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Codification Of The Human Rights To Education: A Panacea For Poverty Eradication In Nigeria

Anumba, Florence N.

**Department Of Social Sciences
School Of General Studies**

Federal College Of Education (Technical), Omoku, Rivers State, Nigeria

ABSTRACT

Education and human rights are not of the West, as many think. Both are inalienable endowments which start from birth of a human being, irrespective of sex, race, language or the circumstance of birth, or the status of the state. Invariably, both originate from birth, not from the West, East, North or South, but from all, as birth takes place amongst humans. A great harm is therefore, done to an individual, when one of these twin natural endowments in him, is not nurtured; where the two are abandoned – not nurtured for his productive maturity to adulthood – his essence as human being is rendered nugatory. In like manner, no state can exist without possessing the capacity to care for its citizens. Granted that the reciprocity of obedience and allegiance of citizens to the state is obligatory, it ends in further strengthening the stronghold of the state – still for the benefit of its citizens. Therefore, when a state fails on its duty to nurture its citizens towards effective and productive capacity by neglecting to provide education, or to protect the human rights of its citizens, it is doomed. This paper focused on the need for Nigeria to compile and systematically arrange human right to education into a Code of rules and disseminated publicly for the socialisation of the citizenry, to enable them gain access to educational opportunities. The state of insecurity, poverty, hunger, squalor, corruption, disease and anarchy Nigeria is currently passing through evidence the gross neglect and lip-service her past leaders paid to education and human rights – the twin inalienable concepts that fashion individuals into innovative, patriotic and productive citizens. The paper discussed international Human Rights instruments that promulgated the human right to education. The research methodology adopted is the Doctrinal method. The paper found that frustrating the enforcement of the human right to education is the bane of Nigeria’s problems, and suggested that the codification of the right in the aforesaid manner in Nigeria is a perfect panacea for remedying her multiple problems, given that it will create employment, diverse skills and professions for citizens to specialize in productively, resulting to a dramatic turn-around in the economy, eradicating poverty in all its forms in Nigeria.

Keywords: Codification, Education, Human Rights, Panacea, Poverty eradication

I. INTRODUCTION

To suggest that the human rights to education be codified in Nigeria does not mean that it be made a law. This is because a ‘Code’ is first and foremost a complete system of positive law, carefully arranged and officially promulgated¹. Human rights is an international law, and right from its declaration on 10th December 1948, it was promulgated into law to be binding on all nations. The codification this paper focuses on, according to Garner², refers to “the systematic collection or

¹Garner, B. A. *Black’s Law Dictionary*. 8th edn. Thompson West Publishing Coy. 2004.

²Ibid.

revision of laws, rules, or regulations. As an international law, human rights instrument is coded in the principles of '*Jus Cogens*' which is a fundamental principle of international law that refers to a set of peremptory norms, universally applied to all states and international organisations. It is inalienable in nature, cannot be derogated from, modified by treaty, or waved or be surrendered. This paper advocates that human rights to education be systematically arranged into a collection of rules and disseminated in variety of the media to create sufficient awareness, provide educational services and opportunities for all and sundry to gain access to and promote same in conformity with human rights instruments. It does not mean that human rights is not enforceable in Nigeria. The case of *Faweihmi v Abacha*³, is a landmark case where the judiciary demonstrated its willingness to uphold human rights, even in the face of executive rascality.

It has been laid bare that human rights, including that of education, is a set of peremptory norms of international law, so inalienable that they cannot be derogated from, or modified by treaty or agreement, and yet cannot be surrendered or waved. That is to say that no state, under any circumstance, can deviate from or violate them, even through treaty, customary law, or legislation.⁴ It is odd that Nigeria, a State-Party and signatory to United Nations Treaties, Conventions, Covenants, and so on, all of which emphasize the necessity of promoting the right to education, indulge in grave violation of her citizens' human rights to education. It is feared that this violation by the State is the bane of all the economic, social, political and religious problems bedeviling the nation. Laws are meant to be obeyed, agreements meant to be performed *pacta sunt servanda*. The challenge to Nigeria is the observance of the instrument in a manner consistent with Nigeria's international obligation.

The International Bills of Human Rights emphasizing human right to education discussed include: the Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, The UN Convention on the Rights of the Child (UNCRC) 1989, The African Charter on Human and Peoples' Rights (ACHPR) 1981, and The African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

Human rights are not particularly enshrined in Nigeria constitution. This act appears not an omission, since Nigeria's consecutive regimes since her independence have connived at the compliance of the non-derogatory obligation. They have all maintained flagrant violation of the human rights to education of the citizens, such that the masses have no access to educational opportunities, hence illiteracy abound. Education is very costly in Nigeria, With the increasing costs of education (school fees, registration fees, cost of books and other materials) students and parents would not want to fail due to these requirements, therefore will strive to ensure success⁵, leading to many indulging in examination malpractice. In view of the fact that national and educational leaders have not considered education as a priority over party patronage, the quality of university education continues to decline considerably.⁶

Bills of human rights enumerated above stipulate that education be made free, at least, at the elementary and fundamental stages, but consecutive regimes in Nigeria have all derogated from compliance, where it is practised at all, it is discriminatory. The case of *Adamu v Attorney-General of Bornu State*⁷ is a good example. In the case, the Court of Appeal sitting in Abuja, entertained the matter and ruled in favour of the plaintiff from Gwoza Local Government Area of Bornu State. The plaintiff had argued that Christian parents in Gwoza were required to fund their children's Christian education, while Islamic education was state-funded, which constituted discrimination and a violation of fundamental human rights. The court declared the practice unconstitutional and affirmed that

³[2000] NWLR (Pt.6) 660.

⁴E DE WET, 'The Prohibition of Torture as an International Norm of Jus Cogens and its Implications for National and Customary Law [2004] 15(1) *European Journal of International Law* 97

⁵Nsife, C. T. and Ogakwu. V. N, "The Problems and Innovations of Education in Nigeria", *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012) 59.

⁶Nwaka, N G "The State of Tertiary Education in Meeting the Needs of the Modern Nigeria Society", *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012) 87.

⁷[1996] 8 NWLR (Pt. 465) 203 education.8

fundamental rights must be upheld, even in the context of State Policy Objectives. Like sit-tight syndrome of African leaders, consecutive regimes in Nigeria had sat tight on this non-derogatory principle of international law for no other reasons than lack of education, personal interests and ethnic hostility – the canker worms that have destroyed the fabric of this country. Quality education is a prerequisite for good governance and good governance in turn enhances quality

Lamenting on inter-ethnic struggle for political power, Nnoli decried:

In competition for the limited numbers of positions and scarce resources within the regions and at the federal level the regional parties generated antagonism and hostility among the among the major linguistic groups in the country. Their propaganda often emphasised some alleged conflict of interests among these groups with each party claiming to be protecting, advancing the interest of one of the ethnic nationalities or the other. ... The strategy sought the widening of their political base from the ethnic homeland to include the whole region. This means obtaining the support of the homelands of the minority ethnic groups within the region. For example, at the formative meeting of the AG, it was “felt that the Yorubas should first weld themselves together so that it might be difficult for other tribes to break through them”.⁹

Nwaka (2011) in Nwaka (2012)¹⁰ asserted, those appointed through god-fathers usually stage-manage the school matters and serve the caprices of their appointers instead of focusing on the effective realization of the school-established goals. “Researches reveal that there are categories of children excluded from the formal schooling system: children from the poorest families, working children, ... orphans, children affected by HIV/AIDS and those with physical or mental disabilities”.¹¹ From information from other countries, according to Oruwari¹², “In Malawi for example, two years after fees were introduced into the school system in the 1980s, enrolment rates fell by over 5 percent. She cited Rose (2000)¹³ as stating that “... whenever user fees are abolished, enrolment increases. Oruwari¹⁴ also cited Coalition For Health And Education Right (2002) with example of Tanzania which eliminated fees for primary to finance their education”.

It is not in doubt that in a short while Nigeria’s efforts to eradicate poverty will score success and her crisis become a story of the past, if the current leaders will develop the political will to codify the Human Rights to education for practicability of the instrument in tandem with the provisions of Bills of Human Rights, which are discuss in the next section, and abolish all forms of user fees. Resources diverted to private pockets in Nigeria can, if properly managed usher in innovations, skills acquisition, man-power development that would culminate in increased productivity, prosperity and development that will translate to poverty eradication.

II. EXAMINATION OF BILLS OF HUMAN RIGHTS

Universal Declaration of Human Rights (UDHR) 1948

On 10th December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights.

Following this historic act, the General Assembly called upon all Member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and explained, principally in schools and other educational institutions, without distinction based on the political status of countries or territories.”¹⁵

⁸ (n 6)

⁹ Nnoli, O. *Ethnic Politics in Nigeria*. Fourth Dimension Publishers, (1980) 158 – 159.

¹⁰(n 6).

¹¹Oruwari, J N, “The Deplorable State of Education in Nigeria”. *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012) 87.

¹²Ibid,

¹³Ibid

¹⁴Ibid,

¹⁵Olananmi, J. *Handbook on Human Rights*, 2nd ed. Law Lords Publications, 2010.

The international community observed that wars ravaging the world culminated from the non-recognition, respect, protection or promotion of human rights by individuals and nations, even nations against their own people in holocausts, genocides and others resulting to grave massacre in human kingdom. This the UN reiterated in the second arm of its Preamble thus:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people¹⁶.

The instrument provides as follows:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.¹⁷

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control.¹⁸

It further provides:

Everyone has the right to education. Education shall be free, at least, in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.¹⁹

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.²⁰

The mother or major international Human Rights instrument, the UDHR 1948, in the above Articles laid it bare that: Every person has the right to a standard of living adequate for the health and well-being of himself on the one hand, and that of his family on the other; that such rights include food, clothing, housing and medical care as well as other necessary social services; including the right to security in the event of unemployment, sickness, disability, widowhood, old age, etc. It provides that everyone has the right to education; that it shall be free, at least, in the elementary and fundamental stages and that elementary education shall be compulsory. Insisting that Government provide these essential services to the vulnerable, would irritate most Nigerian leaders and politicians who always deceive the masses that they are there for the interest of the people, but years of experience have demonstrated that the leaders and the politicians do not ever have citizens' well-being in contemplation. Little wonder, they return to the rural areas every four or eight years, whenever election is approaching, with gifts like wrapper and edibles – to buy the conscience of the electorates – soliciting for their votes.

¹⁶Ibid.

¹⁷UDHR, Art. I.

¹⁸Ibid, Art. XXV.

¹⁹Ibid, Art. XXVI (1)

²⁰UDHR, XXVI (2).

International Covenant on Economic, Social and Cultural Rights ((CESCR) 1966

This instrument opened for signature, ratification and accession on 3rd January 1976 by the General Assembly, provides:

The State-Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.²¹

The State Parties to the present Covenant recognising the fundamental right of everyone to be free from hunger, shall take individually and through international cooperation, the measures, including specific programmes, which are needed.²²

b) Taking into account the problems of both food importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.²³

13(1) The State Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen respect for human rights and fundamental freedoms...²⁴

2(a) Primary education shall be compulsory and available free to all;²⁵

(b) secondary education, in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education...²⁶

The CESCR (1966), on its part, not only provided for, but also emphasized the State-Parties to the present Covenant's resolve to recognise the right of everyone to an adequate standard of living for himself and his family as well, including adequate food, clothing and housing for every person, and to the continuous improvement of living conditions for all. Current Nigerian leaders should avail themselves with the political will to comply religiously with stipulations of this vital international law. They should do away with, and stop chasing rats while their house (the nation) is on fire.

African Charter on Human and Peoples' Rights 1981

The Organisation of African Unity (OAU) now AU at the Sixteenth Ordinary Session by the Assembly of Heads of State and Government held in Monrovia, Liberia, from 17th to 20th July 1979 ..., firmly convinced of their duty to promote and protect human and peoples' rights and freedoms, taking into account the importance traditionally attached to these rights and freedoms in Africa²⁷, resolved that:

17 (1) Every individual shall have the right to education.²⁸

18 (1) The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.²⁹

²¹Art. 11 (1) CESCR 1966.

²²Ibid, Art. 11 (2).

²³Ibid, 11 (2) (b).

²⁴CESCR Art. 13(1).

²⁵Ibid, Art. 13(2)(a).

²⁶Ibid, Art. 13(2)(b).

²⁷ACHPR 1981, Preamble.

²⁸Ibid, Art. XVII (1)

²⁹Ibid, Art. XVIII (1)

The Organisation of African Unity (OAU), now AU, since 1981 thought it wise to harmonise the future of Mother Africa and put together (in writing) how the process to achieve the well-being of their people, having at the back of their minds the African culture of the family to ensure the proper and adequate development of every individual by making sure that no individual is denied education; and that the State should care for and protect the family to enable it perform its natural functions for the progress of the society. Africa was known with peaceful co-existence of her societies. But the arrival of the West, introduction of their systems, and during their departure and creation of new nation effected random demarcation of boundaries as well as hammering different ethnicities of diverse cultures and languages together and forced them into one political unit to answer one name as a nation, without first seeking and obtaining their consent to exist under one political unit, Africa have not been the same. The situation in Nigeria evidence that ethnic hostility frustrates her development. Nigeria is a major and great Member-State of African Unity, and have been in the fore front of decisions, organisation and efforts at moving the continent forward. Nigeria has also ratified the African Charter on Human and Peoples' Rights that provided for human right to education, but to recognise and promote its access to all as of right is robbed the citizens, political will to recognise, promote or enforce, according to this Bill of Human Rights lacks. The failure of Nigerian regimes to care for families' physically, morally and health-wise, contribute to prevalence of poverty in the country. .

African Charter on the Rights and Welfare of the Child (ACRWC)

This Charter was opened for signature on 11th November 1990. Drawing up the Charter, the OAU considered that the Charter of the Organisation of African Unity recognised the paramountcy of Human Rights and the African Charter on Human and People's Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms recognised and guaranteed therein, and noted that:

The situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental maturity, he/she needs special safeguards and care.³⁰

The Charter defined a child as "Every human being below the age of 18."³¹

Article 3 states:

Every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardian's race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth, or other status.³²

On education, the Charter provides:

1. Every child shall have the right to education.³³
 - `` The education of the child shall be directed to:
 - (a) the promotion and development of the child's personality, talents, and mental and physical abilities to their fullest potential;
 - (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;
 - (c) the preservation and strengthening of positive African morals, traditional values and cultures;
 - (d) the preparation of the child for responsible life in a free society in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples, ethnic, tribal and religious groups;
 - (e) the preservation of national independence and territorial integrity;
 - (f) the promotion and achievement of African Unity and solidarity;
 - (g) the development of respect for the environment and natural resources;
 - (h) the promotion of the child's understanding of primary health care.³⁴

³⁰ACRWC Preamble.

³¹Ibid, Art. 1

³²Ibid, Art. 3.

³³ACRWC Art. 11 (1)

³⁴Ibid, Art. 2 (a) (b) (c) (d) (e) (f) (g) (h).

2. State Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
 - (a) provide free and compulsory basic education
 - encourage the development of secondary education in its different forms and progressively make it free and accessible to all,
 - b) make higher education accessible to all on the basis of capacity and ability by every appropriate means;
 - c) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
 - d) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community...³⁵

State Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, ``religious or other forms of discrimination as well as in States subject to military destabilization.³⁶

Convention On The Rights Of The Child (CRC) 1989

This section examines the UN's Convention on the Rights of the child. The Federal Republic of Nigeria as a Member State of the United Nations is a signatory to the Convention. It was ratified by General Ibrahim Badamasi Babangida, the then Military Head of State of Nigeria, the text was adopted on the 20th day of November 1989 and it states as follows:

XXVIII provides:

1. State Parties recognise the right of the child to education and with a view to achieving this right progressive and on the basis of equal opportunity, they shall, in particular make primary education compulsory and available free for all,
 - a) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - b) make higher education accessible to all on the basis of capacity by every appropriate means;
 - c) Make educational and vocational information and guidance available and accessible to all children;
 - d) take measures to encourage regular attendance at school and the reduction of drop-out rates.³⁷

ARTICLE XXIX States: States Parties agree that the education of the child shall be directed to:

- a) the development of the child's personality, talents and mental and physical abilities to their fullest potentials;
- b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;³⁸ ...

This UN Convention does not say a different thing. All the Bills of Rights unanimously sang in chorus the same provisions. This UN Convention was both ratified and adopted by the then Nigeria's Military head of State, yet impossibility of implementation frustrated effective administration of this all-important international law in Nigeria, hence illiteracy and poverty prevailed.

³⁵Ibid, Art. 3 (a) (b) (c) (d).

³⁶Ibid, Art. 26 (2)

³⁷UNCRC Art. XXVIII (a)(b) (c) (d).

³⁸Ibid Art. XXIC (a) (b).

III. ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA

Human Rights are not contained in Nigeria Constitution; only Fundamental Rights are enshrined therein. The fact that human rights are not in Nigerian constitution does not mean that human rights are not enforceable in the country. Nigerian courts have, and do enforce cases of human rights, torture, international crimes and other *jus cogens* norms. In his book titled 'Jurisprudence and Legal Theory', Wigwe³⁹ defined '*Jus Cogens*' as:

a body of the principles of International Law which binds all States and does not allow any exemptions which is basically compilation of norms that lay down the international obligation which are essential for the protection of the fundamental interest of the international community and violation of these norms is hereby recognised as a crime against the community as a whole.

The relationship between Human Rights and *Jus Cogens* is that *Jus Cogens* represents the fundamental principle of Human dignity and well-being; both are universal and non-derogable; *jus cogens* provide the foundation and framework for Human Rights. Specifically, human rights is built upon the foundation of *jus cogens* norms and have detailed and specific protections for individuals including the mechanism for enforcement and implementation of the *jus cogens* laws.

On human rights enforcement, the judiciary addressed individual rights and state actions in adjudicating the case of *Ogugu v The State*,⁴⁰ the case was about a challenge to death penalty preferred against one *Ogugu*. In his appeal, he argued that the death sentence violated his right to life under Section 33 of the Nigeria Constitution, as well as Article 4 of the Africa Charter on Human and Peoples' Rights. The Supreme Court upheld the death sentence, but affirmed the crucial role of Nigeria's constitution and international obligations in protecting human rights. In another case, *Okojie v. Attorney-General of Lagos State*⁴¹ the Lagos State Government in a bid to standardize education, passed laws that effectively took over the control of mission and private schools, including those run by religious organisations like the Catholic Mission. Archbishop Anthony Olubunm Okojie, acting on behalf of the Roman Catholic Mission, challenged the government action, claiming it violated the rights of the mission to establish and administer educational institutions in accordance with its religious beliefs. The Supreme Court entertained the matter and ruled in favour of Archbishop Okojie and the Catholic Mission, declared that the Lagos State Government's takeover of mission schools was unconstitutional, and held that by the Government's action, it violated the mission's right to religious freedom, which includes right to establish and manage educational institutions.

In another case of *Uzoukwu v Ezeonu II*⁴², the Court of Appeal sitting on July 22 1991, heard the Appellants seeking reliefs for alleged violations of their rights under section 31 and 39 of the 1979 Constitution of Nigeria. The Appellants claimed their fundamental human rights, including the protection from discrimination and dignity of human person were violated due to their social status and circumstances of birth. The trial court had granted them leave to file a motion for the enforcement of these rights, the Court of Appeal upheld the enforcement, and emphasized the protection against discrimination and indignity. In the case of *Ubani v Director of State Security Services*⁴³ some political activists were arbitrarily arrested and detained by the State Security Services; the applicants sought to enforce their fundamental right of liberty and freedom from unlawful detention contrary to the provision of section 35 and 36 of the 1999 Constitution of Nigeria. The Court of Appeal determined the case in favour of the Applicants, held that detaining the applicants without trial violated their fundamental rights. The importance of Constitutional provisions cannot be over-emphasized. The DSS had argued in justification of the arbitrary detention for national security reasons, while the court found in favour of the applicants in accordance with constitutional provision.

⁴²[1991] 6 NWLR (Pt 200) 708.

⁴³[1999] 11 NWLR (pt. 625) 129.

⁴⁴[2000] 6 NWLR (Pt.660) 228.

Nigerian courts have, most times, faced the challenge of balancing State security and individual rights, especially in the contexts of government actions being perceived as violating fundamental freedoms of individuals. Judicial activism has often been spurred by the tension of government actively defending human rights against government excesses. The state of affairs manifested in the case of *Fawehinmi v Abacha*⁴⁴, where Gani Faweinmi countered the repressive actions of the military government of General Sani Abacha, whereby he sought to enforce the provisions of African Charter on Human and Peoples' Rights which Nigeria had ratified and also domesticated in her home front. The Supreme Court held that the African Charter, having in that guise become part of Nigeria's domestic law, must be upheld in Nigeria.⁴⁵ But that of education has remained frustrated and non-justiciable.

IV. THE NON-ENFORCEABILITY OF THE HUMAN RIGHTS TO EDUCATION

The above decided cases evidence that Human Rights are enforced in Nigeria. It is then astonishing that, in the case of 'human rights to education', 'Soul is not among the prophets'! The question that crave for answer, in the circumstance, is 'Why is the human right to education not recognised or promoted as such, or not given its right of place in Nigeria? This section will focus on the answer to this question because it is the crux of the matter (the main theme of this research) and the bane of all Nigeria's economic, social, political, religious and cultural problems, and had been a source of worry to the Writer, hence it was chosen for the topic of this research – to examine, investigate, and discover how and which water passed under the bridge. The Researcher thought it a worthwhile task researching on the subject because, not only that human rights is an international treaty (agreement) that binds all States and international organisations, which any must not derogate or deviate from, wave or violate, but also because the frustration of the enforcement in Nigeria has negatively grossly impacted on Nigerians, their well-being as well as their peaceful existence.

Every 'agreement' is a 'contract', and as stated earlier, the sole of every agreement is '*consensus ad idem*' – a Latin legal phrase meaning 'an agreement of parties to the same thing'; a meeting of minds. It is the basis of contractual obligation.⁴⁶ For clarity sake, there is need for further adumbration of this non-derogable, prosperity-based and development-packed agreement. Nigeria has been poverty-ridden, suffered chronic underdevelopment of all sorts because of her neglect of these international instruments – the human right to education Welfare and Food Security. Granted that human rights are not specially enshrined in her constitution, cases cited above evidence that human rights are enforced by Nigerian courts, pointing to Nigeria's obligation to the contractual consensus ad idem. For the sake of clarity, it is an obligation for every party to a contract to observe the terms following the principle of '*pacta sun servanda*' – a legal phrase meaning "agreements must be kept". It refers to the rule that agreements and stipulations, especially those contained in treaties, must be observed.⁴⁷ It is highly regrettable that a nation supposed to be mindful of its agreement with international community, persistently derogate from observing the terms; the effects boomerang on her in form of catharsis of crisis which her citizens are suffering today.

However, the reasons for isolating the human right to education from promotion as such in Nigeria appears to be based on Section 18 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, which is discussed below.

Section 12 of the 1999 Constitution of the Federal Republic of Nigeria, as amended: ⁴⁸

This Section of the Constitution stipulates:

- (1) No treaty between the Federal and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

⁴⁵C N Ojukwu, 'Enforcement of African Charter on Human and Peoples' Rights as a domestic law in Nigeria'. (2000) (25) *International Legal Practice*, 140.

⁴⁶Garner, B A , *Black's Law Dictionary*, 8th edn (Thompson West) 2004.

⁴⁷*Ibid.*

⁴⁸CFRN, s.12 (1) (2).

- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

Treaties are *Jus Cogens*. As earlier stated, *Jus Cogens* are peremptory principles of international law, not subject to derogation by any country or international organisation. The Supreme Court of Nigeria has held that *jus cogens* laws are part of Nigerian laws, even if they are not expressly mentioned in the Nigerian Constitution. In the case of *Abacha v Fawehinmi*⁴⁹ the Supreme Court stated that *jus cogens* norms are universal and peremptory principles of international law that are automatically incorporated into the Nigerian municipal laws. In addition, Section 12(2) empowers the National Assembly to make laws for the Federation or any part of it, for the purpose of implementing a treaty. In the circumstance, the section favours the recognition, promotion and enforcement of the human right to education in Nigeria, to hold otherwise, due to lack of political will or any other reason, is intentionally meant to deny the citizens their enjoyment of this essential human rights.

Nigeria has, by the Ratification and Enforcement Act 1983, ratified the African Charter on Human and Peoples' Rights, thereby domesticated it as her municipal law. Nigeria also did ratified the UN Convention on the Rights of the Child, which was carried out by the then Military Head of State, General Ibrahim Badamasi Babangida on 20th November 1989 – adopting it as Nigeria's domestic law. Nsife and Ogakwu⁵⁰ recalled that, education is one of the fundamental rights of individuals; Article 26 of the Universal Declaration of Human Rights... stipulates that everyone has the right to education, this shall be free at least in the primary stage. What then is tenaciously holding the human right to education from operation?

Section 18 of the 1999 Constitution of the Federal Republic of Nigeria, as amended:⁵¹

This Section on Educational Objectives provides:

- 18(1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
- (2) Government shall promote science and technology
- (3) Government shall strive to eradicate illiteracy, and to this end, Government shall as and when practicable, provide:
- (a) free, compulsory and universal primary education;
 - (b) free secondary education;
 - (c) free university education; and
 - (d) free adult literacy programme.⁵²

Section 18 of the 1999 Constitution of the Federal Republic of Nigeria, as amended runs counter to the provisions of all the Bills of Human Rights discussed above, and constitutes legislative excesses and executive abuses.⁵³ The omissions and commissions by the drafters appear intentional – to deprive the poor masses of access to educational opportunities, diverting it to the rich to benefit. In practice, the right to education is universally enjoyed by the rich, but not by the poor,... Differences in income shape opportunities for education, which in turn shape future patterns of wealth distribution.⁵⁴ The fact that since independence, the non-justiciability of the items in Chapter II, particularly educational objectives, had not been in the contemplation of the catalogue of legislators, to attract a change, authenticates our claim of intentional violation of the citizens' rights.

⁴⁹[2000] 6 NWLR (Pt. 660) 228

⁵⁰ Nsife, C. T. and Ogakwu. V. N, "The Problems and Innovations of Education in Nigeria", *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012) 59.

⁵¹CFRN, s.18 (1) (2) (3)(a) (b) (c) (d).

⁵²CFRN S. 18 (3)(a) (b) (c) (d).

⁵³Awolowo, *Autobiography* (1990) 200.

⁵⁴ Nsife, C. T. and Ogakwu. V. N, "The Problems and Innovations of Education in Nigeria", *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012) 53.

The provision of the Section 18 above is not in consonance with International Human Rights instruments. In fact, all emphasize making education free and compulsory, at least, at the elementary and fundamental stages – primary and Secondary levels which is the contemplation of international community. The Bills of Human Rights discussed above impose obligation on Nigeria to respect, protect, and fulfil human rights in accordance with international standards.⁵⁵ The drafters of the 1999 Constitution intentionally smuggled educational policy into Chapter II, knowing the items therein to be non-justiciable, to demonstrate their resolve to deny the citizenry of their human right to education. The Section, particularly the clause: “as and when practicable” and paragraph 3 with its sub paragraphs (a), (b), (c) and (d) are the omissions and commissions of legislative excesses that render the enforcement of human rights to education impossible in Nigeria. From all indications, what all the multitudes of legislators avoided was the “free education” contents of the Bills. But before any state comes into being, it must show its capacity and readiness to cater for its citizens. From inception, Nigeria had both the human and material resources to make education free at all levels, as well as available to all, but ethnic politics had been a factor militating against her progress. Nwaka⁵⁶ lamented that ethnic interest have robbed these institutions of the opportunity of shaping the destiny of the nation and her citizens. Institutions here refer to universities in Nigeria, where ethnic politics is grossly at play – diminishing education and advancing poverty. Oruwari⁵⁷ observed that over the years, Nigeria has expressed an obligation to education, in the belief that overcoming illiteracy and ignorance will shape the basis for accelerated national development. Ethnic interest and personal greed had seriously militated against all her efforts to move forward. It is not that there is no Human Rights institutions in the country charged with enhancing and promoting human rights; Nigeria has made significant progress, both in human rights legislation and case laws, but ethnic interest, corruption, undue interference and influence have continued to pose challenges.

V. HUMAN RIGHTS INSTITUTIONS IN NIGERIA

As stated earlier, Human Rights institutions charged with promoting human rights in Nigeria abound. Here is an overview of the key institutions:

1. The Nigeria Police Force: This institution is charged with maintenance of law and order in the country, but they are often criticized for human rights abuses.
2. National Human Rights Commission (NHRC): This was established in 1995 by the National Human Rights Commission Act (1995), and charged with overseeing, promoting and protecting human rights in Nigeria.
3. The Judiciary: The Judiciary’s function of law interpretation extends to entertaining human rights matters, but Executive interference and compromise, power blocks and influence of the wealthy continues to pose threats to their effective service delivery.

VI. HUMAN RIGHTS TO EDUCATION AND POVERTY ERADICATION

This subheading examines the relation between human rights to education and eradication of poverty. It argues that if the human rights to education is effectively and efficiently operated, it will result to a boom in the economy such that poverty will have no space to occupy. Education is classified as Second Generation Right which are equality rights, and are referred to as Positive Rights, and consist of Right to Education, Right to health care, right o work, etc. According to Langlois⁵⁸ these rights are often called positive rights as opposed to the negative rights of the first generation, because they require right-providers to act; but where they fail to act, as is the case of human right to education and food security, in

⁵⁵Juma, L. ‘Human Rights and Conflict Transformation in Africa: Some Thoughts on the Transformative Values of Human Rights’ (2012) SPECJU. < <https://www.saflii.org/za/journals/SPECJU/2012/1.html> > Accessed 20th September, 2024.

⁵⁶ Nwaka, N G “The State of Tertiary Education in Meeting the Needs of the Modern Nigeria Society”, *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012) .

⁵⁷ Oruwari, J N, “The Deplorable State of Education in Nigeria”. *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012) 87.

⁵⁸ A. J Langlois, *Human Rights and Politics: Part 1*. <gttp://plato.standord.edu/etrcs/rights-human/> Accessed 10th Oct., 2024.

Nigeria, the effect will, to a great extent, impact on the well-being of citizens and the economy of the state – the right-provider. Azuka⁵⁹ rightly observed: “Education in Nigeria has greatly suffered and is still suffering from years of neglect, and compounded by inadequate attention to policy frameworks within the educational sector”.

It is the view of this paper that chronic underdevelopment and its attendant poverty in Nigeria is due to illiteracy of the masses. An illiterate is ignorant of many things, cannot create values, has no focus, he is easily unreasonably influenced and bought over, at worst, is unemployable and cannot make any meaningful contribution to his family, community or nation. Oruwari⁶⁰ recalled that it has been known that schooling improves production, health and reduces negative features of life such as child labour as well as bringing about employment. Education is the pivot upon which the wheels of all manner of development rotate. If human right to education is recognised and promoted in Nigeria, first and foremost, everybody will have access to it, leading to employment of all, bringing about enlightenment, acquisition of knowledge, diverse skills, and crafts for choice of specialization by the citizens, particularly the youths, who for reasons of poverty and hunger parade the streets, indulge in drug addiction, cultism, banditry, prostitution, grafts, kidnapping, yahoo and cyber crimes, all of which have rendered Nigeria crisis-stricken and also dent her image abroad.

Again, human rights are interdependent and indivisible. You cannot chose one and reject the other. Smith⁶¹ is of the view that irrespective of the designation accorded to any given right, human rights are interdependent, indivisible and universal; one cannot exercise rights to political participation without benefitting from the economic, social and cultural right to education, to facilitate an informed choice. But other human rights, except of education, are enforced in Nigeria, cases cited above are examples. Throwing away, or conniving at human rights to education because its instruments stipulate that it be made free, and hiding that of food security, suffocates national progress. Human right to education will translate to functional education – acquisition of diverse skills and values, mould character, attitude, morals, discipline, respect for elders, diligence and honest labour and ultimately diminish unemployment – resulting in bountiful economy devoid of poverty. Emphasizing the need for traditional education, Nsife and Ogakwu⁶² opined, traditional education was more by observation, the male child observed any other male adult while the female child observed her mother or any female adult; trades like farming, hunting, fishing, dyeing, etc. were learnt by the young ones. Gainful trades like tailoring, carving, fishing, farming, dyeing, blacksmithing, weaving, which many would have chosen to specialize in, are seen in contemporary Nigeria as primitive, due to the neglect of human rights to education; nothing keeps the youths busy any longer, hence they resort to all manner of crimes. There is the dare need for the human rights to education to be compiled, arranged and systematized into a Code of human rights to education rules and disseminated to the reach of all citizens to enable them gain access to educational facilities and opportunities as well as for easy reference and administration cum enforcement.

On health issues, human rights to education will usher in good health and well-being in Nigeria. For people to lead healthy and productive lives, they need knowledge to prevent sickness and diseases. (UNESCO Strategy for Health and Well-being). It is said that health is wealth, and actually, it's the living that praise Jah. The sick or diseased is bereft of happiness and joy because of the pains and disability to which his condition subject him. There is need for government to provide the citizens with the best attainable state of mental as well as physical lives. “State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick”⁶³. “The attainment of higher levels of education among mothers improves children’s nutrition and vaccination rate, while reducing preventable child death, maternal mortality and HIV⁶⁴. This paper holds that should the human rights to education be sufficiently promoted and properly administered in Nigeria it will help reduce, to a great extent, diseases and their epidemiology via poverty eradication in this country.

⁵⁹Azuka, N D, ‘The State of Early Child Care and Education in Nigeria. The State of Education in Nigeria. West and Solomon Publishing Coy. Ltd. (2012).

⁶⁰Oruwari, J N, “The Deplorable State of Education in Nigeria”. The State of *Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012)

⁶¹Smith, R K M, Human Rights in International Law. Human Right and Politics.

⁶²Nsife, C. T. and Ogakwu. V. N, “The Problems and Innovations of Education in Nigeria”, *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012).

⁶³ACHPR Preamble.

⁶⁴UNESCO’s Global Education Monitoring Report

Functional education which the promotion of human rights to education will bring about is a catalyst for employment and specialisation, the multiplier effect will sweep poverty under the carpet in Nigeria. It will usher in sufficient trades and specializations that will result to plenty, good health and well-being. The establishment of Skills Academy where young people will be trained in skills like Barbing, Painting, Fashion/designing, Hair dressing, Tailoring, Catering, Confectionary, Carving, Artists, etc. in a stipulated period, and empower them on graduation will guarantee employment that will translate to prosperity and bountiful economy devoid of poverty. Functional education is synonymous with traditional education which Isife and Ogakwu held to have provided children and youth with knowledge, skills, attitudes, values, and morals for adult and community life ... the main aim was to meet the needs of the individuals and community, hence employment was guaranteed.⁶⁵ Oruwari⁶⁶ opined that any nation that does not appreciate her citizens with creative and innovative ideas will hardly progress. "Education is the process of bringing about positive changes in the way people feel, think, speak, and act"(Nsite and Ogakwu)⁶⁷ Ndum and Okafor⁶⁸ says, education aims at producing useful citizens; is an inevitable and powerful tool that can be used to surmount ignorance, poverty and disease and to produce functional citizens. It is therefore not in the interest of the nation to politicize and frustrate the implementation of human rights to education – killing the goose that lays the golden eggs. Codifying human rights to education in the context of this paper – publicizing the Code widely in the media, to reach all and sundry for acquisition of necessary knowledge to effectively operate (enforce) and implement the code is the panacea to cure the myriads of Nigeria's social ills as well as eradicate poverty in the country.

Benefits Accrueable from Implementing Human Rights to Education

Myriads of benefits accrue to Nigerian citizens from codifying human rights to education, in the context of this paper. The benefits include:

- 1) It will sensitize, socialize and broaden the horizon of citizens and enable them access educational opportunities, develop their personalities and potentials and be able to exercise their rights. It will make for easy reference, guidance and implementation of the Code by both stakeholders and the citizenry.
- 2) It will aid citizens in preventing diseases and their epidemiology in the society.
- 3) It will prepare citizens towards making informed decisions, self-reliance and contributing their quota towards community engagements and national development.
- 4) It will create employment opportunities as the follow up of establishment of academies for skills, trades, crafts acquisition will be guaranteed with empower necessary empowerment for citizens to specialize and engage in their choice of specializations, develop new ideas for technological innovations and growth towards bountiful economy devoid of poverty.
- 5) Diverse specializations will maximize production towards bountiful economy.
- 6) It will also change the growing trends of evil machinations of cyber and yahoo crimes where young men are consumed in money ritual – using their parents, relations and girl friends in the sacrifice in exchange for money.

CONCLUSION

The topic of this research was formulated to stir the consciousness of the Government and stakeholders of education in Nigeria on the necessity of promoting the human rights to education as stipulated in international human rights Bills. Nigeria is a member and signatory to the instruments, has ratified and domesticated them as her municipal laws, and should not derogate from her obligation concerning the instruments according to international standards. The National Policy on Education (NPE) which was first published in 1977, has passed through several reprints – 1981, 1998, 2004 and subsequent times, recognised that education makes for effective national development, but all regimes failed to implement the human rights to education in conformity with the Bills..

⁶⁵Nsife, C. T. and Ogakwu. V. N, "The Problems and Innovations of Education in Nigeria", *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012).

⁶⁶Oruwari, J N, "The Deplorable State of Education in Nigeria". *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012)

⁶⁷(n66).

⁶⁸Ndum C E and Okafor, S M, " Nigerian Educational Standard and the Challenge of Good Governance". *The State of Education in Nigeria*. West and Solomon Publishing Coy. Ltd. (2012).

Nations that comply with and observe their obligations concerning the instruments reap continuous growth in their economy and boundless internal peace and security. Their determination and commitment to respect, protect and promote human rights did the magic for them. It performed a feat the League of Nations could not dare – observance of human rights instruments with commitment have brought peace and prosperity to nations and quelled world wars, checked hostilities and aggressions between nations, checked crimes against humanity and brought dictators indulged in ethnic cleansing to book; it gave rise to international friendship resulting in expansion of commerce, cut barriers and ushered in globalisation.

Experience of the Second World War, when twenty-six nations were at war, but accepted and signed a United Nations' declaration created a conviction that effective global recognition and protection of human rights was an essential condition for international peace. The 'panacea' terminology in the theme meaning something that will not only cure, but also provide lasting solution to a problem' suits the aim of the research as codifying the human rights to education – systematically compiling the collection and disseminating the information publicly – to sensitize and socialize the citizenry and inspire the implementation of the instruments will translate to a dramatic increase and prosperity and poverty eradication.

RECOMMENDATIONS

The following recommendations are proffered:

- 1) That the human right to education be codified into a collection of rules and regulations, systematically compiled and arranged, and publicly disseminated in variety of the media - to sensitize, socialize and inspire the citizenry, majority of whom wallow in ignorance. The sensitization should include crusades, workshops and be included in school curricula at least, at primary and secondary levels for adequate development of their potentials for adult life and national development.
- 2) The Government should direct and apply three-quarters (3/4) of the Fuel Subsidy to implement human rights to education – make primary education free, compulsory and universal, secondary and university educations free, and encourage adult literacy.
- 3) Establish Skills Academies where the young will school and acquire skills like barbing, tailoring, Fashion designing, Hair Dressing, Confectionary, Catering, Carving, Arts/Painting, etc. and empowered at graduation to become professionals, rather than the prevalent miniature outlets' crude training that graduate them mediocre – which promote poverty.. .
- 4) It will engage the youths in massive productivity, eradicate illiteracy, ignorance, idleness, prostitution, corruption, and insecurity while reaping dramatic economic prosperity devoid of poverty.

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