHR 1948.

57. Ibid.

Also the International Covenant on Economic, Social, Cultural Rights 1966 set out detailed formulation of the right of education.⁵⁸

The 1960 UNESCO Convention against Discrimination in Education stipulates that state parties must promote education especially primary education.⁵⁹ Furthermore, Article 10 of the Convention on the Elimination of All forms of Discrimination against women 1979 (CEDAW) provides for equal access to career and vocational guidance and to studies at all educational levels, access to the same curricula and examination, elimination of stereotyping in the roles of women and men and the same opportunities to benefit from academic scholarships.

The right to education is recognized and guaranteed under several regional human rights instruments. These include Article 17 of African Charter on human and Peoples' Right, and the Africa Charter on the Rights and Welfare of the Child. The right to education does not limit education to the primary or the first stage of basic education, or among children of a particular age range. The right to education is also not an end to itself, but an important tool in improving the quality of life.

58. Article 25 UDHR 1948.

59. Article 15 CESC 1966

Education is recognized as key to economic development and the enjoyment of many other human rights. Education provides a means through which all people can become aware of their rights and responsibilities, which is an essential tool for achieving the goals of equality and peace.⁶⁰

Katerina Tomasevski, former United Nations Special Rapporteur on the right to education, points out, 'There is a large number of human rights problems, which cannot be solved unless the right to education is addressed as the key to unlock other human rights.' As part of the United Nations Literacy Decade (2003-2012), the Commission on Human Rights urged member to give full effect to the right to education and to guarantee that this right is recognized and exercised without discrimination of any kind;

Further it enjoined members to take all appropriate measures to eliminate obstacles limiting effective access to education, notably by girls, including pregnant girls, children living in rural areas, children belonging to minority groups, indigenous children, migrant children, refugee children, internally displaced children, children affected by armed conflicts, children with disabilities, children with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and children deprived of their liberty.⁶¹

60. Article 10 of the CEDAW 1979.

61. Beiter, K.D., (2005) *The Protection of the Right to education by Int'l law. The Hague* Martins Nijhoff Publishers, p19. ISBN 90-04-14704.7 Amazon.com, accessed 13/8/13..

Thus, *education about human rights* is closely related to the right to education. International and regional human rights noted in various documents (declarations, resolutions, and conventions) emphasize that the knowledge of human rights should be a priority in education policies.⁶²

The UN commission on Human Right further emphasizes that human right to education entitles every individual to, free and compulsory elementary education, and to readily available forms of secondary and higher education and freedom from discrimination in all areas and levels of education, and to equal access to continuing education and vocational training and to Information about health, nutrition, reproduction, and family planning.⁶³

The human right to education is inextricably linked to other fundamental human rights? rights that are universal, indivisible, interconnected, and interdependent including the right to:⁶⁴ i.e.

- i. Equality between men and women and to equal partnership in the family and society

62. Beiter, K.D., op. cit. p.42

63. United Nations Literacy Decade (2003-2012), Resolution 2002/03

64. Beiter, K.D., op. cit. p.42

- i. Equality between the boy-child and girl-child in all areas, including education, health, nutrition, and employment
- ii. Freedom from discrimination in all areas and levels of education
- iii. Learn in one's own language
- iv. Education for children of migrant workers
- v. Education for persons with disabilities and the freedom from discrimination in access to education.⁶⁵

Furthermore section 15 of the Child Right 2003 provides that every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education. Also section 18 (1) of the 1999 Constitution as amended stipulates that Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. However as the case is, it is obvious that there are enough laws that provide for the right of children to education but the main problem lies in non-implementation and enforcement.

65. Ibid.

2.4.2. Global Trend in Education.

Experts' records show that since the turn of the millennium global access to schooling has expanded substantially: an additional 20% of primary school-age children have enrolled in school in Africa and an extra 10% in South and West Asia. This is indeed a tremendous turnaround, with a six-fold greater expansion during this decade than happened in the 1990s.⁶⁶

Notwithstanding that progress, experts asserts that much remains to be done in order to achieve the 2015 aspirations set by the Education for All (EFA) agendas and two Millennium Development Goals (MDG) which focus on education viz: MDG 1, ensure that by 2015 children everywhere, boys and girls alike will be able to complete a full course of primary school. MDG 2, eliminate gender parity in primary and secondary school.⁶⁷ 72 million children worldwide remain out of school; almost half are in Sub-Saharan Africa and a majority of the rest in South Asia. Around one-quarter and one-seventh, respectively, of all primary school-aged children are affected in these regions. It is usually the poorest countries which are the least able to scale up their school systems so that all can be enrolled.⁶⁸

66. Education MDG , <http://www.un.org/millenniumgoals/education.shtm..> accessed 11/4/13

67. Ibid.

68. Ibid.

Girls make up for more than half of these numbers and with two-thirds of the world's 780 million illiterates being women, the need to meet the MDG 2 (universal primary education) and 3 (gender equality) is evident.⁶⁹

In 2005 the world missed an initial target for MDG 3: gender parity (equal proportions of girls and boys) in primary and secondary schools was not achieved in 74 countries. Indeed achieving the international targets for education is a crucial part of delivering basic human rights to the world's population. It is clearly in the interests of both rich and poor nations to do so, underlining that promoting human rights especially the right to education and developing sound economic system support overall development in any given state.⁷⁰ Strong research evidence shows the numerous economic and social benefits that flow from providing quality access to education. On average, a further year of education increases wage-earnings of individuals by about 10%, researcher's states, and the quality of learning also brings economic payoffs. Thus, reducing educational inequality helps to reduce economic inequality.⁷¹ Countries with more schooled populations enjoy higher rates of economic growth, higher international test scores are associated with faster rates of per capita income growth, and schooling improves people's productivity in rural self-employment.

69. Ibid.

70. Ibid.

71. Ibid.

More educated women are able to participate more fully politically, economically and socially. They often have fewer children, and enjoy better health from improved nutritional diets and earlier and more effective diagnosis of illness.⁷²

These largely economic benefits accord well with the human rights case for education, and thus Governments can actually find help and inspiration from standards that have already been set by the international community. As the case is in many countries the right to education has been enshrined into laws and is expressed as part of immediate obligations that every member country in the world community should formally enforce and implement.⁷³

72. Education MDG , <http://www.un.org/millenniumgoals/education.shtm>..accessed 11/4/13

73. Ibid.

CHAPTER THREE

THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF THE RIGHT OF CHILDREN TO EDUCATION.

3.1 Introduction

The recognition of children's right to education as a human right has been well articulated in several international, regional and domestic legal instruments and several key assistant agencies have advanced Policy advocacy toward ensuring that State parties are obligated to enforce implementation and incorporation into national Laws.

It should be noted that almost all Instruments that protected and promoted the entire Rights of Children also embodied articles that provided for children right to education. Also Articles that captured the right to education as a fundamental human right always begin same with the provision as to right of children to education.

The purpose of this chapter is to elaborate on the entire legal Framework for the protection and promotion of children right to education. We shall begin with relevant International Instruments, Regional and Local Laws. It should be noted that most Regional and Local Laws on children's rights and as the case is on child's right to education, were majorly predicated by these International Laws. It was on the basis of formulating these international laws to suit their peculiar situations that African country member state pass most Regional laws.

3.2. International Instruments on The Right of Children to Education.

3.2.1 Forms of Legal Instruments.

International legal instruments take the form of treaties¹ (also called agreements, conventions, or protocols) that bind the contracting states to the negotiated terms. When these negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are *ratification* or *accession*. A new treaty is ratified by those states that have negotiated the instrument. A state that has not participated in the negotiations may, at a later stage, accede to the treaty. The treaty *enters into force*, or becomes valid, when a pre-determined number of states have ratified or acceded to the treaty.²

When a state ratifies or accedes to a treaty, that state may make *reservations* to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others a specific law may be required to give a ratified international treaty the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

1. Definition of treaty, Article 2a laws of treaties with commentaries available at http://untreaty.un.org/ilc/text/instruments/English/commentaries/1_1_1966pdf accessed 12/4/2013.

2. Ladan, M.T., Materials and Cases on Public International Law, A.B.U. Press Limited, Zaria (2007) p 40

The *binding treaties* i.e. Conventions and Protocols can be used or invoked to force governments to respect the treaty provisions that are relevant to the issues at stake. The *non-binding instruments*, such as declarations and resolutions, can be used in relevant situations to embarrass governments by negative public exposure; governments who care about their international image may consequently adapt their policies.³

Essentially, children right to Education as provided in the international legal instrument entitles every child to;

- i. Free and compulsory elementary education and readily available form of secondary and education.
- ii. Freedom from discrimination in all areas of levels of education and to equal access to continuing education and vocational training.⁴

A cursory look on these treaties will reveal an intention to ensure the right to education at the elementary level, hence while some did not clearly mention the child's right to education as a basic right strictly, the provisions as embodied in the various treaties obviously indicated that. The following are the international legal instruments that protect and promote the children right to education

3 http://treaties.un.org/PagesViewDetails.aspx?src=TREATY&mtdsg-no=1V_11&chapter=4&lang=en. Accessed 12/4/ 2013.

4. See Article 26 Universal Declaration on human right, Article 28 Convention on the right of the child, Article 13&14 Convention on economic, social, cultural rights.

3.2.1 The Universal Declaration of Human Right 1948.

This Declaration was adopted by the United Nations General Assembly on 10th December, 1948 at palais de charlotparis. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. It was the first document drafted after the formation of the United Nations. This declaration was intended to be a standard for countries rather than a binding instrument⁵. It adopted ten basic principles for protecting the welfare for children. Among them was the entitlement to education and to special care and assistance. However, it did not expressly address the issue of children's right.

It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, National constitution and laws⁶. However for the purpose of this research work the relevant article is articulated thus:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. 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.

5. Helen F, and Gavin P., Text, Cases and Materials on Public Law & Human Rights. 2nd Edition. Cavendish Publishing Coogee, Australia.(2003)

6. Article 26 UDHR 1948.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or 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.⁷

Although, these provision did not specifically mention children right to education but the intent is well captured by article 26 sub section1, which provides that everyone has a right to education and that education shall be free and compulsory at least at the elementary and fundamental stages. Furthermore an analysis of sub section 2 clearly stipulate the direction of the education intended to be made available to all which is geared toward full development of the human personality and a promotion of mutual understanding among nations irrespective of national, racial or religious inclination.⁸

Consequently any training that propagate divisive or discriminating agenda is totally abhorred by the various state parties that acceded to the declaration.

7. Right to education doc, http://www.hrea.org/index/phi?doc_id=404; accessed 24/5/ 2013

8. Ibid.

3.2.2 International Covenant on Economic, Social and Cultural Rights(ICESCR).

This is a multilateral treaty adopted by the UN General Assembly on 16th December 1966 and in force from 3rd January 1976. It has its roots in the same process that led to the Universal Declaration of Human Rights 1948 and it is made up of 31 articles. So far about 160 member States including Nigeria has ratified it.⁹ The relevant article to this research work is stated thus:

1. The State Parties to the present Covenant recognize the right of everyone to education.
2. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.¹⁰
3. achieving the full realization of this right:

9. Article 13 ICESCR.(Nigeria ratified it on 29th July 1993)

10. Declaration of the Right of the Child www.un.org/cyberschoolbus/humanright/resource/child.asp accessed 23/4/13

- (a) Primary education shall be compulsory and available free to all;¹¹
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, ...;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

In the spirit of the UHDR this convention further reiterated and strengthened the international effort to make education free to all children and also undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the

11. This provision has been adopted by subsequent UN treaties and conventions and has formed part of general advocacy for children right to education. www.unesco.org/en/right-to-education/; accessed 4/4/ 2013.

religious and moral education of their children in conformity with their own convictions. It also states that no part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, hence private and public institutions are enjoined to give effect to these provisions.

3.2.3 Convention on the Rights of the Child

This is a human right treaty setting out the civil, political, economic, social, health and cultural rights of children and it is binding on all member states that had ratified it. It started as a proposal from the Polish government which was considered by the UN Commission at the UN International Year of the Child in 1979.¹² It was adopted by the UN General Assembly and opened for ratification on 20th November 1989 but came into force on 2nd September 1990. Currently 193 UN member States are parties to it including Nigeria. The institution responsible for monitoring compliance with and implementation of the provision of the CRC is the Committee on the Rights of the Child. Provision for this UN treaty body is made in Article 43 and 44 of the CRC. The Committee is an independent body consisting of 18 international experts in the field of children's rights.

12. At the meeting Poland submitted a draft resolution to be recommended for adoption by the UN Economic and Social Council. The resolution contained a draft text for the Convention on the Right of the Child.; www.ohchr.org accessed 23rd April 2013.

The Convention specifically stipulates the right of the child to education as a fundamental right of the child which all member States has agreed to uphold as indicated in the following Articles¹³

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular,
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
2. is administered in a manner consistent with the child's human dignity and in conformity with the present Convention;

13. Article 28 CRC.1989 www.unicef.org/crc/files/Right_overview.pdf. Prior to the amendment to the CRC (UN General Assembly Resolution 50/155 of 21 December 1995) which entered into force on 18 November 2002, the Committee only consisted of ten experts.

- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

1. States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;¹⁴

14. Article 28 CRC 1989.

- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

In a nut shell this convention undertook to incorporate in its provision the training of the total child with a view to channel his potentials and ability toward the overall benefit of humanity. It also gave allowance to individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.¹⁵

15. Right to Education Project. http://www.hrea.org/index/phi?doc_id=402 accessed 20/5/13

From the foregoing, it is apparent that this Convention encapsulated and expanded the provisions in the earlier treaties as regard children rights to education as well as giving it an international notoriety and acceptance in International polity.

3.2.4 Convention on the Elimination of all forms of Discrimination against Women.

This is another global Convention adopted on the 18th of December 1979 by the U N General Assembly and it came into force on 3rd September 1981 with a current list of 187 member states. The convention has been described as the International bill of right for women and among other provisions; it articulated equal opportunity in education for female student and encourages co-education.¹⁶ Although there is no section that specifically mentioned children right to education but the article which has provided for equal opportunity for the girl-child is considered relevant to this research work. The relevant article stated thus:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:¹⁷

16. Right to Education project. Op. cit. p 64.

17. Article 10 Convention on the Elimination of all forms of Discrimination against Women

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

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

The convention further enjoins the member states to make effort to reduce the number of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;¹⁹

18. UNICEF doc .www.ohchr.org. Accessed 12/5/13

19. *ibid.*

This convention indeed encapsulated such positive provision that should check mate and curtail the incidences of disparity in gender as it relate to girl - child education in the member state.

3.2.5. UNESCO Convention against Discrimination in Education

This convention was adopted in 1960 and it is aimed at combating segregation and discrimination in the field of education. it entered into force in 1962 and as at 2011 it has about 97 member states. The relevant article is articulated thus:²⁰

1. For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:²¹

(a) of depriving any person or group of persons of access to education of any type or at any level;

20. Article 1 UNESCO Convention against Discrimination in Education 1960

21. UNICEF doc .www.unesco.org/en/right-to-education/; accessed 4th May 2013

(b) Of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

For the purposes of this Convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given. In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:²²

22. Article 3 Article 1 UNESCO Convention against Discrimination in Education 1960.

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher

education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;

It further encourages and intensifies by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity as well as to provide training for the teaching profession without discrimination. ²³This Convention is indeed a great milestone in securing the liberty of women to be trained in all realms of learning without the torture of discrimination.

23 Article 3 and 4 UNESCO Convention against Discrimination in Education 1960. Doc.www.unesco.org/en/right-to-education/; accessed 4th May 2013

3.3. Regional Instrument

Regional Instruments operate in the same pattern as international instruments but in the regional level. Thus all members of the regional organization eg the African Union are bound by the instrument. The following are identified as relevant to this research work:²⁴

3.3.1 The Africa Charter on the Rights and Welfare of the Child (Africa Charter)

The African Charter on the Right and Welfare of the Child (ACRWC) was created to protect children. The Charter spells out the rights that African Countries must ensure for their children and it is the main instrument of the African Human rights system for promoting and protecting Child rights.²⁵The Charter, which was adopted by the Organization of African Union (now the African Union) in July 1990 was entered into force in November 1999.

It was the first regional Treaty to address child rights and was created partly to complement the Convention on the rights of Children (CRC) but also because African Countries were under-represented in the drafting process of the CRC and the member States felt that another Treaty was needed to address the specific realities of children in Africa. However as the topic of this research work is specific on children right to education, the relevant article states thus;²⁶

24.Right to Education Doc www.unesco.org/en/right-to-education/; accessed 4th May 2013

25. MDG Doc. <http://www.un.org/millenniumgoals/education.shtm>. accessed 11/4/13

26. Ibid.

1. Every child shall have the right to education.
2. The education of the child shall be directed to:
 - a. the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - b. fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;²⁷
 - c. the preservation and strengthening of positive African morals, traditional values and cultures;
 - d. the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples, ethnic, tribal and religious groups;²⁸
 - e. the preservation of national independence and territorial integrity;
 - f. the promotion and achievement of African Unity and Solidarity;

27. Article 11: The Africa Charter on the Rights and Welfare of the Child (Africa Charter)

28. .MDG Doc. <http://www.un.org/millenniumgoals/education.shtm>. accessed 11/4/13

- g. the development of respect for the environment and natural resources;
- h. the promotion of the child's understanding of primary health care.

Sub Articles 3 and 4 stipulate inter alia that state Parties shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular, provide free and compulsory basic education, encourage the development of secondary education in its different forms, make higher education accessible to all,²⁹ take measures to encourage regular attendance at schools and the reduction of drop-out rates and take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community

Furthermore, state Parties are enjoined to respect the rights and duties of parents, and where applicable, of legal guardians, to choose for their children schools other than those established by public authorities, which conform to such minimum standards as approved by the State, to ensure the religious and moral education of the child in a manner consistent with the evolving capacities of the child.³⁰

29 UNESCO Doc. op. cit. p.67

30. . Article 11: The Africa Charter on the Rights and Welfare of the Child (Africa Charter)

Also in sub articles 5 and 6 State parties were enjoined to take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter and State Parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue their education on the basis of their individual ability.

And lastly section 7 which emphasizes that no part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in Paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.³¹

From all indication this convention is a duplication of the previous international conventions which goes to show the expressed willingness of African Leaders to uphold the right of children to education.

31. UNESCO doc. op cit. p,67.

3.3.2. The African Charter on Human and Peoples Rights.

The Charter was adopted at the 18th conference of heads of States and Government of OAU, Nairobi, Kenya on 27th June, 1981. It entered into force on 27th October 1987. The relevant section is Article 17 which stipulates that every individual shall have the right to education. The Charter has been domesticated and captured as part of Laws of Nigeria in Cap A9 Laws of the Federation 2010. The landmark case of SERAP V FGN&UBEC in which the ECOWAS Court gave Judgement against the Government of Nigeria to the effect that the Federal Government of Nigeria is obligated to provide as of right, free and compulsory education to every Nigeria Child.³²

32. UN, 2003, 'Human right in the Administration of Justice, Office of the High Commissioner for human Right. UN,1211 Geneva 10 Switzerland. UN publication.Pp 442-443

3.4 Domestic Instruments on Children Right to Education in Nigeria.

3.4.1 The Child Right Act 2003.

This law seeks to regulate and protect the rights of children as enshrined in the 1999 Constitution and other subsidiary legislations, such as, the children and young person's law, the adoption of children laws in some southern states and Abuja, etc. ³³Toward the end of the 20th century, civic organisation interested in the welfare of children began agitating for a broad based legislation that would protect the rights of children and their effort coupled with the domestication of the Convention on the Rights of the Child and the OAU charter on the welfare of the child culminated in the enactment of the Child Right Act.

The Act which has 278 sections and 11 schedules was aimed at providing a uniform standard throughout the country; this was because its provision covered the constitutional jurisdiction of both the Federal and State government. The Act has repealed the children and young person's Act..... and has broadened the law in relation to children's rights and responsibilities of children, protection of the rights of children, ward ship of children, fostering, adoption, guardianship, institutional treatment, custody, supervision and care, survival and protection of Nigerian children³⁴.

33. Child Right Act doc. <http://www.onlinrnigeria/com/education>.

34. Ibid

However, the relevant section that entails children right to education is articulated thus: Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education. Every parent or guardian shall ensure that his child or ward attends and completes his : primary school education: and junior secondary education.³⁵

3.4.3 The Compulsory free Universal Basic Education Act 2004.

The history of the evolution of Universal Basic Education Programme in Nigeria began in 1999 as an expression on the part of Government of the desire to entrench viable participatory democracy and enhance national socio-economic development as a consequence of a free and compulsory regime of basic education as well as evidence of Nigeria's commitment to international treaties. The legal justification for enacting the Act is based on the provision of the 1999 Constitution as amended which enjoined the Government to strive to eradicate illiteracy via direct state policies³⁶.

The relevant section in this Act that is of most importance to this research is Section 2(1) and (2) which among others states thus: 'Every Government in Nigeria shall promote free, compulsory and universal basic education for every child of primary and junior secondary school age.' This provision makes it mandatory for every state government to promote and provide conducive atmosphere for the education of the child. It unites the Federal, States, and

35. Sections 15 (1 and 2) of Child Right Act of 2003

36. Universal Basic Education Common (UBEC) Handbook on the compulsory free Universal Basic Education Act 2004: P. 2-3 printed and published by UBEC 2009

Local Governments and imposes a constitutional duty on them to eradicate illiteracy by providing free and compulsory basic education for duration of nine years³⁷: primary school for six years and junior secondary school for three years, to every child between six and twelve years. It also provided penal provision in section 2 (4) for any parent who contravenes the provision of the Act

However, as the case has been there are no perimeters to measure when a state is or is not promoting education. The bottom line still lies on the lack of economic and enforcement machinery that should ensure strict adherence.

3.4.2 **The 1999 Constitution as Amended**

The Constitution of the Federal Republic of Nigeria in Chapter 2 also made provision for education as stated thus: Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels; Government shall promote science and technology; Government shall strive to eradicate illiteracy and to this end Government shall as and when practicable provide: free, compulsory and universal primary education free university education; and free adult literacy programme.³⁸

37. Section 2 (1 and 2) of UBEC 2004

38. Section 18 (1) Constitution of the Federal Republic of Nigeria, 1999. Cap C23 Laws of Federation of Nigeria 2004.

3.5 **Constraints to Enforcement.**

With the plethora of legislations ratified at international level and enacted at national level in Nigeria, one would have thought that there are enough legal protection that should guarantee the rights of children in general and children right to education in particular. However, it has become obvious that even where laws exist, implementation is often fraught with difficulties, as a wide gulf exists between legislation and actual implementation.³⁹

Several factors have been identified as constraints to implementation and enforcement of international treaties and conventions even after domestication.

First, after independence it became clear that Nigeria cannot totally discard its unique legal systems of laws which reflect the divergence political and religious background of the populace. Thus the 3 different traditions of law were articulated in the constitution, viz- the English common law, the Islamic sharia law and the customary law.⁴⁰

For instance, the 1999 Constitution provides for an independent judiciary in section 6 which states that, "for the determination of any question as to civil rights and obligation...."

39. Arinze – Umobi, Dame Carol, The Nigerian Girl – Child, Rights to Education and The Nexus with National Development. A paper from --- www.unicef.org.uk/Document/...pdf/betterlife;eaflet200_press.pdf. accessed on 21/11/1

40. Ibid.

The Constitution equally allows for the Customary and Sharia court to cover various issues and jurisdiction. The Sharia court according to the 1999 constitution have jurisdiction on “ civil proceedings involving question of Islamic personal law...regarding marriage concluded in accordance to that law and...relating to family relationship or guardianship of an infant; where all the parties to the proceeding are Muslims....⁴¹

While the customary court’s jurisdiction as provided is for “ civil proceeding involving question of customary law... and... as may be prescribed by the House of Assembly of the State.

The peculiarity of the Nigeria legal system enumerated above has made it difficult to properly diagnose which law is relevant in the event of seeming violation of international treaties and conventions. For instance, Islamic law which has jurisdiction on issues regarding marriage, family relationship and guardianship of an infant where all parties are Muslims, it would be preposterous and absurd to impose international treaties and convention, even when domesticated, on an ardent Muslim whose entire life is guided by his religious laws.⁴²

Despite the above, the lack of political will on the part of the leaders to enforce the implementation of domesticated and enacted laws has been identified as a major hindrance to effective implementation in Nigeria

41. Section 277(1-2) and section 282(1)-(2) Constitution of the Federal Republic of Nigeria, 1999, as amended, Cap C23 Laws of Federation of Nigeria 2010

42. Education in Nigeria, Online Nigeria Community Portal of Nigeria, Daily News. <http://www.onlinenigeria.com>. accessed 11/4/13

Also, there is the issue of chronic poverty which has over the years been a major concern in the country as most parents in the rural areas can't even afford three square meal a day for their wards; some had to send their children to the street to hawk during school hours to make ends meet thereby replacing the child's right to education with exploitative child labour.⁴³

Furthermore, illiteracy and ignorance are also identified as a serious constraint as most uninformed and illiterate parents don't know the existence or even the benefit of their children's right to education; some prefer their children to learn trade at such tender age when they should be in primary school. This fact further buttress the issue of lack of adequate grass root sensitization on the right of the children to education.⁴⁴

Religious dogmas is also a major concern, although there is no single religion that forbid education yet the misinformed always hide under the cloak of religion to deny their wards the right to education. Another concern is the patriarchal nature of most societies in Nigeria that discriminates against the girl-child, whereby the boy – child is given education while the girl-child is sent out to marry at a very tender age.⁴⁵

43. Right of the Child in Nigeria . www.cleen.org/org/nigeria_ngo_report_Omct.pdf accessed 11/4/13.

44. Ibid.

45. Ibid.

The major worry here is that the boy – child is better preferred to the girl – child. It is believed that the boy – child is there to preserve the family line while the girl – child’s education will eventually end in her husband’s kitchen.⁴⁶

The following are identified as the factors that further encumber the position of the Girl – Child:

- iii. Traditionally ingrained negative and obnoxious practices, e.g female circumcision, early or forced marriage etc.
- iv. Girls are often pawned and used for unremunerated and invisible jobs.
- v. Girls are channeled towards informal courses for home keeping and child rearing and bearing.⁴⁷

Girls’ training is regarded as bad investment as they would eventually be married off. Thus a greater number are illiterate, uninformed, vulnerable, disadvantaged in the labour market and invariably poor and unempowered economically. Besides all these is the lack of appropriate legal and economic mechanism for enforcement.⁴⁸ Although this Right has been provided for in the enabling laws there is no mechanism for enforcement, thus violations and abuses go unchecked.

46.Hodges, A, Children’s and Women rights in Nigeria. Awake-up call, Situation, Assessment and Analysis, National planning Commission and UNICEF, Abuja, (2001) p 141

[47. Ibid](#)

[48. Ibid.](#)

Finally, there is the inhibition in the constitution which captured the obligation of Government toward education as under chapter 2 on fundamental objective and directive principles of state policy which are essentially not justiciable as provided in section 6 (6) (c) of the constitution.⁴⁹

Another worry under this point is the fact that although international instruments are recognized by the Nigeria constitution yet its applicability is not automatic as in the Namibian Constitution where the constitution has recognized and made public international law part of the constitution.⁵⁰ In Nigeria's situation these instrument has to be incorporated and enacted as national laws first before it can be implemented. But the major problem which this research work is set to provide some answers is that after these laws have been enacted as local laws actual implementation becomes another story entirely.

3.5 Impact of International Organization and Civil Societies in Nigeria

3.6.1 United Nations Educational, Scientific and Cultural Organisation (UNESCO)

The main objective of UNESCO is to contribute to peace and security in the world by promoting collaboration among nations through education, science, culture, and communication. This will

49. Nigeria – Representing Children World. www.law.yale.edu/rcw/jurisdiction/afw/Nigeria/ accessed 2/8/13

50. Nigeria - NGO report – CRIN. www.crin.org/docs/resources/treaties/.../Nigeria accessed 1/8/13.

further universal respect for justice, for the rule of law, and for the human rights and fundamental freedoms that are affirmed for the peoples of the world, without distinction of race, sex, language, or religion, by the Charter of the United Nations.⁵¹

The United Nations Literacy Decade (2003-2012) aims to extend the use of literacy to those who do not currently have access to it. More than 861 million adults are in that position, and over 113 million children are not in school and therefore not in a position to learn to read or write either.⁵²

Katerina Tomasevski, former United Nations Special Rapporteur on the right to education, points out: "There is a large number of human rights problems, which cannot be solved unless the right to education is addressed as the key to unlock other human rights. Education operates as multiplier, enhancing the enjoyment of all individual rights, freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated."⁵³

51 . Implementing Child Right in Early Childhood – Unicef – www.unicef.org/early/childhood/files/gui_to_GC7.pdf accessed 20/8/13

52. Ibid.

53. Ibid.

As part of the United Nations Literacy Decade (2003-2012), the Commission on Human Rights urged member states:⁵⁴

"(a) To give full effect to the right to education and to guarantee that this right is recognized and exercised without discrimination of any kind;

(b) To take all appropriate measures to eliminate obstacles limiting effective access to education, notably by girls, including pregnant girls, children living in rural areas, children belonging to minority groups, indigenous children, migrant children, refugee children, internally displaced children, children affected by armed conflicts, children with disabilities, children with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and children deprived of their liberty." (Resolution 2002/23).

Thus, *education about human rights* is closely related to the right to education. International and regional human rights noted in various documents (declarations, resolutions, and conventions) emphasize that the knowledge of human rights should be a priority in education policies.⁵⁵ Further on UN impact is the MDG GOAL 2: which is to ensure that by 2015, children everywhere, boys and girls alike will be able to complete a full course of primary school. Enrolment in primary education in developing regions reached 90 per cent in 2010, up from 82

54. A human Right – Based Approach to Education for all -. www.unicef.org/.../a_Human_Rights_Based_Approach_to_Education. accessed 20/8/13

55.. *ibid.*

per cent in 1999, which means more kids than ever are attending primary school.⁵⁶

- In 2010, 61 million children of primary school age were out of school. More than half of them (33 million) were in sub-Saharan Africa and a further one fifth (13 million) in Southern Asia.
- Even as countries with the toughest challenges have made large strides, progress on primary school enrolment has slowed since 2004, dimming hopes for achieving universal primary education by 2015.⁵⁷
- With more children completing primary education, the demand for secondary education is growing. In 2010, there were 71 million young adolescents (typically aged 12-15 years) out of school around the world.
- Gender gaps in youth literacy rates are also narrowing. Globally, there were 95 literate young women for every 100 young men in 2010, compared with 90 women in 1990.

56 Education for All. www.un.org/en/globalissues/briefing_papers/efa/ accessed 20/8/13

57. UNICEF.Millennium Development Goals. www.unicef.org/media/index_education.htm accessed 21/8/13

3.6.2 United Nations Children's Fund (UNICEF)

UNICEF was created by the United Nations General Assembly in 1946 to help children after World War II in Europe. UNICEF was first known as the United Nations International Children's Emergency Fund. In 1953, UNICEF became a permanent part of the United Nations system, its task being to help children living in poverty in developing countries. Its name was shortened to the United Nations Children's Fund, but it retained the acronym "UNICEF," by which it is known to this day.⁵⁸

Believing in quality education for all, UNICEF helps children get the care and stimulation they need in the early years of life and encourages families to educate girls as well as boys. UNICEF supports young people, wherever they are, in making informed decisions about their own lives, and strives to build a world in which all children live in dignity and security.⁵⁹ UNICEF's work is geared toward ensuring that all children realize their right to education, and that every child has the opportunity to develop to his or her full potential. Working with national governments, non-governmental organizations (NGOs), other United Nations agencies and private-sector partners, UNICEF protects children and their rights by providing services and supplies and by helping shape policy agendas and budgets in the best interests of children.⁶⁰

58. Education for All. www.un.org/en/globalissues/briefing_papers/efa/ accessed 20/8/13

59. UNICEF. Millennium Development Goals. www.unicef.org/media/index_education.htm accessed 20/8/13.

60. Ibid.

For instance in Bauchi, Nigeria 22 December 2010 — The United Nations Children's Fund (UNICEF) appealed to Governments and Non-Governmental Organisations (NGOs) in the country to give maximum support for the promotion of Child rights.⁶⁰ UNICEF made the call while expressing worry over some state Governments' alleged refusal in setting up implementation committee on the Child Rights Act as required by the law. UNICEF made the appeal through its Communication Officer (Media & External Relations) Bauchi Field Office, Mr. Samuel Kaalu, during a three-day Media training on ethical reporting and child rights advocacy for select journalists in the print and electronic media from the zone held in Kano.⁶¹

Kaalu said that media has a role to play on issues related to children and their rights in the society, adding that there is general distress among children, particularly those who have been abandoned by their parents and those who lost their parents, a result that forced them to indulge into street begging, hawking and other unwarranted activities in the society instead of being in school.⁶²

He stresses the need for the government in all level to support the fight for the right of child protection. The UNICEF Specialist said children in any society are entitled and guaranteed by law applicable to human rights, which aimed at providing enabling environment for survival, development, protection, participation.⁶³ He pointed out that, "Our children deserve these rights in view of

60. A human Right – Based Approach to Education for all - www.unicef.org/.../a_Human_Rights_Based_Approach_to_Education. accessed 20/8/13

61. *ibid*

62. *.ibid*

63. *ibid.*

their limited capacity to grow by themselves, but depend totally on not only their parents, care givers, or where not available, government."⁶⁴

He stressed that free education, cultural activities, access to information, freedom of thought, safeguard against unemployment, infant mortality amongst others, are supposed to be the rights for children, but to his dismay, thousands of children under the age of 18 have been deprived of these privileges.⁶⁵

He said no fewer than ten million children are out of school, adding that UNICEF alone cannot cater for these challenges, unless government, NGOs and stakeholders intervene in that direction.

This and many more several other programme has being organised by UNICEF in their effort to ensure that children rights generally are protected as guaranteed by the Laws.⁶⁶

64. .A human Right – Based Approach to Education for all -www.unicef.org/.../a_Human_Rights_Based_Approach_to_Education. accessed 20/8/13.

65. *ibid.*

66. Global Leaders Demand Immediate Attention to education- World Bank; www.worldbank.org/.../global-leaders-demand-immediate-attention-children. Accessed 15/7/13

3.6.3 The World Bank

Since it began funding education funding in 1963, the World Bank has provided over U.S. \$30 billion in loans and credits. It currently finances 153 projects in 79 countries.⁶⁷ Working closely with national governments, United Nations agencies, donors, NGOs, and other partners, the Bank helps developing countries in their efforts to reach the Education For All (EFA) goals of achieving universal primary education for all children by 2015 and reducing the education gap between boys and girls by 2015.⁶⁸

3.6.4 Civil Societies and Non-Governmental Bodies:

There are many international and local non-governmental, non-profit organizations dedicated in fighting for the enforcement of children rights generally, and children right to education in particular. However for the purpose of this research work attention will be paid to the efforts of the Right to Education Project as it transcends between local and international frontiers.

67.. Global Leaders Demand Immediate Attention to education- World Bank; [www..world bank..org/.../global-leaders-demand-immediate-attention-children](http://www.worldbank.org/.../global-leaders-demand-immediate-attention-children). Accessed 15/7/13

68. Ibid.

3.6.5 Right to Education Project

In one of their effort to further the cause of education the Right to Education Project enjoined world leaders at one of the MDG summit in New York to reaffirm education as a human right and as a major driver of economic and social development.⁶⁹

3.6.6. Statistic on Education

Right to education project proffered a statistics which stated that since the turn of the millennium global access to schooling has expanded substantially with an additional 20% of primary school-age children having enrolled in school in Africa and an extra 10% in South and West Asia.⁷⁰ This report reveals a tremendous turnaround in education, with a six-fold greater expansion during this decade than happened in the 1990s. Notwithstanding that progress, the right to education project emphasized that much remains to be done in order to achieve the 2015 aspirations set by the two MDG goals i.e. goals 2 and 3 which focus on education particularly children.⁷¹ They further stated that, 72 million children worldwide remain out of school; almost half are in Sub-Saharan Africa and a majority of the rest in South Asia. Around one-quarter and one-seventh, respectively, of all primary school-aged children are affected in these regions.

69. Right to Education Project. CRIN.www.crin.org/organization/viewOrg.asp?D=1619

70. Right to Education. www.hrea.org>Home>Learning Center

71. Ibid.

It is the poorest countries which are the least able to scale up their school systems so that all can be enrolled.⁷² They also stated that girls make up far more than half of these numbers and with two-thirds of the world's 780 million illiterates being women, the need to meet the MDG 2 (universal primary education) and 3 (gender equality) is evident. They further revealed that in 2005 the world missed an initial target for MDG 3: gender parity (equal proportions of girls and boys) in primary and secondary schools as it was not achieved in 74 countries.⁷³ They sent an emphatic positive message to the world leaders to the effect that achieving the international targets for education is a crucial part of delivering basic human rights to the world's population. Indeed, it is clearly in the interests of both rich and poor nations to understand that promoting human rights, particularly children right to education and sound economics support, rather than contradict each other.⁷⁴

They further stated that strong research evidence shows the myriad economic and social benefits which flow from providing access to education. They maintained that on average, a further year of education increases wage-earnings of individuals by about 10%, and the quality of learning also brings economic payoffs.⁷⁵

72. Right to Education. www.hrea.org>Home>Learning Center.

73. Ibid.

74. Right of the Child in Nigeria .www.cleen.org/org/nigeria_ngo_report_Omct.pdf

75.. Ibid.

Thus, reducing educational inequality helps to reduce economic inequality. Countries with more schooled populations enjoy higher rates of economic growth, higher international test scores are associated with faster rates of per capita income growth, and schooling improves people's productivity in rural self-employment.⁷⁶

More educated women are able to participate more fully politically, economically and socially. They often have fewer children, and enjoy better health from improved nutritional diets and earlier and more effective diagnosis of illness.⁷⁷ These largely economic arguments accord well with the human rights case for education, and thus world leaders can actually find help and inspiration from standards that have already been set by the international community.⁷⁸

3.6.7. Critique on MDG

Noticeable omissions from the MDGs relate to the lack of targets on women's literacy and the silence about making education free and compulsory. Another illustration of how the goals are ill-formulated – and thus in need of major revision by 2015 – is the shocking fact that there is no mention of the quality of education.⁷⁹ What ultimately is important, for the individual learner and for the economy, is not just how many girls or boys are enrolled in what level of schooling, but what they learn, the quality of their teachers, and how learning can develop capabilities to access health provision and forms of economic, social cultural and political

76. Right of the Child in Nigeria www.cleen.org/org/nigeria_ngo_report_Omct.pdf accessed 12/8/13

77. *ibid.*

78. *Ibid.*

79. Right to Education Project. CRIN. www.crin.org/organization/viewOrg.asp?D=1619 accessed 13/8/13

Participation that are potentially available and valuable to them.⁸⁰ They conclude that the nations of the world must remain committed to achieving the right to education – both as an end in itself and as a powerful tool for over-all development.⁸¹

From the foregoing we can appreciate that the work of the international civil society such the Right to Education Project act as a veritable persuasive mechanism toward the enforcement and implementation of international treaties and conventions as well as national enactments. This is because of the general acceptance accorded to credible institutions such as this. It is worthy to state here the effort of another NGO: the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) in securing a landmark ECOWAS Judgment against the Federal Government of Nigeria in a suit filed by SERAP against the Federal Government of Nigeria and Universal Basic Education Commission UBEC. In the judgment, ECOWAS has ordered the Federal Government to provide as of right, free and compulsory education to every Nigeria child.⁸² The researcher commend this ground breaking effort.

81. Right to Education Project. CRIN. www.crin.org/organization/viewOrg.asp?D=1619

82. Right to Education. [www.hrea.org>Home>Learning](http://www.hrea.org/Home/Learning) Center

79. Ecowas Court Orders Nigeria To give every child free Education. www.transperancyng.com/.../2824. Accessed 14/8/14.

83. Ibid.

3.6.8. Guidepost for Future Direction.

Indeed there is no doubt as to the intent of these international laws vis a vis the local laws to secure the protection and promotion of children right to education. The fact that children's right to education are recognized and agreed upon by State parties to these Treatises and Conventions are obvious. However much is still being desired as just mere recognition of a Right does not guarantee implementation, as the statistics revealed by Right to Education Project over 72 million children remain out of school, almost half are in sub-saharan Africa and a majority of the rest in South Asia.

Consequently a burden is placed on the International bodies particularly the United Nations and the African Unions to go beyond recognizing this Right via Legal instruments to ensuring actual implementation. State parties should be made obligatory to Treaties and Conventions ratified and domesticated by them. There should be some form of legal sanctions placed on State parties where this Right is not actually being implemented and enforced. The international bodies should not just worry about non-implementation but should actively ensure that this Right is safe guarded. For instance Aids and Grants can be withdrawn from non-implementing States while robust Grants and Aids can be used as an incentive to States that are actively making efforts towards implementation.

CHAPTER FOUR

PROBLEMS AND PROSPECTS

4.1 Introduction.

From the foregoing chapter, we have articulated the relevant International and Local Legal Instruments that guaranteed the children right to education as well as an assessment on the efforts of International Agencies that has further proffered assistance that seem to advance the cause of children right, particularly right to education. There is no doubt therefore that we have enough Laws that should safeguard the right of children to education. However as we shall see in this Chapter, there are actually some factors that seem to handicap the effective implementation of these Laws.

These factors are categorized as educational, political and religious, socio – economic, communal and environmental factors. It has been observed that even where Legal machineries are in place for enforcement, if these militating factors are not tackled, the efforts of the Government, Civil Societies and the International bodies will be highly undermined.

4.2 Educational Factors.

Some factors have been identified as educational factors impeding the advancement of children right to education in Nigeria:

- a) One such factor is the educational policies being proffered in the Nation which seem very rigid and unable to adapt to the fast and changing trend in the global economy.¹
1. Students go through educational stages of primary, secondary schools and even upto university without being equipped to face the realities of adult life.² Although a lot of changes has taken place in educational policies like the reversal from the 6.3.3.4 to 9.3.4 however several factors have been identified as the factors militating curriculum changes and innovation in Nigeria. These are
 - i) Laxity on the part of the policy makers as well as administrative obstacles. Without a sense of urgency on the part of the government, policy makers are not motivated to be prompt and innovative in proffering the needed changes in education policy, and also when these policies are finally drafted they go through a host of administrative approvals which most often than not hamper speedy implementation.³

1. Alade, I.A., *Trends and issues on curriculum Review in Nigeria and the need for paradigm shift in Educational practice.* <http://ijeteraps.scholarslinkresearch.org/articles/Trends...> Accessed 4/12/13.
2. Ibid.
3. Ibid.

- ii) Secondly, there is the problem of non - involvement of teachers in curriculum innovation and changes. Most times teachers who themselves are agents of implementation and change agents and who are also in the system are not always involved in policy making or curriculum changes.⁴
- iii) There is also the problem of not having adequate and qualified personnel to effect the changes been proffered by policy makers.⁵
- iv) Another concern is the fact that large numbers of textbooks are still outdated, irrelevant and inaccurate, and cannot reflect to changes that has been made⁶
- v) finally, the articulation of policy guidelines on standards, procedures, strategies and coordination of roles to ensure and sustain the delivery of qualitative education in Nigeria has often received impetus from various succeeding Government since independence in 1960, but the problem which has remained perennial is the fact that these policies are not retained and followed to logical conclusion by succeeding Government thereby leading to

4. Proposed Curriculum Innovation For The Nigeria Teacher Programmes To Meet The Globalisation Challenges. <http://www.unilorin.edu.ng/publication/jekayinoluwa/46.pdt>. Accessed 20/11/13

5. Ibid.

6. Challenges of girl-education. <http://connection.ebscohost.com/c/articles/61068001/girl-child-qeducation-northern-nigeria-problem-challenges-solution>. Accessed 20/11/13

- vi) what has been termed as the case of abandonment or neglect of national development plans and policies particularly as it affects education of children.⁷

4.3 Political and Religious Factors.

The first concern here is the inability of the leaders to muster enough political will and implement these laws that has already been ratified and enacted irrespective of any opposing factor. Infact, it has been argued that this factor is a major issue which will require the government of the day to go beyond ratification into actual implementation.⁸

Another fact in issue is the issue of bureaucratic bottleneck that hamper actual implementation in Nigeria. This factor bothers on the fact that after ratification, it is the duty of the government through its administrative agencies to proffer policies and guidelines that will incorporate these laws into mainstream polices for easy implementation.⁹Another concern is the inhibition provided in the constitution which captured the obligation of Government toward education as under Chapter 2 on Fundamental Objective and Directive Principles of

7. Ibid

8. United Nation on right to education www.unesco.org/new/en/education/themes/leading_the intl. accessed 13/2/13.

9.The Challenges Affecting the Implementation of the Universal Basic... www.krepublishers.com/.../Jss-20-30-183-09. Accessed 11/4/13

State Policy which are essentially not justiciable as provided in section 6 (6) (c) of the 1999 constitution. Thus, the aggrieved cannot sue the government for lapses in this area.¹⁰

Although International Instruments are recognized by the Nigeria Constitution yet its applicability is not automatic as in the Namibian Constitution where the constitution recognized and made public international law part of the constitution.¹¹ In Nigeria's situation as provided in section 12 of the 1999 Constitution, these instrument has to be incorporated and enacted as national laws first before it can be implemented. Thus it must of necessity pass through the stress and rigors of the National Assemble in the case of national laws and that of the State House of Assemble before it can become recognized as the law of the State. But the problem which this research work is set to provide some answers is that after these laws have been enacted as local laws, actual implementation becomes another story altogether.

Besides all these, is the lack of appropriate legal and economic mechanism for enforcement or what we call task force of coercion which makes actual implementation possible. Although this Right has been provided for in the enabling laws there is no mechanism for enforcement, thus violations and abuses go unchecked.¹²

10. The 1999 Constitution of Federal Republic of Nigeria as amended.

11 Section 144 of .Namibia constitution 1990, http://www.superiorcourt.org.na/sureme_court/ Namibia constitution html accessed 11/3/13.

12. international law and the right to education/report to education www.right-to-education.org/nude/234 accessed 13/2/13.

For instance, there are agencies such as the Universal Basic Education Commission (UBEC) established by the UBEC Act and the National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP), also established by a National Law, but the problem is that these agencies though punitive measures are provided for in the instruments yet, there are little or no record of actual enforcement which has made violation of children right to education very common and unabated.¹³

Furthermore religious belief is also a major concern, although there is no single religion that forbid education yet the misinformed always hide under the cloak of religion to deny their wards the right to education, particularly as it relate with the girl – child.¹⁴

Also another worry under this sub head is the prevalence of ethno-religious clashes in most part of the country which totally annihilate the development of education in those parts of the country.¹⁵

13Arinze-Umobi, D.C.,*The Nigeria girl-child Right to Education and the Nexus with National Development*. <http://www.Right-to-EducationinNigeria.co.org.html> accessed 21/11/12

14. Ibid.

15.Graca M.,(1996) UN: Impact of Armed Conflict on Children,.<http://www.unicef.org/graca/> accessed 12/5/13..

4.5 Socio – Economic Factors.

First is the issue poverty. The prevalence of chronic poverty which has lingered over the years in the country as most parents in the rural areas and even in the urban area can't even afford three square meal a day for their wards; some had to send their children to the street to hawk during school hours to make ends meet. This was observed from an empirical research carried out on the streets of the Federal capital territory Abuja, where the researcher interviewed some young girls (who come from some local communities near the FCT) on the reason why they were not in school and their responses buttress the above postulation. Indeed from a research statistics conducted by National Agency for the Prohibition of Traffic in Persons (NAPTIP) between the years 2010-2011, it was observed that poverty form one of the major reasons for child labour.¹⁶

Secondly, illiteracy and ignorance have also been identified as a serious obstacle as most uninformed and illiterate parents do not know the benefit of education; some prefer their children to learn trade at such tender age when they should be in primary school. Also lack of adequate grass root sensitization on the right of the child to education further buttress this fact.¹⁷

16. NAPTIP, 2010/2011 Annual Report

17. Arinze-Umobi, D.C., The Nigeria girl-child Right to Education and the Nexus with National Development. <http://www.Right-to-Education> in Nigeria co.org.html accessed 21/11/12

The third concern, is the patriarchal nature of most societies in Nigeria that discriminates against the girl-child. The major worry here is that the boy – child is better preferred to the girl – child. It is believed that the boy – child is there to preserve the family line while the girl – child’s education will eventually end in her husband’s kitchen.¹⁸

The following are identified as the factors that further encumber the position of the Girl – Child:

- i. Traditionally ingrained negative and obnoxious practices, e.g female circumcision, early or forced marriage, societal beliefs, cultural influences that discriminate against the girl – child.
- ii. Girls are often pawned and used for unremunerated and invisible jobs.
- iii. Girls are channeled towards informal courses for home keeping and child rearing and bearing.¹⁹

Girls’ training is regarded as bad investment as they would eventually be married off. Thus a greater number are illiterate, uninformed, vulnerable, disadvantaged in the labour market and invariably poor and unempowered economically.²⁰

18. Ibid.

19 Ibid.

20 Ibid.

Indeed a number of factors militate against the girl – child education in Nigeria, one major concern is the area of negative societal beliefs and cultural influence that tend to generally relegate the women to the background having to depend on their husbands for sustenance or at best involve in menial or subsistence business.²¹

4.6 Communal Factors.

Under this heading the researcher will be looking into the effect of communal clashes and armed conflict on children’s right to education in Nigeria.

According to a UN record by Internal Displacement Monitoring Center (IDMC), three- quarters of the world’s 25 million people internally displaced by conflict are believed to be women and children.²² Internally displaced persons (IDP)²³ are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence,

21. Arinze-Umobi, D.C., The Nigeria girl-child Right to Education and the Nexus with National Development. <http://www.Right-to-Education> in Nigeria co.org.html accessed 21/11/12

22. Graca M..op.citp.98

23. UNICEF, The needs of Internally displaced women and children...

<http://www.reliefweb.int/rw/lib.nsf/db900SID/VONN-5G8JWG?OpenDocument> accessed 21/11/13

violations of human rights on natural or human-made disasters, and who have not crossed an internationally recognized State border.²⁴

1.The Impact of Displacement on children’s right to education.

The UN Study on the impact of Armed Conflict on children drew attention to the fact that children, which includes adolescents, are not just bystanders in armed conflicts, but frequently are deliberate targets. Conflict has a physical, emotional and psychological impact on all children.²⁵At the same time, internally displaced children encounter specific risks and challenges. In fact the very nature of displacement jeopardises most of the human rights guaranteed to the child in International law, exposing displaced children to sexual exploitation, abuse and violence, forced labour, abduction and recruitment by armed groups.²⁶ In the turmoil of displacement, family and community structures including schools breakdown while traditional and social norms disintegrates, which places displaced children at greater risk of infringements of their basic rights than other children, particularly their right to education.²⁷

24..Graca M. op. cit .p 98.

25.Ibid.

26.Ibid.

27.Ibid.

In protracted situations of displacement, internally displaced children may spend their entire childhood in camps or temporary shelters. Many displaced children are unable to attend school because of insecurity, lack of infrastructure, fees, discrimination and language barriers.

Girls education is of particular concern, as girls are more likely to drop out of school. Schools are frequently lacking in IDP camps and local schools may lack the capacity to integrate influxes of displaced or returnee children. In addition, education for IDPs rarely goes beyond the primary level.²⁸ Although, the Convention on the Rights of the Child (CRC) 1989 has provided a right-based framework for the protection of internally displaced children, when it enjoined State parties to “ undertake all feasible measures to ensure protection and care of children who are affected by an armed conflict. However, in the turmoil of displacement children are placed at a higher risk of the infringement of their basic rights than others particularly their rights to education as schools are practically shut down during armed conflict.²⁹

Education on its own has a crucial preventive and rehabilitative part to play in fulfilling the needs and rights of children in conflict and post-conflict situations. Education also serves much broader functions as it gives shape and structure to children's lives and can instill community values, promote justice and respect for human rights and enhance peace, stability and interdependence.³⁰ Unfortunately, not even schools are safe from attack during times of armed conflict. In rural areas the school building may be the only substantial permanent structure, making it highly susceptible to

28. .UNICEF, The needs of Internally displaced women and children...
<http://www.reliefweb.int/rw/lib.nsf/db900SID/VONN-5G8JWG?OpenDocument>.

29.Ibid.

30.Ibid.

shelling, closure or looting. Often, local teachers are prime targets because they are important community members or because they may hold strong political views.³¹The destruction of education networks represents one of the greatest developmental setbacks for countries affected by armed conflict. Lost education and vocational skills take years to replace, making the overall task of postwar recovery even more difficult.³²

Another concern here is that resources that could have been invested for the overall development of the community particularly on education are diverted into to quell armed insurgence and on armament. Stating the words of United Nations Children's Fund (UNICEF) in a reported titled , . "**State of the World's Children**, 1996.³³

Even if they have never seen a gun, millions of children suffer from wars, as resources that could have been invested in development are diverted into armaments. Indeed, one of the most distressing realities of our time is that most wars have been fought in precisely those countries that could least afford them.³⁴

31. Graca M.,24..Graca M. op. cit .p 98..

32..Ibid.

33..UNICEF, The needs of Internally displaced women and children...

<http://www.reliefweb.int/rw/lib.nsf/db900SID/VONN-5G8JWG?OpenDocument>.

34.Ibid.

4.7. Environmental Factors.

Under this subhead the researcher focuses on the effect of environmental degradation and emergencies on the promotion and protection of children right to education. Children right to education has been affected by severe flood, storms, erosion etc. poorly constructed schools are often damaged by severe storms.³⁵

Environmental pollution and natural resources management affect the success of government interventions in education. Illnesses caused by environmental factors like air and water pollution have an impact on school attendance rates.³⁶ Undernourishment, whether due to soil depletion or loss of harvest, will affect children's ability to absorb instruction. Deforestation and lack of safe water close to household may also affect children's attendance rates as they spend more time collecting firewood and water. These situations can also affect teachers and their attendance rates.³⁷

Children who have been displaced because of natural disasters face additional challenges with regard to their education. The impact of extreme climatic events and the increasing scarcity of water due to climatic change are likely to increase the number of displaced people in Nigeria. Temporary migration can cause children to miss school and can also cause overcrowding in locations that receive many environmental refugees and IDPs.³⁸

35.The Effect of Environment on Education ageconsearch.umn.edu/handle/22117
.www.prb.org/Articles/2011/un-human_development-report-2011.accessed 3/8/13

36.Ibid.

37.Ibid.

38.Ibid.

The protection of children's right to education is a particular challenge in emergency situation, as children are exposed to greater risk of family separation, sexual exploitation and psychosocial trauma. Disruption of social services particularly affects orphans and vulnerable children in their access to basic services.³⁹

Indeed environmental issues affect children in myriad ways and the effects of environmental degradation are likely to intensify in the coming years in view of global warming trends. Environmental degradation negatively affects the development of Nigeria as a country and has profound negative effects on children generally and on their education in particular. This is because children are particularly vulnerable to emergencies in terms of their education, health and safety.⁴⁰

39. .The Effect of Environment on Education. Op , cit. p.105

40.Ibid.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary.

In chapter one the researcher outlined the problem of study which is to the effect that though there are enough Laws to guarantee the right of children to education, yet some identified issues militates against actual implementation. Furthermore, the chapter examined the importance of the child viz a viz his right to education and the need to enforce that right. In chapter two, the study delves into conceptual analysis of child's right with a detailed definition of critical terms used in the study. In chapter three the researcher articulated the various international and local Laws that captured the children right to education, the effort of international and local non-governmental agencies towards actual implementation. The chapter also provided guidepost to the future. In chapter four the study enumerated the identifiable problems and prospect towards implementation.

Indeed from the foregone, it has been observed that education (formal or informal) is the greatest force or agent that can be used to bring about change¹.

1.. United Nations on right to education, www.unesco.org/new/en/education/themes/leading_the_inter- accessed 13/2/13

It is also the greatest investment that a nation can make for the quick development of its economic, political, sociological and human resources². A nation whose citizenry are majorly uneducated is sure to be under developed and stagnated.³

Consequently, a denial of this right does not only impede the development of a child but it hampers the overall development of a nation.⁴

Furthermore it is in full recognition of the above, that the Nigerian Government as an active member of the United Nation has ratified and domesticated most UN Conventions, particularly those that embodied the right of a Child to education⁵

2.. United Nations on right to education, [www.unesco.org/new/en/education/themes/leading the inter- accessed 13/2/13](http://www.unesco.org/new/en/education/themes/leading_the_inter- accessed 13/2/13).

3. Ezeilo J. Women and Children Right..http//www.CRC/org.925 accessed 11/10/12.

4. Ibid

5. By ratification we mean when a State obtained approval of a treaty under its own internal procedure, i.e. parliamentary approval, to be bound by the treaty officially. On the other hand domestication means when a state achieve the incorporation of multilateral and bilateral treaties into domestic laws in order to become applicable and enforceable internally.

By virtue of the foregoing therefore, this chapter shall endeavor to uncover the issues and challenges responsible for the non-implementation of the instrument relating to the right of a child to education, and it shall conclude by proffering timely recommendations that can surmount these challenges.

5.2 Findings

An assessment of Children right to education reveals a lot of challenges. For example, do we have enough laws in place for the enforcement of the right of a child to education and if there are, are the laws been implemented, in other words are there mechanisms in place to make the laws effective⁶. Can we say that these laws are being implemented when in Nigeria today a lot of children are out of school due to one local circumstance or the other such as poverty, cultural and societal beliefs and practices?⁷ Based on these facts, for several years Nigeria has been criticized for violating children's right to education⁸.

6. Arinze –Umobi, DC, The Nigeria Girl-Child, Right to Education and the Nexus with National Development. <http://www.right-to-educationinnigeria.co.org.html> accessed 20/11/12

7. Ibid.

8. Ibid.

With the plethora of legislations both ratified at international level and enacted as national laws in Nigeria, one would have thought that there are enough legal protection that should guarantee the rights of children in general and children right to education in particular⁹. However, it has become obvious that even where laws exist, implementation is often fraught with difficulties, as a wide gulf exists between legislation and actual implementation¹⁰. Several issues have been observed as challenges to actual implementation and enforcement of international treaties and conventions even after domestication¹¹.

After independence it became clear that Nigeria cannot totally discard its unique legal systems of laws which reflect the divergence political and religious background of the populace. Thus the 3 different traditions of law are articulated in the constitution, viz- the English common law, traditional customs and practice and Islamic Law¹². For instance, the 1999 Constitution provides for an independent judiciary in section 6 that states that judicial powers of the Federation or the state shall be vested in Courts established for the Federation or for the State¹³.

9. A human Right Based Approach to Education for NU; www.unicef.org/.../a_Human_Right_Based_Approach_to_education accessed 20/8/13

10. Ibid

11. Global Leaders Demand Immediate Attention to Education: World Bank: www.worldbank.org/.../ accessed 15/7/13

12..Ejeilo J. Women and Children Right; <http://www/CRC/org.925> accessed 11/10/12

13. Education in Nigeria on line Nigeria Community Portal of Nigeria, Daily News, <http://www.onlinenigeria.com>. Accessed 11/4/13

The Constitution equally allows for the Customary and Sharia court to cover various issues and jurisdiction¹⁴. The Sharia courts have jurisdiction on “civil proceedings involving question of Islamic personal law...regarding marriage concluded in accordance to that law and...relating to family relationship or guardianship of an infant; where all the parties to the proceeding are Muslims...”¹⁵ While the customary court’s jurisdiction as provided is for “civil proceeding involving question of customary law... and... as may be prescribed by the House of Assembly of the State”¹⁶. The peculiarity of the Nigeria legal system enumerated above has made it practically difficult to impose a standard or uniform rule in the event of violation of international treaties and conventions.¹⁷

For instance, Islamic law which has jurisdiction on issues regarding marriage, family relationship and guardianship of an infant where all parties are Muslims, it would be preposterous and absurd to impose international treaties and convention, even when domesticated, on an ardent Muslim whose entire life is guided by his religious laws¹⁸.

14 Section 277(1-2) of the 1999 Constitution, Laws of the Federation C23 Vol111, 2010.

15. Ibid

16. Section 282(1)-(2) of the 1999 Constitution, Laws of the Federation C 23 Vol 3, 2010.

17. Education in Nigeria on line Nigeria Community Portal of Nigeria, Daily News, <http://www.onlinenigeria.com>. Accessed 11/4/13

18. Ibid.

1. Despite the above, the inability on the part of the leaders to set up an enforcement mechanism that will enforce the implementation of domesticated and enacted laws has been identified as a major hindrance to effective implementation in Nigeria.¹⁹
2. Also, there is the issue of poverty which has over the years been a major concern in the country as most parents in the rural areas can't even afford three square meals a day for their wards;²⁰ some had to send their children to the street to hawk during school hours to make ends meet thereby replacing the child's right to education with exploitative child labour.²¹ Indeed from a research statistics conducted by National Agency for the Prohibition of Traffic in persons (NAPTIP)²² between the years 2010-2011, it was observed that poverty forms one major cause of child labour²³.

19. Arinze – Umobi, D.C; op. Cit p. 2

20. 2010/2011 Annual Report for NAPTIP.

21. Ibid.

22. Ibid.

23. Ibid.

3. Furthermore, illiteracy is also identified as a serious challenge as most uninformed and illiterate parents don't know the existence or even the benefit of their children's right to education;²⁴ some prefer their children to learn trade at such tender age when they should be in primary school. This fact further buttress the issue of lack of adequate grass root sensitization on the right of the children to education²⁵.
4. Religious beliefs is also a major concern, although there is no single religion that forbid education yet the misinformed always hide under the cloak of religion to deny their wards the right to education.²⁶ Akin to this is the issue of societal beliefs and customs which pervade in some interior localities where formal education is still perceived as a foreign culture that should be resisted or at best to be allowed cautiously.²⁷

22. Lawal, B; An Analysis of the Legal frame for combating Hawking by children in Nigeria; A. B. U. Journal of Public and International Law (2011) Vol. 1 N5. P. 67

23. 2010/2011 Annual Report for NAPTIP.

24. Ibid.

25. For other causes of child labour in general in Nigeria, see JideOgunsakin ,'' a Legal prognosis of child labour under the child right Act'' (June, 2008) Labour Law Review, Vol. 2 No. 2 Pp 110-121 at Pp 114-115.

26. Arinze – Umobi, D.C. op. cit. p.2

27. Ibid.

5. Another concern is the patriarchal nature (i.e. the perpetuity of family line through the male-child) of most societies in Nigeria that discriminates against the girl-child, whereby the boy – child is given education while the girl-child is sent out to marry at a very tender age²⁸.

The major worry here is that the boy – child is better preferred to the girl – child. It is believed that the boy – child is there to preserve the family line while the girl – child’s education will eventually end in her husband’s kitchen²⁹.

The following are identified as the issues that further encumber the position of the Girl – Child:

- iv. Traditionally ingrained negative and obnoxious practices, e.g female circumcision, early or forced marriage etc.
- v. Girls are often pawned and used for unremunerated and invisible jobs.
- vi. Girls are channeled towards informal courses for home keeping and child rearing and bearing.³⁰

Girls’ training is regarded as bad investment as they would eventually be married off.³¹

28. Arinze – Umobi, D.C; The Nigeria girl-child, Right to Education and the nexus with National Development, <http://www.right-to-educationinnigeria.co.org.html> accessed 21/11/12.

29. Ibid

30. Ibid

31. Ibid.

Thus a greater number are illiterate, uninformed, vulnerable, disadvantaged in the labour market and invariably poor and unempowered economically³². Besides these, there are no appropriate enforcement and economic mechanism set up to stop this anomaly, thus violations and abuses go unchecked.³³

6. Finally, there is the inhibition in the constitution which captured the obligation of Government toward education as under chapter 2 on fundamental objective and directive principles of state policy which are essentially not justiciable.³⁴The drafters of the 1999 Constitution of the Federal Republic of Nigeria (as amended) in order not to overburden the Government, cleverly exonerated the State from enforcing certain rights which are recognized in international Law (right to education inclusive).³⁵ Thus they accomplished this aim by incorporating such rights in Chapter 2 on Fundamental Objectives and directive Principles of State Policy.³⁶

32. Wilde, N. op.cit at p. 2

33. Ibid

34. Section 18 Constitution of the Federal Republic 1999 (as amended).

35. Arinze – Umobi, D.C; op.citp.2

36. Ibid

Paradoxically, section 6 (6) (c) of the Constitution ousted the powers of the Court to question Government on any act or omissions relating to Chapter 2. Consequently, the provisions of chapter 2 are clearly non-justiciable and thus the practicality of the provision that 'Government shall strive to eradicate illiteracy 'as provided in section 18 of chapter 2 has been termed as mere rhetoric with no practical relevance³⁷. Herein lays one of the challenges to the implementation of children's right to education in Nigeria.

7. It is worthy to state here that one of the major reason why the above ouster clause is placed in the Constitution as regard ensuring free education is the notorious fact of poor and inadequate funding³⁸. Even where rights are recognized, if infrastructural and economical parameters such as building of more schools , training more teachers and availability of fund are not in place such rights cannot be effected³⁹.

In fact, Statistics show that federal government expenditure on education between 1997 and 2000 has been below 10% of overall expenditure. The national expenditure on education cannot be computed because various states expenditure on education cannot be determined in relation to the UNESCO recommendation of 26% of national budgets⁴⁰.

37. Igbuzor, O., The State of Education in Nigeria, <http://dawodu.com/igbuzor/4.htm>

38. Ibid

39. Ibid

40. Ibid

8. Also relevant under this point is the fact that although international instruments are recognized by the Nigeria constitution yet its applicability is not automatic as in the Namibian Constitution where the Constitution has recognized and made public international law part of the constitution⁴¹. In the Nigeria's situation these instruments has to be incorporated and enacted as national laws first before it can be implemented.⁴²
9. Furthermore, although the Child Right Act 2003 in Nigeria incorporated every Nigeria child irrespective of tribe, ethnic or religious inclination by stating that, 'Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education: Every parent or guardian shall ensure that his child or ward attends ...'⁴³.

However, it seems antithetical why the National Assembly having enacted a Federal law should leave it at the discretion of the various states to domesticate the law as at when it pleases them, thereby posing a major frustration to the implementation of international instruments.⁴⁴

41. Igbuzor, O., *The State of Education in Nigeria*, <http://dawodu.com/igbuzor/4.htm> accessed 21/5/13

42. Ibid.

43. Section 15 of the Child Right Act, 2003.

44. Section 2 (2) and Section 4 (4) (a) Constitution of Federal Republic of Nigeria, 1999, Cap. C23. Vol 3, 2010.

Although this can be explained by the fact that Nigeria is a federalist state (i.e power is shared between the federal, state and local government) and matters that border on the right and welfare of children generally are matters within the legislative competence of the state under the 1999 constitution. Hence the National Assembly is incapacitated in that it has no constitutional power to foist the Child Right Act on the states.⁴⁵ Herein lies another clog on the wheel of implementation and enforcement. Thus up till date there are still some states who are reluctant to enact the laws while those that have the laws lack the political will to implement despite the penal provisions. It is reported by UNICEF that 24 states have passed the Child's Right Law :

Anambra,Benue,CrossRivers,Delta,Ebony,Edo,Ekiti,Imo,Jigawa,Kwara,LagosNassarawa,Ogun,Ondo,Osun,Oyo,Taraba,Plateau,Rivers,Bayelsa, Kogi.⁴⁶

But the major concern is that after these laws have been enacted as local laws, actual implementation becomes another story entirely.

45. Child_rights_legislation_in_Nigeria...www.unicef.org... accessed 21/5/13

46.However among the remaining States yet to passed the law conforming to the Child's Right Law states like Sokoto, Gombe, Kano has in one way or the other promulgated Law (eg law prohibiting the withdrawal of girls from school) that promote children right to education.

5.3 Recommendations

Having enumerated the above challenges of implementation of the Laws at both international and domestic levels as regards Child's right to education, this research work concludes by proffering recommendations that would guarantee actual implementation of these laws.

There should be an urgent amendment in the Constitution, so that issues relating to children right to education should vest solely on the state and federal high courts, such that the sharia and customary courts jurisdictions should be limited to questions on sharia and customs as long as it does not infringe on the rights of children to education.⁴⁷ This amendment will impose a uniform or standard rule in the event of violation of international treaties and conventions.

1. The Government should provide enforcement machinery that would ensure implementation⁴⁸. For instance, empowering all existing implementation committees under the various Acts or create new ones as well as empower the existing law enforcement agencies that should radically ensure actual implementation.⁴⁹

47 .Nwagwu, N.A., etal. *Current issues in Educational Management in Nigeria*, www.unilorin.edu.ng/publication/nysiyuiya.CURRENT/2520 accessed 13/4/13

48. Ibid.

49 .Ibid

Sequel to the above the Government through the Judiciary should muster enough political will that would ensure that matters of violation brought before it are properly prosecuted through the office of the Attorney – General.⁵⁰ Indeed, the judiciary has a solemn responsibility in its administration of justice to ensure that the rule of law relating to children’s right is entrenched and injustices are treated accordingly.⁵¹ For example the recent ECOWAS decision on children right to education which among other things gave judgement that Nigerian children have right to free education in line with the African charter on the welfare of the child.⁵²

2. Government should endeavor to tackle the issue of poverty by empowering the rural and urban poor to enable them withdraw their wards from street hawking and other exploitative child labour into class rooms. Government can do these by providing soft credit to these indigent parents in order to empower them financially.⁵³
3. The Government should set up a sustainable adult literacy programme incorporating, apart from basic literacy, dissemination of information to promote the implementation of children right to education⁵⁴

50. Ibid.

51. Ibid.

52. ECOWAS Court to Federal Govt of Nigeria: serap-nigeria.org/ecowas-court-to-fg.ng... accessed 13/8/14.

53. Nwagwu, N.A., et al. Op .cit 118.

54. Ibid.

Adequate grass root sensitization (i.e. educating the rural and sub urban populace) on the importance of education as well as on the rights of children, particularly right to education and all forms of user fees should be effectively abolished so as to encourage the rural poor to send their wards to school.

5. Priority interventions should take the form of concrete and goal-directed attitudinal changes, particularly religious practices affecting adversely on children right to education.⁵⁴ Strategic programme identifications should take the form of public enlightenment not only through the media but also through personal contact to parents, guardians and religious leaders.⁵⁵
6. Sequel to the above is the challenge of disparity among sexes and in view of the fact that religion is a significant force in attitude formation, religious leaders should be effectively involved in propagating the message of equality of sexes in their various religious gatherings.⁵⁶

53. Wigwe C, Consequent orders and the Nigeria justice, A.B.U. Journal of Public and International Law (2011) Vo. 1 No. 5, P. 51

54. Nwagwu, N.A, op. cit p. 118

55. Ibid

56. Ibid.

- 6 There should be a Constitutional amendment that will make chapter 2 of the 1999 Constitution of the federal Republic of Nigeria, justiciable and enforceable specially as it relate to education.⁵⁷
- 7 The Government should provide adequate resources by meeting the international standard of 20% of its annual budget. This will be needed to build new schools, train more teachers and the provision of other basic teaching aids, thus provide solution to the problem of inadequate infrastructure as well as solve the problem of inadequate qualified teachers.⁵⁸ Also the Government should endeavor to meet the target goals of Education for All (EFA) and Millennium Development goals (MDG) by 2020 which among others is to eradicate illiteracy to the barest minimum as well as breach the gap of disparity of sexes in education and furthermore, to meet up with international standards of child's education across the globe⁵⁹
- 8 Furthermore there should be a constitutional amendment to incorporate these international treaties and conventions into domestic Laws automatically as in the Nambian Constitution without requiring extra domestication. This will place these conventions at par with local legislations and in turns brings them within the judicial powers of the court entrenched under the constitution.

57. Nwagwu, N.A, op. cit p. 118

58. Education for All www.org.en/globalessness/briefing_papers/efa/accessed_20/8/13.

59. Ibid.

See per Achike JSC in *Abacha V Fawehimi* (2000) 4 SC pt 11 at p.100. See also, *Ogagu V. The State* (1994) 9 NWLR. Pt 366. P 24-27; *Oshevire V. British Calednians Airways LTD* (1990) 7 NWLRpt 163 p. 507; *U.A.C (Nig) LTD V. Global Transport S.A* (1996) 7 NWLRpt 448 p. 291.; *Ibidapo V. Lufthansa Airlines* (1997) 4NWLRpt 498 p. 124.⁶⁰

- 9 Moreover Government should endeavor to include education in exclusive legislative list this will ensure that all laws relating to education, passed by the National Assembly are directly implemented by the States without further domestication.⁶¹

In conclusion, having examined the various constitutive instruments on the right of a child at international, regional and local levels, one may conclude that there are indeed Laws in the field of study. The only issue at hand is lack of machinery for the effective implementations of the provision of the various instruments which this research work has made an attempt to proffer recommendations that can indeed if implemented surmount these challenges.

60. Sasegbon, D (2005) *Sasegbon's Laws of Nigeria, An Encyclopedia of Nigerian Laws and Practise*, D.S.C Publications, Lagos. P. 923 para 2230.

61. Education for All www.org.en/globalessness/briefing_papers/efa/ accessed 20/8/13.