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## FINANCIAL SUSTAINABILITY OF THE RIGHT TO FREE PRIMARY EDUCATION IN NIGERIA: WHAT WE KNOW AND WHAT WE NEED TO DO?

Osifunke Ekundayo \*

### ABSTRACT

*This paper explored the development of free primary education in Nigeria and analysed the barriers to its effective implementation and continuous sustenance over the years. This was done by examining the country's legislations in comparison to its obligations under relevant international human rights instruments. As analysed, Nigeria has not effectively implemented free primary education as required by relevant international instruments to which it is a State party and it has essentially failed to undertake the required measures in order to fully eliminate the payment of fees in primary schools within its public educational system. In this paper, it will be noted that Nigeria has made attempts at implementing the right to free primary education for all children albeit there are still several challenges being encountered. This is further justified by the evidence that costs of schooling are considered a reason for school dropout. Nigeria would appear to be complying with international standards based on the inclusion of the provision of free, compulsory primary education presently in its domestic laws such as the Convention on the Rights of the Child (CRA) and the Compulsory Free Universal Basic Education Act (UBE Act). Both legislations do make an affirmative obligation to a positive right to free and compulsory education. However, besides these positive legislative aspects, according to the international standards, Nigeria appears to be non-compliant in several important practical ways. A central challenge is the lack of a substantive provision guaranteeing the right to free and compulsory primary education in the Nigerian constitution, which is the 'grundnorm'. The Constitution does not expressly provide for a substantive right to education, rather, it only provides the legal framework for educational objectives and management in the country.*

### I. INTRODUCTION

Committee on Economic Social and Cultural Rights (CESCR) designates education as a basic human right that is necessary for enjoying many other rights.<sup>1</sup> It is referred to as a

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<sup>1</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para. 1. Available at: <http://www.refworld.org/docid/4538838c22.html/> accessed 17 June 2014.

“multiplier right”.<sup>2</sup> CESCR continues further, describing education as “...the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.”<sup>3</sup> Kishore Singh has rightly observed that “education is not a privilege of the rich and the well-to-do it is an inalienable right of every child. Provision of basic education free of cost is a core obligation of States...”<sup>4</sup> Education has much to contribute to both individual and national development and ought to be regarded by states as an investment in human capital.<sup>5</sup> States are the principal duty bearers and are under obligation to fulfil, respect and protect all human rights for all individuals within their jurisdiction. States have the primary responsibility to promote and ensure the right to education for all individuals in their territories and subject to their jurisdiction. States parties to relevant human rights treaties on the right to education are required to establish an accessible educational system, and refrain from actions which may prevent or limit its accessibility.<sup>6</sup> It must be noted that States are not required to make all primary education free,<sup>7</sup> but shall, nevertheless, ensure that free primary education is available.<sup>8</sup>

It is generally agreed that education is a priority, however when it comes to financing education, prioritising education in public expenditure is a different issue. In developing nations, governments face many challenges in allocating their budgets and, while they may claim to support education, they do not always live up to their words. The budget allocated to education is a reflection of efforts done by States to make education generally available. Though the principle underlying state’s obligation for providing primary education free of charges is clear, the extent of ‘free’ education, and the scope of entitlements that go with it, still require to be elucidated – whether provision for free primary education includes the obligation to provide text books, note-books, other study materials; and whether bursaries should be provided to children from poor households, all these are not clearly clarified. In this respect, examples offered by State practice must be taken into consideration. For instance, the Free and Compulsory Education for Children Bill of 2003 in India provides that free education means “exemption from obligation to pay tuition fee or other charges which schools usually collect from pupils in a school. Measures taken by the Government of Kenya for universalising access to primary education include among many, abolishing all fees and levies for primary education, providing text books and learning materials to the poor and needy; making available to the children from poor families bursaries and uniforms and school feeding programme.”<sup>9</sup> Some African countries have argued that insufficient resources is a factor for not realising economic, social and cultural rights and that realisation of these rights is

<sup>2</sup> *Ibid.*

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

<sup>4</sup> Kishore Singh, ‘Statement of the UN Special Rapporteur on the Right to Education’, February 2015.

<sup>5</sup> Van Bueren, G. *The International Law on the Right of the Child*, (Dordrecht: Martinus Nijhoff Publishers 1994), p.232

<sup>6</sup> CESCR *Gen Comment No 13*, paras 46 &47.

<sup>7</sup> Art 29 (2) CRC recognises the liberty of individuals and bodies to establish educational institutions.

<sup>8</sup> Newell, P & Hodgkin, R., *Implementation Handbook for the Convention on the Rights of the Child*, 3<sup>rd</sup> ed, (Paris: UNICEF, 2008) p.421.

<sup>9</sup> The Sessional Paper No. 1 on Education in Kenya, 2003.

aspirational and to enforce free primary education will force unrealistic choices on States. Undoubtedly, insufficient funding impedes free education for all school age children, specifically in those countries of widespread poverty. Insufficient resources are routinely emphasised in State Parties' reports required by human right treaties as the key obstacle to making education free.<sup>10</sup> At the same time, where public funding is insufficient, poor states need to seek international assistance from richer states, international financial institutions such as the World Bank, regional banks, and international organisations.<sup>11</sup>

Another frequently cited reason for children's lack of schooling is the inability of the government to afford the costs due to the country's debt repayment of loans to global creditors such as the International Monetary Fund (IMF) and the World Bank. These global creditors attach stringent conditionalities that are not favourable to implementing free education, because debt repayment exceeds investments in development. As a result, government turns a blind eye when schools charge fees in primary schools when it is supposed to be free.

## II. FREE EDUCATION: DEFINITION, LEGAL PARAMETER AND TYPES OF SCHOOLING COSTS

An examination of the definition of 'free' in respect of primary education needs to be undertaken to see how States utilise it. There is virtually no internationally comparable information on the costs of nominally free public education which families, or the children themselves, have to bear. The word 'free' in Article 28 (1) (a) of the CRC means that education at the primary stage should be secured for all children regardless of family means.<sup>12</sup> The term 'free' must be understood to mean that the delivery of primary education itself would be free of charge but it is not as certain that other expenses of the student such as transportation costs, books and school uniforms would be covered. Because there is no information on the real costs of supposedly free education, it cannot inform global financing strategies. Also, there is no agreement on the meaning of 'free', and, even less so, on the corresponding public responsibility to finance free primary education. The main reason is the lack of global consensus that primary education should be a public responsibility because this would entail major changes in country's financing

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<sup>10</sup> United Nations Human Rights Committee (HRC), Concluding Observations on the initial Report of Sierra Leone, 25 March 2014, CCPR/C/SLE/CO/1, Available at: <http://www.refworld.org/docid/533562eb4.html/> accessed 27 November 2014; UN Committee on the Rights of the Child (CRC), List of issues in relation to the combined third to fifth Periodic Reports of the United Republic of Tanzania, 18 July 2014, CRC/C/TZA/Q/3-5, available at: <http://www.refworld.org/docid/54ae8c474.html> [accessed 27 November 2014], UN Committee on the Rights of the Child (CRC), Concluding observations on the consolidated third and fourth Periodic Reports of India, 13 June 2014, CRC/C/IND/CO/3-4, available at: <http://www.refworld.org/docid/541bee3e4.html> [accessed 27 November 2014], UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under Article 44 of the Convention : Convention on the Rights of the Child : combined 2nd, 3rd and 4th Periodic Reports of States Parties due in 2010 : Congo , 18 September 2012, CRC/C/COG/2-4, available at: <http://www.refworld.org/docid/52de5b1e4.html> [accessed 27 February 2014].

<sup>11</sup> CESCR, *General Comments no13*, Article 13(2)(e) ICESCR paras 56 & 60

<sup>12</sup> Newell, P & Hodgkin, R., *Implementation Handbook for the Convention on the Rights of the Child*, 3<sup>rd</sup> ed, (Paris: UNICEF, 2008) p.421.

strategies.<sup>13</sup> In most sub-Saharan African countries monetary policies are influenced by the macro-economic policy and preferences of the IMF. If a government does not respect the policies agreed to in a loan, the IMF will stop loan disbursements which will send a signal to donors and private companies that the country is economically unstable.<sup>14</sup> It is projected that to make primary education free in all areas huge budgetary allocation will be involved, but the caps agreed through IMF loans are barriers to making primary education completely free and thus accessible to all children in loan recipient countries. Cost sharing in guises such as charging students for desks, textbooks and contribution towards various infra-structure projects is encouraged by policy makers because the use of these fees fit in with the structural adjustment programmes advocated by the IMF and World Bank as a means of achieving macroeconomic stability.<sup>15</sup>

The requirement that primary education be available free for all is interpreted by CESCR in its General Comment 11 paragraph 7. The ICESCR Committee has defined the nature of the 'free of charge' requirement as being unequivocal.<sup>16</sup> It stated clearly in its General Comment 11 that:

The right is expressly formulated so as to ensure availability of primary education without charge to the child, parents or guardians. Fees imposed by the government, the local authorities or the school, and other direct costs, constituted disincentives to the enjoyment of the right and may jeopardise its realisation. They are also often highly regressive in effect. Their elimination is a matter which must be addressed by the required plan of action. Indirect costs such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not) or the obligation to wear a relatively expensive school uniform can also fall into the same category.<sup>17</sup>

Indirect costs are costs that are not directly related to the provision of education but arise from the educational service and can include payment for transport, school meals, school uniforms and sporting equipment. They can also extend to levies on parents, which are sometimes portrayed as being voluntary when in fact they are often compulsory, therefore arguably amounting to direct costs. Although the ICESCR Committee has indicated that: "[o]ther indirect costs may be permissible, subject to the Committee's examination on a case-by-case basis",<sup>18</sup> it is submitted that a range of indirect costs can act as a significant deterrent to children accessing Universal Primary Education (UPE). This will require the government to incur additional expenditure to defray those other

<sup>13</sup> Tomasevski, K. *Education Denied: Costs and Remedies* (London: Zed Books, 2003) p.70.

<sup>14</sup> *Ibid.*

<sup>15</sup> Alexander, N, 'Paying for Education: How the World Bank and the International Monetary Fund Influence Education in Developing Countries', (2001) 76, (3&4), *Peabody Journal of Education*, 285-338, at 322.

<sup>16</sup> CESCR *General Comment No 11 (1999) Plans of Action for Primary Education (art 14)* E/C.12/1999/4. 10 May 1999, para 7.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*



indirect costs which discourage attendance because the heaviest charge on a family budget for those with children in schools comes from the indirect costs.

To make education free, all direct and indirect costs would have to be identified so as to be gradually eliminated through their substitution by public allocations. Tomasevski raised two issues about this; firstly, imposition of charges in public primary school exclude all those unable to pay them, thus contradicting the legal human rights requirement that education should be free for all primary-school age children so that it can be made all-encompassing and compulsory. Secondly, that it is a common fact that human rights rationale supports poverty alleviation, therefore, direct charges in public education will hinder the attainment of education for all by excluding the poor, thereby closing off their principal pathway out of poverty.<sup>19</sup> In many African countries, direct charges in nominally free public schools were opposed only where levied by the central government, exempting those informally levied by local communities or schools.<sup>20</sup> Such charges, however, often result from insufficient funding for education by the central government, which leads to informal charges to parents and other fund-raising initiatives at the school level in supplementing public funding.

There is a rights- based case for removing school fees so that education can be made available, this means, free tuition, free text books and no indirect charges or levies must be charged for access. Ultimately, it is submitted that these prohibitive extra costs prevent children from accessing schooling even where tuition is free. The requirement upon states to make primary education free implies that the state should eliminate all such financial obstacles in order to enable all children, no matter how poor, to complete primary schooling. Despite the ICESCR Committee's elaboration of the requirement of "free of charge" in its General Comment 11, a conclusive definition for the concept of 'free' which could be regarded as acceptable by the majority of states has not been laid down and continues to be debated. Nevertheless, the essential point is that all children who live in States which are party to either the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) or the African Charter on the Rights and Welfare of the Child (ACRWC) are entitled to receive free primary education.

The CRC Committee considers the cost-free aspect of primary education as crucial and therefore strongly recommends the States to fulfill this obligation.<sup>21</sup> UNESCO too attaches high importance to the State obligations for free primary education, with the notion that states; 'free', 'compulsory' and 'universal education for all' is among the most clearly defined of the rights which governments have a duty and responsibility to

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<sup>19</sup> Tomasevski, K., 'Not Education for All, Only Those Who Can Pay: The World Bank's Model for Financing Primary Education', 2005 (1) *Law, Social Justice & Global Development*, (An Electronic Law Journal) pp.3&4, Available at: [http://www.go.warwick.ac.uk/eli/lgd/2005\\_1/tomasevski/](http://www.go.warwick.ac.uk/eli/lgd/2005_1/tomasevski/), accessed 15 April 2013.

<sup>20</sup> Tomasevski, K, *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report*, p. xix, Available at: [http://www.katarinatomasevski.com/images/Global\\_Report.pdf/](http://www.katarinatomasevski.com/images/Global_Report.pdf/) accessed 17 June 2014.

<sup>21</sup> Examples; CRC Committee, Concluding Observations: Senegal (UN. Doc. CRC/C/ 46, 1995), paras 128and 142; Zimbabwe (UN. Doc. CRC/C/ 54,1996), para 89; Kenya (UN. Doc. CRC/C/111, 2001), para 135; Cameroun (UN. Doc. CRC/C/111, 2001), paras 379-380; Ivory Coast (UN. Doc. CRC/C/ 108, 2001), paras 337-338; the Gambia (UN. Doc. CRC/C/111, 2001), para 452-453; and South Africa (UN. Doc. CRC/C/94, 2000), para 447.

make a reality.<sup>22</sup> Making primary education ‘compulsory’ is dependent on making it ‘free’. Parents cannot be forced to send their children to school, if it is unaffordable for them. It is important to bear in mind that education costs represent a significant burden for households – particularly those in the lowest income brackets. To sum up, although the two pillars of primary education- free and compulsory are mentioned together in international human rights instruments,<sup>23</sup> they are also essential in order to make primary education accessible. Sadly, most developing countries including Nigeria do not currently guarantee effective enjoyment of the right to free primary education.

### III. ARGUMENTS FOR AND AGAINST FREE PRIMARY EDUCATION

Here it is necessary to explore some of the basic arguments that have been made in favour of and against both the introduction and the abolition of primary school fees. The idea of charging primary school fees seems both unfair and counterproductive to the goal of enabling universal access to education. However, the issue is more complex than is assumed. Even today fees are sometimes advocated on the grounds that fee paying schooling is the best way of ensuring quality education provision in developing countries. In addition, some argue that abolishing fees on a large scale creates more problems than it solves. One of the primary arguments in favour of financing primary education through user fees is that many developing country governments cannot afford to provide the necessary funding to deliver adequate education services through tax revenues alone. It is further argued that tax revenues tend to be quite small when a large percentage of a population lives in poverty. It is proposed by the propounders of fees, that if revenues from fees could be used to improve both quality and access, the resulting increase in demand may actually outweigh the decrease created by the higher direct costs faced by users.<sup>24</sup> It should be noted that the recommendation made assumes that funds raised through fees will be channeled directly back into either the school where they are collected or into education systems in general but this is not always the case, in the case of general taxes, revenues are in demand by many other competing sectors.

Additionally, relying on school user fees to inject additional funding into education systems will only be an effective policy if the level of government funding for education remains constant, rather than falling after the fees are introduced or increased. Another view in favour of fees (against fee abolition), argues that maintaining fees for public schooling may be the most effective way to improve or maintain quality in the public system. Many have argued that parents who pay fees directly to their local schools feel a greater sense of ownership in how those schools are run, and that revenues raised by the community stays within the community. Plank,<sup>25</sup> maintains that voluntary

<sup>22</sup> UNESCO’s Medium –Term Strategy 2002-2007 (31 C/4, para57) UNESCO, Paris.

<sup>23</sup> Article 26(1) of UDHR; Article 13(2) (a) and 14 of the CESC; Article 13(3)(a) of the Protocol of San Salvador to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights and Article 11(3) (a) of the African Charter on the Rights and Welfare of the Child.

<sup>24</sup> Thobani, M., ‘Charging Fees for Social Services: Education in Malawi’, (1984) 28 (3) *Comparative Education Review*, 402-423 at 410.

<sup>25</sup> Plank, D, ‘School fees and Education for All: Is abolition the answer?’ *USAID Working Paper* (2007). Available at: [http://www.equip123.net/docs/e2SchoolFees\\_WP.pdf](http://www.equip123.net/docs/e2SchoolFees_WP.pdf) accessed 17 June 2014.

community contributions toward things such as school construction and maintenance may not only ensure that valuable school improvements are achieved quickly, but are also a means of encouraging community engagement.

On the other hand, Bold et al.<sup>26</sup> argue that there is increasing evidence to suggest that providing public services free of charge does not result in a reduced sense of ownership, or in less efficient use of that service. A strong argument against requiring families to pay school fees at the primary level is that those whose families can least afford to pay the fees will be denied access to education. Pro fee advocates further argue that only fees can enable poor countries to expand and improve primary education services in such a way that the poor would be better off, even if they have to finance the improvements themselves. A 2005 study found that in 27 sub-Saharan African countries more than 50 percent of those out of school came from the poorest income quintile.<sup>27</sup> Such findings make it hard to dismiss the claim that the direct costs of education have disproportionately reduced enrolment rates among the poor, and debunks the argument of those who justify asking the poor to pay fees, suggesting that the poor have exhibited a high willingness to pay for these services. They fail to make the distinction between *willingness* and *ability* to pay. There are the neediest families for whom the cost of schooling might be prohibitive. Perhaps the most compelling justification for free primary education is the observation that the growing number of countries that have eliminated fees have all seen immediate and significant increases in enrolment rates, particularly among the poor. This response suggests strongly that fees have indeed been a significant barrier to school enrolment.<sup>28</sup> Finally, from a legal perspective, State Party to international human rights instruments on right to free primary education specifically the ICESCR, cannot escape the unequivocal obligation to adopt a plan of action for the implementation of free primary education on the grounds that the necessary resources are not available. If the obligation could be avoided in this way, there would be no justification for the specific requirement contained in article 14 ICESCR which applies, almost by definition, to situations characterized by inadequate financial resources.

#### IV. NATURE AND SCOPE OF STATE OBLIGATIONS IN IMPLEMENTING FREE PRIMARY EDUCATION

##### A. International Legal Framework

The global community recognises education as a human right due to its indispensability to the preservation and enhancement of the inherent dignity of the person.<sup>29</sup> The right to education has a solid basis in the international human rights laws. Article 26 of the

<sup>26</sup> Bold, et al., *Does Abolishing Fees Reduce school Quality; Evidence from Kenya*, (CSAE Working Paper Series) (Oxford: University of Oxford, April 2011) p.20

<sup>27</sup> World Bank, *Education Strategy Update 2005*.

<sup>28</sup> Kattan Raja & Burnett Nicholas, 'User Fees in Primary Education', *Education Human Development Network*, (World Bank 2004), p. 8.

<sup>29</sup> CESCR *Gen Comment No.13*, para. 4.

Universal Declaration of Human Rights (UDHR)<sup>30</sup> clearly provides that every child is entitled to receive free and compulsory primary education in all States. The right to primary education, free of charge, is established by international instruments, notably UNESCO's *Convention against Discrimination in Education*, Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights* and Article 28(1) of the *Convention on the Rights of the Child*. Article 4 (a) of the *Convention against Discrimination in Education*. Within the Organisation for Economic Cooperation and Development (OECD) education is free and a variety of governmental subsidies reduce private costs of raising and educating children.<sup>31</sup> Where education is free of charge and parents are in addition entitled to financial support, any remaining financial barriers to children's right to education tend to be small, this is the model, which has been developed in the West.<sup>32</sup>

Regional human rights treaties also include provisions on the right to education. For example, the African Charter on Human and Peoples' Rights (ACHPR) provides that every individual shall have the right to education<sup>33</sup>, and the African Charter on the Rights and Welfare of the Child (ACRWC) provides in Article 11 that every *child* should have the right to education.<sup>34</sup> The specific mention of 'child' in Article 11 ACRWC implies that the education referred to is primary education. Article 13(2) (a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises clearly the right of everyone to primary education, free of charge. Article 14 goes on further and lays down State obligations for a detailed plan of action for the progressive implementation of the right to compulsory education free of charge for all. The Committee on Economic, Social and Cultural Rights (CESCR) has interpreted the right to 'compulsory primary education free of charge for all' in its General Comment No. 11 (1999) on plans of action for primary education. It states:

Article 14 of the International Covenant on Economic, Social and Cultural Rights requires each State party which has not been able to secure compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all....<sup>35</sup>

<sup>30</sup> Universal Declarations of Human Rights. G.A. Res 217, UNGAOR 3<sup>rd</sup> Sess.Supp. No 127 at 71 UN Doc A/80 (1948).

<sup>31</sup> Tomasevski, K, *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report*, p. 222, Available at: [http://www.katarinatomasevski.com/images/Global\\_Report.pdf/](http://www.katarinatomasevski.com/images/Global_Report.pdf/), accessed 17 June 2014

<sup>32</sup> *ibid* at p.224

<sup>33</sup> Article 17(1), African Charter on Human and Peoples' Rights (ACHPR) 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>34</sup> African Charter on the Rights and Welfare of the Child (ACRWC) (1990), OAU/Doc/CAB/LEG/24.9/49(1990) entered into force Nov 29 1999.

<sup>35</sup> CESCR General Comment 11 (1999): Plans of Action for Primary Education (art.14): 10 May 1999 E/C.12/1999/4. para 1.

The nature of this requirement for primary education free of charge is *unequivocal*. In spite of the obligations required to be undertaken in accordance with article 14, a number of States parties have neither drafted nor implemented a plan of action for free and compulsory primary education. For example, in its concluding observation to Nigeria's report submitted to the CRC Committee, the Committee recommended that Nigeria should ensure effective implementation of its National Plan of Action on CRC/CRA 2009-2015 of 2008, which puts children first as a state policy in matters relating to education and other things, by designing and implementing a cost plan with clear indicators and allocating adequate financial and human resources for its operationalisation.<sup>36</sup> As regards the nature of the obligations of States Parties under Article 13(2) (a), CESCR General Comment No. 13 states that the obligation to provide primary education for all is an immediate<sup>37</sup> and core obligation<sup>38</sup> of the States Parties. Article 13 of ICESCR further enjoins upon State Parties to the International Covenant to "prioritise the introduction of compulsory, free primary education".<sup>39</sup> In spite of these normative frameworks, primary schooling is in fact not free in many developing countries and universal free primary education is still far from being a reality. Moreover, school fees imposed are contrary to the international normative framework and incompatible with international legal obligations.

## V. LEGAL FRAMEWORK ON RIGHT TO EDUCATION IN NIGERIA

### A. Right to Education in the Constitution of Nigeria

The Nigerian Constitution is the fundamental law against which all inconsistent enactments are void.<sup>40</sup> This is based on the doctrine of the supremacy of the constitution, which is emphasised in the constitution itself. The Nigerian constitution provides that "... if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void".<sup>41</sup> Education is grouped under the section on "Fundamental Objectives and Directive Principles of State Policy" in the Constitution of Nigeria, wherein "free, compulsory and universal primary education" is listed as an objective of state policy<sup>42</sup> rather than a substantive right under the constitution. Thus, free and compulsory primary education is not currently a constitutionally guaranteed right in Nigeria. With regard to the doctrine of the supremacy of the constitution, the right to education as a directive principle of state policy, and not a substantive right in the bill of rights, prevails over its protection than

<sup>36</sup> Concluding Observations: Nigeria, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, CRC/C/NGA/CO/3-4, 21 June 2010, para 71

<sup>37</sup> CESCR Gen Comment No 13 para 51

<sup>38</sup> *ibid* para 57

<sup>39</sup> See also CESCR Gen Comment No 13. para 51

<sup>40</sup> Elias, T., *Nigeria: The Development of its Laws and Constitution*, (London: Stevens and Sons 1967), p. 133.

<sup>41</sup> S.1 (3) 1999 Constitution of Nigeria.

<sup>42</sup> S.18(3)(a) 1999 Constitution of Nigeria

under other domestic legislations.<sup>43</sup> It is submitted herein that promoting and ensuring the right to free basic education for children in Nigeria will only be achievable if there is a constitutional amendment guaranteeing the right to free, compulsory and universal primary education as a substantive and justiciable right.

The Constitution defines the nation's educational objectives<sup>44</sup> and regulates the sharing of responsibilities for education among the three levels of government – federal, state and local.<sup>45</sup> The educational objectives provision in Chapter II of the 1999 Constitution is as follows:

(1) 'Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. (2) Government shall promote science and technology. (3) Government shall strive to eradicate illiteracy; and to this end, government shall as when practicable provide- (a) Free, compulsory and universal primary education;'<sup>46</sup>

Section 18 makes the realisation of the right to education non-committing through the use of the expressions "strive to eradicate", and, "as when practicable". This allows the government no specific time frame for the provision of free compulsory universal primary education as no definite time is given to achieve the objectives. This promise has still not been met. With such wording in the Constitution, there is a constitutional silence about the substantive commitment of the government in providing free, compulsory primary education to the children in the nearest future in Nigeria. The element 'shall as when practicable' is criticised for being too vague. This poses a challenge under international law, because the State can argue for a variety of time frames when this was brought up in international litigation as was reflected in the case of *SERAP v. Federal Republic of Nigeria*.<sup>47</sup> Therefore the State needs to specify guidelines on what constitutes 'when practicable' or give specific deadline such as 1, 5, or 10 years' time.<sup>48</sup> Afterwards, government shall develop a plan to progressively realise the attainment of this right, failure of which will amount to a violation. Having ratified relevant international instruments on the rights to free primary education namely, the ICESCR,<sup>49</sup> the CRC<sup>50</sup> and

<sup>43</sup> Free compulsory primary education is currently provided for in the CRA and the UBE Act but not in the central body of legislation governing the provision of education in Nigeria- the Constitution. See; Section 15 CRA 2003 & S.2 Compulsory, Free Universal, Basic Education Act (UBE Act) 2004

<sup>44</sup> S.18 1999 Constitution of Nigeria

<sup>45</sup> 2<sup>nd</sup> Schedule Part 1, para 60(e); S.4(7) & Part II, 2<sup>nd</sup> Schedule, para 30; S.7(5) & 4<sup>th</sup> Schedule, para 2, 1999 Constitution of Nigeria

<sup>46</sup> S.18 1999 Constitution of Nigeria

<sup>47</sup> *SERAP v. Federal Republic of Nigeria & UBEC*, Suit No: ECW/CCJ/APP/12/7.

<sup>48</sup> Article 38, 1992 Constitution of Ghana. The 1992 Constitution of Ghana committed Ghana to the principle of free universal basic education and gave this commitment some substance by establishing a time-frame. As a result, the FCUBE emerged from this constitutional mandate in 1996.

<sup>49</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), 993UNTS 3 entered into force January 3 1976, the right to education is recognised in Articles 13 and 14 of the Covenant. Nigeria ratified the Covenant on 29 July 1993 without any reservation. The ICESCR is not a child specific instrument but has extensive provisions on the rights to education which is applicable to both adults and children.

the ACRWC,<sup>51</sup> Nigeria is bound by the obligations under these treaties.<sup>52</sup> In relation to introduction of free compulsory primary education, it is a specific legal obligation whereby States' parties have immediate obligations in relation to the right to education. In the case of primary education unlike secondary or higher education, the obligation to provide primary education for all is an immediate duty on all state parties.<sup>53</sup> In addition, the ICESCR Committee has explained at length that nevertheless, the fact that realisation over time, or in other words progressively, is foreseen under the Covenant, this should not be misinterpreted as depriving the obligation of all meaningful content.<sup>54</sup> It thus imposes an obligation on states to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberate retrogressive measures in that regard would require the most careful consideration and would need to be fully justified.<sup>55</sup>

It has also been observed that "progressive realisation means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realisation of Article 13 ICESCR [on the right to education]".<sup>56</sup> Kumar has pointed out that it is possible that the standard of progressive realisation may be used by States to claim a lack of resources as the reason for not meeting the obligations relating to the right to education.<sup>57</sup> It can also be argued that progressive realisation extends so long as the delay is attributable to causes beyond the control of the State, and that the State has not acted negligently or deliberately. The Maastricht Guidelines provides that State has the burden of proof to show that causes of delay for non-compliance is beyond its control.<sup>58</sup> A number of restrictions have been imposed on progressive realization, both through the language of restrictions by the ICESCR and its following interpretation.<sup>59</sup> The CESCR Committee has established that there is a "minimum core content" with regard to each economic, social, and cultural right which

<sup>50</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html> [accessed 7 March 2012]. Nigeria ratified the UN CRC on 19<sup>th</sup> April 1991. Article 28 provides the right to education

<sup>51</sup> OAU Doc. CAB/LEG/24.9/49(1990) entered into force 29 November 1999. Nigeria ratified the ACRWC on 23<sup>rd</sup> July 2001 Art 11 for right to education

<sup>52</sup> Article 14(2) Vienna Convention: 'The consent of a state to be bound by a treaty is expressed by ratification'.

<sup>53</sup> CESCR *General Comment 13 The Right to Education (article 13 of the Covenant) E/C.12/1999/10* (8 December 1999) para 51, available at: <http://www.refworld.org/docid/4538838e10.html> accessed 18 August 2014.

<sup>54</sup> CESCR *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, E/1991/23, (14 December 1990) para 9. available at: <http://www.refworld.org/docid/4538838e10.html> [accessed 18 August 2014].

<sup>55</sup> *Ibid.*

<sup>56</sup> CESCR Gen Comment No.13 para 44, see also CESCR Gen Comment No3, para 9.

<sup>57</sup> Kumar, Raj., 'International Human Rights Perspectives on the Fundamental Right to Education-Integration of Human Rights and Human Development in the Indian Constitution', (2004) 12 *Tulane. J. Int'l & Comp. Law*, 237 at 250.

<sup>58</sup> Guideline 13 of the Maastricht Guidelines. The Maastricht Guidelines on violations of Economic, Social and Cultural Rights were adopted on the occasion of the 10<sup>th</sup> anniversary of the Limburg Principles on the implementation of ICESCR. Available at: [www.umn.edu/human\\_rts/instatee/Maastrichtguidelines.html/](http://www.umn.edu/human_rts/instatee/Maastrichtguidelines.html/) accessed 17 June 2014.

<sup>59</sup> Kumar, supra, p.251.

all State parties have obligations to fulfil.<sup>60</sup> Ssenyonjo points out that the obligation depends on the political will of the executive and the legislature to take the necessary steps.<sup>61</sup> For example by enacting legislation or prioritising budget allocation for the ESC rights.<sup>62</sup> Nigeria being a party to the treaty has, through its constitutional provision of not being time specific on the provision of free compulsory universal primary education, failed to comply with this international human rights obligation under the Covenant.

### *B. Right to Education under the Nigerian Child's Rights Act (CRA) 2003*

Nigeria having ratified the Convention on the Rights of the Child (CRC),<sup>63</sup> thereby agree to 'respect and ensure' the children's rights set forth therein.<sup>64</sup> Nigeria thereby committed itself to conform its legislation, and administrative practice to the requirement contained in the CRC, through the enactment of the Child's Rights Act (CRA) of 2003, which is the national legislation which protects the rights of children in Nigeria. The CRA was enacted as a comprehensive law to deal with issues relating to children with the aim of providing more protection for children in Nigeria. Section 15 of the CRA provides for the right to free and compulsory primary education as follows:

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 attend and completes his Primary school education and junior secondary education.

The section stipulates that primary and junior secondary education should be provided free by the government to the children.<sup>65</sup> However, the right to free and compulsory primary education cannot be enforced or challenged in court, because the Constitution of Nigeria, which is the *grundnorm*, states that 'the government shall when practicable, provide free, compulsory and universal primary education'. Section 1 & 3 of the Constitution provides that:

[T]his Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of

<sup>60</sup> CESCR, *General Comment No. 3* para. 10.

<sup>61</sup> Ssenyonjo, M. 'Reflections on States Obligations with Respect to Economic, Social and Cultural Rights in International Human Rights Law', (2011) Vol.15, No.6, *The International Journal of Human Rights*, 969 at 976.

<sup>62</sup> *Ibid*

<sup>63</sup> Nigeria ratified CRC on 19 April 1991. See: Office of the High Commissioner of Human Rights, Status of ratification of the Convention on the Rights of the Child, available at: <http://www.ohchr.org/english/law/crc-ratify.htm/> accessed 12 August 2012.

<sup>64</sup> Art 26 Vienna Convention on the Law of Treaties UN Doc. A/Conf.39/27; 1155 UNTS 331; 8 ILM 679 (1969); 63 AJIL 875 (1969). Available at: [https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch\\_XXIII\\_01p.pdf](https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01p.pdf) accessed 12 August 2012.

<sup>65</sup> S. 15 of the CRA.



Nigeria [...], [if] any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.<sup>66</sup>

The constitutional provision on education in section 18 undermines Section 15 of the CRA in authority; therefore Section 15 of the CRA cannot be effectively implemented or enforced judicially. This was noted by the CRC Committee in its 2010 Concluding Observation on Nigeria.<sup>67</sup> The CRC Committee has urged Nigeria, taking into account its General Comment No. 1 of 2001 on the aims of education, to ensure that the right to free and compulsory education is incorporated into the Constitution within the context of the constitutional review.<sup>68</sup> Presently, the right to free and compulsory primary education is guaranteed only in the CRA and not protected in the constitution of Nigeria.

### *C. The Compulsory Free Universal Basic Education (UBE) Act 2004*

The right to 'basic' education as such is not reflected in international treaties and conventions in the field of education. The word 'primary' education is used in most Covenants and Conventions.<sup>69</sup> However, the right to education has been interpreted as part of the Education for All (EFA) process to recognize the significance of basic education as a fundamental human right. The importance of basic education was acknowledged at the World Conference on Education for All (Jomtien, Thailand, 1990)<sup>70</sup> and was reaffirmed at the World Education Forum (2000). The Dakar Framework for Action uses both terms, 'primary' education interchangeably with 'basic' education.<sup>71</sup> In line with its commitments to the declarations at the World Education Forum and the EFA goals, in May 2004, the Nigerian legislature passed the UBE Bill, 'The Compulsory Free Universal Basic Education Act No 66 of 2004' into law. It represents the most significant reform in education in Nigeria and addresses the issues of access, equality, equity, inclusiveness, affordability and quality. Each state government is under duty to ensure that every child in its state has access to free universal basic education.<sup>72</sup> Under the Act, the goods and services to be provided free of charge in public schools are tuition, books, instructional materials, classrooms furniture and mid-day meal; therefore, there is abolition of all forms of fees and levies.<sup>73</sup> According to the UBE Act, charging fees or levies should attract sanction.<sup>74</sup> Despite this provision however, in practice levies and other forms of charges such as money for textbooks and furniture are still being paid in

<sup>66</sup> Section 1(1) & (3) 1999 Constitution of Nigeria

<sup>67</sup> Concluding Observations June 2010: Nigeria CRC/C/NGA/CO/3-4, para 8.

<sup>68</sup> *ibid* para72

<sup>69</sup> Article 28(1) (a)CRC, Article 13(2) (a) ICESCR

<sup>70</sup> Recalling that "education is a fundamental right for all people, women and men of all ages, throughout our world", the World Declaration on Education for All adopted changes at the Conference stipulates that "Basic education should be provided to all children, youth and adults".

<sup>71</sup> The Dakar Framework for Action. Education for All: Meeting our Collective Commitments .Dakar, Senegal, 26-28 April 2000

<sup>72</sup> S.2 Compulsory, Free Universal, Basic Education Act (UBE Act) 2004.

<sup>73</sup> S 15 (1) UBE Act 2004

<sup>74</sup> SS. 2 & 3 UBE Act.

most public primary schools in Nigeria.<sup>75</sup> The provisions of this Act though impressive, their implementation is a problem. Free compulsory primary education is currently provided for in the CRA and the UBE Act but not in the central body of legislation governing the provision of education in Nigeria that is, the Constitution.

## VI. HISTORICAL BACKGROUND OF THE VARIOUS FREE PRIMARY EDUCATION INITIATIVES IN NIGERIA

A historical retrospect of the various free primary education initiatives in Nigeria is extremely valuable for expounding the various stages that the free education programmes have passed through, and to show that implementing free primary education is a living reality which is sustainable and has acceptance by the vast majority of States in various parts of the world today. Free primary education programme initiatives in Nigeria can be divided into three periods. In each period, significant political developments occurred.

### *A. The First Attempt at Free Primary Education in Nigeria*

The introduction of free primary education has been used in political campaigns to win votes since this time. Each region introduced its free primary education programme just as the country was aspiring to attain independence from the British colonists. The various political parties felt the need to prove that an indigenous government could deliver more goods to the public than the Colonial Government,<sup>76</sup> so there was the need to educate the indigents which calls for providing them with education which will be free. In essence the first free education programme in Nigeria was region based so it cannot be said to be universal free education since each region implemented its programme independently.

### *B. Free Primary Education in the Western Region.*

The 1954 Education Law in Western Region was the legislative basis for the development of universal primary education in 1955. Salient provisions in the law are as follows; tuition and other services in public primary schools to be free.<sup>77</sup> There is penalty of fine or imprisonment for any person who receives or obtains any fee contrary to the provisions of the Law.<sup>78</sup> One of the consequences of the education law on Primary Education in the Western Region was that school fees were abolished. Regional expenditure on education increased from £2.2 million in 1954 to £5.4 million in 1955, and nearly 90% was spent on primary education alone.<sup>79</sup> From 1955, through independence in 1960 till mid-1960s universal primary education in the Western region was nearly a reality in the Western Region. By 1960, just five years after the introduction

<sup>75</sup> Yusuf A & Ajere R. "Universal Basic Education (UBE) in Nigeria". Available at: <http://www.unilorin.edu/> accessed 13 March 2014.

<sup>76</sup> Fafunwa, *History of Education in Nigeria*, (London: George Allen & Unwin Ltd, 1974), p 167

<sup>77</sup> S.34 Cap 34 Vol II Laws of Western Region of Nigeria, 1959

<sup>78</sup> S34 (2) Cap 34 Laws of Western Region 1959

<sup>79</sup> Fawehinmi, G., *People's Right to Free Education at All Levels*, (Lagos, John West Publications Limited, 1974), p 48.

of free primary education, over 1,100,000 children were enrolled; this represented more than 90 per cent of the children of school age.<sup>80</sup>

### C. Free Primary Education in the Eastern Region

In 1957, the Eastern Region introduced its own Universal Primary Education (UPE initiative). In the first year of the programme primary school enrolment between 1956 and 1957 rose from 775,000 to 1,209,000 and to 1,378,403 in 1959.<sup>81</sup> Confronted with the harsh realities of financial constraints after one year of operation the scheme collapsed.<sup>82</sup> Fafunwa gave the reason for the unsuccessful implementation of the UPE scheme in Eastern Region to inadequate planning, that the government spent lesser time in planning than the Western Region.<sup>83</sup>

### D. Northern Region Attempt at implementing Free Primary Education

The development of education in the north lagged behind that of the south. There was not much effort by the northern government to give its children primary education.<sup>84</sup> The major reason for this was that most leaders in Northern region at this time were reticent about western education as compared with the Islamic education. Also, the Northern government at that time was concerned with the promotion of adult literacy than with universal primary education.<sup>85</sup> There was educational imbalance between the North and the South and this is still evidence presently.

### E. The Implementation of Free Education in the Colony of Lagos

The Federal territory of Lagos embarked on the free primary education scheme in 1957. Education (Lagos) Ordinance 1957 was enacted. The Ordinance provides that; no fees must be charged in a maintained primary school,<sup>86</sup> (maintained primary school is a primary school in respect of which grants-in-aid are provided).<sup>87</sup> The Ordinance defined the expression 'fees' to include any payment for tuition, books, uniforms or any other services.<sup>88</sup> Penalty would be imposed on any one who receives or obtains or makes collection of fees contrary to the provision of the Ordinance.<sup>89</sup> Parents or pupils should not be ordered to purchase any article including uniforms, books and equipment for use in maintained primary schools unless previous consent in writing has been granted by or

<sup>80</sup> Fafunwa, *supra*, p.169

<sup>81</sup> Otonti, N, *Western Education and Nigerian Cultural Background*, (Oxford, OUP,1964), p117.

<sup>82</sup> Akinyemi, K. 'Trends in the Development of Primary Education in Nigeria in: S. Adesina, K.Akinyemi and K. Ajayi, (eds), *Nigerian Education: Trends and Issues*, (University of Ife Press, Ile-Ife, 1983), p 70

<sup>83</sup> Fafunwa, *supra*, p. 171.

<sup>84</sup> Fawehinmi, *supra*, p. 49.

<sup>85</sup> Fafunwa *supra*, p 175.

<sup>86</sup> S.20. Cap 56 Education (Lagos) Ordinance. Laws of the Federation of Nigeria & Lagos 1958.

<sup>87</sup> *Ibid.*, S.2

<sup>88</sup> *Ibid.*, S.20(2)

<sup>89</sup> *Ibid.*, S.20(3)

on behalf of the Minister in charge of education.<sup>90</sup> Fees such as collection and charges made in schools were abolished and prohibited.<sup>91</sup> Education in Lagos Colony was the responsibility of the Federal Ministry of Education and the Lagos City Council. In January 1957, the Territory of Lagos initiated free universal eight year primary education, which remained the practice until 1963 when the country became a republic. In Lagos Colony, the Minister in charge of education in the Lagos Colony, Chief Aja Nwachukwu sent out an open letter in a press release to parents of children attending schools under the free primary education scheme that education was not to be subsidised by parents.<sup>92</sup> Parents were asked to write to the Education Officer to lodge complaints against school heads that were collecting any form of levies and refunds were to be made upon careful investigation.<sup>93</sup> The scheme emphasised transparency and accountability. The Government was careful to advertise primary education as a 'fee-free' education. There was a surge in enrolment because it was free. This evidenced economic factor as a significant obstacle to education. Abolishment of fees paved the way for all children in the Lagos Colony to be able to have primary school education. Indeed by 1958, primary school enrolment was 56,688 from 38,872 in 1956, with nearly fifty per cent of students continuing to secondary school.<sup>94</sup>

These early efforts represented an awareness of the importance of universal education in the building of a modern society. In Nigeria, where independence was used to promote a new political, social and economic order, so at independence, Nigeria looked forward to an educated electorate and citizenry in order to realise her objectives of freedom and prosperity.<sup>95</sup> The Free Primary Education programmes continued in the Western Region and Lagos Colony in 1955 and 1957 respectively, and remained in place until 1966.

The period between 1967 -1970 there was civil war in Nigeria. In assuaging the effect of the war, the Federal government embarked on a policy of reconciliation, reconstruction and rehabilitation.<sup>96</sup> Fortunately, 1970 was the period when crude oil exported accounted for 90% of the country's foreign exchange earnings and 80% of total exports.<sup>97</sup> The 1970's were the period of the oil boom in Nigeria. The boom made it possible for the government to embark on the massive provision of social services especially in education and health-care sectors.<sup>98</sup> This wealth imparted positively on the educational system in many ways.

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<sup>90</sup> *Ibid.*, S. 21(1)

<sup>91</sup> *Ibid.*, S. 61

<sup>92</sup> Ref. No. EL. 14/S.1/9 Dated 8<sup>th</sup> June 1957

<sup>93</sup> *Ibid.*

<sup>94</sup> Fafunwa, *supra* (Appendix 12), pp 245& 246

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> Ekpo, A. & Umo, O., 'An Overview of Economic Growth and Development', In: Ajaegbu, H., St Matthew-Daniel, B. & Uyop, O. (eds.) *Nigeria: A people united, a future assured*, (Abuja: Federal Ministry of Information, 2000), pp.125-131.

<sup>98</sup> *Ibid.*

## VII. SECOND ATTEMPT AT FREE PRIMARY EDUCATION-UNIVERSAL FREE PRIMARY EDUCATION (UPE 1976)

In 1976, in a dramatic move, the Federal Military Government launched a nationwide programme of universal primary education. This was second attempt to implement UPE in Nigeria. The Federal Government of Nigeria made primary education free and universal by implementing the free UPE scheme nationwide in September 1976.<sup>99</sup> This was the first time the universal free education programme was applied to the whole country. The aim was that UPE will wipe out the imbalance in education between the Northern and Southern states.<sup>100</sup> A factor for initiating the universal free primary education was a desire to establish uniform education throughout the country so as to dismantle the patchwork of schools ran mostly by various religious denominations.<sup>101</sup> The introduction of the national UPE programme was aimed at improving access to school by providing free primary education for all children.

Due to the huge oil revenue accruing to the country, the Federal Government with effect from the 1976/77 school year made financial grants to each state in the country to enable them implement the free UPE scheme.<sup>102</sup> The national government provided full grants to finance education during 1976-78.<sup>103</sup> According to Obasi, the Federal grant to the states per pupil enrolled in primary education was a major incentive for the states to publicise the free UPE scheme and it encouraged access into primary schools by children from poor background in particular, which were previously under-represented in primary education because schooling was unaffordable for them.<sup>104</sup> The 1976 UPE scheme was financed by the petroleum oil revenue and its implementation was accompanied by pledges that all education from primary, secondary to tertiary would be continually free.<sup>105</sup> Between 1968 and 1978, the Federal Government expenditure and resources allocated to education was second only to defence and exceeded the financial resources allocated to other social services like agriculture and healthcare.<sup>106</sup> Federal government expenditure on education alone exceeded state revenue from local sources.<sup>107</sup>

<sup>99</sup> Ukeje, B.O., Aisiku, J.U., 'Education in Nigeria'. In: Fafunwa, A.B., Aisiku, J.U. (eds.) *Education in Africa: A Comparative Survey*, (London: George Allen & Unwin, 1982), pp.205-234. See also Article 26 UDHR.

<sup>100</sup> Nwangwu, N.A., *UPE: Issues, Prospects and Problems*, (Benin: Ethiope Publishing, 1995), p 197.

<sup>101</sup> Nwabueze, B.O., *Crisis and Problems in Nigeria's Education*, (Ibadan: Spectrum Books, 1995), p.160.

<sup>102</sup> *Ibid.*

<sup>103</sup> Ostrom, E., 'Crossing the Great Divide: Co-Production, Synergy and Development', Vol. 24, No 6, *World Development*, p.1077

<sup>104</sup> Obasi, E. 'The Impact of Economic Recession on UPE in Nigeria', (2000) 20 *International Journal of Education Development* pp.189-207, at p.191.

<sup>105</sup> Nwabueze, *supra*

<sup>106</sup> Nwangwu, N.A., *UPE: Issues, Prospects & Problems*, (Benin: Ethiope Publishing 1995), p. 198

<sup>107</sup> *Ibid.*

### A. Challenges in Sustaining UPE Programme

Beginning from the early 1980s the economies of most developing countries plunged into a deep recession precipitated by the severe crisis in their economies.<sup>108</sup> In Nigeria, the recession was drastic, even calamitous.<sup>109</sup> For Nigeria, the severe recession was triggered off by the sudden collapse of the World market price for crude petroleum oil (Nigeria's main foreign exchange earner), as well as the reduction in the volume of crude oil export from 1981 due to the glut in the crude oil market. The sharp fall in crude petroleum price and the decline in the volume of export resulted in the remarkable decline in Nigeria's earnings from oil. By the 1980s, major economic problems were encountered following the decline in revenue from petroleum products. The rate of inflation remained high and this had a negative impact on the education sector as well.

The UPE scheme launched nationwide in 1976, as a result suffered a serious setback as the UPE capital and recurrent grants disbursed by the Federal Government to the States were no more available, due to the drastic cutback in Federal social service sector outlay occasioned by the severe recession.<sup>110</sup> The national government demanded that state governments begin to shoulder part of the cost of education. The national government stopped funding primary education in 1981. Because of the worsening economic conditions, Structural Adjustment Programme (SAP) was introduced in Nigeria in 1986, as prescribed by IMF and The World Bank to stimulate recovery of the ailing Nigerian economy as a pre-condition for obtaining the loan facility.<sup>111</sup> The implementation of structural adjustment programs is a common prescription by the IMF and World Bank for all nations which are having distressed economies and are seeking the relief loan facilities of the two International financial institutions.<sup>112</sup> However, due to tight budget constraints resulting from the IMF's policies, Nigeria had no choice but to continue imposing some sort of charge in order to raise resources. This requirement contradicted the international treaties' legal requirement that primary education should be free. Because public funding for education was insufficient to cover direct, indirect and opportunity costs of school, the definition *free* education was reduced to *fee-free*.<sup>113</sup> The yardstick was *not* the elimination of *all* financial obstacles which keep children out of school which would have ensued from international human rights law and national legislations.<sup>114</sup> The indebtedness of the State to the international financial institutions such as the World Bank and IMF demanded liberalisation of trade as a debt relief strategy; this resulted in influencing the national educational policies.<sup>115</sup> Katarina

<sup>108</sup> Little, J.M.D. Cooper. *et al*, *Boom, Crisis and Adjustment: The Macroeconomic Experience of Developing Countries*, (Oxford: Oxford University Press, 1993), p 25.

<sup>109</sup> *Ibid*.

<sup>110</sup> Obasi, *supra* p192

<sup>111</sup> Teboho Moja, *supra*, p 6

<sup>112</sup> Zuckerman, E., 'The Social Costs of Adjustment', In: Thomas, V., Chibber, A., Dailami, M., De Melo, J. (Eds) *Restructuring Economics in Distress: Policy Reform and the World Bank*. (Oxford University Press, Oxford), pp.247-271 at 252

<sup>113</sup> Tomasevski, K, *The State of the Right to Education Worldwide Free or Fee: 2006 Global Report*.

<sup>114</sup> *Ibid*.

<sup>115</sup> Tomasevski, K. 'Globalizing What: Education as a Human Right or as a Traded Service', *12 Indiana Journal of Global Legal Studies*, 2005, 1-79 at p. 6.

Tomasevski pointed out, subjecting education to the free market relieves governments of the necessity to allocate to it significant part of their budget, the consequences is that only those who could afford to pay fees could enrol.<sup>116</sup>

There was significant drop in primary school attendance in the 1980s which is attributed to the implementation of stabilization and adjustment policies of SAP at the prompting from the IMF and World Bank.<sup>117</sup> According to Obasi, this makes the SAP a formidable obstacle to the achievement of UPE.<sup>118</sup> Funding responsibilities of primary education during the period of economic crisis were transferred from one level of government to another, as well as to families, to help subsidise education through fee payments.<sup>119</sup> Schools are subsidised through additional funds contributed by communities to their local schools through Parent-Teacher Associations (PTAs), Schools, Councils, and Community-based Organisations. The quality of public education suffers in consequence with the justification that public funding is scarce. Thus, impoverishment of public education triggered an exodus to private schools by all those who can afford to pay. The result is that children from poor households have no access to quality education because it is unaffordable to them.

#### VIII. UNIVERSAL BASIC EDUCATION (UBE) 1999-PRESENT FREE PRIMARY EDUCATION INITIATIVE

The third free primary education initiative was in 1999 and was called the Universal Basic Education scheme (UBE). The aim was to achieve universal basic education for all children by 2015, in line with the Millennium Development Goal 2 (MDG2). The UBE programme is wider as it makes provision of free education throughout the six year duration of primary education and the first three years of secondary education, that is, the junior secondary classes. UBE came as a replacement for Nigeria's Universal Primary Education scheme. The launch of UBE in 1999 is aimed at providing free universal basic education for all, to enable all citizens to acquire appropriate levels of literacy, numeracy, communicative, manipulative and life skills. The main target of the UBE educational policy was ensuring that every Nigerian child acquires a minimum of 9 years basic education.<sup>120</sup> Though it is doubtful if the government that could not sustain free primary education of a period of six years can provide nine years of free education for its children. UBE is broader than UPE, which focused only on providing educational opportunities to primary school age children. UBE stresses the inclusion of girls and women and a number of underserved groups: the poor, street and working children, rural and remote populations, nomads, migrant workers, indigenous peoples, minorities,

<sup>116</sup> *Ibid.*

<sup>117</sup> Action Aid International, *Contradicting Commitments How the Achievement of Education For All is Being Undermined by the International Monetary Fund*, 2005 p.16

<sup>118</sup> Obasi, *supra* p 191.

<sup>119</sup> UNESCO, 'State of Education in Nigeria', (Abuja Office: UNESCO, 2000), p.10.

<sup>120</sup> Etuk, G.R., Nigeria's Universal Basic Education (U.B.E.) Policy: A Sociological Analysis, (2012) 7 ( 2) July *American International Journal of Contemporary Research*, pp.179 – 183, at 180.

refugees, and the disabled.<sup>121</sup> The formal educational system is only one of six components included in basic education in the implementation guidelines of the Federal Government. Others relate to early childhood, literacy and life skills for adults, nomadic population, and non-formal education or apprenticeship training for youth outside the formal education system.<sup>122</sup>

Etuk expressed the fear that given the unstable and consequently unreliable socioeconomic realities in Nigeria, it is doubtful how far the UBE programme can go in meeting its target and achieving its set objectives.<sup>123</sup> UBE not only provides free basic education, but also makes it compulsory. The enabling law of UBE has prescribed punishment for parents and guardians who keep their children and wards from school. Such offence is punishable by imprisonment or payment of fine.<sup>124</sup> Universal Basic Education in Nigeria is meant to be free and compulsory for every Nigerian child of school age. The main objectives of UBE are; to ensure children have access to nine years of formal basic education, by providing free Universal Basic Education for every child in Nigeria who is of school age. UBE sought to drastically reduce school drop-out rate and improve quality and efficiency. There was the enactment of the UBE Act on 26 May 2004. Sadly, enforcement of this good law is not possible because of constitutional provision, this was claimed by the Federal Government.<sup>125</sup> Though the UBE Act, guarantees the right to free education, Nigerian Constitution states that free education shall be provided by the government when it is practicable to do so,<sup>126</sup> since the Constitution is the supreme law of the land,<sup>127</sup> implementing free primary education cannot be enforced.<sup>128</sup>

## IX. FUNDING OF PRIMARY EDUCATION IN NIGERIA

The main sources of funds that the Nigerian government has are federal taxes and duties on petroleum profits, agriculture, imports and exports, which form the revenue of the Federation Account, and the centrally collected value added tax (VAT) which was introduced in 1976.<sup>129</sup> The Educational Trust Fund (ETF) is a trust fund established by decree in 1993 (amended by Act 40 of 1998) with the objective of using funding, combined with project management, to improve the quality of education in Nigeria. All

<sup>121</sup> Tsafe, A.K., A Critical Analysis of Universal Basic Education on its Implementation so Far (2013) 2(1) *Scientific Journal of Pure and Applied Sciences* 23-34, at p. 24.

<sup>122</sup> Nigeria, UBE Planning and Implementation Guideline, 2000. See also, Unagha, A.O., Implementing Universal Basic Education (UBE) through the Strategic Provision of School Library Services

<sup>123</sup> Etuk, G.R., *supra*

<sup>124</sup> UBE Act 2004

<sup>125</sup> Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria and Universal Basic Education Commission, No. ECW/CCJ/APP/0808. In *SERAP v. Nigeria*, Nigeria argued that the educational objective in the Constitution of Nigeria is non-justiciable. The ECOWAS Court dismissed the arguments.

<sup>126</sup> S.18 1999 Constitution of Nigeria.

<sup>127</sup> S.1 (3) 1999 Constitution of Nigeria.

<sup>128</sup> *SERAP v. Nigeria*. ECW/CCJ/APP/0808 (ECOWAS Nov 30 2010).

<sup>129</sup> Hinchliffe, K. *Public Expenditures on Education in Nigeria: Issues, Estimates and Some Implications*, The World Bank, Africa Region Human Development Working Paper Series, 2002, p.4.



corporations and companies of identified minimum operating capacity and registered in Nigeria contribute a levy of 2% of their annual assessable profits to the Fund which complements Federal, State and Local Government budgets for the three levels of education nationwide.<sup>130</sup> Therefore considerable attention has been given in Nigeria, to greater use of corporate, community and household sources of finance for education. Primary education is funded by local governments from their Federation Account allocation.<sup>131</sup> Primary education is the responsibility of States and their Local Governments.<sup>132</sup> State Governments are supposed to receive direct allocations from the Federation Account for funding primary schools in their areas of jurisdiction.<sup>133</sup> As a result, the jurisdiction of the Federal Government with regard to primary education has ceased to cover special financing through first line charge allocation.<sup>134</sup> The Supreme Court of Nigeria has ruled that:

[...] Once the Federation Account is divided amongst the three tiers of government, the State Governments collectively become the absolute owners of the share that is allocated to them [...] So that it would normally be their prerogative to exercise full control over the share. Consequently, it will not be appropriate for the Federal Government to administer the share without the authorisation of the State Governments.<sup>135</sup>

The *ratio decendi* of this judgment is based on the decentralisation of the education system as stipulated in the Constitution. Decentralization entails devolving the responsibility and the operations of the educational system from the federal government to subsidiary levels of government, such as states and municipalities.<sup>136</sup> There have been arguments in support and against decentralisation for education. Advocates of decentralisation state as follows: "... decentralisation of education strengthens direct involvement and participation of parents and community groups. It was conceived as a way to expand access to education for children in remote rural areas".<sup>137</sup> Local governments are said to be better than national governments at recognizing the needs and

<sup>130</sup> *Ibid.*, p.5

<sup>131</sup> *Ibid.*, p.24

<sup>132</sup> Sections 7(5), 12 (2) & Fourth Schedule, item (2) (a) of the 1999 Constitution stipulates that the functions of local government council in the government of a state shall include the provision and maintenance of primary, adult and vocational education

<sup>133</sup> *AG of the Federation V. AG of Abia State & 36 Others* (2002) 6 NWLR 673

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> Alexander, N, 'Paying for Education: How the World Bank and the International Monetary Fund Influence Education in Developing Countries', (2001) 76(3&4) *Peabody Journal of Education*, 285–338 at 314

<sup>137</sup> World Bank, 1998b (report on El Salvador).

preferences of local residents, and local residents may find it easier to hold accountable local, as opposed to national, officials.<sup>138</sup>

The arguments against decentralisation as highlighted by Alexander are as follows; first, the federal government's responsibility for oversight and supervision can diminish when functions are devolved to lower levels of government. Second, many localities lack the capacity or the resources to implement decentralized education programs. Third, in addition, many localities become overloaded as the federal or state government devolves an increasing number of responsibilities. Lastly, it is difficult to monitor and evaluate decentralization efforts.<sup>139</sup>

In Nigeria, the educational system is decentralised as stipulated under the constitution, but some have argued that the current system of paying teachers' salaries have resulted in irregular and sporadic payments by the various states.<sup>140</sup> In response, Orbach argues that the Supreme Court judgment could be used to develop the managerial capacity of state governments and to promote a more integrated planning of education at state level.<sup>141</sup> At the same time, devolution of national authorities will reduce concentration of power at the centre and therefore prevent its arbitrary exercise. This means that both Federal and State governments can participate at all levels of education. Past experiences have shown that Local Government Councils were incapable of operating the primary schools effectively and efficiently to guarantee free, universal and quality education to all primary school age children and that there is the need for the intervention of the Federal Government with funds, supervision and control.<sup>142</sup> Information about local government expenditures is often inadequate; the public has little information on use of primary education funds available to schools.<sup>143</sup> The argument against decentralisation is that with decentralisation, charges would be introduced by local authorities or schools and such charges will be justified by calling them *community participation*. They are usually triggered by insufficient funding for education by the central government. A child that is unable to pay will most likely be sent out of school. It is submitted that the issue of decentralisation is influenced by the World Bank and IMF as part of their conditionalities. Decentralization has often been included as a policy prescription in World Bank and International Monetary Fund loan and credit packages especially in the education sector.<sup>144</sup> As reflected in article 27 of the Vienna Convention

<sup>138</sup> Burki, S. J., & Perry, G. E., *Beyond the Washington Consensus: World Bank Latin American and Caribbean Studies*, (Washington DC: World Bank, 1998), p. 81. Available at: <http://dx.doi.org/10.1596/0-8213-4282-7> accessed on 5 August 2014

<sup>139</sup> Alexander *supra*, p.316.

<sup>140</sup> Francis, P., et al. 'Hard lessons: Primary Schools, Community and Social Capital in Nigeria' *World Bank Technical Paper No 420 Africa Region Series* (Washington, D.C: World Bank 1998). Available at: <http://documents.worldbank.org/curated/en/1998/10/10531789/hard-lessons-primary-schools-community-social-capital-nigeria> accessed on 5 August 2013.

<sup>141</sup> Orbach, E. 'The Capacity of the Nigerian Government to deliver Basic Education Services', *Africa Region Human Development Working Paper Series No. 61*. (Washington DC: World Bank. 2003).

<sup>142</sup> Federal Ministry of Education, *Education Sector Report 2003*, (Abuja: FME2003) p.13. See also *The State of Education in Nigeria*. (Abuja: UNESCO Abuja Office 1998) p.23.

<sup>143</sup> *Ibid*.

<sup>144</sup> Alexander, *supra*, p. 330.

on the Law of Treaties,<sup>145</sup> “[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. In other words, States should modify the domestic legal order as necessary in order to give effect to their treaty obligations. Nigeria therefore takes on obligations under the ICESCR to provide free primary education to children within its jurisdiction. The CRC places obligation on the state as follows:

With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.<sup>146</sup>

As it stands, Nigeria’s educational allocation continues to fall short of international benchmarks. While Ghana, South Africa, Cote d’Ivoire, Kenya and Morocco allocated 31%, 25.8%, 30%, 23% and 17.7% respectively of their annual budget to education in 2005,<sup>147</sup> Nigeria allocated 8.43 percent of its budget to education during the same period.<sup>148</sup> Nigeria’s total annual percentage of budgetary allocations to education has been significantly lower than those of 20 World Bank sampled countries in 2012,<sup>149</sup> while UNESCO recommends 26% both of which are significantly higher than the 8.43% allocated by Nigeria. The share of education expenditure in total government expenditure indicates how committed a country is to educational development especially when considered in light of the country’s GDP. States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.<sup>150</sup> Article 28 CRC also promotes and encourages international cooperation in matters relating to education, pointing out that particular attention should be taken of the needs of developing nations, because of the realisation of the fact that some developing countries might need financial assistance to fund the running of the free primary education programme.

## X. FINDINGS AND WHAT WE NEED TO DO

The paper reveals four main findings; first, free primary education programme was implemented towards the end of British Colonial administration from 1955-1959 and continued after independence in 1960. The abolition of fees gave opportunity for most

<sup>145</sup> Vienna Convention on the Law of Treaties adopted 22 May 1969 (entered into force 27 January 1980) 1155 UNTS p.331. *Ar 46.*

<sup>146</sup> Art 4 CRC

<sup>147</sup> Editorial, in; ‘Africa- Asia University Dialogue for Basic Education Development’, (2008) Vol 11, No 3- December *Journal of International Cooperation in Education*, p.5.

<sup>148</sup> Kpolovie, P. & Obilor, I., Adequacy-Inadequacy: Education Funding in Nigeria, (2013) Vol. 2(8) *Universal Journal of Education and General Studies*, pp.239-254 Aug Available on:

<http://www.universalresearchjournals.org/ujegs/> accessed on 14 August 2014.

<sup>149</sup> World Bank, *World Bank Selected 20 countries' Annual Budgetary Allocation to Education*, (Washington D.C.: The World Bank 2012). Available at:

<http://www.africaeconomicanalysis.org/...gen/education10204234737htm/> accessed on 5 August 2013.

<sup>150</sup> Art 4 CRC, see also, Art 2 ICESCR, & CESCR General Comment 11

children in the Federal Colony in Lagos and the various regions to have access to primary school education. A number of policies, laws, structural and programme processes were put in place then in order to achieve the free primary education initiative. The feats achieved in education delivery post-independence by the Nigerian communities and government was significant. There was no doubt that the qualitative performance of the schools was remarkable. There was also political willingness, as the government was determined to devote adequate funding and implement policy changes on education, in order to protect and advance the country. It is observed that there has been regression of the right to free universal primary education between the periods after independence to the period of political instability. These developments hindered the sustenance of the free primary education initiatives in Nigeria.

Second, a central challenge is the lack of a substantive provision guaranteeing the right to free and compulsory primary education in the Nigerian constitution, which is the 'organic' law of the land. Thus, Nigerians cannot effectively claim the right to education under the law when this is not provided by the State as required under international human rights law. Indeed, the Nigerian Constitution does not expressly provide for a substantive right to education. Rather, the Constitution only provides the legal framework for educational objectives and educational management in the country.<sup>151</sup> Despite that education as a right is incorporated into Nigerian domestic law through the Nigerian CRA and the UBE Act, this has not made the expected impact because of the constitutional constraint,<sup>152</sup> as analysed earlier in the paper. This non-implementation of this right by the State cannot be effectively challenged due to the doctrinal barriers rooted in the constitution's provisions. Thus, although both the CRA and the UBE Act provide for the right to free primary education on paper, the reality falls far short, as implementation trails very far behind.

Third, as provided in the Constitution, matters on primary education is delegated to the states and local governments<sup>153</sup>. To implement the free education programme without much fund is difficult for such states. The local governments have typically experienced only marginal success in the delivery of primary education throughout the country. The paper discussed that this decentralised structure is under-resourced by the federal government to operate primary schools effectively and efficiently. It is noticed that the central government does not release sufficient resources for adequate provision of educational services.<sup>154</sup> While the decentralisation was supposed to foster local participation and ownership, insufficient resourcing, lack of accountability and low level fiscal autonomy has undermined efforts.<sup>155</sup> The CRC Committee, in its 2010 Concluding Observation to Nigeria's Report, recommended that primary education should be placed in the concurrent legislative list in the Constitution so that it will be administered and

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<sup>151</sup> S. 18, 1999 Constitution of Nigeria

<sup>152</sup> SS.6 (6) & 18(3) 1999 Constitution of Nigeria.

<sup>153</sup> Fourth Schedule, Item 2(a) 1999 Constitution of Nigeria provides as follows: The function of a local government council shall include...(a) the provision and maintenance of primary, adult and vocational education

<sup>154</sup> UNESCO 2003 Report

<sup>155</sup> Johnson, C., 'Local Democracy, Democratic Decentralisation and Rural Development: Theories, Challenges and Options for Policy' (2001) 19 *Development Policy Review*: 521–32.

managed both by the federal government and the states.<sup>156</sup> Salaries of teachers gulp 80 to 90% of educational budgets leaving only 20% of the budget for educational maintenance and operations. If the federal government takes responsibility of paying teachers' salaries and not consider it as part of the state's allocation for education, then the allocation to states for education will be used to cover operating costs. That is the approach adopted in Kenya, which has proved very successful. If there is enough resources for non-salaried costs then there will not be indirect demands on pupils to bear any charge for school maintenance. In line with the CRC Committee recommendations, it is hereby submitted that education should be included in the concurrent legislative list in the Nigerian Constitution.

Fourth, as regards funding by international donors supporting the education sector, it is apparent that donor financing continues to play an important role in the education systems of Nigeria and is crucial for the free primary education programme's effective implementation. This is in line with Article 2 of ICESCR which obligates State parties, "[...] to take steps, individually and through international assistance and co-operation, especially economic and technical, [...] to achieving progressively the full realization of the rights recognized in the present Covenant".<sup>157</sup> This is further reiterated by CESCR in its General Comment No 11: Plans of Action for Primary Education, in which the Committee calls upon the relevant international agencies to assist States parties to the greatest extent possible to meet their obligations on an urgent basis. Sadly, corruption in the education sector not only distorts access to education but also affects the quality of education. Despite public outrage, corruption persists in Nigeria because public officials have no fear of being held accountable for their actions.<sup>158</sup> The issue was highlighted in 2006, when it was discovered that US\$21 million had been lost in 2005 and 2006 to the illegal and unauthorised utilisation of funds. As a direct consequence, over five million Nigerian children lacked access to primary education.<sup>159</sup> As a result of unchecked magnitude of corruption in the country, international donors exercise caution in giving aids towards educational development to the country directly. In addition, insecurity in the country as a result of Boko Haram insurgency coupled with suicide bombings was also identified as limiting donor activities. The bombing at the UN headquarters in Abuja in August 2011 affected UNICEF's ability to complete the Girls' Education Programme (GEP2), due to the effect on its management systems as all records were destroyed.<sup>160</sup>

<sup>156</sup> Concluding Observations: Nigeria, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, CRC/C/NGA/CO/3-4, 21 June 2010, para 71(e)

<sup>157</sup> Emphasis added.

<sup>158</sup> Hope, K.R. Sr., *From Crisis to Renewal: Development Policy and Management in Africa*, (Leiden: Brill 2002), p.104.

<sup>159</sup> Mumuni, Adetokunbo, & Sweeney, Gareth., 'Public interest litigation for the right to education: the *SERAP v. Nigeria* case', *Global Corruption Report: Education, Transparency International*, (Oxford: Routledge, 2013), p. 307.

<sup>160</sup> DFID Report on Nigeria 2013.

Based on the summary of findings discussed above, the main recommendations of this paper are grouped into four.

#### *A. The Need for Constitutional Amendment*

The first and foremost recommendation would be to emphasise the need for a Constitutional amendment. In the Nigerian Constitution, there is no explicitly enumerated or substantive right to education despite its ratification of the CRC and ICESCR. It is recommended, that government should make education a fundamental right substantively entrenched in the country's constitution. Though the national legislations, namely the CRA and the UBE Act, guarantee the right to education, it is argued that these laws do not provide as strong protection as the Constitution due to the doctrinal barriers rooted in the constitution's provisions.<sup>161</sup> A state in the country can adopt or refuse to adopt any law enacted at the national level on children, due to issues on children being within the residual list in the constitution.<sup>162</sup> This potentially creates non-uniformity in the laws protecting children and their rights. In the Constitution, the educational objectives of the Nigerian government are grouped under Fundamental Objectives and Principles of State Policy,<sup>163</sup> and thus not capable of judicial enforcement.<sup>164</sup> As part of the domestic law of state parties, the right to a cause of action under the provisions of the CRC should be real and remedies should be genuine.<sup>165</sup> Sadly, this is currently not the case in Nigeria in respect of children's right to education.

#### *B. Increase Funding of Primary Education*

Within the international human rights framework governments are obligated to allocate the maximum of their available resources to provide free primary education. In order to achieve this, Nigeria government need to allocate sufficient finance in its budgetary allocation for education in particular primary education, bearing in mind that The Dakar Framework recommended that at least 20% of the national budget or 5% of the Gross Domestic Product (GDP) should be spent on education<sup>166</sup> while UNESCO recommends 26%, both of which are significantly higher than the allocation for education by the government. It is recommended that the funding allocation for primary education needs to be increased because ensuring free primary education for all children in Nigeria is the foremost challenge to the country. The Government should increase the budgetary allocation to education because of its importance to the national economy, and implement safeguards, which with proper monitoring, would contribute more significantly to the empowerment of the public. In addition it is suggested that there should be included in

<sup>161</sup> S.6(6) 1999 Constitution of Nigeria.

<sup>162</sup> *Ibid.*, S.4(7).

<sup>163</sup> *Ibid.*, S.18.

<sup>164</sup> *Ibid.*, S.6(6)(c).

<sup>165</sup> CRC General Comment No. 3: General Measures of Implementation of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003).

<sup>166</sup> The Dakar Framework for Action, Education for All: Meeting our Collective Commitments, 26-28 April 2000. [www.unesco.org](http://www.unesco.org)

the Constitution of Nigeria, constitutional provisions for financing education, for example, the Constitution of Brazil<sup>167</sup> contains elaborate provisions in this regard which is commendable. The Brazil Constitution provides for sharing of resources and responsibility at all levels in the Brazil's federal system. These constitutional provisions also cover scholarships to be provided to needy students.<sup>168</sup>

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

Presently, data on total government spending on education is sporadic, and data on government spending on primary education is difficult to find. There is no credible estimate of the total amount of public expenditure which is spent by the Federal, state and local governments on education and, subsequently, the sources, levels, trends and distributions across the various educational levels are not available for analysis. A recommendation on the administrative side is the need for better records management. Although the federal government, states and local governments produce data on executed budgets annually, they are not collated into comprehensive Government accounts or made available to the public. Without reliable data, it will not be possible to understand the nature of the problem and respond accordingly. A mechanism must be developed whereby data is generated and made available on all aspects of the financing of education in the country. The relevant primary education authorities must build data collection and analysis into their daily operations and use the data more effectively. To achieve universal free and compulsory education for all children, accurate information collection systems need to be implemented; when the data has been collected, a suitable plan can be proposed.<sup>169</sup> A recommendation on the administrative side is the need for better records management. Without reliable data, it will not be possible to understand the nature of the problem and respond accordingly. A mechanism must be developed whereby data is generated and made available on all aspects of the financing of education in the country.

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

Political will and national commitment are needed for the effective and successful implementation of free and compulsory primary education in Nigeria. Policy commitments related to free primary education must be time-bound, action-oriented and include mid-term performance indicators. The Government needs to explore alternative and innovative ways of increasing the resources available to sustain the free and compulsory primary education programme. Lack of transparency has been one of the major problems of successive governments and attempts to curb incidences of fraud. The establishment of bodies such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other related Offences Commission (ICPC)

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<sup>167</sup> 2010 Constitution of the Federative Republic of Brazil

<sup>168</sup> *Ibid.*, Article 212

<sup>169</sup> Wilson, Duncan & Melchiorre, Angela, "Analysing Education Budgets through the Lens of Human Rights: A Two-Step Process, RTE Framework for Budget Analysis", Available at: <http://r2e.gn.apc.org/sites/r2e.gn.apc.org/files/RTE%20framework%20for%20budget%20analysis.pdf> accessed on 14 July 2014.

seem to have not made the desired impact. With no effective restraints on government behaviour, corruption has remained widespread. In order to bring an end to corruption in the education sector, there should be a 'zero tolerance to corruption' policy. There should be transparency and accountability on the part of the government.

## XI. CONCLUSION

Overall, as with many development efforts, the complete solution to implementing free qualitative compulsory primary education will be an on-going challenge. Nevertheless, to bring Nigeria in compliance with international human rights standards on education, the State needs to be willing to constitutionally and affirmatively recognise the right to education and prioritise its resources purposefully and differently to what is currently the practice.

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