A Critical Examination of the Suitability of a Human Rights Based Approach for Implementing Girls’ Rights to Education in Nigeria

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ABSTRACT
Education is considered essential for development in any society, as a result childrens’ rights to education forms part of the fundamental entitlements and basic human rights contained in international human rights instruments. Nigeria’s adoption and ratification of these international human rights instruments shows the level of commitment to childrens’ rights and specifically the right to education. However, the human rights legal framework for education does not capture the full range of factors that are necessary to enhance girls’ access to education. As a result, this thesis examines the capabilities approach with its focus on addressing inequality and argues that the Capabilities Approach (CA) provides a richer framework for enhancing girls’ opportunities to choose the kind of life that they wish to live. This thesis therefore examines both the Human Rights Based Approach (HRBA) and the (CA) with a view to find a lasting solution for enhancing girls’ enjoyment of their right to education. These two approaches have been selected because, while the HRBA is an explicit approach aimed at empowering people to claim and exercise their rights and fulfill their obligations, the CA supplies the analysis of what is entailed in rights. The CA essentially looks into the specific situations of girls’ peculiar position and addresses the root causes of why things are the way they are. By so doing it provides practical solutions to the challenges that restrict girls’ access to education and schooling in Nigeria.
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List of Abbreviations

AGEI- Africa Girls Education Initiative
CA- Capabilities Approach
CADE- Convention against Discrimination in Education
CFRN- Constitution of the Federal Republic of Nigeria
DCCA- Data Collection Compilation and Analysis
DFID- Department for International Development
ECOWAS- Economic Community of West African States
EDOREN- Education Data Research and Evaluation in Nigeria
EFA- Education for All
FGM- Female Genital Mutilation
FME- Federal Ministry of Education
GDP- Gross Domestic Product
GEP- Girls Education Project
HRBA- Human Rights Based Approach
ICPC- Independent Corrupt Practices Commission
IDS- Institute of Development Studies
ILO- International Labour Organization
NGO- Non Governmental Organization
NWLR- Nigeria Weekly Law Report
SDGs- Sustainable Development Goals
SERAP- Socio Economic Right and Accountability Project
TEGIN- Transforming Education for Girls in Nigeria and Tanzania
TI- Transparency International
UBE- Universal Basic Education
UBEC- Universal Basic Education Commission
UNCRC- United Nations Convention on the Rights of the Child
UDHR-Universal Declaration on Human Rights
UN-United Nations
UNESCO-United Nations Educational Scientific and Cultural organization
UNGA-United Nations General Assembly
UNGEI-United Nations Girls Education Initiative
UNICEF-United Nations Children’s Fund
UNODC-United Nations office on Drugs and Crime
UPE-Universal Primary Education
WASH-Water and Sanitation Hygiene
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Nigeria

A.G of Ondo v A.G of Federation (2002)9 (4) NWLR 772

Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v President of the Federal Republic of Nigeria and Another (2010) ECW/CCJ/APP/12/07
Table of legislation

Nigeria

Child Rights Act 2003


Universal Basic Education Act 2004
Table of International Treaties

**International**

Constitution on the Elimination of all Forms of Discrimination against Women adopted 1979

Declaration of the Rights of the Child, adopted 26th September 1924


Convention against Discrimination in Education 1960 entered into force 22 May 1962

Declaration of the Rights of the Child adopted 10 December 1959


International Covenant on Civil and Political Right opened for signature 16 December 1966 999 UNTS 171 entered into force 23 March 1976

Minimum Age Convention No.138; adopted 26 June 1973 entered into force 19 June 1976

Worst Forms of Child Labour Convention No.182 adopted 17 June 1999 entry into force 19 November 2000

Universal Declaration of Human Rights 1948 adopted 10 December 1948

**Regional**

Africa


CHAPTER ONE - INTRODUCTION

1.1 BACKGROUND

Education is regarded in all societies and throughout human history both as an end in itself and as a means for the individual and society to grow.\(^1\) Its recognition as a human right is derived from the indispensability of education to the preservation and enhancement of the inherent dignity of the human person.\(^2\) The right to education provides for a guarantee of other rights and indeed many individual rights are beyond the reach of those who have been deprived of education, especially those associated with poverty eradication.\(^3\) The right to education, where it is effectively guaranteed, operates as a multiplier thus enhancing the enjoyment of all individual rights and freedoms.\(^4\) When this right is denied, it deprives people of the enjoyment of many other rights and freedoms.\(^5\)

Likewise, girls’ rights to education has been affirmed by several binding and non-binding instruments, including the United Nations Convention on the Rights of the Child 1989 (hereafter ‘UNCRC’89), the Millennium Development Goals (MDGs)\(^6\) and the Dakar framework for Action towards Education for All (EFA)\(^7\) Both the MDGs and the EFA were to be achieved no later than 2015.\(^8\) The MDGs\(^9\) which were developed by world leaders in the year 2000 set out eight targets. These targets were set to eradicate global poverty and human suffering by 2015. The world has however missed these targets particularly goals two and three, which are relevant to this thesis.


\(^{3}\) UN ComESCR, General Comment no.13, The Rights to Education E/C/12/1999/10


\(^{5}\) Katarina Tomasevski, Education Denied, Costs and Remedies ( ZED Books London) 2003)

\(^{6}\) We Can End Poverty: Millennium Development Goals and Beyond 2015< http://www.un.org/millenniumgoals/> Accessed 6 August 2015


\(^{8}\) ibid

\(^{9}\) We can end Poverty: Millennium Development Goals and Beyond 2015< http://www.un.org/millenniumgoals/> Accessed 6 August 2015
They are the goals of, achieving universal primary education and, promoting gender equality respectively. These goals which are deemed to be vital for meeting all the others are miles off track and records reveal that progress towards realizing the rights to education for the girl has been slow.\textsuperscript{10}

Indeed around 57million children of primary school age continue to be denied their right to education.\textsuperscript{11} The situation is even worse in Nigeria as it records the highest number of out-of-school children\textsuperscript{12} with a total of 10.5million children out of school and 60% of the number are girls.\textsuperscript{13} Despite Nigeria’s adoption and ratification of international human rights agreement, as well as policies and laws which Nigeria has enacted, the lives of vulnerable children, especially girls have not improved dramatically especially in the Northern part of Nigeria.\textsuperscript{14}

Against this background this thesis asks the questions: firstly, what is the suitability of a Human Rights Based Approach (hereafter referred to as HRBA) for achieving girls’ education in Nigeria? Secondly, whether the Capabilities Approach (hereafter referred to as CA) provides an alternative or complementary framework to the HRBA in the achievement of girls’ education in Nigeria.

The research questions are relevant since a high number of girls are out of school and their right to education are being denied.\textsuperscript{15}

\textsuperscript{10} War Child, Millennium Development Goals http://www.warchild.org.uk/issues/millennium-development-goals?gclid=CjwKEAia68WnBRCjxZr5qoaL3jMSJAAIXir3S8YmiDe8YeRQSKyeXFaJLDkPClm-VMVwaX3IT-upDhoCBT_w_wcB > Accessed 28 February 2015


\textsuperscript{12} The term ‘out of school children’ refers a range of issues affecting children’s education which includes, children who: do not have access to a school in their community, do not attend school and children who drop out of the education system. For more details, see Global Partnership for Education, ‘Out of School Children’ <http://www.globalpartnership.org/areas/out-of-school-children> Accessed 21 August 2015


\textsuperscript{14} ibid

\textsuperscript{15} UNESCO and UNICEF, Fixing the Broken Promise of Education for All: Finding from the Global Initiative on Out of School Children (UNESCO Institute for Statistics 2015)
1.2. AIMS AND OBJECTIVES

This thesis undertakes a critical examination of the suitability of a HRBA for implementing the rights to education for girls in Nigeria against the background of the slow progress in achieving girls’ education in the country. It therefore has three main aims:

1. To examine the provisions on the right to education contained in international, regional and national instruments and the effectiveness or otherwise of a HRBA for implementing the right to education with reference to girls in Nigeria.
2. To examine the steps taken in Nigeria towards achieving free, compulsory and universal primary education.
3. To explore the Capabilities Approach as complementary to the HRBA in achieving gender equality for girls in Nigeria.

With regards to the first aim, the HRBA is about empowering people to know and claim their rights as well as increasing the ability and accountability of individuals and institutions that are responsible for respecting, protecting and fulfilling rights to education.\(^{16}\) Thus an examination of the HRBA entails identifying the relationship and obligations that exist between the right holders and the duty bearers.

In considering the second aim, this thesis examines the key steps taken by the Nigerian government in carrying out their obligations as the primary duty bearer, and their attitude towards ensuring that the beneficiaries maximize their rights to education.

In considering the third aim, it is noted that although the HRBA is supposed to empower people to know and claim their rights, the situation is different when dealing with children as they are arguably seen as having limited capacity to claim their rights.\(^{17}\) The situation is worse for girls because of their vulnerabilities which are associated with childhood and also those associated


\(^{17}\) Mhairi Cowden, ‘Capacity, Claims and Children’s Rights’ (2012) 11 Contemporary Political Theory 362
with gender. These vulnerabilities when combined with the peculiar socio-economic, religious, cultural and traditional circumstances in Nigeria, produce deeply rooted system inequality manifested in the experience of multiple and intersectional discrimination at the individual level.

Some commentators argue that while rights to education are important, what is more important for women and girls is a quality education. Such a quality education is one that brings them to a position where they are able to grasp and understand the inequities that produce their disadvantage and at the same time give them much greater power to make genuine choices over the kind of lives they want to lead. In order to bring women to this position, this thesis explores the CA as a complementary approach to the existing HRBA.

The CA is a framework that seeks to broaden the scope of people’s capabilities by asking why things are the way they are, with an emphasis on giving people the freedom to choose what they have reason to value. Thus this thesis through the lens of the CA examines the causes of girls and by implication women’s suppression and domination that lead to their lack of access to education, dropping out of school or their underachievement in education.

This is important because international educational targets, MDGs and the EFA often use indicators that rest on basic measures of participation without addressing how the content and experiences of schooling relate to gender equality. The CA is thus useful for evaluating and assessing a broad range of issues including what education would mean for the girl taking into account the socio-economic, cultural and religious factors, as well as her identity such as her gender, ethnicity, class and religion.

Hence in the area of gender equality in education, a focus on CA evaluates not just satisfaction with access and enrolment at school and learning outcomes, as a means of achieving the MDGs

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19 ibid

20 Transforming Education for Girls in Nigeria: Baseline Research Summary report (Action Aid International 2011)

21 Martha Nussbaum, Frontiers of Justice: Disability, Nationality, Species Membership (Cambridge 2005)


and the EFA in favour of the girl, the CA questions the range of real educational choices that have been available to girls. It helps us highlight the inequalities by taking into consideration the fact that the education provided by one type of school may not be suitable or accessible for all children, because some children will have different educational needs. The CA alerts us that we cannot simply evaluate educational achievement by enrolment and years of schooling but by looking at whether learners are able to convert resources into capabilities, and thereafter potentially into functionings. However considering the diversity between human beings and the equality of primary goods, the conversion from capabilities to functionings would vary. The variation that exists also leads to inequalities of wellbeing and functionings. Therefore examining these various factors that shape girls experiences in attaining educational achievement is what this thesis seeks to address.

1.3. METHODOLOGY
This thesis is informed by library based research which draws upon interdisciplinary sources and primarily it utilizes a socio-legal approach. Interdisciplinary research may be defined as a research that combines research, concepts and theories from two or more disciplines to advance fundamental understanding or to solve problems whose solutions are beyond the scope of a single discipline. The interdisciplinary research in this thesis draws mainly from research, concepts and theories from law and the social sciences. The interdisciplinary analysis is beneficial to this thesis as the legal literature alone lacks some key concepts needed to properly answer the research questions. For example, to properly understand the purpose of the CA as an evaluative tool to measure the progress of girls’ education, and, how to achieve the rights to education for girls, it is imperative to understand economic concepts like ‘functionings’ and ‘capabilities’.

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24 Ibid
25 Amartya Sen, *Inequality Reexamined*, (Oxford University Press, 1992) 40 Functionings are defined as the valuable activities and states that make up people’s well-being, such as having a healthy body, being safe, or having a good job. They are related to goods and income, but they describe what a person is able to do or be as a result
27 Committee on Facilitating Interdisciplinary Research and others, *Facilitating Interdisciplinary Research* (NAP, 2005) 188
The socio-legal method is simply a combination of methods for the study of law in context.\(^{29}\) The socio-legal method in this thesis comprise of identifying through a feminist perspective, relevant legal provisions and relating them to factual issues in terms of whether legal reform and human rights law bring about beneficial social effects, as well as protect the interest of those for which it is intended.\(^{30}\) Examples are drawn from studies of others carried out in Nigeria and Tanzania.\(^{31}\) The studies selected help to explain the inequalities girls experience particularly in the northern states of Nigeria where there are higher rates of girls who are out of school. Other examples from other African countries, are also relied on such as Ghana and Zimbabwe to support some of the arguments made in this thesis. Reliance is also placed on newspaper reports, journal, articles, books and internet sources to help put the analysis into context.

A feminist perspective for purposes of this thesis identifies and evaluates the law in order to perceive otherwise unnoticed connections of significance for all individuals but especially for women.\(^{32}\) Thus it attributes greater substantive content to several sources of law and directs attention to consideration of women-relevant issues.\(^{33}\) The evaluation of the law from a feminist perspective lies in the knowledge that legal rules affect men and women differently.\(^{34}\) Therefore this perspective seeks to chart and understand with the goal of contributing to the work of equality, as well as to increase knowledge of general and public opinion of what the law is or ought to be.\(^{35}\) This perspective also helps in this thesis to show how girls’ experiences differ from that of boys, and highlights the underlying inequities and gender discrimination that girls experience even because of the existing legal framework. It further aids the understanding of the girls’ unique position and interaction within the family, culture and geographic location and the many different ways she is affected by such interaction.\(^{36}\)


\(^{31}\) For example, the research by Elaine Unterhalter, ‘Inequality, Capabilities and Poverty in Four African Countries: Girls’ voice, schooling, and strategies for institutional change’ (2012) 42(3) Cambridge Journal of Education 307


\(^{33}\) Ibid 27

\(^{34}\) Ibid 12

\(^{35}\) Ibid 27

\(^{36}\) Ibid 12
However, this thesis remains aware of the difficulty with utilizing such a feminist approach, which is that there is no one universal truth to the way girls and by implication, women’s experiences can be interpreted.\textsuperscript{37} This is because experiences of girls and women differ depending on their class, race, sexual orientation, religion, and social context, and these differences can give rise to a variety of interpretations.\textsuperscript{38}

1.4. STRUCTURE OF THE THESIS

The thesis is made up of seven chapters. Chapter one provides a background to the research and explains the aims and objectives of the research. It also provides brief summaries and the structure of the thesis. Chapter two considers the theoretical underpinning of the nature of rights and the implications of a HRBA to education. In this chapter, key concepts like the meaning of ‘human rights’ and ‘HRBA’, are defined in order to understand some of the discussions on the legal framework of rights that carry through in chapter three and four. Chapter two also identifies and discusses the core principles of a HRBA which forms the yardstick for measuring the success or failures of rights based solutions.

Chapter three reviews and analyzes the legal framework on the right to education. In this chapter, relevant provisions contained in key international, regional and national human rights instruments are examined. The instruments are examined in order to highlight their utility within the HRBA and to identify some of their strengths and weaknesses in a factual context.

Chapter four examines the steps that the Nigerian government and other development partners have taken towards the fulfillment of their obligation with regard to basic education for boys and girls in Nigeria. This chapter focuses on the Universal Basic Education (hereafter referred to as UBE) scheme in Nigeria, and in particular, highlights the origin of UBE and examines its objectives. It thereafter examines the challenges of the UBE program that have hitherto hindered the full implementation of free, compulsory basic education and gender equality in Nigeria. Other major initiatives in education such as the Nigeria Girls Education Initiative (NGEI) that originated from the United Nations Girls Education Initiative (UNGEI) with a vision for a world


\textsuperscript{38} Haslanger Sally, Tuana Nancy, and O’Connor Peg, ‘Topics in Feminism’ \textit{The Stanford Encyclopaedia of Philosophy} (Fall edn 2013) <http://plato.stanford.edu/archives/fall2013/entries/feminism-topics/> accessed 16 January 2014; Elizabeth Spelman \textit{The Inessential Woman} (Beacon Press 1988)
where all girls and boys will have equal access to free quality education, and their challenges are also discussed.

Chapter five considers the potentials and limitations of HRBA to education. The significance of this is tied to the fact that both the MDGs and the EFA had as their target the year 2015 for their targets to be achieved, however this has not happened yet. Thus considering the potentials and limitations is a reminder that ‘business as usual’ approaches cannot be the norm for achieving the relevant targets that this thesis considers. The arguments in this chapter lead to the conclusion that alternative approaches are required for the post 2015 agenda on education.

Chapter six is focused on the ‘second part’ of the research question, i.e. CA as a complimentary approach to the HRBA as a way to achieve gender equality in education and compulsory basic education for girls in Nigeria. Here much consideration is given to the meaning of the CA, what it entails and some criticisms of it. Furthermore, the CA is used as a lens through which barriers to education for girls in Nigeria are assessed. It is argued that through the CA peoples’ capabilities are enhanced so that they are able to make choices that they have reason to value. In this way even the right to education for girls is enhanced.

Chapter seven which is the concluding chapter, summarizes the findings of this thesis from previous chapters. Thereafter the chapter presents the recommendations on the way forward for the achievement of free and compulsory education and gender equality in favour of girls in Nigeria, and as part of going forward with the post 2015 development agenda.
CHAPTER TWO – OVERVIEW OF A HUMAN RIGHTS BASED APPROACH

2.1. INTRODUCTION
Chapter two provides an overview of a Human Rights Based Approaches (HRBA), in order to set the scene for analysis in this thesis. First the historical development of human rights is considered. This is followed by a discussion on the meaning and nature of HRBA with some explanation of the meaning of human rights, and HRBA. Thereafter six core principles of the HRBA are examined. The chapter concludes that a HRBA is a framework that can be used for analyzing various issues of violation and is adopted as a framework for the discussions in chapter three.

2.2. HISTORICAL DEVELOPMENT OF HUMAN RIGHTS
The practice of human rights, as it is acknowledged today, was largely influenced by the ideology of philosophers like Thomas Hobbes\(^1\), John Locke\(^2\) and Jean Jacques Rousseau\(^3\) in the 17\(^{th}\) and 18\(^{th}\) century. These philosophers believed that there was a natural law to life, liberty and the pursuit of happiness.\(^4\) By this revolutionary idea, a new western world emerged in which the autonomous man was supreme over the sovereignty of all his associations including the sovereign State.\(^5\) These ideological changes introduced by these philosophers were accompanied by socio-economic changes in Europe.\(^6\) The communal bonds of feudalism gave way to industrial capitalism and urbanisation. Urban-based industrial proletariats made demands on government for political participation and individual rights became the vehicle for preventing the State from its excesses.\(^7\) By the 19\(^{th}\) century a number of concerns were raised which became controversial human rights issues, for example slavery, serfdom and bad working conditions. In response to this, social movements began to spring up, for example, labour unions, women’s rights and national liberation movements.\(^8\) The idea that every human being should be treated equally and

\(^1\) Thomas Hobbes, *The Leviathan* (Oxford University Press, 1909)
\(^6\) ibid
\(^7\) ibid
\(^8\) Trevor Buck and others, *International Child Law 3rd* edn (Routledge, 2014)
deserving of respect and dignity, capable of asserting rights against other individuals and the state was beginning to appear.\textsuperscript{9}

Earlier struggles for human rights in western countries, like Britain, were not based on the equality of the human being nor were they based on the dignity of the human being.\textsuperscript{10} Rather they were merely a means to protect the interest of particular groups of people.\textsuperscript{11} These groups of people were the Barons who in the 13\textsuperscript{th} century outlined a set of liberties called the Magna Carta of 1215,\textsuperscript{12} and by the 14\textsuperscript{th} and 15\textsuperscript{th} century, the focus had shifted to seeking redress.\textsuperscript{13} The 16\textsuperscript{th} century was marked as the period of church supremacy and the State.\textsuperscript{14} In the 17\textsuperscript{th} century, the English bill of rights set out the ground rules for new settlement between the king and the parliament.\textsuperscript{15} Between the 18\textsuperscript{th} and 19th century, the focus of rights was based on natural law or natural rights, thus emphasising the dignity of the human being, rather than by status or any other classification.\textsuperscript{16}

In the context of Africa, rights talk were developed from struggles for the realisation of social, economic and cultural rights as well as civil and political rights.\textsuperscript{17} Rights talk were also a defining feature of resistance and liberation movement in most developing countries of Africa. Nationalist and anti-colonial movement framed the demand for self-rule in terms of every day constraints that colonial administrators imposed.\textsuperscript{18} The struggles for independence were in Africa informed by the experience of struggles against oppression and brutal exploitation in everyday life. These struggles constituted the emergence of a tradition of struggles for rights by the specific histories

\footnotesize{
\begin{enumerate}
\item ibid
\item ibid
\item National Archives and Record Administration, The Magna Carta, \texttt{<http://www.archives.gov/exhibits/featured_document>} accessed 16 May 2014.
\item The National Archives, ‘Medieval Concept of Human Right’ \texttt{<www.nationalarchives.gov.uk/humanrights/1215-1500>} accessed 17 May 2014
\item ibid
\item ibid
\item Buck (n8)
\item Mamood Mamdani, \textit{Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism} (Princeton University Press 1996)
\end{enumerate}
}
and experiences of those involved.\textsuperscript{19} It has however been argued that human rights conceptions did not really exist in pre-colonial Africa, what existed was the notion of human dignity and worth.\textsuperscript{20} Arguably this notion was not only peculiar to Africa but was common to all societies.\textsuperscript{21} Rights, however, did exist because even the most primitive social orders had rules specifying that firstly, certain individuals or groups have special permission to perform certain actions, and secondly, that some were entitled to tell others what they must do, such rules ascribed rights.\textsuperscript{22} However, in pre-colonial Africa, the rights struggles was primarily to protect group and ethnic cultural rights and not individual rights.\textsuperscript{23} In areas of Africa, such as in Northern Nigeria, emirates were actually powerful empires in which existed social stratification among nobles, freemen and slaves.\textsuperscript{24} Nevertheless, it was the conquest and colonisation of Africa that gave rise to the concept of constitutional and political guarantees, which were formulated to protect the human rights of the citizens.\textsuperscript{25} These constitutional guarantees were bequeathed to British colonies. Their aim, in actual fact, was to protect the British Empire in foreign lands, as well as British citizens who were staying behind.\textsuperscript{26} Nevertheless, even though human rights existed in Africa, the international human rights framework as they are known today is largely a western model.\textsuperscript{27} The western model of rights has at its roots, liberalism in which the individual is a political actor abstracted from the communal society.\textsuperscript{28} The next section discusses the meaning and nature of HRBA.

2.3. MEANING AND NATURE OF HUMAN RIGHTS BASED APPROACH

It is important to make clear the definition and concepts used here. This section outlines the meaning of human rights, and Human Rights Based Approach (HRBA).

\textsuperscript{20} Rhoda Howard, Human Rights in Commonwealth Africa (Rowman and Littlefield 1981)
\textsuperscript{21} ibid
\textsuperscript{22} Archard (n4)
\textsuperscript{23} Howard (n20).
\textsuperscript{24} ibid.
\textsuperscript{25} Issa G. Shivji, The Concept of Human Rights in Africa (CODESRIA Book Series, 1989)
\textsuperscript{26} ibid
\textsuperscript{28} ibid
2.3.1 Meaning of Human Rights

This thesis draws upon Michael Freeden’s definition of human rights as:

A conceptual device expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection.  

The definition implies that there is a relationship between individuals (or group of individuals) who have a valid claim and another individual (or group of individuals) who have a correlative duty or obligation. The first individual enters into the role of a right holder and the second individual enters into the role of the duty bearer. It is the relationship in each circumstance that defines the role of the actors involved.  

Accordingly, human rights are a universal norm and they exist as moral and legal codes for the protection of the human being. As moral codes, they belong to all human beings regardless of nationality, sex, ethnicity, gender, age culture, religion or race. As legal codes, they are specifically framed to protect specific individuals and groups. Thus said, all internationally recognized human rights are universal, inalienable, interrelated and interdependent. ‘Universal’ means that they are to be enjoyed by everyone without discrimination. While ‘Inalienable’ means they are inherent in every individual and it is not a gift or privilege. They are ‘interdependent and interrelated’ implies that fulfilment of one guarantees the full enjoyment of others.

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29 Michael Freeden, Rights (Open University Press 1991) 9  
30 H.L.A Hart, ‘Are There any Natural Rights?’ (1955) 64 (2) The Philosophical Review 175  
31 Brian Orend, Human Rights, Concept and Context (Broadview Press Limited, 2002)  
32 Charter of the United Nations 1945, Article 1(3)  
This view that human rights are universal has been an issue for debate. Some scholars hold that human rights are universal because they are applicable to every human being for the protection of their dignity. Yet, generalizations about human rights cannot be made outside a specific place, time and level of development. Neither can reliance be made on the basis of human rights documents, because they are essentially political treaties based on compromise, consensus and guarantees by States to respect each other’s sovereignty. The implication is that human rights instruments are universally valid documents only to the extent that States have agreed to be bound by them.

It is also argued that the international human rights framework is based on a western model of rights which has been supported by the spread of the western model of the State to other parts of the world. However, other commentators have contested the notion of rights as a western model. For example, Martha Nussbaum argues that even if the international human rights framework is western, ‘the fact by itself does not make them unsuitable for other nations’. She goes further to argue that societies sometimes borrow things from other cultures, such as ‘little pieces of an external view’ or ‘large systematic views’ that come from outside. In the same vein, Makau Mutua is of the view that human rights in Africa are not purely western but have been largely influenced by western ideologies due to the lopsided power structure of membership of the United Nations. Others however have argued that rights never take shape in a social vacuum, therefore human rights have existed in many societies in different context. Nevertheless, the idea of human rights is embedded in the belief that human beings are to be treated with dignity to their person, free from interference by the State or other individuals.

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36 Donnelly (n10)  
37 ibid  
38 Howard (n20)  
39 ibid  
40 Cobbah (n27)  
42 Martha C Nussbaum, ‘Creating Capabilities: The Human Development Approach’ (Harvard University Press,2011) 102  
43 Ibid  
This is grounded in the idea that the human being can be abstracted from social institutions.\(^\text{47}\) It is a view, however, which reflects the needs of a very concrete, specific person. This view has been presented as a response to all human needs, a response to the needs of all individuals, independently of their particular situation in terms of gender, race, education, origin, sexual orientation, age or disability. The assumption by liberalism of an abstract human identity implied that the mere Statement of general rights detached from institutional reform would be enough to ensure those rights for all.\(^\text{48}\) However, this abstract individual emerged from the needs of the White, heterosexual, middle-class, Western, European man.\(^\text{49}\) Consequently, this abstraction meant that there were no specific rights that addressed different groups of people such as women, racial minorities and persons with disabilities, amongst others, which has proved challenging to address. Even though these specific rights have now come into existence, there are still traces of abstraction that are operative in the way they are formulated, understood and interpreted.\(^\text{50}\) Some scholars however argue that rights and their component ideas have existed in many traditions. This argument is based on the view that rights are measured by capabilities, or put differently, ‘what people are actually able to do and to be’.\(^\text{51}\) Consequently, even though human rights conceptions originated in the west, they have become applicable in Africa, as elsewhere, but their applicability is dependent on the balance between cultural values and the ‘universal’ human rights documents.\(^\text{52}\)

Accordingly, each society including Africa has their own set of norms, which define their perception of rights.\(^\text{53}\) Yet, what has become acceptable standards in international human rights documents have come about through a process of what citizens of the west engaged with and produced for the international community.

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\(^{47}\) Karl Marx, ‘On the Jewish Question’ 1844 reprint in Jeremy Waldron (ed) *Theories of Rights* (Oxford University Press 1987)

\(^{48}\) Thomas Nagel, *The View from Nowhere* (Oxford University Press, 1986)


\(^{50}\) ibid

\(^{51}\) Martha C Nussbaum, *Creating Capabilities: The human Development Approach* (Harvard University Press 2013) 18

\(^{52}\) Donnelly (n10)

Some commentators therefore suggest that in order to balance the variations that exist between the western concept of human rights and the non-western ideas about rights there should be a cross cultural dialogue in order to produce a common and an acceptable standard of human rights.\(^\text{54}\) This view has been contested by other commentators who argue that dialogue in a cross cultural context will even produce a further entrenching of the culture owing to the perception that it is their established mode of practice in those communities as opposed to the practice elsewhere, such as the West.\(^\text{55}\) Therefore, it becomes pertinent to suggest a middle ground or a space to dialogue on which aspects of old culture, local communities wish to retain and which ones they wish to deny.\(^\text{56}\)

Indeed, research reveals that the context and manner in which human rights laws are interpreted and utilized differs according to different cultural settings.\(^\text{57}\) Accordingly, although rights are accepted and practised in non-western and poor countries, the motive and reasons for doing so are also dependent on the social context, and the level of resources available to both the State and to parents, to enable parents fulfill their obligations towards children.

Human rights are a key pillar of the United Nations (UN) in many projects it undertakes.\(^\text{58}\) International human rights law are created primarily by international treaties, for example, the United Nations Convention on the Rights of the Child (UNCRC) 1989, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, and declarations, such as the Universal Declaration of Human Rights 1948.\(^\text{59}\)

The international treaties are drafted and acceded to by governments and are geared primarily towards the actions of governments. At their base they consist of governments assuming certain legal duties with regard to individuals or groups. Thus, human rights treaties serve primarily to


\(^{56}\) ibid

\(^{57}\) Details of which are discussed below at chapter 5, section 5.4


\(^{59}\) Buck (n8)
create rights for people and duties for governments. Human rights law can be applied, in certain situations, to the actions of other actors, but its purpose is designed primarily to place both positive and negative constraints on the actions of States. It is important to note in this context that, even where the primary duty is upon the State, that duty is often a duty to regulate a third party actor in a non-discriminatory way.

Furthermore each of the UN human rights treaties has a committee, or oversight body, charged with monitoring the member States’ compliance with that particular treaty. Each committee review reports and issue recommendations to governments. In addition, they often provide guidance as to the meaning of the law, which they do through the issues they ask governments to report upon; the issues they choose to take up with governments in oral discussion; the concluding remarks they make after each government has been reviewed; and the issuance of General Comments that explain and elaborate on the meaning of specific provisions within the specific treaty, or that relate to other similar issues.

In essence, human rights through the means of law, are meant for the protection of individuals or groups, the breach of which leads to legal action and the State is obligated to respect and protect such rights. Thus it is against this understanding of the nature of rights that a HRBA has increasingly become the norm in protecting citizens’ interest. The HRBA is thus elaborated further in the section that follows.

### 3.3.2. Meaning of Human Rights Based Approaches (HRBA)

A HRBA is an explicit approach that is geared towards empowering people to claim and exercise their rights as well as fulfill their obligations. It is an approach that relies on international laws

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61 Maria Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’ (2001) 23 *Human Rights Quarterly* 1062


63 ibid

64 ibid

65 Freeden (n29) 8

66 Buck (n8)

67 Seppanen Samuli, Possibilities and Challenges for the Human Rights Based Approach to Development (Erik Castren Institute of International Law and Human Rights 2005)
and norms for exposing the roots of vulnerability and marginalization and expanding the range of responses. The HRBA is therefore grounded in, and gains its legitimacy from, the rights enshrined in international and national legislation contained in treaties, declarations, plans, policies and development processes. It is also located and derived from civil, political, economic, social and cultural spheres.

Although human rights and HRBA are similar in the sense that they both legally enshrine the rights and responsibilities of right holders and duty bearers, there is however a subtle distinction between them. The distinction is that HRBA incorporates a more all-encompassing reference to people’s general sense of equity, justice, entitlement and fairness that give rise to legal obligations. For example, at the international level, the goal of a HRBA to education is to assure every child a quality education that respects and promotes her or his right to dignity and optimum development. In order to achieve this, the HRBA develops strategies which includes informing citizens about what rights they have, how they can draw upon those rights, how those rights relate to education and how they can claim those rights, and the actions necessary to translate children’s right to education and rights within education into legislation, policies and programs that ensures that they can achieve the necessary education.

Essentially, the normative basis of a HRBA requires that States Parties to international treaties and conventions have a legislative response at the level of the States. Its link to international law is a strong tool particularly when all countries have ratified core United Nations human rights treaties. The link to national legislation also demands certain procedures to be observed by the actors involved. Imperatively, where systems go wrong, redress of violations is another key aspect of a HRBA. In such instances, human rights machinery such as a Human Rights

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68 Ravnbol (n33)
69 Cuanachain (n35)
70 Samuli (n67)
71 Cuanachain (n35)
74 ibid
75 Samuli (n67)
Commission or a court, is used to secure redress of the violation.\textsuperscript{59} Importantly, such actions may not only be for individuals but also for groups and classes of vulnerable people.

In the context of children, a HRBA means to place children at the center of all interventions concerning them.\textsuperscript{77} Responses to the needs of children are designed to place at the core, their human rights, and address all forms of abuse and exploitation of children.\textsuperscript{78} A HRBA provides safeguards through laws, policies and programs that have a specific focus on children. It emphasizes that the government as key duty bearers elaborate and implement provisions in national law to protect children’s human rights to education. It acknowledges children as social agents with rights to be consulted on matters that affect them. This means that children’s voices are to be heard, as their experiences and recommendations are key to designing and implementing effective and preventive measures.\textsuperscript{79}

In the section that follows six core principles are examined and these highlight the potentials of a HRBA for effectively ensuring children’s rights are realized. These principles are: participation, best interest, accountability, non-discrimination and equality, empowerment, and the rule of law. Significantly, the principle of the best interest of the child\textsuperscript{80} and the principle of participation\textsuperscript{81} are fundamental to human rights of children. These two principles are provided under the UNCRC’89 but the principle of the best interest of the child is central when decisions that affect the child is to be taken.

\section*{2.4. THE CORE PRINCIPLES OF HUMAN RIGHTS BASED APPROACH}

\subsection*{2.4.1. The principle of participation}

This principle is found in several human rights documents and particularly Article 12(1) of the UNCRC’89 which provides that ‘States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the

\textsuperscript{77}Ravnbol (n33)
\textsuperscript{79}UNICEF, South Asia in Action: Preventing and Responding to Child Trafficking-Analysis of Anti-Trafficking Initiatives in the Region (Innocenti Research Center 2009)
\textsuperscript{80}UNCRC’89, Article 3
\textsuperscript{81}UNCRC’89, Article 12
views of the child being given due weight in accordance with the age and maturity of the child’. In considering the right of children to education, this principle effectively means that rights-holders, parents and local communities, are actively engaged in educational outcomes for children. Children should be at the center of decision-making processes affecting their education. Thus decision making process in matters that affect them should be wholly child centered. However, due to the nature of education, parents, teachers, and local communities all have an active role to play. Children should feel free to express or withhold their opinion and should not come under pressure to do either.

2.4.2. The best interest principle

Article 3 of UNCRC’89 gives a framework on how children should be considered in matters affecting them. Article 3(1) states that ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’ Article 3 is about the best interest principle, and is the leading and most important principle for the implementation of all substantive articles of the UNCRC’89. The term ‘best interests’ broadly describes the well-being of a child or ‘what is good for the child’. Indeed children’s wellbeing is determined by a variety of circumstances such as the age and level of maturity of the child, the family environment of the child, and the experience of the child. These circumstances potentially shape their experience of childhood. However, because Article 3 does not make the best interest of the child ‘the’ primary consideration but ‘a’ primary consideration, the meaning attached to it is subject to diverse interpretations according to the context of realities within families.

83 ibid
84 Fortin Jane, Children’s Rights and the Developing Law, 3rd edn (Cambridge University Press, 2009)
86 Robert H Mnookin, In the Interest of Children, Advocacy, Law Reform and Public Policy, (W.H Freeman and co, 1985)
2.4.3. The principle of accountability

The principle of accountability constitutes a central part of the contemporary HRBA towards implementing the right to education for girls.\(^88\) Accountability has been defined as the ‘obligation of power-holders to take responsibility for their actions’.\(^89\) The power holders are primarily the government, which are also the primary duty bearers. Therefore, by means of accountability, the government as primary duty bearers have an impact on the lives of its citizens which includes children, and girls in particular.\(^90\) It is thus imperative for the primary duty bearers, the government, and other relevant stakeholders to proactively and co-operatively establish and apply standards, indicators, tools and systems of monitoring, measuring and evaluation to fulfil their obligations and commitment to protect children from violations of their rights.\(^91\)

The Committee on the Rights of the Child (ComRC) recommends that States Parties submit its report in the first instance, within the first two years of its membership, thereafter every five years.\(^92\) The ComRC may also request for further reports on progress made with regard to protecting children.\(^93\) The report is to be submitted to the ComRC for consideration and discussion. Thereafter the ComRC invites all relevant stakeholders to respond to the information contained therein.\(^94\) The mechanism of States reporting to the ComRC is essential as it is part of the process of strengthening national capacity for protection of the rights of the child.\(^95\)

The principle of accountability is significant for several reasons. First, it is a control mechanism to prevent and address arbitrary exercise of power by States. Secondly, it is central to the question of how to sustain policy efforts beyond a single initiative and policy cycle. Thirdly, it is an important link between human rights and good governance, which guide sustainable and

\(^{88}\) Establishing Effective Accountability mechanism for Human Rights Violations (2012) 49 (4) UN Chronicle; Article 2 UNCRC’89

\(^{89}\) Sarah Lister, *Fostering social accountability: From principle to practice, Guidance Note* (UNDP, 2010) 8

\(^{90}\) ibid

\(^{91}\) ComRC General Comment No. 13 2011 CRC/C/GC/13 para 38

\(^{92}\) Article 44 UNCRC’89


\(^{94}\) ComRC General Comment No. 13 2011 CRC/C/GC/13 paras 41- 42

equitable development.\textsuperscript{96} It is even more imperative for States Parties to be accountable to their human rights obligations as it forms part of a sustainable development strategy for the future wellbeing of children in their adult life.\textsuperscript{97}

However, the State is not the only party to be held accountable where children are concerned. This is because the daily responsibility for realizing children’s rights first rests on the child’s parents. For example, parents are the ones who ensure that their children attend school.\textsuperscript{98} They also ensure that their children are protected from exploitative labour\textsuperscript{99}. Parents, therefore have the corresponding duty to claim rights on the child’s behalf.\textsuperscript{100} Accordingly, accountability to, and for, children involve not only the government, but also parents and guardians as duty-bearers, along with state officials, service deliverers and other institutions and individuals who implement children’s rights.\textsuperscript{101}

2.4.4. The Principle of Non-Discrimination and Equality

The principle of non-discrimination is at the heart of the human rights framework. This principle ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.\textsuperscript{102} Equality affirms that all human beings are born free and equal. It presupposes that all individuals have the same rights and deserve the same level of respect. The principle of non-discrimination and equality implies that laws, policies and programs should not be

\textsuperscript{97} Lena Thu Phuong Nguyen, Child Responsive Accountability: Lessons From Social Accountability (UNICEF 2013)
\textsuperscript{98} Article 28, UNCRC’89
\textsuperscript{99} Article 32 UNCRC’89
\textsuperscript{101} Nguyen (n97)
discriminatory, and also that public authorities should not apply or enforce laws, policies and programs in a discriminatory or arbitrary manner.\textsuperscript{103}

However, it is not in all cases that different treatment of people amounts to prohibited discrimination or inequality. Different treatment of people may occur if the criteria for the differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the International Covenant on Civil and Political Rights.\textsuperscript{104}

States Parties are obligated by this principle to ensure that they refrain from discriminating or eroding equality and the obligation to protect and advance the fulfilment and enjoyment of the rights to equality and non-discrimination for all people.\textsuperscript{105} This principle is particularly crucial where social and economic rights are concerned. This is because social and economic rights are usually framed in a language that allows States Parties to determine the extent to which they fulfil their obligation. In other words, they tend to be discretionary.\textsuperscript{106} For example under the Constitution of the Federal Republic of Nigeria (CFRN 1999), the right to education is non-justiciable,\textsuperscript{107} therefore girls are more likely to be denied education since there is no judicial redress for them when they denied education. It is for this reason that human rights advocates strongly engage with States Parties in order to change the existing status quo and break the cycle of discrimination that are in existence within such societies.\textsuperscript{108} The failure of the government to adequately address the challenges affecting girls, will ultimately lead to unequal treatment for them as adults in the work place.\textsuperscript{109}

\textsuperscript{104} ibid
\textsuperscript{105} ComRC General Comment No.5 CRC/GE/2003/5, article 2
\textsuperscript{106} Paul O’Connell. ‘Vindicating Socio-economic rights, International standards and Conceptions’ (Routledge. 2012)
\textsuperscript{107} Constitution of the Federal Republic of Nigeria 1999, Section 18(3)
\textsuperscript{108} Fredman (n102)
\textsuperscript{109} Catherine Albertyne, Sandra Fredman and Judy Fidge, Introduction: Elusive Equalities- Sex, Gender and Women’ (2014) 10 (4) International Journal of Law in Context 421
2.4.5. The Principle of Empowerment

This principle gives individuals or groups the space to participate in activities in order to bring change to the things that disempowered them. Such activities are aimed at addressing the root causes of inequality and discrimination in order to achieve equitable distribution of power and resources. Individuals thus become more empowered when they get involved through participation to change the things that disempowered them in the first place.\footnote{ibid} The activities involve gaining knowledge of, and having an understanding of their rights. Hence Civil Society Organizations (CSOs) get involved by providing the training, tools and support to local communities and ensuring that advocacy is promoted at the grassroots. In the case of children, their limited capacity makes it imperative for those who have the responsibility towards them such as their parents, to develop skills and tools to claim on behalf of their children.\footnote{Nguyen (n97)}

The significance of this principle is that it challenges the power structures that are embedded in the political processes that reinforce disempowerment of particular groups and which foster inequality.\footnote{International Human Rights Network http://ihrnetwork.org/what-are-hr-based-approaches_189.htm accessed 2 April 2015} However in the context of children, because of their limited and evolving capacity, their direct participation in political processes is limited.\footnote{Andrew Bainham, Children-The Modern Law (Jordan Publishing Limited 2005)} Therefore the recognition of children’s limitation gives room for the development of strategies that encourage and facilitate their own participation.\footnote{Nguyen (n97)} The ComRC states that particular measures should be taken towards ensuring that there are effective, child-sensitive procedures available to children and their representatives.\footnote{ComRC General Comment no 5 CRC/GC/2003/5 para24} These measures should include the provision of child-friendly information, advice and advocacy. It should also include support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.\footnote{ibid}
2.4.6. The Rule of Law

A HRBA is usually grounded in, and gains legitimacy from the inherent human rights recognized in international law. The international legal framework is a minimum agreed standard of respect for human rights among States Parties as a means of framing issues and problems as well as seeking redress in the judicial system. Thus, the rule of law refers to a principle in which all persons, institutions and entities, public and private, including the State itself, are accountable to that agreed standard of laws that are publicly promulgated and which are consistent with international human rights norms and standards.

The HRBA is thus characterized by its adherence to the principles of the rule of law, equality before the law, accountability to the law, fairness in the application of the law, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. This principle is therefore useful as a legitimate and credible standard of assertion for the international community. It also promotes the universality of human rights. Therefore, States, through giving recognition to these human rights standards, engage in the process of codifying new human rights laws, and making the new laws adapt to the changing nature of the state and its values. The significance of the rule of law is that it provides stability and the protection needed for a State to maximize economic and human development outcomes. To that extent, if a state has a weak rule of law, it results in high cost of food, poor health facilities and increase in insecurity within the state. Consequently, a weak rule of law is an impediment to development outcomes including low educational achievement for girls.

2.5. CONCLUSION

A HRBA is best seen as a strategy that aims to protect the rights of individuals or groups through the means of the international legal framework. The particular focus guided by its core principles
is to ensure that the duty bearers fulfill their obligation. HRBA through application of its core principles can be used for addressing issues that affect children and has been used in various instances to address violations of marginalized individuals and groups such as the girl. Therefore, the HRBA examined in this chapter is adopted as a framework for discussing the right to education in the next chapter.
CHAPTER THREE - RIGHT TO EDUCATION: THE LEGAL FRAMEWORK

3.1. INTRODUCTION

According to the United Nations Committee on Economic Social and Cultural Rights, (hereafter referred to as ComESCR), the right to education ‘epitomizes the indivisibility and interdependence of all human rights’.¹ This is because it is an economic right, a social right, a cultural right, and in many ways, a civil right and a political right.²

In all societies and throughout human history the role of education has been vital, both as an end in itself, and as a means for the individual and society to grow. Its recognition as a human right is derived from the indispensability of education to the preservation and enhancement of the inherent dignity of the human person.³ The right to education is included in numerous International treaties and texts of varying legal nature and both legally binding and non-binding instruments have affirmed it.

While there is no single convention explicitly providing the right to education for girls, there are various agreements that are discussed further in the section that follows, which specifically refer to the peculiar situation of girls. These include the Millennium Development Goals (MDGs) and the Education for All (EFA) initiative. These initiatives were set out towards fulfilling education targets by the year 2015. There are also particular expert bodies that promote the course of education for children and particularly girls’ education. These include the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the United Nations Children’s Fund (UNICEF).

This chapter sets out the legal framework at the international, regional and national level. The first section discusses the main initiatives for education set out by world leaders, which are, MDGs and the EFA. The second section examines key legal instruments with specific focus on the right to education. This section is divided into three parts, each of which examines the

¹ ComESCR General Comment 11, UN Doc E/C.12/1999/4(1999) para2
² ibid
international, regional and domestic human rights framework for education respectively. The third section focuses on the obligations of both the government and parents towards ensuring educational achievements for children. This section also examines the place of the right holder, girls, as a beneficiary of such rights. The fourth section examines some limitations of the HRBA which makes implementation of the rights to education for girls almost impracticable to achieve. This chapter concludes by suggesting a holistic and interdisciplinary approach towards education for girls in Nigeria.

3.2. WORLD FOCUS ON EDUCATION

Two initiatives adopted by world leaders for achieving education targets are the Millennium Development Goals (MDGs)\(^4\) and the World Declaration on Education for All (EFA).\(^5\) Specifically, in the year 2000 it was agreed that eight goals and eighteen targets set out to eradicate global poverty and human suffering under the MDGs were to be achieved by 2015.\(^6\) The MDGs, which were carefully negotiated by world leaders of the United Nations became a ‘political’ consensus document. These goals were also set in line with the Universal Declaration on Human Rights (UDHR) 1948. Thus the MDGs and human rights are interdependent and mutually reinforcing commitments towards development.\(^7\) Of particular relevance to this thesis from the eight goals of the MDGs are goal two and three. Goal two is targeted at achieving universal primary education, and goal three aims to promote gender equality and women empowerment. Although the MDGs have not met their targets for 2015, they have recorded considerable success across the globe.\(^8\) Donors have used them to align their development aid policies and priorities in education.\(^9\) Countries, including Nigeria, have used these goals as targets and standards to rally domestic political will to reform and improve their education systems: one

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\(^9\) ibid
example is the Universal Basic Education scheme in Nigeria which is discussed in the next chapter.

In a similar vein, the EFA movement is a global commitment made in 1990 and endorsed in the year 2000. Its aim is to provide quality basic education for all children, youth and adults. The main goal of the EFA is poverty and illiteracy reduction, as well as universal education, by 2015. The EFA declaration is significant because it gives ‘priority to ensure access to improve the quality of education for girls and women.’ It also spells out a meaning of gender equality, which is to achieve equity in education. Such equity entails putting in place a rights based empowerment framework that will target the most vulnerable, and transfer power hierarchies in learning spaces, communities and policy structures. In this way, the poor and vulnerable girls can have a voice and a right to quality education that is sustained. It goes on to highlight the need to think about gender and quality education in a multiple learning environment, and taking into account multidimensional poverty and discrimination against women and girls. The EFA promotes the understanding of a world where girls and boys are being empowered to gain their full potential and contribute to transforming their societies.

Considering the gains of the MDGs and EFA, this thesis moves on to consider the international, regional and national legal framework on education in the next section.

3.3. HUMAN RIGHTS LEGAL INSTRUMENTS ON EDUCATION

Many countries recognize the need to assert the universal right of children to education. To make this possible, specific provisions for education are documented in various international, regional and domestic documents. These documents offer a progressive framework for the protection of children’s rights. Indeed, human rights agreements serve primarily to create rights

12 Ibid Articles 3 para 4
13 Ibid Articles 5 and Articles 6
14 Education for All (n8)
15 World Declaration on Education for All (n10) Articles 4 and 5
16 This is portrayed by the ratification of the United Nations Convention on the Rights of the Child 1989 by most countries.
for people and duties for governments. These instruments are known by different terms such as treaties, conventions, declarations, charters, protocols and covenants.

Treaties and covenants are used as a generic term for a broad range of international agreements but are used specifically for formal multilateral agreements with a broad number of Parties.\textsuperscript{17} Declarations are used in a broad number of instruments, particularly used for those that are not legally binding on Parties.\textsuperscript{18} Protocols are treaty agreements that are less formal but with the specific substantive obligations that implement the general objectives of a previous framework or umbrella convention.\textsuperscript{19} The term ‘charter’ is used for particularly formal and solemn instruments, especially as a constitution for an international organization.\textsuperscript{20} Well-known recent examples are the Charter of the United Nations of 1945 and the African Charter on Human and People’s Rights.\textsuperscript{21} Covenants are also formal instruments agreed to by States Parties who are bound by them. They are used synonymously with conventions and treaties.\textsuperscript{22}

The international legal framework is a mechanism that facilitates international co-operation and compliance with international law among States. It addresses pressing issues of global concern and promotes compliance at domestic levels.\textsuperscript{23} Even though international law requires a State to carry out its international obligations, in general, State Parties carry out their international obligations by means of legislative, executive and/or judicial measures.\textsuperscript{24}

A State Party may also incorporate treaties within its legal structure so that the State authorities can implement them.\textsuperscript{25} In some countries, international (and at times regional) human rights law

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\textsuperscript{17} ‘Introduction to the Convention of the Rights of the Child: Definition of Key Terms’
\textsuperscript{18} United Nations Treaty Series, ‘Definitions’
\url{https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml#charters} accessed 19 June 2015
\textsuperscript{19} ibid
\textsuperscript{20} ibid
\textsuperscript{21} ibid
\textsuperscript{22} Nancy Flowers (ed.), ‘Human Rights Here and Now : Celebrating the Universal Declaration of Human Rights’
\url{http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/6_glossary.htm#Anchor-Covenant-16835} Accessed 19 June 2015
\textsuperscript{23} Arthur Watts, ‘The Importance of International Law’ in Michael Byers (ed.) \textit{The Role of International Politics: Essays in International Relations and International Law} (Oxford University Press 2001)
\textsuperscript{25} ibid
\end{flushright}
automatically becomes a part of national law as soon as that country has ratified or acceded to an international agreement. Under such systems treaties are considered to be self-executing. In other countries, international human rights law does not automatically form part of the national law of the ratifying State. International law in these countries is not self-executing, that is, it does not have the force of law without the passage of additional national legislation. In the sections that follow, the international, regional and domestic instruments are examined with regard to the right to education and what it means for girls.26

3.3.1. The Rights to Education in international Documents

This thesis highlights features of the most relevant provisions for rights to education at the international level.27 A key instrument in the area of rights to education for children is the Universal Declaration on Human Rights (UDHR) 1948.28 The UDHR makes no specific mention of children but makes it clear that the right to education like every other right contained therein, at the elementary and fundamental stages, is both for adults and children alike as well as for males and females.29 The UDHR recognizes the right to education for all under Article 26. It provides that such education must be free, compulsory and directed to the full development of the human personality and also the strengthening of respect for human rights and fundamental freedoms. The UDHR 1948 puts the onus on parents to choose the type of education that they want for their children. This onus is an attempt to respect parents’ freedom to choose based on their religious beliefs. This freedom may be abused by parents and may potentially lead to denial of the child’s right to education.30

Significant among the international legal instruments is the UNESCO Convention against Discrimination in Education (CADE) 1960.31 CADE is the only legally binding international instrument that is exclusively focused on the right to education. CADE lays down international

28 The first attempt at children’s rights was the declaration of the Rights of the Child of 1924 which was revisited and revised by the Universal Declaration on the Rights of the Child of 1959. These two declarations were however non-binding on the international community
30 Kate Manzo, ‘West Africa’s Children: Trafficking, Slavery and Uneven Development’ 2005 37 (4) The Royal Geographic Society 393
31 CADE entered into force 22 May 1962
obligations for the right to education and promotes the right of every person to enjoy access to education of good quality without discrimination or exclusion.\textsuperscript{32} It is an instrument that is applicable to all persons and does not make specific mention of girls.

Article 4 CADE formulates the legally binding clause for implementing education at primary, secondary and tertiary level. It also imposes sanctions States Parties that neglect to fulfil their obligation.

Article 4 specifically provides:

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

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

The CADE has been strengthened by the International Covenant on Economic Social and Cultural Rights (ICESCR) 1966.\textsuperscript{33} Specifically, Article 13 ICESCR provides that primary education shall be ‘compulsory and available free to all’, while Article 14 ICESCR outlines the obligations of states parties necessary to secure the progressive implementation within a reasonable number of years and to fix a plan. A significant feature of both Articles 13 and 14 is the element of compulsion, which highlights the fact that neither parents, nor guardians nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education.\textsuperscript{34}

The ICESCR is closely interrelated and interdependent on another covenant, the International Covenant on Civil and Political Right (ICCPR) 1966.\textsuperscript{35} The ICCPR evokes the right of education within the broader context of freedom of thought, conscience and religion. The ICCPR is significant because it is a document that refers to ‘all people’ which therefore includes children.\textsuperscript{36}

\textsuperscript{32} UNESCO ‘Rights to Education: Law Policy and Review Guidelines (UNESCO 2014)
\textsuperscript{33} ICESCR opened for signature 16 Dec 1966, 993 UNTS 3 (entered into force 3 January 1976
\textsuperscript{34} ComESCR para 6 General Comment 11, UN Doc E/C.12/1999/4(1999)
\textsuperscript{35} ICCPR opened for signature 16 December 1966 999 UNTS 171 entered into force 23 March 1976
\textsuperscript{36} ICCPR, Article 1
Children are specifically referred to in certain of its articles, such as Article 14 which concerns juvenile matters and issues of guardianship, and Article 24 on issues of non-discrimination, birth registration and right to a nationality. The ICCPR focuses on protecting the rights of every individual with the aim of ensuring equality for everyone.\textsuperscript{37} Children’s attainment of educational qualification becomes a guarantee to achieving civil and political rights. Under Article 18(4), the ICCPR requires States Parties to undertake to have respect for the liberty of parents. It also provides that when applicable, legal guardians should ensure the religious and moral education of their children in conformity with their own convictions.

Another relevant international legal instrument is the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) 1979. CEDAW does not address girls specifically but it provides the basis for realising equality between women and men. The CEDAW requires that both ‘men and women have equal access to, and equal opportunities in, political and public life including the right to vote and to stand for election … as well as education’.\textsuperscript{38} This Convention helps girls to have access to education and by implication helps women secure their rights throughout their lives.

Significantly, the most comprehensive document for children’s rights globally is the United Nations Convention on the Rights of the Child UNCRC 1989 (UNCRC’89).\textsuperscript{39} This Convention is a child centred document thus bringing about a turning point for children. It creates new rights under international law which did not exist before, \textsuperscript{40} or which until the adoption of UNCRC’89 had only been acknowledged or refined in case law.\textsuperscript{41}

The UNCRC’89 refers to education in two provisions, notably Article 28 and Article 29. Article 28 affirms the right of the child to education and the duty of the State to ensure that primary education is free and compulsory. Article 28 also recognizes the right of the child to education with a view to achieving this right progressively and on the basis of equal opportunity. Article

\begin{thebibliography}{9}
\bibitem{38} CEDAW, Article 10
\bibitem{39} Trevor Buck and others, \textit{International Child Law} (3rd edn, Routledge,2014)
\bibitem{40} For example, the 1929 Declaration and the 1959 Declaration on Human rights which were non-binding and had a narrower scope.
\bibitem{41} Buck (n39)
\end{thebibliography}
29(1) is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context education goes beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.\(^{42}\)

Article 29(1) specifically outlines what the aims of education for children should be. These aims, set out in the five subparagraphs of article 29 (1) are all linked directly to the realization of the child’s human dignity and rights, taking into account the child’s special developmental needs and diverse evolving capacities. The aims are: the holistic development of the full potential of the child\(^ {43}\), development of respect for human rights\(^ {44}\), an enhanced sense of identity and affiliation,\(^ {45}\) and his or her socialization and interaction with others\(^ {46}\) and with the environment.\(^ {47}\)

Furthermore, children and in particular, girls, who are out of school are more likely to be engaged in some form of labour.\(^ {48}\) As such, two legal instruments; the Worst Forms of Child Labour Convention (ILO C182) 1999 and the Minimum Age Convention (ILO C138) 1973 both protect children from child labour and exploitation. The ILO C138 provides that children less than 18 years are prohibited from engaging in the labour market.\(^ {49}\) Article 7(2) of the ILO C182 requires States ‘to take effective and time-bound measures’ in fulfilling their obligations towards education for children. Article 7(2) (e) particularly requires States to take into account the special situation of girls. The emphasis on education is to enable children attain a certain minimum level of education at a certain age before they become eligible to work.

### 3.3.2. Rights to Education in African Regional documents

The principles expressed in the international documents are further specified in regional human rights documents. These regional documents are better equipped to address specific pressing

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\(^{42}\) ComRC General Comment No.1 (2001) Article 29(1), CRC/GC/2001/1

\(^{43}\) UNCRC’89 Article 29(1) (a)

\(^{44}\) ibid Article 29(1) (b)

\(^{45}\) ibid Article 29(1) (c)

\(^{46}\) ibid Article 29(1) (d)

\(^{47}\) ibid Article 29(1) (e)

\(^{48}\) Dorte Thorsen, *Child Domestic Work: Evidence from West and Central Africa* (UNICEF 2012)

\(^{49}\) ILO C138 Article 3 (1)
issues within that particular region of the world. For this reason, they appear to be more important than the international human rights instruments even though there is no hierarchy between international and regional human rights instruments.\(^50\) Rather, regional human rights instruments supplement and complement the international human rights framework, by protecting and promoting human rights in specific areas of the world. In the African region, there are key binding regional treaties which are identified and discussed.

One key binding African regional instrument is the African Charter on Human and Peoples’ Rights 1981 (ACHPR’81).\(^51\) The ACHPR’81 recognizes the right to education and expressly provides that every individual shall have the right to education.\(^52\) Furthermore by virtue of Article 66 of the ACHPR’81 special protocols or agreements can be adopted if necessary, to supplement the provisions of the ACHPR’81. Therefore, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (African Protocol)\(^53\) has been created. Specifically Article 12 of the African Protocol requires States Parties to eliminate all forms of discrimination against women and guarantee access to education and training.\(^54\) The African Protocol also requires States Parties to eliminate all stereotypes in textbooks and the media that perpetuate such discrimination and, especially protect girls from all forms of abuse, including sexual harassment in schools and other educational institutions, and provide sanctions for the perpetrators of such practices.\(^55\) Most impressive about the African Protocol is the recognition of the right to education, which for girls must be read together with Article 15(a) on the provision of a source of clean drinking water to be located close to the family. The essence of reading both together is to enhance girls’ access to education, since girls are most likely responsible for collecting water for the family before, or indeed after, school.\(^56\)


\(^{52}\) ACHPR’81 article 17

\(^{53}\) Adopted 7 November 2003 and entered into force 25 November 2005

\(^{54}\) African Protocol, Article 12 (1) (a)

\(^{55}\) ibid Article 12 (1) (b)

Clearly, the African Protocol and the ACHPR’81 have had some normative gains in the African region. Yet, the African continent still lags behind in the attainment of primary education for all by 2015. It also lags behind in not closing the gender gap in education as quickly as other regions have done. Some commentators have argued that culture has played a major role in the slow progress made in education. It is also argued that culture has led to the poor ratification, incorporation and enforcement of provisions within the women’s protocol and more generally provisions that bother on the discrimination on the basis of sex. However, States are to ensure that narrow and sexist interpretation of culture are not allowed to hold sway.

Another key regional instrument is the African Charter on the Rights and Welfare of the Child (ACRWC) 1990. The ACRWC recognizes all other provisions in any other convention or agreement that better protect children’s rights. Particularly, Article 1(2) provides that:

Nothing in this Charter shall affect any provisions that are more conductive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international convention or agreement in force in that State.

The ACRWC has been influenced by the UNCRC’89. The ACRWC’s definition of the ‘child’ has a similarity to the definition of the ‘child’ under the UNCRC’89. The ACRWC’89 defines the child as ‘every human being below the age of 18 years’. This definition has come under criticism on two grounds. First, for its contradiction with African culture and tradition, and secondly because it contradicts the emphasis that the family is a collective unit. On the first ground, it is argued that in African traditional societies, the child ceases to be a child if he/she has attained physical maturity and not in terms of the age of the child. On the second ground, it is argued that the

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60 Banda n(50)
61 ACRWC’90 Article 2
63 ACHPR ’81 Articles 18 and 29(1)
child is not autonomous but has responsibilities towards the family because of kinship ties. Of particular relevance is Article 11(1) of the ACRWC which provides that ‘every child shall have the right to an education’. However, this provision when read together with paragraph 2(c) of the same Article introduces arguments about the interpretation of what is acceptable as culture for children and girls particularly. Article 2(c) states that the education of the child shall be directed to: ‘the preservation and strengthening of positive African morals, traditional values and cultures’; It is noted that the understanding of paragraph 2(c) can be deduced from the provisions under Article 31(a) of the ACRWC. Indeed, article 31(a) of the ACRWC provides that ‘every child has responsibilities towards the family and society, the State and other legally recognized communities and the international community and subject to such limitations contained in the charter shall have the duty to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need.’

The guiding principle behind Article 31(a) of the ACRWC is rooted in the belief that children in traditional African societies do not belong exclusively to their parents. They have obligations to the wider society, which likewise bears responsibility for their proper socialization. More consideration is given to the wider society in the next section, which discusses specifically the Nigerian legal framework.

3.3.3. Rights to Education in National Documents – Nigeria

This section, first outlines the demography of Nigeria. This is necessary to better understand the discussion on the domestic legal instruments and their implication for rights to education in different parts of Nigeria.

3.3.3.1. Nigeria in Context

Nigeria is a country in the West African Region bordering the Gulf of Guinea between the republics of Benin and Cameroon, and has a total area of 923,768 sq. km. [910,768 sq. km. of land and 13,000 sq. km. of water]. The country operates a federal system of government with a central government and thirty-six subnational governments called ‘states’. Geographically, the states are located within six geopolitical zones namely; North Central, North East, North West, North

South East, South-South and South West. These six geopolitical zones were created for ease of resource sharing. The population is estimated to be about 178.5 million people, and is made up of 389 ethnic groups, 774 local governments, 500 indigenous languages, and two major religions- Islam and Christianity, among 36 states and the federal capital territory. There is also a sizable population of adherents to traditional religion.

Many of the ethnic groups in Nigeria live a patrilineal system of kinship which has wider implications of patriarchy towards women and girls. The largest ethnic groups are the Hausa-Fulani in the North, the Igbo in the Southeast, and the Yoruba in the Southwest. The existence of these three large ethnic groups has huge repercussions on the way rights to education for children are understood and implemented. Indeed when translated into educational policy, some parts of the Nigerian federation are classified as educationally disadvantaged states and also related to this is the adoption of a quota system in students admission into federal government institutions. The fragmentation of Nigeria’s geographical, ethnic and cultural identity lines is effectively balanced by the country’s federal structure and the strong emphasis of the federal government on representing six geopolitical zones and different ethnic and cultural identities.

In the subsections that follow, the legal framework on education in Nigeria is examined.

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70 April A. Gordon, Transforming Capitalism and Patriarchy: Gender and Development in Africa (Lynne Rienner Publishers, 1996)
71 Lalage Bown, Maintaining Universal Primary Education: Lessons from Commonwealth Africa (Commonwealth Secretariat 2009)84
72 ibid
3.3.3.2. The Constitution of the Federal Republic of Nigeria (CFRN) 1999

In 1999 Nigeria returned to civil and democratically elected leadership after several years of military leadership. During the military leadership the CFRN 1999 was enacted as part of the process to usher in civilian leadership.\textsuperscript{74}

The CFRN 1999 guarantees the fundamental human rights which are similar to those of the UDHR 1948, although the latter has a broader scope of application.\textsuperscript{75} The CFRN 1999 has eight chapters. These eight chapters have 320 sections. The Fundamental Human Rights are listed from Sections 33-46 of chapter 4 of the CRFN 1999.\textsuperscript{76} However, Section 19(d) of chapter 2, outlines the foreign policy objective and provides that Nigeria shall have ‘respect for international law and treaty obligation’. This therefore accommodates fundamental human rights contained in any other international law.

Significantly, Sections 17 and 18 of the CFRN 1999 constitute the fundamental and directive principle of State policy. Section 17(3)(f) provides that ‘children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect’. While Section 18 provides that government shall strive to eradicate illiteracy; and to this end shall, ‘as and when practicable provide’\textsuperscript{77}: ‘free compulsory and universal primary education’,\textsuperscript{78} ‘free secondary education’,\textsuperscript{79} ‘free university education’\textsuperscript{80} and ‘free adult literacy programme’.\textsuperscript{81} Section 18 has been criticized, first, because of the placement of the provision for education under the directive principle in Chapter 2 CFRN 1999 and not under the fundamental rights and freedoms in Chapter 4 of the same document. The provisions in the CFRN 1999 imply that the constitutional provision for education is not a right. They also imply that it is at the discretion of the government that investment in education will occur. Furthermore, by virtue of section 6(6)(c)

\textsuperscript{74} Preamble to the CFRN 1999 Para 1, http://www.nigeria-law.org/Constitution%20of%20the%20Federal%20Republic%20of%20Nigeria%20Promulgation%20Decree.htm accessed 30 September 2015
\textsuperscript{77} CFRN s.18(3)
\textsuperscript{78} CFRN s,18(3)(a)
\textsuperscript{79} CFRN s,18(3)(b)
\textsuperscript{80} CFRN s,18(3)(c)
\textsuperscript{81} CFRN s,18(3)(d)
of the CFRN, the entire content of chapter 2 are all non-justiciable. Section 6(6)(c) of the CFRN provides as follows:

The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

This section has therefore denied citizens from seeking enforcement of their rights through lawsuits. However, there are two ways that a non-justiciable provision can be made justiciable. First, where the CFRN’99 in its justiciable sections directs that a particular section of chapter two of the CFRN’99 should be complied with. Secondly, the CFRN empowers the National Assembly of Nigeria to make non-justiciable provisions justiciable. This they can do by making legislation from those items in chapter 2. Some commentators have argued that if the National Assembly has powers to legislate on non-justiciable items, then it is better to amend the entire constitution and completely redraft the content of chapter 2. It was also held in the case of A.G of Ondo v A.G of Federation (2002)9 (4)NWLR 772, that the court cannot enforce any of the provisions of chapter two until the National Assembly has enacted specific laws for their enforcement.

Another criticism is on the use of the term ‘shall’ and ‘when practicable’. These terms reflect the financial and other resources required to fulfill the obligations of the State. Thus the Nigerian government veils itself with the use of these terms in not fulfilling their obligations towards funding education. Furthermore the CFRN’99 is criticized for focusing only on literacy (reading

83 This condition is in accordance with the exceptions under the CFRN’99 Section 6(6)(c)
84 Section 4 referring to item 60 (4) of the exclusive legislative list of the CFRN’99
86 CFRN 1999, s.18(3)
and writing), which are indeed the first steps in education but not much attention is given to the quality of education that is meant to prepare the child for adult life. 88

3.3.3.3. The Child Rights Act 2003

The UNCRC’89 stipulates that ‘State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.’ 89 As a consequence, Nigeria enacted the Child Rights Act 2003 (hereafter referred to as CRA 2003) which helped to define a new perspective on the rights of the child in Nigeria.

The provisions of the CRA 2003 supersede all other legislations that have a bearing on the rights of the child in Nigeria. Section 15 of the CRA 2003 makes it clear that children have a right to free compulsory and universal basic education. It also states that it is the responsibility of the government to provide education. Since the CRA 2003 was enacted at the national level, the individual states are expected to formally adopt and adapt it, and make it state law. Issues of child rights protection are on the residual list of the CFRN 1999, giving states exclusive responsibility and jurisdiction to make laws relevant to their specific situations. 90

The structure of the CRA 2003 has been informed by the mandate to provide a legislation which incorporates all the rights and responsibilities of children, and which consolidates all laws relating to children into one single legislation, as well as specifying the duties and obligations of government, parents and other authorities, organizations and bodies. 91 So far, 26 of the 36 states have domesticated the CRA 2003. 92 However the states that have domesticated tend to pay lip service to the implementation of the CRA 2003. This is obvious in the absence of

88 Anibueze Uchenna Anselm and Okwo Fredrick, ‘Counterpart Funding of the Universal Basic Education in Nigeria: Implication for Counselling’ (2013) 17 (2) IOSR Journal of Humanities and Social Science 11
89 UNCRC’89, Article 4

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significant improvements in the area of child marriage in the various states before and after the passage of CRA 2003.\textsuperscript{93}

3.4. THE RIGHT TO EDUCATION: DUTY BEARER AND RIGHT HOLDER

The right to education principally involves three main actors: the government as the provider or primary funding body of public schooling, the child as the right holder to education and the child’s parents.\textsuperscript{94} In this section the significant roles of these main actors are discussed, highlighting their strengths and weaknesses in contributing to the implementation of the rights of the child.

3.4.1. The Government

The human rights framework confers responsibility on States to uphold the human rights of their citizens. In other words, it is the government’s obligation to make sure freedoms and rights are understood and enjoyed.\textsuperscript{95} In addition, the government needs to go further to ensure that it eliminates discrimination against the girl.\textsuperscript{96} It is the duty of the government to prevent interference with the enjoyment of rights to education for the girl. This implies that they are to ensure that parents have the liberty to choose the type of school their children should attend. It also implies that relevant stakeholders are able to carry out their role in enabling girls’ access their right to education. To this extent, the government provides measures for the full realization of this right.\textsuperscript{97}

Katerina Tomasevski, a former UN special rapporteur on the right to education developed the 4As approach as a means of fulfilling the obligations of government.\textsuperscript{98} The 4As are: Availability, Accessibility, Acceptability, and Adaptability. They are included under the General Comments No. 13 of the ICESCR and provide clear and tangible ways on how the government can fulfill its


\textsuperscript{94} Katarina Tomasevski, Manual on Rights-Based Education: Global Human Rights Requirement Made Simple (UNESCO 2004)

\textsuperscript{95} This responsibility is largely on states parties to United Nations Conventions and Agreements see,ComESCR General Comment no.13 E/C.12/1999/10 para 46

\textsuperscript{96} ComESCR General Comment no.13 E/C.12/1999/10 para 46

\textsuperscript{97} Ruth Bell, Angela Donkin, Michael Marmot, Tackling Structural and Social issues to Reduce Inequities in Children’s Outcomes in Low-Middle Income Countries’ (UNICEF Office of Research, Discussion Paper 2013)

\textsuperscript{98} Tomasevski (n94)
obligation towards its citizens in regard to education. However, it is not the only way that the obligations can be explained. The government obligations can also be summed up in terms of its duty to respect, protect and fulfil the rights of its citizens. The duty to respect means that government policies does not impact negatively on either men or women. It also means that where there are disparities the government takes steps to redress them. The duty to fulfil also requires that States protect girls and women from being denied access to education by third parties. Third parties such as parents, religious groups or the community that deny girls freedom of movement in public places. The duty to fulfill requires the government to make structural changes aimed at transforming gender relations at all levels of education.

**Availability**

To be available means to ensure free and compulsory education for all children and to allow parents freedom of choice. This embodies two different governmental obligations: the right to education as a civil and political right and as a social and economic right. As a civil and political right, it requires the government to permit the establishment of educational institutions by non-State actors, while as a social and economic right, it requires the government to establish educational institutions or fund them, or use a combination of these and other means so as to ensure that education is available.

**Accessibility**

The accessibility of education aids in eliminating discrimination. Such discrimination could be based on economic accessibility, physical accessibility, or both, and on any of the grounds of discrimination listed under Article 2 of the UNCRC‘89. This includes, race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

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99 ComESCR General Comment No.13 ICESCR E/C.12.1999/10 para 6  
Records, however, show that there still exist gender disparity and declining numbers in enrolment of girls in school.\textsuperscript{103} Parents and guardians are reluctant to send their girls to school because of the long distances that they have to walk to go to school. Children’s access to education has also been hindered due to child labour needs at home, monetary cost of education and parent’s concern that their children were young and immature to attend school.\textsuperscript{104} Other challenges include lack of water and sanitation hygiene in schools. Girls often stay away from school because of poor toilet facilities.\textsuperscript{105} In some schools particularly in the rural areas boys and girls have to share toilets and sometimes girls have to tell their fellow girls to wait outside the toilet to keep guard for them. The absence from school is higher for girls, particularly during their menstruation. The reason is that girls are uncomfortable remaining at school because of fear and shame associated with menstruation.\textsuperscript{106} The conclusion therefore is that the government has failed or needs to do more to achieve its obligation of accessibility.

\textit{Acceptability}

Acceptability, according to General Comments No.13 of the ICESCR, means that the form and substance, including the teaching method, must be culturally acceptable and of good quality.\textsuperscript{107} Teachers should be professionally trained and equipped with the necessary skills to adapt to the challenges and complications in the locales where schools are situated.\textsuperscript{108} The quality of teaching must also involve greater exposure to sources of information through media and technology. This is because girls’ empowerment increases with their exposure to the use of such educational tools. It is especially beneficial for schools in the rural communities.\textsuperscript{109} In practice however, few media and technological tools are used in schools in rural areas. In other words, the quality of

\begin{itemize}
\item ibid
\item Bethlehem Mengitsu, \textit{Her Rights to Education: How Water Sanitation and Hygiene in School Determine Access to Education for Girls} (Water Aid, 2013)
\item ComESCR General Comment No.13 ICESCR E/C.12.1999/10 para 6
\item Segun Olugbenga Adeleji and Olanrewaju Olaniyi, \textit{Improving the Conditions of Teaching in Rural Schools Across African Countries} (UNESCO and IICBA 2011)
\end{itemize}
education in a rural area is of poorer quality than that which is offered in urban areas of Nigeria. The case is worse when teachers from urban areas, who are posted to rural areas in order to boost the learning outcomes, are reluctant to go to the rural areas, and if they do go, only do so occasionally.\textsuperscript{110}

**Adaptability**

Each child should matter in every school, and children’s learning needs should be taken into consideration. Children’s learning should be such that it allows them to keep on learning in the future. One approach in achieving adaptability is through the medium of the principle of the best Interest of the child under the UNCRC’89.\textsuperscript{111} The Nigerian government has made schooling adaptable by creating special schools for the Almajiris,\textsuperscript{112} and the nomads. It has also followed the pattern of teaching so that the mother tongue is to be used from Primary 1-3, before progressive transition to English. In practice it is however problematic to follow this approach because the main model of instruction is usually in the English language. The children are not able to grasp the English language and therefore are unable to learn. This experience of low proficiency in English can lead to school dropout and low learning outcomes.\textsuperscript{113} Despite the obligation that government has towards fulfilling the rights to education, parents remain at the center of how these obligations are realized for children.

3.4.2. Parents’ Obligations

By virtue of the Universal Basic Education (UBE) Act 2004, citizens are to access the basic education which begins at the early childhood care and education.\textsuperscript{114} It is however, the responsibility of parents to register their children at a school and to ensure that they attend regularly.\textsuperscript{115} Parental obligation also includes providing Early Childhood Care and Education (ECCE) to prepare the child for primary school. Parents are to ensure children are not burdened

\textsuperscript{110} Kevin Nengia, 13000 Teachers to Receive Six Month Salary Arrears Soon- Amaechi’ The Tide News Paper January 27 2015
\textsuperscript{111} UNCRC’89 Article 3
\textsuperscript{112} The word ‘Almajiri’ is defined as a knowledge seeker who moves from one place to another in search of quoranic education. See Goodluck I Ifijeh and Juliana James Iwu, ‘Provision of Formal Education to Almajiris: The Role of Libraries’ (2012) 8 (15) European Scientific Journal 97
\textsuperscript{114} UBE Act 2004, section 2(4)
\textsuperscript{115} ibid
with domestic or other work that affects their schooling. They are to ensure their children are well nourished so they are able to learn, and ensure that their children are not subjected to harmful traditional practices.\(^\text{116}\)

It is noted however that for parents to fulfil this obligation they have to have their own Economic Social and Cultural Rights (ESCR) protected. These ESCR are interdependent and indivisible. For example, if a parent’s right to education was violated, such violation will have an effect on their right to freedom. Therefore, how parents fulfil this obligation varies according to their level of education and their socio-economic status. In other words, both the educational and socio-economic status of parents can affect children’s attendance at school either negatively or positively.\(^\text{117}\) The extent of a mother’s education is more pronounced and visible in terms of how she relates with her girl than it is for her boys. A mother’s education affects both the type of income the mother can access and the ways schooling for the child is addressed.\(^\text{118}\)

Parents without education often find it difficult to visualize the long term benefits of education. The mere fact of children not attending school affects not only the child and the immediate family, but the entire nation. Consequently, the nation will have a labour force ill equipped to compete in the global market.\(^\text{119}\) In the Northern states of Nigeria, parents’ obligation to send their children to school have been grossly hampered as a result of insecurity and terrorist activities. Indeed, parents withdraw their girls from school for fear of violence against them.\(^\text{120}\) As a result, girls’ education in the Northern zones lags behind those in the South,\(^\text{121}\) although

\(^{116}\) ibid
\(^{118}\) S Chandrasekhar and Abhiroop Mukhopadhyay, ‘Primary Education on a Fundamental Right, Cost Implication’ (2006) 41 (35) *Economic and Political Weekly*
recently there are efforts in two Northern states in Nigeria, Sokoto and Kaduna to combat the challenges of education for girls in these northern states of the country.

3.4.3. The Right holder: The Child

There are two conventional theories in relation to whether children can be termed rights holders. These theories are the will theory and the interest theory. The will theory posits that rights protect a child’s choice if that child has the capacity to enforce that choice. The interest theory gives children rights regardless of whether they are exercised on their behalf. The will theory however considers children incapable of exercising rights because they presumably lack capacity to make choices. It is the parents and the government that have to ensure that young children are enrolled in early childhood development education. However, the will theory may still exclude adolescents from exercising rights because their capacity to make choices will still depend on the decision making context. The Interest theory seems to be a more appropriate approach in addressing what rights children have. This is demonstrated through the legal framework that places obligations on the government, parents and all other institutions to ensure that the right of the child to education is adequately protected.

John Eekelaar groups children’s interest into three categories: basic interest, developmental interest and autonomy interest. Children’s basic interest refers to the child’s need for immediate physical, emotional, and intellectual care. Children’s developmental interest refer to the child’s need to maximize their full potential by having equal access to appropriate resources and finally, autonomy interest relates to the need for a child to freely take decisions about their lives. Eekelaar however advocates that where autonomy interest conflict with basic and/or developmental interest, the latter should prevail.

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127 ibid
From the classification, it can be argued that the right to education comes under the basic and developmental interest of the child. It means that the right of the girl to education should prevail over every other socio economic and cultural barrier that has hindered her access to education. Girls and boys are entitled to have an education; hence all parties that have an obligation towards children should ensure that their interests materialize. By these, children and particularly girls can equally and without discrimination be empowered for their future lives as adults.

Although the legal framework imposes duties on the government in order to protect children’s interest and to ensure that children’s rights are realized, those charged with the daily responsibility of enforcing their rights are the ones who abuse it. For example, for the child to enjoy the right to education, there is a duty to attend school. However, for very young children this duty to attend school can only be enforced where parents send the child to school.\(^\text{128}\) The reason is that the child lacks full capacity to make the decision whether to attend school or not. Also for adolescents, there are sometimes conflicting interests between the parent’s demand for child domestic work, and that of letting the child attend full time education.\(^\text{129}\)

3.5. CONCLUSION

This chapter has examined key legal instruments that pertain to the right to education at the international, regional and domestic level. The legal framework reveals that children’s right to education are extensively provided for in these instruments. Indeed, the drafting, adoption and ratification of Instruments on rights for the child may be the surest way of gauging the legitimacy of children’s rights standards.\(^\text{130}\) Nevertheless, the mere adoption of formal texts or passing of legislation on rights and welfare for children may not be indicative of consensus of what the rights for children are, especially for the girl, in any given community. Legal obligations alone are not all that is required as the solution for preventing girls from missing out on full time education or from dropping out. In the next chapter consideration is given to some


\(^{130}\) ibid
of the factors that challenge and limit the implementation of the right to education contained in the international legal framework, which has largely influenced the regional and national legal framework.
CHAPTER FOUR – THE UNIVERSAL BASIC EDUCATION SCHEME AND OTHER INITIATIVES TOWARDS GIRLS EDUCATION

4.1. INTRODUCTION
This chapter seeks to examine the contributions of the Universal Basic Education (hereafter referred to as UBE) scheme, and other initiatives adopted in Nigeria for implementing free and compulsory education.

The UBE scheme is primarily set up for the transmission of fundamental knowledge to all the citizens of the Nigerian society from one generation to another.¹ The UBE scheme was designed particularly to meet the basic education required for every child of school going age up to the age of 16, as well as for adults who did not complete their basic education as children.² However, despite its successes, there are still challenges that limit the progress of the UBE. This chapter thus examines some of the existing challenges and the effect of them on children, particularly girls, in Nigeria.

Other initiatives have also been developed to enhance education for girls in Nigeria. Some of them include Girl Child Education Project (GEP) which is primarily targeted at children in the northern states of Nigeria where the problems are more acute. There is also the Nigeria Girls Education Initiative (NGEI) which emanated from the United Nations Girls Education Initiative (UNGEI). These initiatives are all targeted towards ensuring that the easily discriminated groups such as girls, the disabled, orphans and talented women have access to education.³ They will be reviewed in some detail in this chapter.

This chapter therefore considers in the main, the origin of UBE and its objectives, other initiatives in education and the challenges of UBE in Nigeria.

4.2. ORIGIN OF UNIVERSAL BASIC EDUCATION (UBE) IN NIGERIA
The concept of Universal Primary Education, (referred to as UPE) began under the premiership of Chief Obafemi Awolowo, who introduced free, universal and compulsory education in the

³ UNESCO, Girls and Women’s Rights to Education, Overview of the Measures Supporting the Rights to Education for Girls and Women Reported by Member States (UNESCO 2014)
Western region of Nigeria in 1955. The UPE concept was subsequently fully adopted in the Eastern region of Nigeria and is characterized by stories of success in both the Eastern and Western region.

The same cannot however be said of the Northern region where the Islamic form of education was being practiced before Christian (western) education came into the country. Islamic education came to Nigeria by over 300 years before the arrival of Western education around the 1840s. Hence, the region did not embark on providing the Western education for its citizens. It was satisfied with the Islamic education. In addition, Muslim parents feared that their children would be converted to Christianity because the curriculum of education revolved round reading the New Testament of the Bible, the Catechism and the Ten Commandments. Classes were held in churches and teachers’ salaries were paid from church funds. This largely explains why the adoption of Western education in the Northern region was delayed.

In 1976 the UPE concept was expanded to include all parts of the country. However, this was largely unsuccessful and was subsequently abolished in 1984. However, the concept i.e. UPE, was reintroduced as Universal Basic education (UBE) in 1999 following the return of democracy to Nigeria, there were high expectations that this would solve existing problems plaguing education in Nigeria. The introduction of the UBE scheme in 1999 was also heralded by the World Conference of Education for All (EFA) held in Jomtien, Thailand in 1990. The UBE scheme is also a response to international recognition of children’s education as stipulated by the Millennium

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4 P. U Osadebe, ‘Evaluation of Achievement of Universal Basic Education in Delta State’ (2014) 134(3) Education
8 ibid
10 Anibueze U Anselm and Okwo Frederick, ‘Counterpart Funding of the UBE in Nigeria: Implication for Counselling’ (2013) 17(2) IOSR Journal of Humanities and Social Science
Development Goals (MDGs).\textsuperscript{11} As such, for the first time in the history of Nigeria, the UBE program that originally started as a regional project was redesigned by the national government to provide education for the Nigerian citizens by restructuring the content of the UPE to encompass the philosophy of education as articulated in the National Policy on Education.\textsuperscript{12} This philosophy emphasizes: ‘the development of individuals into effective citizens, the full integration of the individual into the community and the provision of equal access to educational opportunities for all citizens at all levels of education both inside and outside the formal school system.'\textsuperscript{13}

The UBE scheme is therefore an expression of Nigeria’s strong desire to reinforce participatory democracy by raising the level of awareness and general education of the entire citizenry.\textsuperscript{14} UBE is broader than UPE as UPE focused only on providing educational opportunities to primary school age children. UBE stresses that the government provide free compulsory basic education for every child of school going age.\textsuperscript{15} This includes girls, and a number of under privileged groups, including children with disability, the poor, street, nomadic children and working children, and children in rural and remote populations.\textsuperscript{16} The UBE scheme since its revamp in 1999 achieved a milestone in widening access to education by abolishing school fees. This abolition led to increase in enrolment, however, this did not last for lack of poor planning.\textsuperscript{17} The main problem was that population growth exceeded the funding required to sustain the program.\textsuperscript{18}

In 2004, the UBE Act was enacted to give legal backing to the UBE scheme. This was done to avoid the failures of the previous UPE programs and to make the realization of the aims and objectives of the UBE a reality. Furthermore, in an attempt to avoid the problems, which impeded the realization of the objectives of the UPE, the government outlined implementation

\textsuperscript{11} Anyanwu Joy and others, ‘Problem of Universal Basic Education in Nigeria and the Role of Information Communication in Enhancing its Quality, Sociological and Counselling Perspective’ (2013) 10 (5) (2) International Journal of Computer Science Issues 1694
\textsuperscript{13} ibid
\textsuperscript{14} Ukhoh-Aviomoh (n1)
\textsuperscript{15} UBE Act 2004 Section 2(1)
\textsuperscript{16} Oni (n7)
\textsuperscript{17} ibid
\textsuperscript{18} ibid
guidelines to facilitate successful achievement of the stated objectives of the UBE. These guidelines which include public enlightenment and social mobilization for full community development, data collection and analysis; provide the benchmark for assessing the progress of the UBE scheme. As a result of the guidelines, the UBE scheme has greater potential for success than that of the UPE.

4.3. OBJECTIVES OF UNIVERSAL BASIC EDUCATION (UBE) SCHEME IN NIGERIA

The UBE scheme was launched with the aim of providing free and compulsory universal basic education for every Nigerian child, irrespective of age, sex, race, religion, occupation or location. It has the objective of ensuring that children access at least one year of Early Childhood Care and Education (ECCE), and 9 years of uninterrupted formal schooling. The 9 years consist of six years of formal primary schooling and three years of junior secondary school. The scheme also has the mission to operate as an intervention, coordinating and monitoring agency to progressively improve the capacity of States, local government agencies and communities in the provision of access to high quality basic education in Nigeria. Other objectives include developing in the general citizenry, a strong consciousness for education and a strong commitment to its vigorous promotion and reducing the incidence of dropout from the formal school system (through improved relevance, quality and efficiency). This scheme also caters for young persons whose schooling has been interrupted and those who are out of school, through appropriate forms education and through the acquisition of the appropriate levels of literacy and numeracy, life skills and the ethical, moral and civic values needed for laying a solid foundation for lifelong learning.

The UBE program as highlighted in the objectives above, which is intended to be universally free and compulsory, implies that appropriate types of opportunities will be provided for the basic

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19 Federal Republic of Nigeria, Implementation Guidelines for the UBE Programme (FME,2000)
21 Sara Humphreys and Lee Crawfurd, Review of the Literature on Basic Education in Nigeria (EDOREN 2014)
education of every Nigerian child of school going age.\textsuperscript{26} These appropriate types of opportunities are more expressly stated in the National Policy on Education in Nigeria, which contains the statement of a plan of action, towards the achievement of educational goals.\textsuperscript{27} The objectives of the National Policy includes ensuring that permanent literacy and numeracy skills and the ability to communicate effectively are embedded in children, laying sound bases for scientific and reflective thinking, facilitating citizenship education for effective participation and contribution in the society, and providing basic tools for further educational advancement.\textsuperscript{28} The attainment of these objectives is to be facilitated amongst others, through the medium of instruction in the primary language of the child’s environment for the first three years.\textsuperscript{29} During this period, English shall be taught as a subject which shall be progressively used from the fourth year as a medium of instruction.\textsuperscript{30} This lowers the incidence of dropout rates for both boys and girls.\textsuperscript{31} However if dropout occurs, special efforts shall be made by appropriate agencies to encourage parents to send their daughters to school,\textsuperscript{32} or in the case of adults who dropped out, provision shall be made in the context of adult and non-formal education to enable such early leavers to continue with their education.\textsuperscript{33}

The UBE scheme is therefore complementary to, and interdependent on, the National Policy on Education since they both promote the same targets of citizens’ education.\textsuperscript{34} An example of this interdependence can be seen under the UBE Act 2004 which stipulates appropriate sanctions against parents who fail to enrol their children in school.\textsuperscript{35}

\begin{flushleft}
\textsuperscript{26} ibid
\textsuperscript{28} B O Ukeji, Education Administration (Fourth Dimension Publishers, Enugu, 1992); Adetoro E.J, Handbook on Education in Nigeria (African Educational Press Ibadan, 1966)
\textsuperscript{29} Babajide G Abidogun, Nkidi Phatudi and Ina Joubert and Cyril Hartell, ‘ Teachers Perception and Value of Yoruba as a Medium of Instruction in Primary 3 Classes (2014) 8 (1-i) International Journal of Educational Science 101
\textsuperscript{30} Federal Republic of Nigeria, National Policy on Education (4\textsuperscript{th} edn. NERDC,2004)
\textsuperscript{31} ibid
\textsuperscript{32} ibid
\textsuperscript{33} ibid
\textsuperscript{34} Adeneye O.A Awofala and Oludola Sarah Sopekan, ‘Recent Curriculum Reforms in Primary and Secondary Schools in Nigeria in the New Millennium’ (2013) 4 (3)
\textsuperscript{35} UBE Act Section 2(4)
\end{flushleft}
UBE scheme has in many ways since its operation in 1999 enhanced access to school and higher levels of enrolment but the much needed results have been slow and minimal. According to an education survey, it is observed that of all the children aged 6–16, 31% had never attended school, of these, 90% were from the rural areas and from poor families. While 84% were from North East and North West region of which the population of girls was 54% compared to 46% of boys who had never been to school\(^3^6\). It is concluded that in spite of the laudable objectives of the UBE scheme there are challenges that have hampered its full realization. Some of these challenges will be examined after a summary of other initiatives towards girls’ education in Nigeria in the next section since of the challenges also affect these other initiatives.

### 4.4. OTHER INITIATIVES TOWARDS GIRLS EDUCATION IN NIGERIA

UNICEF Nigeria and other development partners have been working with the government of Nigeria in promoting girls education through various initiatives including Girls Education Project (GEP) and the United Nation’s Girls Education initiative (UNGEI) which at the national level is the Nigeria Girls Education Initiative (NGEI).\(^3^7\) The GEP was inspired by an earlier initiative, the African Girls Education Initiative (AGEI).\(^3^8\) The GEP evolved from a major partnership between UNICEF, the United Kingdom’s Department for International Development (DFID) and the government of Nigeria.\(^3^9\) The GEP was first initiated in six states in Nigeria, which are, Bornu, Jigawa, Bauchi, Katsina, Sokoto and Niger.\(^4^0\) The GEP collaboration resulted in policies such as National Policy on Gender in Basic Education, the National School Health Policy and the Integrated Early Childhood Care Development Policy which focuses on mainstreaming gender in education planning and implementation.\(^4^1\)

The NGEI established in 2006, has as its main aim the improvement of the quality of life for girls and to identify gaps in intervention activities through a collaborative approach to girls’

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\(^{3^6}\) Nigeria DHS EdData Survey 2010: Education Data for Decision Making

\(^{3^7}\) UNGEI, ‘Nigeria: Background’<http://www.ungei.org/infobycountry/nigeria_165.html> accessed 8 September 2015


\(^{4^1}\) Chege et al, (n39)
education and through forging strong links with Civil Society Organisations (CSO) and the federal and state governments of Nigeria.\textsuperscript{42} The primary focus of NGEI has largely been on projects in secondary schools. Since UNGEI was established, there has been progress in girls’ secondary school attendance in the schools where UNGEI projects are ongoing. The reason for this focus was due to the absence of girls from secondary school education.\textsuperscript{43} Research reveals that those who do not have a secondary school education cannot become teachers or other community leaders and professionals. It therefore implies that although the UBE program has been in place for some time, the reality is that its focus has been on primary education and not secondary which has wider implications for girls and women as they are unable to take on educationally qualified work outside their homes.\textsuperscript{44}

4.5. CHALLENGES OF UBE IN NIGERIA

There are many challenges that have hindered the full realization of the UBE but some the major challenges discussed here are those of funding, insecurity availability of human and material resources, the element of compulsory schooling, teachers’, lack of proper planning and religious education.

4.5.1. Funding

The world over, ability to allocate enough funds for a program remains the greatest challenge that a program could ever have. For example, in most Asian and Pacific countries, public spending on education in 2008 ranged from 2.0% to 6.0% of GDP.\textsuperscript{45} Nigeria has the same funding challenges in education. The Federal Government of Nigeria has not spent up to 15% of its total budget on education from 1999 to 2009, when the country returned to international participatory democracy.\textsuperscript{46} Rather there has been a decline in education budget expenditure.


\textsuperscript{46}Ibid
There was a decline from 8.6% in 2006 to 8.35% in 2008.\textsuperscript{47} Significantly, this pattern of allocation is below the UNESCO’s threshold for government funding, which recommends 20% of the total budget of the government to go towards education, of which 50% should go towards funding basic education.\textsuperscript{48} This is certainly affecting the implementation of government policies on education and in particular the UBE scheme since its inception. In the period between 2010 and 2013 there was a decline in budgetary allocation from 5.3% in 2010 to 3.1% in 2012.\textsuperscript{49}

The UBE Act 2004 stresses that the implementation of UBE shall be financed from federal government block grant of not less than 2% of its consolidated revenue fund and funds or contributions in form of federal guaranteed credits, and local and international donor grants.\textsuperscript{50} The amount which is set aside is to be used as an intervention fund to assist the state governments in implementing the UBE scheme in order to ensure uniform development of basic education in the country.\textsuperscript{51} The UBE Act also emphasize that for any state to qualify for the federal government block grant under Section 12 (1) of the Act, such a state shall contribute not less than 50% of the total cost of projects as its commitment in the execution of the project.

Most states are however unwilling to give the required 50% counterpart funding as provided for in the UBE Act.\textsuperscript{52} For example, research from four states in Nigeria, namely Kano, Lagos, Yobe and Anambra, between 2010 and 2013 shows that state governments allocated less money to the basic education sector than was recommended.\textsuperscript{53} The research from these four states also reveal that although the state’s education spending has been increasing; their average spending on basic education was only 0.6%, which mainly serves to cover junior secondary schooling overhead cost.\textsuperscript{54} The bulk of education budgets are spent on recurrent expenditure with priority

\textsuperscript{47} Ibid
\textsuperscript{48} EFA Global Monitoring, ‘Education for All is Affordable by 2015 and Beyond’ (UNESCO, 2013) \url{http://unescdoc.unesco.org/images/0021/002199/219998E.pdf} Accessed 3 August 2015
\textsuperscript{50} UBE Act 2004, Section 11
\textsuperscript{52} See text of (n48)
\textsuperscript{54} UNESCO and UNICEF (n51)
on tertiary education. This suggests that states do not prioritize primary education as their expenditure responsibility. The capital component of the growing education spending is less than 20%, except in Yobe state with an average of 45% capital expenditure.

Apart from individual states unwillingness to give counterpart funding, other issues affect domestic financing of basic education in Nigeria including financial governance and accountability challenges and institutional failures that allow imbalance in recurrent capital spending. This situation creates opportunities for the misuse of about 40%–45% of financial resources. The result is that receipts are issued for no actual expenditure and no evidence of performance, as well as the failure to satisfy conditions necessary for federal matching grants to states.

The effect of these funding patterns become obvious in the enthusiasm levels towards school attendance for both children and adults alike. Figures from the National Bureau of Statistics show that primary school net attendance in 2014 stood at 68.7% compared with 71% in 2012. Similarly, secondary school net attendance rate was 54.8% in 2014 but 57.4% in 2012. The rate of Primary Six completions also dropped from 87.7% in 2012 to 74% in 2014. Literacy rate of girls and women between ages 15-24 had only increased slightly from 66% in 2012 to 66.7% in 2014.

The funding challenges as highlighted above is heightened by the phenomena of corruption, thus making the implementation of UBE untenable to a large extent. As a result of corruption, allocation of funds is in acute shortage and is further worsened when the recognition of the right to education is not given its due place but is rather treated as a directive policy of the government. The implication is that priority attention is not given to funding education and the political will to do so is completely left to chance. Particularly when combined with the general approach of some African countries and developing countries including Nigeria, that apply the

55 Ibid
56 Ibid
58 Nwoko (n53)
60 Ibid
The directive principle of non-justiciability in matters relating to economic and social rights. The point these countries make is that if unwritten fundamental law of reason is applied in interpretation of directive principles contained in constitutions, it is only then that non-justiciable rights will become justiciable. Furthermore, it is only then that non-justiciable rights will constitute the normative basis for political and civil rights which are deemed fundamental in constitutions. Therefore a need for Nigeria and other developing countries to integrate a system of applying unwritten fundamental law of reason in constitutional interpretation.

Thus said, it is common knowledge that public education is capital intensive and the biggest single item of national expenditure besides military expenditure in the world. Nevertheless the tendency to treat education as a discretionary good is usually obvious in poor countries in Africa where priority is given to military expenditures and other projects which are perceived to be more important than education. The implication of this is that national expenditure on education will not be priority. An example of this was in 1994, when the then military president of Nigeria, General Sani Abacha spent the sum of US $150 million on military weapons, which sum was the equivalent of over half of the national expenditure on basic education budget. The case of Nigeria is extreme but not an isolated one because in most low-income African

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64 The unwritten law of reason is a special form of foundational law that takes into consideration the preconditions of the rule of law. It can be deduced from relevant constitutional and human rights jurisprudence, common law, and international human rights norms. See also Atupare P Atudiwe, ‘Reconciling Socio-economic Rights and Directive Principles with a fundamental Law of Reason in Ghana and Nigeria’ (2014) 27 Harvard Human Rights Journal 71
66 ibid
67 Federal Ministry of Education (n49)
countries, even where there is no existing conflict, military spend supersedes that of education.

Indeed the growing concern for poor expenditure on education was a major incentive for the suit filed in the ECOWAS Community Court of Justice in the case of Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v President of the Federal Republic of Nigeria and Another (2010) ECW/CCJ/APP/12/07. In this case, SERAP brought a claim relying on a report of investigation conducted into the activities of funds allocated for basic education in 10 states of the Federation of Nigeria. The Independent Corrupt Practices Commission (ICPC) reported that money yet to be recovered was about 488 million Naira of funds looted from state offices and another 3.1 billion Naira looted by officials of the second defendant, the Universal Basic Education Commission (UBEC). The applicants, SERAP, contended that this was not an isolated case but a case that illustrated the high level corruption and thefts of funds meant for Primary Education in Nigeria, the result of which has made Nigeria unable to attain the level of education deserving of the country. Over 5 million children at the time were denied access to primary education. SERAP argued that the denial of majority of citizens’ access to quality education was a direct consequence of the high level of corruption among the defendants. SERAP therefore sought for several reliefs but more relevant are relief No. 1 and No. 3. Relief No.1 was for the court to declare that every Nigerian child is entitled to free and compulsory education. While relief No.3 was for the court to direct the defendants to make adequate provisions for the compulsory and free education of every child forthwith. The defendants however argued that under Article 11 of the constitution of the federal republic of Nigeria, the subject of education was a mere directive policy and was therefore not justiciable in a court of

69 Low-income economies are defined as those with a Gross National Income (GNI) per capita, calculated using the World Bank Atlas method, of $1,045 or less in 2013; middle-income economies are those with a GNI per capita of more than $1,045 but less than $12,746; high-income economies are those with a GNI per capita of $12,746 or more. Lower-middle-income and upper-middle-income economies are separated at a GNI per capita of $4,125. Low- and middle-income economies are sometimes referred to as developing economies. Source: World Bank, ‘Updated Income Classifications’ <http://data.worldbank.org/news/2015-country-classifications> Accessed 22 March 2015

70 OXFAM, Education Now: Break the Cycle of Poverty (Oxford, 1999)

71 Economic Community of West African States (ECOWAS)


73 (2010) ECW/CCJ/APP/12/07

74 Ibid
The court relying on Article 17 (1) ACHPR, which states that ‘every individual shall have the right to education’, held that although the right to free and compulsory education in Nigeria is not justiciable, in this case it is justiciable under the ACHPR. The Court further held in regard to Relief No.3 that the first defendant while working towards recovering the stolen funds should take the necessary steps to cover the shortfall so as to ensure the smooth implementation of the right to education. Ironically even with the spending on weapons, national insecurity remains a major challenge to school attendance.

4.5.2. Insecurity

Although little priority is given to budgetary allocation on education, the required internal security is also lacking in schools in the country. This is evidenced from the recent spate of kidnapping and bombing of girls in some schools in the north of Nigeria. This sort of negative action have other rippling effects, particularly because they highlight the denial of schooling for girls. They also reflect deeply entrenched gender bias against girls, which are particularly visible in situations of armed conflict. On April 14 2014, for example, an Islamic extremist group named Boko Haram, (a name which means western education is sinful), stormed into a secondary school in the remote village of Chibok and kidnapped 276 girls who were about to write a national examination. Boko Haram claimed that the girls have been married off and are settled in their marital homes. The group is unwilling to negotiate with the government for the release of the girls. Therefore, there seems to be no hope of finding the girls.

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75 Ibid
77 (2010) ECW/CCI/APP/12/07 para 26
78 (2010) ECW/CCI/APP/12/07 para 28
83 Ibid
further reiterates the vulnerability of the girl and the low value attached to girls’ education. Although there were also boys who were registered in that same school sitting for the same examination, none of them were reportedly kidnapped.\textsuperscript{84} It also demonstrates the insecurity which girls experience and has become a major influence in informing parents’ decision not to send their girls to school in the Northern part of Nigeria. \textsuperscript{85} In fact, the inadequacy of the government to tackle the problem of insecurity begs the question whether girls are ever likely to enjoy free and compulsory education like their male counterparts. This indeed is another level of discrimination which one commentator has described as ‘unintentional Intersectionality’\textsuperscript{86} that arises when justice institutions lack resources, or do not allocate the existing budget, in a way that reduces or eliminates the discrimination at a certain level.\textsuperscript{87} Consequently, crimes committed against these Chibok girls are left in impunity.

4.5.3. Human and Material Resources

The achievement of the objective of any program depends largely on the management of available human and materials resources.\textsuperscript{88} Likewise, Article 4 of the UNCRC’89 stresses the point that State Parties have a responsibility to ensure that economic and social rights of citizens are given priority in government expenditure. Article 4 provides as follows:

State Parties shall undertake all appropriate legislative, administrative and other measure for the Implementation of rights recognized in the present convention. With regard to economic, social and cultural rights, States Parties shall undertake such measure to the maximum extent of their available resources and, where needed within the framework of International co-operation.

Indeed, education is classified as a social and economic right because it is the vehicle by which citizens are able to secure an adequate standard of living. Therefore, the right to education as a


\textsuperscript{87} Aoife Nolan, ‘Economic and Social Rights, Budgets and the Convention on the Rights of the Child’ (2013)21(2) \textit{International Journal of Children’s Rights} 248

\textsuperscript{88} ibid
social and economic right is aimed at ensuring adequate enjoyment of food and nutrition, clothing, housing and the necessary conditions of care provided under Article 11 of the ICESCR’66.

Similarly, cultural rights are an important component of human rights and are conceived as the rights of every person to participate in the cultural right of the community. Yet economic and social rights in both the ICESCR and the UNCRC’89 are subject to the limitation of ‘progressive realization.’ The phrase which is found under Article 2(1) of ICESCR is explained by the Committee on Economic, Social and Cultural Rights (ComESCR) that progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be achievable in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the ICESCR should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights, and on the other hand, it imposes an obligation to move as expeditiously and effectively as possible towards that goal. Nevertheless, it is the responsibility of the government to create an enabling environment that ensures to its citizens an adequate standard of living.

The government responsibility to create an enabling environment has also been hampered because of poor planning and inadequate population data. The areas most affected by poor planning are, the provision of instructional materials such as textbooks, laboratory equipment and audio visual materials. The impact is that the staff to pupil ratio which is supposed to be

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91 ibid
92 UNESCO and UNICEF (n51)
93 Irina Bokova, UNESCO 2012 (UNESCO 2013)
1:35 as stipulated in the national policy on education, continues to vary across different geographic or regional locations.

4.5.4. Compulsory schooling

The element of compulsory schooling was initiated largely to eliminate children’s engagement with labour. Children are required to attend school up to a certain minimum age before engaging in labour. The concept of compulsory schooling places an obligation of government to make schools available and safe. The idea is also to provide development opportunities to give children wider options for the future world of work. The element of compulsion also makes it generally acceptable that girls who stayed at school were unlikely to be married at an early age.

The global human rights minimum standards mandate is that education should be free of charge so that it can be compulsory until the minimum age of employment. Although this law is more than 80 years old, the reality of economic exclusion from education is that different types of charges are levied in open defiance of its requirements. These levies and fees that are often requested by the schools and local authorities have continuously become a disincentive to parents. Furthermore, the conditions of household income affect children’s attendance at school. It determines parents’ capacity to pay the levies charged. Thus the ComESCR stress the point that beyond the funding of education, parents are among the most important valuable resource and therefore should be systematically supported. This is to ensure the wellbeing of children and their educational outcome.

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97 ibid
99 Humphries (n96)
100 ComESCR General Comment 11, UN Doc E/C.12/1999/4(1999) para 7
102 ComRC General Comments No.5 (2003) CRC/GC/2003/5 para 7
103 UNCRC’89 Article 28(1) (a)
In some cases, due to cost, parents are forced to choose which of their children to send to school, in most cases the decision is made in favour of boys.\textsuperscript{104} Girls are forced into domestic work or caring for siblings and parents at home, consequently leading to a range of inequalities whether social, cultural, political and economic that serve to exclude them from full and equal participation in society.\textsuperscript{105} It also creates a stereotype that women should be perpetually involved with that type of work such that even when women have increased in the work place, the gender composition in work related to caring includes more women than men.\textsuperscript{106}

The element of compulsion must also take into consideration the distance of school and home. Yet, in some rural areas, most children trek for more than 2 kilometres from home to school. This challenge of trekking to schools far away from home leaves children exhausted by the time they arrive at school and are therefore not in the right frame of mind to learn.\textsuperscript{107} This problem is worse when the route to the school is unsafe for children especially girls. Sometimes parents are unable to bear the transportation cost or to pay a boarding fee where available. Therefore, girls are more prone to violence on their journey to school and in turn are either late, absent or drop out of school.\textsuperscript{108} More problematic is the fact that in many local communities in Nigeria and across societies, the culture of disbelief is such that women reporting violence are assumed to be lying with respect to its incidence and seriousness. This engenders contempt towards women complainants of violence, disregard of their evidence and a lack of assistance to them and is thus discriminatory.\textsuperscript{109}

4.5.5 Teachers

The number of teachers who exit the teaching profession has been increasing due to a number of factors including: low salary, inadequate support from parents, and the public, increase in

\textsuperscript{104} ComESCR General Comment 11 para 7 UN Doc E/C.12/1999/4(1999)
\textsuperscript{106} ibid
\textsuperscript{108} ibid
workloads, lack of space for teachers to participate in key decisions effecting the school, and lack of induction and mentoring programs for new and experienced teachers. These factors reduce teachers’ motivation to teach. They are sometimes forced to engage in buying and selling of goods or other activities that are non-beneficial to pupils. Yet research carried out in the United Kingdom (UK) reveals that:

The effects of high-quality teaching are especially significant for pupils from disadvantaged backgrounds: over a school year, these pupils gain 1.5 years’ worth of learning with very effective teachers, compared with 0.5 years with poorly performing teachers. In other words, for poor pupils the difference between a good teacher and a bad teacher is a whole year’s learning.

This means that even though enrolment of pupils is on the increase, the quality of learning is hindered and falls below the human rights standard and the standard set by the EFA and MDGs. Invariably poor conditions of service, leads to poor quality of teaching and learning.

4.5.6. Religious Education

In the northern part of Nigeria, most children do not receive formal western education. The majority receive some kind of Islamic religious education. The comparative advantages of Islamic religious education institutions in western Africa, including proximity, informal organization, and community involvement, have long been acknowledged. In Asia, religious education institutions have been a key ally in the efforts to achieve Education for All in countries such as Bangladesh, Indonesia, and Pakistan. Financial support which is given by the government

111 Kevin Nengia, 13000 Teachers To Receive Six Month Salary Arrears Soon- Amaechi’ The Tide News Paper January 27 2015
112 The Sutton Trust, Improving the Impact of Teachers on Pupil Achievement in the UK: Interim Findings (The Sutton Trust, 2011)
for girls to go to school has been given to girls in secular schools as well as girls in religious school. Thus enrollment in religious schools has grown rapidly in those countries.\textsuperscript{116}

This is however not the case in Nigeria. In the years after independence in 1960, the expansion of public secular education in Northern Nigeria, although slower than in other parts of the country, was paralleled by the expansion of Islamic religious education.\textsuperscript{117} Yet this Islamic religious education system has not become a springboard for children’s secular school enrolment.\textsuperscript{118} The reasons are linked, first, to household characteristics that make it unlikely for the child to be enrolled in secular education. Second, among different reasons put forward to explain low levels of school participation in northern Nigeria, it is shown that the failure of public secular schools to deliver quality education is undermining efforts to expand access to secular school through integration.\textsuperscript{119} Indeed research reveals that many children in rural areas and their parents feel alienated from formal secular schools, which are usually located in more urban areas.\textsuperscript{120} As a result, poorer parents send their children to religious schools, which are tailored to meet special needs of those with limited engagement with the State.\textsuperscript{121} A major move was made in the 1970s when many religious education institutions across Nigeria were transferred to the State.\textsuperscript{122} However, the experience of the last 30 years has not been positive. The quality of the education provided in government schools has been very low. Indeed, only a third of children are literate in English language by the end of primary school, and just a few more are literate in either English or Hausa, the lingua franca of the region and mother tongue of half of the children.\textsuperscript{123}

Moreover, parents in Northern Nigeria perceive the quality of education in government schools to be low in other respects. For instance, government schools have not been able to deliver a good quality of teaching in Islamic religious subjects.\textsuperscript{124} Therefore, the parents are unwilling to

\begin{footnotesize}
\begin{itemize}
\item[116] ibid
\item[118] ibid
\item[119] Baba N.M, ‘Islamic Schools, the Ulama, and the State in the Educational Development of Northern Nigeria’ (2011) 33 Bulletin de L’APAD
\item[120] ibid
\item[121] ibid
\item[123] ibid
\item[124] ibid
\end{itemize}
\end{footnotesize}
send their children to such government schools. Yet the religious institutions are also not vested with qualified teachers to teach secular subjects. The demand for religious education continues to rise in certain locations and secular education expands too slowly yet any attempt to integrate religious and secular education are unlikely to be effective. Thus if the government can ensure that basic performance standards are achieved in its schools, it may be possible to attract the interest of those parents who opt out of the formal education system altogether because they see no value in them.  

4.6. CONCLUSION

The concept of Universal Basic Education (UBE) is not new to the Nigerian society. It has assumed a global significance and its meaning has been broadened.  

Over the years, there have been agitations for increased education of the citizens of nations owing to the accrued benefits. The UBE scheme is aimed at increasing the participation of children till they are old enough for the labour market. This chapter examined the issues that can make the realization of the UBE objectives a mirage in Nigeria. Indeed, the vision of UBE comprises the universalizing of access and promotion of equity, focusing on learning and enhancing the environment. This chapter identified some key factors that challenge the success of the UBE in Nigeria. It is of note that all efforts, time and money expended towards the realization of these objectives will be in vain if these challenges are not addressed. It is indeed a great challenge for government and other education stakeholders in Nigeria.

There is no doubt that the Nigerian government has shown remarkable dedication to the education of her children especially with the UBE by providing free education up to junior secondary school level. However, it is worth mentioning that in some places where the free education is said to be free, there are still other underlying costs attached. Moreover, the quality of education provided in such public schools where education is free is often substandard. This trend is prevalent in rural communities and as such calls for increased grass root mobilization and facilitation to ensure useful and effective adjustments for achieving education goals.

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125 Antoninis (n117)
These challenges notwithstanding, any steps taken towards realizing the objectives of the UBE and the rights to education for children, can help to equalize the distribution and exercise of power among sexes within and between societies’. The next chapter explores the limitations of the HRBA, and goes on to examine alternative approaches in the subsequent chapter, that could enhance, supplement and bolster the implementation of rights to education for girls in Nigeria.

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CHAPTER FIVE - LIMITATIONS OF HUMAN RIGHTS BASED APPROACH

5.1. INTRODUCTION

In chapter two, the meaning and nature of the Human Rights Based Approach were discussed.\(^1\) Significantly, the thesis finds that the HRBA which is based on the widely accepted structural framework of human rights that which seem to have taken on a form of truth, through affirming and reaffirming their inherence in all human beings. Furthermore, the use of the language of rights make historical, political and social constructions appear to be natural and without bias.\(^2\) Nevertheless, the HRBA is flawed due to several factors. Four of these factors are identified and discussed, three of which are closely linked to the way legal instruments are framed, and which are discussed in more detail in this section. First, is the neutral language of the legal framework, which in regard to children’s rights, privileges male children and fails to recognize its subordinating effect on female children.

Secondly, in line with the first factor, is a further contribution to the subordination of the girl by virtue of the use of single categories or identities of either age, race, gender, religion or sex.\(^3\) These identities overlap and the overlap of these single identities lead to forms of discrimination which are left unattended.\(^4\)

The third factor is the challenge, of implementing a legal framework that is impracticable because of their roots which are largely grounded in norms of childhood which have a western origin.

Fourthly, is the challenge posed by socio-economic and political inadequacies which include poverty and corruption and which are found in Africa and more specific to Nigeria.

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1. In chapter two above section 2.3
3. Feminists argue that the use of single identities illustrate how law privileges, or focuses on dominant subjects above other subjects. See Kirsten M Backstrom, ‘The International Rights of the Child: Do They Protect the Female Child?’ (1996-7) 31 George Washington Journal of International Law and Economics 541 at 541-2; Allison Diduck, Law’s Families (Lexis Nexis, United Kingdom 2003), viii
5.2. GENDER NEUTRAL LANGUAGE OF RIGHTS AND THE GENDERED NATURE OF DISCRIMINATION

Most international human rights documents, are framed in a language that is vague, and their meaning largely dependent on what each States Party attaches to them from different context and realities.\(^5\) The UNCRC’89 is used an example to buttress this point. Indeed the generalization of the rights of the child under the UNCRC’89 does not provide a specific set of criteria for protecting girls as different from boys.\(^6\) The gender neutral language of the UNCRC’89 thus leads to forms of discrimination which may be unintentional in their effect to either boys or girls.\(^7\) For example, when Article 38 of the UNCRC’89 makes reference to child soldiers, the primary targets were boys and no specific concerns were addressed to girls.\(^8\) Also Article 24 (3) of the UNCRC’89 provides that ‘States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children’. This article, which seemed to bear reference to the practice of Female Genital Mutilation (FGM), was not explicitly stated neither did it specifically address the situation of women and girls. This is because although boys are circumcised, women and girls seems to be the primary target of the Article.\(^9\) FGM is a collective name given to several different practices involving the cutting of female genitals.\(^10\) It is likened to female circumcision or clitoridectomy.\(^11\) It is a traditional ritual targeted at preparing girls for womanhood.\(^12\) Indeed FGM is one traditional harmful practice that affects women and girls rather than boys. Being the primary targets, girls, thus experience discrimination on the grounds of sex, gender and tradition which are passed down by those who should be protecting children.\(^13\)

\(^6\) ibid
\(^11\) ibid.
\(^12\) ibid
\(^13\) UNCRC’89 article 2
The gender neutral language obscures the impact the discrimination has on girls such as the violation of her right to health, privacy and protection from physical or mental violence. It is noted that FGM has been extensively debated in the academic literature and is often presented as one example of the conflict between the international norms of human rights and cultural practices. FGM is one of the few issues, which clearly divides representatives of Western and non-Western States internationally. It therefore implies that it will be difficult for States Parties with a high prevalence of this practice to abandon it.

Furthermore, Article 24(3) of the UNCRC’89 and Article 34 present a missed opportunity not only to specifically address FGM but also the issue of child marriage and its detrimental effect to the girl. Article 34 provides that, ‘States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse’. Child marriage has a greater impact on girls than it does boys. Generally, child marriage is almost inevitable for girls who appear to be physically mature. Child marriage deprives a girl of her adolescence. In many traditional societies, the idea of an adolescent period between puberty and adulthood is alien. A girl who menstruates can bear a child, and is therefore ‘a woman’. This sits awkwardly with the fact that the UNCRC’89 covers everyone up to age 18 and regards childhood as a process of development – one that does not end with a definitive physical maturity marker. Marriage then leads to sexual abuse which may lead to pregnancy. In the event that the girl survives the process of childbirth, she becomes laden with the responsibility of rearing the child, and becomes confined to staying at

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14 Ibid Article 24
15 Ibid
16 Ibid Article 19(1)
21 UNCRC’89 Article 1
22 UNICEF, Innocenti Digest no 7 (n20)
home with child rearing and domestic work.\textsuperscript{23} She is also exposed to the risk of sexually transmitted diseases and HIV/AIDS.\textsuperscript{24}

Consequently, child marriage leads to a denial of rights and this denial over time becomes a norm that inevitably produces an identity, which for the girl means the denial of power, privilege and decision-making.\textsuperscript{25} This cycle, which she goes through, is beyond the normal expectation required of children for family cohesion because no thought has been given to her mental capacity to handle the responsibilities that marriage entails.\textsuperscript{26} By implication she is also denied access to education. Therefore, participation rates in education for girls are low due to child marriage, sibling childcare, household duties and childcare labour. The denial of access to education means that her opportunity of reaching her potential for growth and development in other areas of life is also hampered.\textsuperscript{27} Statistics in Nigeria reveal that girls are less likely to attend school or complete their basic education than boys.\textsuperscript{28}

The neutral language of the UNCRC’89 thus potentially diminishes its efficacy to address discrimination against girls. Another implication of the neutral language of the UNCRC’89, as discussed in the next section, is that it also fails to take into consideration the intersecting identities of the girl, which sometimes produce and reinforce her subordination.\textsuperscript{29}

\begin{itemize}
\item \textsuperscript{28} 2006 Population and Housing Census of the Federal Republic of Nigeria: Census Priority Table Volume 1 \texttt{<http://www.population.gov.ng/images/Priority%20Tables%20Volume%201-update.pdf>} accessed 23 September 2014.
\item \textsuperscript{29} Michael Nnebe, ‘Nigeria’s Education Imbalance: The North South Divide’ Nigeria World 14 January 2014 \texttt{<http://nigeriaworld.com/feature/publication/nnebe/011414.html>} accessed 6 October 2014
\item \textsuperscript{29} Askari Ladan ‘Girls’ Rights Under International Law: An Argument for Establishing Gender Equality as a Jus Cogens’ (1998) 8 Southern California Review of Law and Women’s Studies 3.
\end{itemize}
5.3. THE UNCRC'89 AND NON-CONSIDERATION OF THE INTERSECTING IDENTITY OF THE GIRL.

The UNCRC’89, although a welcome instrument for protecting the rights of children, has been criticized for its failure to take into consideration the intersecting identity of the girl.\(^\text{30}\) The girl occupies a unique position as female in the category of children and as children in the category of women.\(^\text{31}\) Therefore some intersectional feminist theorist argue that it is not enough to examine women’s oppressions and by implication girls, through single categories like ‘gender’ or ‘sex’.\(^\text{32}\) It is rather more productive to look at social realities that affect women from multiple points of difference,\(^\text{33}\) and to think of the oppression women experience beyond either sex or gender but in conjunction with other identities.\(^\text{34}\) The reasons for this shift is that women’s experiences are not universal,\(^\text{35}\) and there are also multiple oppressions that shape each other to produce women’s disempowerment.\(^\text{36}\)

Therefore, to examine girls’ unique position, her gender as a category should be examined in interaction with her age, sex, race, religion and culture to produce a better understanding of how she is multiply disadvantaged. This multiple social identity produces the idea of a metaphor known as intersection.\(^\text{37}\) This metaphor has been largely attributed to the work by Kimberle Crenshaw.\(^\text{38}\) Crenshaw explains this idea of oppressions shaping each other by saying that intersectional subordination is often not intentionally produced but it is ‘the consequence of the imposition of one burden that interacts with pre-existing vulnerabilities to create yet another

\(^{30}\) Ibid


\(^{32}\) Leslie McCall, ‘The Complexity of Intersectionality’ Law’ In Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman(eds.) Intersectionality and Beyond (Routledge-Cavendish, 2009)


\(^{34}\) Ibid

\(^{35}\) Ibid

\(^{36}\) Nina Lykke, Feminist Studies: A guide to Intersectional Theory, Methodology and Writing(New York Routledge 2010)

\(^{37}\) Maneesha (n33)

\(^{38}\) Crenshaw (n7) 1257
dimension of disempowerment.\textsuperscript{39} Therefore the categories of identity one is able to discern creates more intersections, thus more complex identities and oppressions.\textsuperscript{40}

The marginalization of the girl child, makes it imperative for her to be placed at the center of the analysis within these multiple identities in order to meet her needs and also the needs of her family and the society in which she is being raised.\textsuperscript{41} It is acknowledged that identity is fluid and changes according to age and experience, for example as daughter, daughter-in-law, mother, grandmother. It can also change according to socio-cultural status or geographic location.\textsuperscript{42} It is therefore imperative to understand how identities of ‘sex and gender’ in interaction with other socio cultural categorizations and constructions of identities based on class, race ethnicity, geopolitical position, nationality, sexuality, disability and age mutually influence each other.\textsuperscript{43} This intersectional approach is required in responding to the many often subtle ways in which girls are marginalized. An understanding of children’s rights within these intersectional approaches can counteract gender bias and adult dominance in the execution of human rights law so that girls can come to prominence in the landscape of human rights.\textsuperscript{44}

Significantly, no group of boys and girls, women or men is entirely homogenous, rather all groups include members of social subgroups, defined by age, religion, race, ethnicity, economic status, caste, citizenship, sexual identity, ability/disability, and urban/rural locality. Each of these subgroups may experience various forms of discrimination.\textsuperscript{45} Typically however, girls’ experience, lower status than boys within the same social subgroup, and there is resistance to change this

\textsuperscript{39} ibid
\textsuperscript{40} Amoah(n25)
\textsuperscript{43} Lykke (n36)
\textsuperscript{44} Taefi (n31)
They therefore experience double discrimination based on the subgroups to which they belong and also their sex. 

Against this background, it is argued that the UNCRC’89 fails to take into consideration girls’ unique positioning at the margins of age, gender, race, culture, religion and class. It does not consider that the girl occupies a unique position both as ‘female’ and as ‘child’. Therefore when the UNCRC’89 refers to children, it becomes inadequate for the actual protection of the rights of the girl. The failure to place the girl at the center of the legal framework makes her experience of discrimination inherently caught up in her age, gender, race or ethnicity and class. These identities when they combine or overlap heighten her disadvantage, marginalization and vulnerability particularly in regard to school attendance and participation. Accordingly, an understanding of the connection and interactions of multiple identities will help to produce a holistic approach to ending girls, and by implication women’s, oppression and subordination.

5.4. CULTURAL FACTORS

Some scholars hold that human rights are universal because they are applicable to every human being for the protection of their dignity. Yet, generalizations about human rights cannot be made outside a specific place, time and level of development. Reliance can also not be made on the basis of human rights documents because they are essentially political treaties based on compromise, consensus and guarantees by States to respect each other’s sovereignty.

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Accessed 28 September 2014

47 Momin Rahman, ‘Theorizing Intersectionality: Identities, Equality and Ontology’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds.) Intersectionality and Beyond (Routledge-Cavendish 2009) 353


49 Taefi (n31)

50 Crenshaw (n41)


52 Taefi (n31)


implication of this is that human rights instruments are neither in the philosophical nor the sociological sense universally valid documents.55

It is argued that the international human rights framework has historically been based on a western model of natural rights that found a place in many non-Western parts of the world through colonialism.56 The theory of natural rights has three key elements, the element of equality of all human beings, the inalienability of rights and the element of individualism. It is the individualistic element of the natural rights that raises the most suspicion about the Western view of human dignity.57 In essence this individualistic element does not fit into the view of African society, which understood their society as an interdependent communitarian collective.

Some scholars however argue that rights and their component ideas have existed in many traditions.58 This argument is based on the view that rights are measured by capabilities, or put differently, ‘what people are actually able to do and to be’.59 Consequently, even though human rights conceptions originated in the West, they have become applicable in Africa, as elsewhere, but their applicability is dependent on the balance between cultural values and the ‘universal’ human rights documents.60

Therefore, each society has its own set of norms that protects what that society has reason to value.61 Hence, what has become acceptable standard in international human rights documents have come about through a process of what citizens of the West engaged with. Africa and the Developing World also have a set of norms which they have developed and which define their perception. However, some commentators suggest that in order to balance the variations that exist between the Western concept of human rights and the non-Western ideas about rights, there should be a cross cultural dialogue in order to produce a common and an acceptable

55 ibid
57 ibid
58 Martha C Nussbaum, Creating Capabilities: The human Development Approach (Harvard University Press 2013) 18
59 Ibid 18
60 Donnelly (n53)
standard of human rights.\textsuperscript{62} This view has been contested by other commentators who argue that dialogue in a cross cultural context will even produce a further entrenching of the ‘old’ culture owing to the perception that it is their established mode of practice in those communities as opposed to the practice elsewhere, such as the West.\textsuperscript{63} Therefore it becomes pertinent to suggest a middle ground or a space for dialogue on which aspects of old culture local communities wish to retain and which ones they wish to forgo.\textsuperscript{64}

Research carried out in Ghana referred to earlier but discussed here in more detail reveals the difference between universal rights and local understanding of what rights mean.\textsuperscript{65} The focus of the study was on the subject of the rights of the child. Parents were asked what they considered as important rights of the child and almost all the parents mentioned the right to healthy living, right to education and a right to be cared for by parents.\textsuperscript{66} These rights which were identified, are all in consonance with the international human rights framework for children’s rights. However what became clear in this study was that the context or motive that parents gave for ensuring that children were able to enjoy these rights was not merely so that children will become something in the future but more than that, it is so that their children would be in a better position to reciprocate the care when their parents are in old age.\textsuperscript{67} Accordingly, although rights are accepted and practised in non-Western and Developing, the motive and reasons for doing so are also dependent on the social context, and the level of resources available to both the State and to parents, to enable parents fulfill their obligations towards children.

What it means from an African cultural perspective, for example in consideration of who is a child, is that the definition of a child is not adequately conveyed in most international human rights instruments, particularly the UNCRC’89.\textsuperscript{68} Indeed there are many ways a child can be defined. Some commentators are of the view that, the concept of childhood is a social construct


\textsuperscript{64} ibid.


\textsuperscript{66} Ibid

\textsuperscript{67} Afua (n63)

\textsuperscript{68} Jo Boyden and Andy Hudson ‘Children: Rights and Responsibilities’(1985)69 (69) Minority Rights Group Reports 1
and therefore the meaning and responsibility assigned to it varies from country to country. 

Therefore as a social construct, the term ‘child’ could be based on the age, physical abilities and biological changes of the child. Other commentators argue that the sociological categorization of children based on their age is used as a structural requirements in society to maintain order. This is because the categorization is based on a belief that childhood has an expiration date, whatever that date is. However, some other scholars are of the view that ‘children are physically smaller than adults’. This idea of the smallness of children is thus used in describing children as immature in mind and body. It can therefore be said that contemporary societies build on this sociological categorization of age and the immaturity in mind and body in their definition of a child.

Essentially, the UNCRC’89 uses the categorization of age to define the child. It defines the end of childhood but is silent about the beginning of childhood. The definition of the child under Article 1 of the UNCRC’89 states as follows: ‘every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier’. Some commentators have criticized the view about the minimum age definition of a child, but this criticism is in line with the argument that setting of age limit is for purposes of maintaining order. In other words, the age limit is used to determine what children should be allowed to do or not do.

Despite the definitions based on age which the UNCRC’89 and other international and domestic instruments have adopted, the definition has been criticized because it has its roots in a model that is possibly of a white, middleclass, heterosexual child which does not take into consideration individual circumstances or ethnic background. However, in traditional African society, a child...

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69 Allison James and Alan Prout (eds.) Constructing and Reconstructing Childhood (Falmer Press. 1990)
70 ibid
72 ibid
73 Wyness. Michael, Childhood and Society: An Introduction to the sociology of Childhood, (Palgrave Macmillan, 2006)
74 ibid
75 Andrew Bainham, Children-The Modern Law, (Jordan Publishing Limited,2005)85
76 Ibid 85
77 Ibid 85
78 Ibid 85
is not defined based on age.\textsuperscript{80} In practice, it is physical maturity and ability that defines whether a person is a child or not. Children are seen as part of a community to which they have to contribute materially and intellectually towards the sustenance of the community. The concept of 'parent' is wider than the men and women who are biological parents, and the idea of 'family' assumes an extended group of kin. It is in this context that it is often said that the child in an African community is the child of a variety of persons that exercise different functions towards the child development.\textsuperscript{81}

This approach of the extended family has however been tested in contemporary society due to changes in the means of economic production and the resultant adjustments in the social organization of these kinship ties.\textsuperscript{82} These challenges have arisen in part because of the movement of family members in search of work, marriage and other opportunities. Consequently, the extended family, which served to guarantee children’s survival and development rights have suffered some strain.\textsuperscript{83} Notwithstanding there have been entrenched roles which characterized members of the family that are still very much in place today. These entrenched roles have become the socio cultural barriers that affects girls’ schooling and participation in education.

For example, Rwandan society is characterized by a patriarchal social structure that underlies the unequal relationships between men and women and boys and girls. In Uganda, girls are considered property. In Zimbabwe, the ‘woman’s place’ is to be submissive and stay at home.\textsuperscript{84} Similarly, women and girls in Nigeria are confined to domestic work and this this contributes to their passivity in the political life of the country.\textsuperscript{85} Generally girls and young women are subjected to disadvantages in three distinct areas which are age, class and sex, making it difficult and sometimes impossible to achieve their educational rights or their aspirations.\textsuperscript{86}

\textsuperscript{81} ibid
\textsuperscript{82} ibid
\textsuperscript{83} ibid
\textsuperscript{84} Babalola Abegunde, ‘Gender Inequality: Nigerian and International Perspectives’ (2014) 17 (1) \textit{British Journal of Arts and Social Science} 165
\textsuperscript{85} ibid
\textsuperscript{86} Helmore K, Enhancing the Power of Girls in Society-in Economy-in Leadership: Dakar (Plan West Africa and East and Southern Africa, 2014)
Therefore, it seems unlikely that girls in Africa will ever benefit much from such legal provisions pertaining to their rights to education except when these stereotypes are eliminated. The stereotype that finds its root in the fact that women should be confined to the domestic affairs within the family means that there is no incentive for parents to educate the girl.\(^87\) For example, in a research in Togo it was found that parents fear that the longer the girls spent in schooling the more difficult it will be for them to get married. This is owing to the fact that the men fear that an educated woman or girl ‘will suppress and command men’ and also do the same if she is given the opportunity to occupy positions of decision making or to advance herself.\(^88\)

For girls, her physical development determines her readiness for marriage and other household chores. This is in contrast to the construction of the child reflected under the UNCRC’89 as helpless, vulnerable and dependent until after a certain minimum age.

The understanding of the ‘child’ within an African perspective implies that as part of their collective responsibility in the family, cultural upbringing of children in Africa limits the child’s right to be heard.\(^89\) The principle of linear authority of father over son, and elder over younger siblings is in operation.\(^90\) Respect for elder siblings or adults is not just a social skill but a necessary prerequisite which defines a person’s place and role towards positive social cohesion in the community.\(^91\) Therefore parental authority is perceived as almost exclusive or absolute.\(^92\) This linear authority is also promoted under Article 18 of the ACHPR’81 which emphasizes that the child has a duty ‘to work for the cohesion of the family and ‘to respect his parents and elders at all times and to assist them in case of need’. To that extent, once a girl is presumed to be physically mature, she is given such responsibilities as cooking, washing clothes and fetching wood for the fire, and in some instances she has to get married.\(^93\) The cultural understanding of

\(^88\) Helmore (n86)
\(^89\) Achilihu (n27)
\(^90\) Momoudu Sallah, ‘Black young people in the UK: Charting the tensions of relativism and dogmatism in praxis’ in Gavan Titley and Alana Lentin (eds.), The Politics of Diversity in Europe, (Council of Europe 2008)
the term ‘child’ therefore limits and undermines the realization of the right of the girl to education, largely because these responsibilities confine her to a domestic lifestyle. In the instance where she gets married, pregnancy and risk of sexually transmitted diseases further heighten the conditions that limit her access to education.\footnote{UNICEF, ‘Child Domestic Work’ 5 Innocenti Digest (Innocenti Research Centre 1999) <http://www.unicef-irc.org/publications/pdf/digest5e.pdf> accessed 7 October 2014}

### 5.5. SOCIO ECONOMIC FACTORS

Socio-economic and cultural factors often limit, and undermine the implementation of rights for children. Two major limiting factors discussed under this section are poverty and corruption.

#### 5.5.1. Poverty

The term poverty has several meanings.\footnote{Bob Baulch, ‘The New Poverty Agenda: A disputed Consensus’, (2009) 27(1) Wiley online library <online.library.wiley.com/doi/10.1111/j.1759-5436.1996.mp27001001.x/pdf> accessed 29 April 2014} However, according to the World Bank, poverty is defined as ‘pronounced deprivation’.\footnote{Poverty and Hunger <www.worldbank.org/depweb/english/beyond/beyondco/beg-06.pdf> accessed 29 April 2014} ‘The deprivation which could be understood as living ‘with low income’\footnote{ibid} and ‘characterized by’ the inability to meet basic nutritional, health, educational, social and recreational needs.\footnote{United Nations Development Program 1996, Human development report, (Oxford University Press, 1996)} Studies have revealed that poverty is one of the economic conditions, if left unaddressed will make it practically impossible for laws and policies to be effectively implemented by UN member states, for the protection of children’s rights.\footnote{Munyae M. Mulinge, ‘Persistent Socio-Economic and Political Dilemmas to the Implementation of the 1989 United Nations Convention on the Rights of the Child in Sub-Saharan Africa’, 2010 34(1) Child Abuse and Neglect 10}

Indeed, girls are hindered from enjoying such rights as freedom of choice and the right to health and wellbeing, which they could have if they were. For example, poverty drives parents to see their female children as commodities from which they can derive some economic benefit.\footnote{Kate Manzo, ‘West Africa’s Children: Trafficking, Slavery and Uneven Development’ 2005 37 (4) The Royal Geographic Society 393} Thus, child marriage which is still commonly practiced in many parts of Africa and in Nigeria, is motivated by the fact that a bride price will be received. At other times the motivation is that
prospective groom will be required to contribute to the economic wellbeing of the bride’s family as an exchange for sexual relations or marriage with their girl. The implication of this is that there is risk to the girl’s health because the husband is usually older and sexually more mature and active than the girl. The girls also experience all the other disadvantages earlier mentioned.\textsuperscript{101}

In households where there are many children or the parents are unable to work because of sickness or lack of employment, children are sent to relatives or friends to work as domestic servants, and in most cases it is the girls who are sent out.\textsuperscript{102} Parents’ motivation for this could be for several reasons, they could be due to the fact that in the relatives house they will be accommodated better and also be fed, or that payment will be received by the parents for work carried out by the children. These relatives may be kind to them and actually feed, clothe, shelter and give them work which is suitable for their age and maturity, or they may be unkind and even physically and sexually abuse them.\textsuperscript{103} The result of this is that first and foremost, children become isolated from their parents, which negates the intention of the UNCRC’89 for the upbringing of the child within their family.\textsuperscript{104} In the worst cases, children have been trafficked\textsuperscript{105} by means of this separation from the family and parents have lost their children by means of deception and monetary inducement.\textsuperscript{106} Consequently, poverty enhances maltreatment of children by continuing to undermine the capacity of poor families to provide for their members economically. These experiences therefore deny children’s rights to a global standard of living.\textsuperscript{107}

The impact of poverty on children has been confirmed in a longitudinal young lives cohort study.\textsuperscript{108} The study reveals that poverty is a major cause for the development of inequality experienced by children in childhood through to adulthood. The study makes it clear that household poverty leads to poor nutrition for children, denial of access to education, stunted growth, and increased risk of trafficking.

\textsuperscript{101} See section on ‘Gender Neutral language of Rights and gendered nature of discrimination’ discussed above in fig 5.3
\textsuperscript{102} Dorte Thorsen, Child Domestic Workers: Evidence from West and Central Africa (UNICEF 2012)
\textsuperscript{103} Our Africa, \texttt{<http://www.our-africa.org/state-of-children>} accessed 21 April 2014
\textsuperscript{104} ibid
\textsuperscript{105} Article 3(a) Child Trafficking Protocol 2000 recognises trafficking as other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, having control over another person for the purpose of exploitation.
\textsuperscript{106} Global Freedom Center- Advancing the Movement against Human Trafficking \texttt{<http://globalfreedomcenter.org/GFC/humantraffickingstories>} accessed 29 April 2014
\textsuperscript{107} Mulinge (n99)
growth and development as well as child pregnancy and engagement with hazardous work.\textsuperscript{109} Therefore, considering the level of economic development and cultural practices in Nigeria, girls become more vulnerable to violations particularly in areas relating to their economic and social rights.

Poverty is thus a major underlying factor within the particular context of Nigeria that prevails over the HRBA. However, corruption that is discussed in the next section highly impacts on the economic wellbeing of ordinary citizens.\textsuperscript{110}

5.5.2. Corruption

Corruption is a complex social, political and economic phenomenon that affects all countries whether rich or poor.\textsuperscript{111} However its effects in the Developing World is most destructive because those in positions of authority divert resources that could be used for improving the lives of its citizens for personal gain. This means that resources for development and poverty reduction are depleted.\textsuperscript{112} It is a complex phenomenon because its effect undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption is a complex phenomenon because its effects undermine democratic institutions such as the judiciary, parliament and the public sector, which are supposed to be the ‘watchdogs of society’.\textsuperscript{113} It also slows economic development and contributes to governmental instability.\textsuperscript{114} Even when initiatives and anti-corruption laws are enacted, often they are still overseen by the perpetrators of corruption within the same government under which these initiatives are to be

\begin{flushleft}
\textsuperscript{109} ibid
\textsuperscript{110} Solomon Fakinlede, Poverty and Morality: Assessing the Influence of Poverty in Moral Judgements in Nigeria’ (PhD thesis, Walden University, 2008)
\end{flushleft}
implemented. Thus ‘persistent corruption’ violates the protection of the rights of the child, and results in deepening poverty and declining access to achieving their full potential.

Within the African context of the family, where the relationship norm is communal rather than individualistic, the number of people dependent on a few family members for their wellbeing is enormous. This leads to a depletion of the income of the very few who are employed. The impact of this is that the few who are employed are driven to engage in corrupt practices so as to fulfil their responsibilities to the family.

In the same vein, when it comes to business enterprises, employers rely on putting their close relatives in strategic positions. On one hand, jobs are created for dependant relatives but on the other hand the aim is to stem corruption within their business or organisation. This method of employment, in a sense reduces the pool of reliable and qualified potential employees. It also results in a lack of capacity as well as a shortage of human resources in places where they are needed, because in some instances it is these dependant relatives that cover up the fraud carried out by their employer. Thus the effects of corruption in the Developing World are of greater consequence than other developed parts of the world. One explanation for this is that in the Developing World there is a lack of the culture of the public interest. This view can be attributed to a long history of poverty, which gives rise to a high level of fraud and poor ethical compliance by governments and individuals. Indeed the definition for corruption for example in Nigeria is no different from the definition in England. However norms that have become acceptable have fuelled the corruption in Nigeria more than in England. In England consumption of goods and services is the major reason for expenditure. In Nigeria individuals spend their money on social interactions on a high scale such as giving money to a relative for taxi fare,

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115 Mulinge (n99)
116 ibid
117 Cobbah (n56) 309
118 Fakinlede (n110)
119 ibid
120 Fakinlede (n110)
121 ibid
122 UNODC (n111)
124 ibid
handing bank notes to a neighbour in need and even helping other family relatives with school fees and tuition.\textsuperscript{126} This monetisation of everyday sociability puts pressure on individuals to commit fraud or other forms of corrupt practices.\textsuperscript{127}

On the contrary, in England for example, the benefits system\textsuperscript{128} administered by the government caters for citizens who may be classed as dependants, thus removing the pressure from an individual or a few family members. The benefits system is a government programme designed to support in practical ways and give financial assistance to its citizens who are unemployed, sick, bringing up children, low-income earners and the elderly.\textsuperscript{129} This benefits system represents in a sense, the impartiality of the State and reflects an ethic of general interest unlike the practice of social norms in favour of the prominence of private and partisan interest prevalent in Nigeria and most developing countries.\textsuperscript{130} Therefore, though it may be argued that the Developing countries lack resources\textsuperscript{131} in meeting its obligations,\textsuperscript{132} a lot of their resources could be harnessed if corruption were reduced.

5.6. \textbf{CONCLUSION}

Legislation on rights and welfare for children may not be indicative of consensus of what the right for children are, especially for the girl, in any given community. Legal obligations alone are not all that is required as the solution for preventing girls from missing out on full time education or from dropping out. Through the legal framework, much attention has been given to improving access to schooling, therefore making schooling a site with the potential for girls to develop skills, gain insight and have the chance to delay early pregnancy and the accompanying challenges. Nevertheless, the achievement of the educational targets of the MDGs through the HRBA has been slow and limited. By recognizing and identifying these limitations which this chapter outlined, it is evident that the HRBA by itself is insufficient and inadequate without more. In order to make progress in implementing the rights of the girl to education a holistic approach is

\begin{itemize}
  \item Olivier de Sardan (n120)
  \item ibid
  \item Understanding the Benefits System \texttt{<www.nidirect/understanding-the-benefits-system>} accessed 23 May 2014
  \item ibid
  \item Resources include human resources, material resources and access to information and knowledge.
\end{itemize}
required.

It is for this reason that the next chapter explores the Capabilities Approach (CA) for enhancing girls’ rights to education.
CHAPTER SIX: CAPABILITIES APPROACH: A COMPLEMENTARY APPROACH TO THE HUMAN RIGHTS BASED APPROACH TO EDUCATION

6.1. INTRODUCTION

The previous chapter highlighted that in view of limitations of the Human Rights Based Approach (HRBA) towards the fulfillment of the rights of the girl child to education, there is a need for other approaches that could enhance and supplement the implementation of the right to education for girls in Nigeria. This chapter examines the Capabilities Approach (CA) as complementary to the Human Rights Based Approach (HRBA) for achieving rights to education particularly for the girl child in Nigeria. Indeed, the CA is closely allied to the HRBA.¹ Both the CA and the HRBA are perspectives which refer to basic standards of humanity that should be fulfilled in the process of development. Although the CA extends the human rights agenda towards notions of secure rights, it addresses positively the fact of human and social diversity. It allows for more flexibility and adaptation to different personal capacities (talent, skills and personal characteristics) and different cultural and societal contexts.² Therefore while the HRBA draws attention to deprivations, the CA concentrates on their causes and assessment. Together, they can produce a cogent set of policy prescriptions.³

The chapter argues that it is not only the amount of resources spent on education or a consideration of education as a resource in itself that guarantees educational achievement. It is not even the simple production of educational ‘outputs’ in terms of qualifications and years of schooling, as evaluated by economic and human rights approaches to education. Rather, it is taking into account the complex settings in which schooling takes place and the conditions of gender, ethnicity and inequality.⁴ It is also about ensuring that barriers to education are evaluated and assessed in order to enhance policy formulation to increase and enhance the

¹ Martha Nussbaum, Creating Capabilities: The Human Development Approach (Harvard University Press 2011)
capabilities that give people opportunity to lead flourishing lives.\textsuperscript{5} In this chapter, the CA is used as a normative framework for evaluating and assessing the barriers to education for girls and considering how policies and rights to education can be achieved. The evaluation is made through the lens of Nussbaum’s list of central capabilities which creates opportunities for people to lead flourishing lives.\textsuperscript{6}

The task of this chapter is carried out by exploring the meaning and foundational idea of the CA. This is followed by the criticisms against the CA. Thereafter, the relationship between the CA and human rights is considered. It goes on to make the distinction between capabilities and functionings, which leads to the evaluation of capabilities and education. In evaluating the CA and education, consideration is given to how education for girls can be enhanced. Martha Nussbaum’s list of central capabilities\textsuperscript{7} and Elaine Unterhalter’s research projects in Africa are used to highlight how gender parity and equality in education can be achieved for girls in Nigeria.\textsuperscript{8} The chapter in conclusion argues that beyond the focus on the goal of enrolment of pupils, school attendance, literacy and numeracy skills, the CA provides a broader scope of education quality that allows children and particularly girls to have more choices in later life as women.

6.2. MEANING AND FOUNDATIONAL IDEA OF THE CAPABILITIES APPROACH

The CA in its current form is attributed to the pioneering work of economist, Amartya Sen,\textsuperscript{9} and more recently developed by the philosopher Martha Nussbaum.\textsuperscript{10} The foundational idea of the CA which contains aspects of ideas that dates back to Aristotle,\textsuperscript{11} is that the freedom to achieve wellbeing is to be measured and understood in terms of people’s real opportunities ‘to be’ and ‘to do’ or ‘what they have reason to value’.\textsuperscript{12} This freedom to achieve is based on the idea of social justice that allows people to have access to the equitable distribution of goods and

\textsuperscript{5} ibid
\textsuperscript{6} Nussbaum (n1)33-34
\textsuperscript{7} ibid
\textsuperscript{8} Elaine Unterhalter, ‘Inequality, Capabilities and Poverty in Four African Countries: Girls’ voice, schooling, and strategies for institutional change’ (2012) 42(3) Cambridge Journal of Education 307
\textsuperscript{9} Amartya Sen, Inequality Reexamined, (Oxford University Press, 1992) 40
\textsuperscript{10} Martha Nussbaum, Women and Human Development: The Capabilities Approach, (Cambridge University Press. 2000)71
\textsuperscript{12} Nussbaum (n10)
services in a society. Sen argues that the freedom to achieve, which he called ‘agency freedom’, implies that individuals can act to bring about changes that they value.

Sen’s work on the CA emerged out of a critical engagement with welfare economics. Accordingly, it developed into a generally, flexible and multipurpose normative framework for the evaluation of individual wellbeing, social arrangements, policy design and proposals for social change in the society. He conceptualized the CA in response to a general pessimism that welfare economics could not deliver useful forms of measuring inequality among persons in a society. This was as a result of the weak informational base of welfare economics. For example, it was impossible to develop policy on schooling for several reasons: first due to weak information on how schooling was valued by all individuals in a particular society; second, due to the way schooling was ranked relative to other important goods, like whether girls remain at home and help with housework rather than go to school; third, due to uncertainty of whether aspirations for or against schooling were the ‘real’ views of an individual, or the views they had to adopt because of powerful customs that dictated appropriate behavior.

Nussbaum’s view on the CA varies in a sense from Sen’s CA. She argues that true human functioning is the responsibility of the government. The government is obligated to make available to each and every member of the community the basic necessary conditions that enables them to choose and live a fully human good life. Such basic necessary conditions should also comprise of actual functionings that make up the fully good life. Importantly, Nussbaum makes a number of distinctions amongst types of capabilities. These types of capabilities are basic capabilities, innate capabilities and combined capabilities.

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14 Amartya Sen, (n9)
16 Amartya Sen and James Foster, On Economic Inequality (Oxford University Press 1997)
17 Sen (n9)
19 Nussbaum (n1)
20 ibid
21 ibid
22 ibid
capabilities are ‘the innate faculties of the person that make later development and training possible.’\textsuperscript{23} Internal capabilities are ‘states of the person (not fixed, but fluid and dynamic)’ and, unlike ‘innate equipment’, they will develop ‘in most cases, in interaction with the social, economic, familial, and political environment’\textsuperscript{24} By contrast, combined capabilities, are the ‘freedoms or opportunities created by a combination of personal abilities and the political, social, and economic environment’.\textsuperscript{25} Nussbaum however goes further in elaborating on basic capabilities by saying that the individual should be able:

To use the senses, to imagine, think, and reason-and to do these things in a “truly human” way, a way informed and cultivated by an adequate education, including but not limited to, literacy and basic mathematical and scientific training. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.\textsuperscript{26}

Consequently, human functioning requires that there is an enabling environment where citizen’s autonomy is privileged at least to the same extent as other metaphysical commitments. Thus children’s autonomy and parents’ autonomy ought to be recognized by the State.\textsuperscript{27} For example, the choice by parents of which school to send their children if it is not acknowledged because the choice is limiting for the child, it amounts to a violation of the parent’s values that make up their good life.\textsuperscript{28}

Nussbaum thus argues that if parents’ choices conflict with what the State considers as morally acceptable conceptions of the good, then children should be taught through formal education to see themselves as genuinely entitled to make choices of the future they want for themselves.\textsuperscript{29}

\textsuperscript{23} Ibid 23–24
\textsuperscript{24} ibid
\textsuperscript{25} Ibid 20-21.
\textsuperscript{26} ibid 33
\textsuperscript{27} Martha C Nussbaum, \textit{Frontiers of Justice: Disability, Nationality, Species membership} (Harvard University Press, 2006)
\textsuperscript{28} Laura Feracioli and Rosa Terrazzo, ‘Education for Autonomy: Liberalism and Autonomy in the Capabilities Approach’ (2014) 17 (3) \textit{Ethical Theory and Moral Practice} 443
\textsuperscript{29} ibid
Amartya Sen identifies being educated as a basic capability. Basic capabilities, in his approach, are ‘a relatively small number’ of centrally important beings and doings that are crucial to well-being.\(^{30}\) In Sen’s notion of basic capabilities, to be educated is included among the fundamental capabilities on the basis that education contributes to the quality of life and formation and expansion of human capabilities to meet basic needs. Here the idea of basic capability retains the fundamental requirement associated with human needs, while inscribing in it a philosophical approach concerned with people’s freedoms and well-being. Hence, the conceptual and normative implications of the basic capability to be educated remain unspecified. Other examples of basic capabilities he identified are the capabilities to be well-nourished and well-sheltered, to escape avoidable morbidity and premature mortality, to be educated and in good health, and to be able to participate in social interactions without shame.\(^{31}\)

Thus said, the views of both Nussbaum and Sen provide a framework for conceptualizing the basic and fundamental capability to be educated as essential to the expansion of future capabilities, and therefore as constitutive of an entitlement in education.\(^{32}\) They are both aimed at promoting human agency, knowledge, and skills, as well as the ability to deliberate over means and ends and basic conditions of autonomy.\(^{33}\) Ultimately both views considerably overlap with the notion of equality of condition. For example, where there are social conditions in, for example, health and housing, and access to the labor market these inevitably will support gender equality.\(^{34}\)

Nussbaum however produces, and robustly defends, a universal, cross-cultural list of central capabilities for human flourishing and a life of dignity.\(^{35}\) Her list points out a threshold standard of what constitutes the good life.\(^{36}\) The list comprises the following: life, bodily health, bodily integrity, senses, imagination, and thought, emotions, practical reason, affiliation, other species

\(^{30}\) Sen (n9) 44
\(^{31}\) ibid
\(^{32}\) Nussbaum (n1)
\(^{34}\) Elaine Unterhalter, in Walker Melanie and Unterhalter Elaine(eds.) Amartya Sen’s Capability Approach and Social Justice in Education (Palgrave Macmillan 2007)
\(^{35}\) Nussbaum (n1)
\(^{36}\) ibid
(concern for and in relation to animals, plants and the world of nature), play, and control over one’s environment.\(^{37}\) These ten central human capabilities would need to be present for such a fully human good life. The idea of having such a list is to give a specific content to capabilities, arguing that Sen’s reluctance to make commitments about what capabilities a society ought centrally to pursue means that guidance in thinking about social justice is too limited. Nussbaum claims that although the list is open-ended, and revisable, it constitutes ‘a minimum account of social justice’\(^{38}\).

For purposes of this thesis, the idea of the CA is primarily to create conditions for being and doing. It means focusing on education as a basic capability and taking into account gender relations, ethnicity and inequality in assessing and evaluating the necessary conditions that are imperative for girls to pursue their ultimate end.\(^{39}\) In the context of education for girls, the CA focuses on the conception of social justice that looks into factors such as domination, inequality and economic deprivation that produces girls’ oppression. The CA therefore acknowledges these factors and addresses them in order to undermine the oppression and enhance girls’ basic capabilities for educational achievement.\(^{40}\)

More generally the CA as a normative framework provides a platform for analyzing, in various forms, what equity or equality entails with the aim of producing a holistic perspective for tackling challenges.\(^{41}\)

6.3. CRITICISMS OF THE CAPABILITIES APPROACH

Sen's CA has largely been criticized on several grounds. First, it has been criticized for lacking a coherent list of important capabilities.\(^{42}\) Secondly, that its usefulness is not evident particularly when making interpersonal comparisons in the presence of potential disagreement about the

\(^{37}\) ibid
\(^{38}\) ibid


\(^{40}\) Iris Marion Young, Justice and the Politics of Difference (Princeton University Press 1990)

\(^{41}\) Ingrid Robeyns ‘Capability Ethics in Hugh LaFollett and Ingmar Person(eds.) The Blackwell Guide to Ethical Theory (2nd edn Blackwells,2012)

relative weights to be assigned to these capabilities. Thirdly, that its informational gap is extremely high and in some cases lacks the relevant social indicators. Fourthly, that it is individualistic and does not regard individuals as part of their social environment but regards them as ‘atomized beings’.

One of the main criticisms against Sen’s idea of CA comes from Unterhalter. She argues that the analysis of CA put forward by Sen is ‘insufficiently nuanced’. This, according to Unterhalter is because Sen’s CA does not specify how a person’s valued ‘doings’ and ‘beings’ can be measured. She therefore argued that contrary to Sen’s view, a cross disciplinary approach is needed for an in-depth social analysis which can complement and provide new contexts to explore questions posed by the CA. Critics have argued that Sen’s capabilities approach is too focused on evaluations and does not provide solutions for actual social problems.

In response to these critics, some commentators have defended Sen’s evaluative framework of the CA. One such commentator is Ingrid Robeyns. Her view is that the CA is a framework that helps to evaluate social policy and actual problems. Sabina Alkire agrees with Robeyns view but goes further to add that Sen’s approach as an evaluative framework is limited since it does not generate activities, policies and institutions that are capable of expanding capabilities. Therefore, Alkire puts forward her analysis to address this limitation. She analyses the CA from two perspectives; the evaluative and the prospective. The evaluative analysis is concerned with comparisons of states of affairs at one point in time. The prospective analysis is concerned with

45 ibid
46 Unterhalter (n4)
47 ibid
48 ibid.
50 For example, Dean H. ‘Critiquing Capabilities: The distractions of a beguiling concept.’ (2009) 29 (2) Critical Social Policy 261-278
51 Ingrid Robeyns, The Capability Approach: An Introduction
52 ibid
53 Alkire, S ‘Using the Capability approach: Prospective and Evaluative Analyses’ in Flavio Commim, Mozaffa Qizilbash and Sabina Alkire (eds.) The Capabilities Approach, Concepts, Measures and Applications (Cambridge University Press 2008)
54 ibid
identifying concrete actions to be taken within those states of affairs.\(^{55}\) The prospective analysis takes into account the issues of groups and social structures which Sen’s CA has been accused of neglecting.\(^{56}\)

To buttress the point that the CA is individualistic, Angela Githitho-Muriithi argues that the CA does not consider individuals as socially embedded and connected to others.\(^{57}\) Therefore it poses difficulties for societies that are more communitarian than liberal.\(^{58}\) To explore this further, Robeyns interpretation of the CA provides an answer by stating that it is a framework that can be utilized in diverse circumstances.\(^{59}\) In other words, the capabilities approach can be applied in a diversity of circumstances whether in a group setting, like in the circumstances of care and dependency within the family or when addressing opportunities for individual freedom to choose. Robeyns argues that critics have misunderstood the idea of ‘the individual’ under the CA.\(^{60}\) Her reply to those who would argue that the CA ignores group dynamics is that, group dynamics are nothing more than the sum of individuals and their prospects.\(^{61}\) Therefore it is not incompatible with an account of personhood that recognizes the connections between people, their social relations and their social embedment.\(^{62}\)

Martha Fineman also refutes Githitho-Muriithi’s argument in her discussion of American families. Fineman is of the view that it makes no difference whether a society is communitarian or liberal because of the inevitable dependency that exist in families.\(^{63}\) She argues that the inevitability and normality of dependency is grounded in human reproduction, therefore all humans are inevitably dependent both at childhood and at old age.\(^{64}\) This inevitable dependency eventually

\(^{55}\) ibid

\(^{56}\) ibid

\(^{57}\) Angela Githitho-Muriithi, ‘Education for All and Child Labour in Kenya: A Conflict ofCapabilities?’(2010) 2 Procedia Social and Behavioural Sciences 4613

\(^{58}\) ibid


\(^{60}\) ibid

\(^{61}\) ibid

\(^{62}\) Ingrid Robeyns, Sen’s Capability Approach and Gender Inequality: Selecting Relevant Capabilities in Bina Agarwal, Jane Humphries, and Ingrid Robeyns (eds.) Amartya Sen’s Work and Ideas: A Gender Perspective (Routledge, USA and Canada, 2005)


\(^{64}\) ibid

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results in derivative dependency, which is the dependency arising from the caretaker’s need for goods and resources.\(^{65}\)

The argument put forward by Fineman is relevant to support the point that social wellbeing and individual wellbeing are interdependent. Therefore, individuals involved in the caretaking and reproductive labour that takes place within the family should be treated and compensated as if they were engaged in work outside their homes. The implication is that the individual who is dependent on the care and the individual administering the care are individuals both of whom should still be able to exercise their freedoms and are at a position to achieve functionings that they value. It is common knowledge that girls and women are primarily responsible for the care of children, older parents or younger siblings\(^{66}\) and so should be adequately compensated. Consequently, when mothers are compensated they in turn have their capabilities expanded. In this way they are able to choose from a wider range of options such as whether to send their female children to school, and how to use their compensation in ways that would not have otherwise existed if their capabilities were not enhanced.\(^{67}\)

In essence, every individual is socially embedded or is part of a social environment. Yet when dealing with distribution of social goods, women and girls are excluded because the family in which their labour is done is seen as a homogeneous unit whose needs are to be met in other ways, rather than receiving wages like their counterparts in the external labour force. Hence this results in a nation with economic and sex inequality against women.\(^{68}\)

Nevertheless, through the lens of the CA, it can be seen that when individual flourishing is realized, it ultimately converts to group flourishing. Accordingly, the family should not be conceptualized as a private institution but as a dynamic public institution assigned a specific role of caretaking for the benefit of society. By this approach, families, and individuals within the family will be compensated, particularly women without any form of stigma attached to it.\(^{69}\) The CA thus becomes relevant in ensuring that individual members of a group, in this case the family, are able to develop capabilities as well as functionings.

\(^{65}\) Ibid
\(^{67}\) Fineman (n63)
\(^{68}\) Ibid
Jonathan Herring’s work also supports the view put forward by Fineman. He argues in the context of English Family Law that relational values are an inevitable aspect of human existence. Therefore it is people’s experience of everyday life within their relational values that should be acknowledged. While many of these discussions are not new, the level of relational values within the family that influence individual outcomes cannot be ignored. The CA finds it meaning within the relational values, and engages with them to find out what people are actually able to do and to enhance their social realities and expand their capabilities. The CA therefore seeks to promote peoples valued beings and doings but at the same time confronts these valued doings and beings if an individual’s future is threatened within the relational values that are experienced in everyday life.

In many societies including Nigeria, care and dependency within the family sometimes means that marriage for girls forms part of their caring responsibility. This responsibility results in the receipt of a bride price by the girl’s father. The marriage is seen as beneficial to the family because the bride price contributes to the economic wellbeing of the family. In addition, the prospective groom also becomes a potential contributor to the economic wellbeing of the bride’s family. The CA presents an answer by acknowledging that more valued States are those that expand capabilities. Therefore, it is the State’s responsibility to expand the capabilities of the mother, father and each child within the family. One way of doing this is by providing education for every member of a family but particularly the girl child.

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From a critical point of view, the notion that the CA is individualistic has always been problematic, and it bothers on the issue of how individual choices can be central in communities where ‘individualism’ is not a part of daily life. The response given by Robeyns to this issue is that the CA embraces ethical individualism. Ethical individualism makes a claim on who and what should count in evaluative exercises and decisions. Therefore contrary to the criticism that Sen’s CA is individualistic, the CA looks into situations and the functionings that people achieve and ask the question why is a situation the way it is. For example, a girl or woman who has been married off may very well claim that she does not want to be educated, or may achieve minimal education with the view that being married is of value and perhaps of more value than being educated. In these circumstances, the CA approach will investigate constraints such as being forced to do excessive amounts of domestic work, and also the care of siblings or of other children. It will investigate whether girls are being told that there is no need for them to go to school or to receive an education since they will be married earlier, or whether their attendance at school results in a drain on household resources. The CA will also explore the social norms and cultural values that inform these choices. The CA goes further to seek by reflection and scrutiny within a broad based social context of participants, why people are the way they are and function at the level they do. It therefore asks questions such as, what things or circumstances shape people’s preferences, expectations and perceptions? Or what influences their choices and the freedoms they have? Consequently by virtue of the CA, each individual activity within the family, including the caretaking labour, needs to be assessed, valued and compensated by the government irrespective of gender, ethnicity, race or regional locations to achieve valued outcomes.

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76 Githitho-Muriithi (n57)  
77 ibid  
80 ibid  
81 Fineman (n69); Nussbaum (n1)
Nussbaum’s list of central capabilities has also been criticized for having no external input or a means by which it can be publicly revised.\(^8^2\) Sen’s response to Nussbaum’s list is that her list is prescriptive and problematic, since the list was not a subject for public discourse that was accepted and validly recognized.\(^8^3\) While Sen is not opposed to Nussbaum’s list, he emphasizes that the list must be understood and relevant to particular purposes, such as for assessment, evaluation or critique.\(^8^4\) Nevertheless, specifying a single list would mean the CA has become a theory rather than a normative framework for assessing the quality of life.\(^8^5\) Sen therefore leaves his CA deliberately vague, because of the importance for him of communities deciding what capabilities count as valuable.\(^8^6\) Nussbaum refutes the charge that her list is prescriptive. She argues that her aim is first to support a position grounded in political liberalism and secondly, to have an overlapping consensus for the content of her list among people who hold a wide range of divergent reasonable comprehensive doctrines of what is good.\(^8^7\) In the next section the relationship between the CA and human rights are examined.\(^8^8\)

**6.4. RELATIONSHIP BETWEEN CAPABILITIES APPROACH AND HUMAN RIGHTS**

The view that capabilities and human rights have some similarity, is shared by several scholars.\(^8^9\) This shared view according to Sen, is only so far as neither of them is subsumed within the territory of the other.\(^9^0\) The similarity of human rights and capabilities is that they both share the same motivation - freedom. Human rights can be seen as the rights to freedoms, and capabilities are seen as freedoms of a particular kind.\(^9^1\) From the capability angle, the CA highlights the critical importance of the substantive freedoms and opportunities of individuals

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\(^8^3\) Amartya Sen, ‘Capabilities list and Public Reason: Continuing the Conversation (2004) 10 (3) Feminist Economy 77

\(^8^4\) Ibid

\(^8^5\) Robeyns (n82)

\(^8^6\) Sen (n83), ‘Capabilities list and Public Reason: Continuing the Conversation (2004) 10 (3) Feminist Economy 77

\(^8^7\) Nussbaum (n74)

\(^8^8\) Sen (n9)


\(^9^0\) Sen (n89)

\(^9^1\) Nussbaum (n89)
and groups.\textsuperscript{92} Such freedoms are used to refer to the extent to which a person is free to choose particular levels of functioning, while human rights highlight the importance of values such as freedom, dignity, respect and the arrangements needed to promote these. Thus whether an individual has a right is dependent on the opportunity to exercise that right.\textsuperscript{93}

The way Nussbaum summarizes the relationship between the CA and human rights is that human rights language strikes people as highly concrete and abstract, but the CA supplies the analysis of what is entailed in human rights.\textsuperscript{94} This simplifies the analysis to the daily question of what is a person able to do. It is a question that people in all works of life ask, and understanding what opportunities people have does not require a formation peculiar to one culture rather than another.\textsuperscript{95} The CA is thus by contrast down to earth and practical.

Therefore, the CA can also be adapted and pursued concretely by countries using their own history and traditions as a guide. The CA provides clarity in points of vagueness with regards to human rights legal framework and also a valuable critique of issues of justice that are misleading.\textsuperscript{96} Therefore, rights are best secured to people when they have opportunities to function in that area.\textsuperscript{97} To that extent, rights are used in defining social justice such that the society will not be a just one unless the capability is achieved.\textsuperscript{98} It is by means of the CA that rights can be secured for citizens. For example, when considering civil and political rights and economic and social rights, civil and political rights have been looked at as having no preconditions with economic and social rights.\textsuperscript{99} However the CA insist that both civil and political rights, and economic and social rights are interdependent. The reason is because people are unable to participate in political debate, to vote or run for office if they are inhibited

\textsuperscript{94} Nussbaum (n89), ‘Capabilities and Human Rights’ (1997) Fordham Law Review 273
\textsuperscript{95} ibid
\textsuperscript{96} Nussbaum (n89)
\textsuperscript{97} ibid
\textsuperscript{98} ibid
by extreme poverty, lack of education and ill health. Essentially such people do not have their entitlements securely or on a basis of equality.\textsuperscript{100}

The CA thus expands the ethical underpinnings of human rights and provides a framework in which the substantive rights of individuals and groups can be evaluated and better understood.\textsuperscript{101} It supplements traditional human rights analysis by providing an applied framework in which a range of factors that influence realization of human rights in practice can be fully investigated and understood.\textsuperscript{102} For example, the realization of human rights to education requires examining the factors associated with reduced rates of school attendance or increased rates of school dropout among girls in in some context, which in turn requires examination of variations in interpersonal needs and of a broad range of other factors that can influence the substantive position of individuals and groups including adaptive expectations and choice inhibitions.\textsuperscript{103}

### 6.5. \textsc{Capabilities and Functionings}

In the last section, the view that capabilities represent a person’s opportunities or freedom to achieve well-being,\textsuperscript{104} the actions one values doing, or the means by which people live their lives.\textsuperscript{105} By contrast however, functionings are defined as states of ‘wellbeing’ of a person seen in terms of quality of the persons ‘being,’\textsuperscript{106} i.e. ‘being adequately nourished’, ‘being happy’, ‘avoiding premature mortality’ and ‘having self-respect.’\textsuperscript{107} Furthermore, functionings are neither commodities nor utilities, but is the actual use of the capabilities available.\textsuperscript{108} For example, in considering the capability to read, what is considered is not only whether the individual has

\textsuperscript{100} Nussbaum (n89)
\textsuperscript{102} Nussbaum (n87)
\textsuperscript{103} Sen (n101); Nussbaum (n89)
\textsuperscript{104} Sen (n9) 5
\textsuperscript{106} Sen (n9)
\textsuperscript{107} ibid
reading skills but also other conditions that prevent the actual reading (functioning) from occurring. Conditions such as health problems, which are both internal and external, the individual’s access to a text, the language the text is written, its relevance, the existence of the right conditions and environment, which allows the individual time and space to read.\(^{109}\)

A classic example of the distinction between capabilities and functionings, is of two hungry men.\(^{110}\) One of the men is fasting because of religious conviction. The second man has nothing to eat because he has no money, no opportunity to earn money to purchase food, and no chance to establish social relations that will provide him with food.\(^{111}\) If one evaluated only functionings (eating), one would view the situation of the two as the same. In evaluating capabilities in this case, what is considered is the deliberate choice to fast or the freedom to eat in any other circumstance.\(^{112}\) Thus while eating is a functioning, the real opportunity to eat is the corresponding capability.\(^{113}\)

It is useful to substantiate the freedom that capabilities signify by drawing upon Joseph Raz’s idea of freedom.\(^{114}\) Raz states that a man or woman who has freedom is one that has various options based on what they value, to choose from.\(^{115}\) Raz argues that if there exists one choice for everyone to choose then such an option would not in the circumstance give people capabilities.\(^{116}\) The case is made worse if the only option available is not one that is good for everyone.\(^{117}\) Therefore it can be said that the plurality of options is what really authenticates people’s real ‘freedom to…’ based on what they have reason to value by their informed choices. Consequently, if the government offers a limited range of opportunities for people to choose

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\(^{110}\) Sen (n9)

\(^{111}\) ibid

\(^{112}\) ibid


\(^{115}\) ibid

\(^{116}\) ibid

\(^{117}\) ibid
from, it undermines their wellbeing. Thus said, people’s real freedom in some societies is still influenced by what they have been familiar with in terms of culture whether good or bad, their tradition and some other socio-economic circumstances. For instance, in the research that Elaine Unterhalter carried out in Nigeria, she observed that those with least access to commodities are also least able to raise concerns about their circumstances since they do not know any better than what they are used to.

To conclude this section, it can be said that functionings without capabilities does not give an adequate result of what people are actually able to do and to be. Neither does capabilities alone specify peoples actual ‘being’, but taken together, they provide a ‘rich informational base’ that is useful for evaluating development. This is how the CA complements the HRBA.

6.6 CAPABILITIES APPROACH TO EDUCATION

Education achievement can be seen in two ways, either through schooling i.e. compulsory education which in the Nigerian context is done through the Universal Basic Education scheme, or seen as the process of exercising agency, i.e. using reflection, information, understanding and the recognition of ones right to exercise these capacities in order to formulate valued beings and doings. In the CA, education is assumed (and expected) to be empowering and transformative. Indeed education is instrumental as a means to other valuable goods, such as better life prospects, career opportunities, and civic participation. Schooling improves one’s opportunities in life. It also promotes the achievement of important levels of knowledge and skills acquisition, which play a vital role in agency and well-being. Education is intrinsically valuable because, all things being equal, it enhances the possibility of appreciating and engaging in a wide range of activities that are fulfilling for their own sake. Ultimately, the instrumental and

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118 Ibid
120 Ibid
121 Sen (n9)52
123 Martha Nussbaum, Women and Human Development: The Capabilities Approach (Cambridge University Press,2000)
124 Unterhalter (n74)
125 Terzi (n33)
intrinsic aspects of education relate to the enhancement of freedom, both in terms of well-being, freedom and agency freedom, which are aspects central to and highlighted by the CA.\textsuperscript{127}

Empirical research has also shown that education contributes to flourishing of individuals and their quality of life.\textsuperscript{128} For example, Sen has highlighted the benefits related to the education of women, both in broadening their freedom to exercise agency and in its correlation to a reduction in infant mortality.\textsuperscript{129} This means that there are significant correlations between education and various aspects of life that promotes the capabilities of women.\textsuperscript{130} Better educated people live longer, healthier lives and transmit more material as cultural benefits to their children.\textsuperscript{131} These empirical studies confirm the value of the capability to be educated as fundamental as well as foundational to different capabilities.\textsuperscript{132} Thus education has a role in promoting people’s wellbeing and their freedom to lead flourishing lives. Ultimately, the capability to be educated can be considered basic both in the sense of being essential to wellbeing and foundational to the expansion of other capabilities.\textsuperscript{133} Therefore Sen’s capabilities approach to education provides a framework to think about the role, process and content of public education in innovative ways and to broaden strategic horizons beyond the constrictions of standardized testing and quantitative policy directives especially in relation to enrolment figures and years of schooling.\textsuperscript{134}

It offers a set of conceptual tools for reflecting on ways of reducing the injustices in education systems and wider society rather than waiting for a consensus on what constitutes perfect justice.\textsuperscript{135} Essentially, the CA engages critically with all social, cultural and other factors that shape peoples preferences, expectations and perceptions and thus influence which choices are made from the freedoms they have.

The Millennium Development Goals (MDGs) have been focusing on education in terms of enrolment and equal access but fails to pay attention to accessibility of school, violence and

\textsuperscript{127} Terzi (n33)
\textsuperscript{128} Amartya Sen, Development as Freedom. (Oxford University Press 1999) 198
\textsuperscript{129} ibid
\textsuperscript{130} ibid
\textsuperscript{131} ibid
\textsuperscript{133} Terzi (n33)
\textsuperscript{134} ibid
\textsuperscript{135} Amartya Sen, The Idea of Justice (Harvard University Press 2011)
\textsuperscript{136} ibid
They do not differentiate the capability set of children in more urban neighborhoods with less religious interference to those of children in rural areas with more religious interference. Importantly they neither tell us what interest education protects and why those interests are important, nor whether aspects of moral agency are seen as important dimensions of rights.\textsuperscript{137}

The claim that education is a fundamental human right does not tell us very much except that it is widely assented to through the human rights framework.\textsuperscript{138} This claim thus engages with what the content of the rights is, how one right should be weighed against others and questions the importance of moral agency in waiving rights. For example, the weight placed on the interest of a girl to be educated is higher than the weight placed on other interests by adults in the family which are against that education. This is because it protects her interest to live a healthier life, to understand something of the society and the world in which she lives, and to enhance her capacity to communicate and defend her own interest. The interest of the adults might concern valuing beliefs and practices that prohibit or limit the education of girls. The issues affecting girls thus goes beyond the right to have an education but the substantive levels of interaction among other competing interest that in some ways deprive her from accessing formal education or achieving moral agency. For this, a normative theory is required.\textsuperscript{139} Therefore the capabilities approach serves to investigate these competing interests to find out why things are the way they are.

Nussbaum’s list serves as a tool for investigating the ways that girls’ education can be enhanced in Nigeria.\textsuperscript{140} Her list is relevant because it considers the various areas of life, the threshold required by every citizen to move and act.\textsuperscript{141} It also asks the question ‘what does a life worthy of human dignity require?’ Whatever the answer, the government has an obligation to provide it.\textsuperscript{142}

\begin{thebibliography}{99}
\bibitem{137} Sen, The Idea of Justice (Harvard University Press 2011)
\bibitem{138} ibid
\bibitem{139} ibid
\bibitem{140} Nussbaum (n1)32-34
\bibitem{141} ibid
\bibitem{142} ibid 62-63
\end{thebibliography}
The CA to education is therefore more than a simple proposal; it is about equality of condition in education and also about equality of conditions and capabilities that bear on education.\footnote{Elaine Unterhalter, Rosie Vaughan and Melanie Walker, ‘The Capability Approach and Education’ https://www.nottingham.ac.uk/educationresearchprojects/documents/developmentdiscourses/rpg2008walkermclean9.pdf> accessed 8 June 2015} Thus constraints and resources the government utilizes to sustain an individual or a society’s capabilities is a matter for that society, and there may be variations between societies and between different levels of government in any particular society.\footnote{The funding of education in Nigeria particularly the UBE scheme discussed in chapter three is both the responsibility of the federal government and its States counterpart. The percentage of funds allocated is a function of the resources available to the government.; Elaine Unterhalter, ‘Education, Capabilities and Social Justice: Paper Prepared for EFA Monitoring report 2003 (UNESCO, 2003); Mario Biggeri, Jerome Ballet and Flavio Comim (eds), Children and the Capability Approach (Palgrave Macmillan 2011)}

6.6.1. Girls’ Education through the Lens of the Capabilities Approach
The CA can be challenging when dealing with children’s education. This is due to the fact that while adults are able to exercise their agency in making sense of their rights framework or the capabilities set available to them, for children it is different since they have limited capacity to exercise their agency.\footnote{Brighouse Harry, ‘What Rights (if any) Do Children Have? In Archard A and Macleod C.M (eds) The Moral and Political Status Of Children (Oxford University Press, 2002) 32} Yet children’s concerns ought to be protected in a way that balances the rights of the child and the agency of the adults. It is this phenomenon that makes it of paramount importance to develop conditions of wellbeing freedom and agency freedom for children and adults, such that girls’ and boys’ capabilities are enhanced, as they become adults.\footnote{Unterhalter (n74)} The implication of this balancing means that children’s capabilities set, in a certain geographic region such as the North of Nigeria, are different from those of the South. An examination of these variations brings clarity to understanding ‘agency’ and ‘freedom’ by which children can achieve their valued outcomes.\footnote{Unterhalter (n74)}

The United Nations (UN) assumes that physical presence in a classroom especially that of girls, is a primary way to enhance capabilities. Little attention is given to the content of what the students are learning and the way students apply or incorporate their lived experiences into their learning. The UN thus ignores the fact that achieving gender equality in education stretches
beyond access, to the need for curricula reforms and pedagogies supporting gender equity.\textsuperscript{148} Curricular reform is not adequate in and of itself without structural and behavioral changes that start from the home life of students.\textsuperscript{149} Therefore the UN current focus on access without structural change will do little in the push for girls’ effective participation and gender parity in the classroom.\textsuperscript{150}

It has even been argued that the classroom is a site where capabilities can be diminished as well as enhanced.\textsuperscript{151} This is the case where in some societies school might provide reasonable social arrangements for some capabilities such as gaining literacy or the knowledge to pass a degree, but not for others such as, being free from sexual harassment while walking to school or the experience of racial discrimination.\textsuperscript{152} The lack of social arrangements that allows girls feel safe, limits the capabilities they have for completing basic education.\textsuperscript{153} It follows then that girls’ learning which is disrupted because of lack of adequate social arrangements affects the way they make choices throughout their lives.\textsuperscript{154}

Elaine Unterhalter’s research in South Africa reveals that gender inequality exist by way of harassment of female students by their teachers and male peers.\textsuperscript{155} This greatly diminishes their capability to succeed at or even to stay in school.\textsuperscript{156} Nussbaum has described the capabilities in her list as ‘bodily integrity’ meaning that people are able to move freely from place to place and are secure against violent assault and domestic violence, having opportunities for sexual satisfaction and for choice in matters of reproduction.\textsuperscript{157} Thus where there are capability failures,

\textsuperscript{149} Githitho-Murithi, (n57)
\textsuperscript{150} Aikman, Unterhalter and Challender (n146); Unterhalter (n146)
\textsuperscript{151} Unterhalter (n4)
\textsuperscript{152} ibid
\textsuperscript{153} Unterhalter (n18)
\textsuperscript{155} ibid
\textsuperscript{156} Unterhalter (n4)
\textsuperscript{157} Nussbaum (n1)
the government has a responsibility to provide employment and other resources of entitlement to vital goods.\textsuperscript{158}

Furthermore, a study of Kenya’s education curriculum reveals that images depicted in textbooks of gender roles are far removed from students’ lived realities.\textsuperscript{159} The point being made is that curricular reform without a structural and behavioural change is unlikely to produce the set of capabilities that formal classroom education is supposed to produce.\textsuperscript{160} In fact in many instances students could only relate to the text based on their lived realities. It therefore follows that even in the text that portrayed a gender neutral division of labour, there were still pictures in the text that showed a conservative viewpoint that women and children should be responsible for housekeeping which is more in line with their lived experiences. For these students, their interpretation of ‘we clean clothes’ did not mean it was gender neutral, it only meant the gender roles of members of their household which in many cases was gender divided. Consequently, the images tell a different story and are more relevant to their experiences. Thus the curriculum was inadequate to address the curricular objective needed to expose students to diverse opinions and lifestyles.\textsuperscript{161} Therefore the disparity between the written curriculum, illustrations and daily life is unlikely to change what the students have reason to value. Any effort to alter gendered divisions of labour must come first from students’ lives and then brought into the classroom.\textsuperscript{162}

The examples of South Africa and Kenya reveal that the assumption that schooling and enrollment for gender equity in education initiatives, without considering how factors such as content and pedagogy, and issues about how education changes subjectivities is insufficient to achieve the social, and economic well-being of girls and women.\textsuperscript{163}

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\textsuperscript{158} Capability failure according to Sen, is when there are insufficient solutions to a particular problem in a society which leaves its citizen deprived of other capabilities and functionings. Thomas Wells, ‘Sen’s Capabilities Approach’ in James Fieser and Bradley Dowden (eds.), (2012) The Internet Encyclopedia of Philosophy \url{http://www.iep.utm.edu/sen-cap/} Accessed 3 June 2015

\textsuperscript{159} Kim Foulds, ‘The continua of identities in postcolonial curricula: Kenyan students’ perceptions of gender in school textbooks’ (2013) 33(2) International Journal of educational development 165

\textsuperscript{160} ibid


\textsuperscript{162} Foulds (n159), Unterhalter (n18)

\textsuperscript{163}
Similarly, the UN assumption that physical presence in a classroom especially that of girls, is a primary way to enhance capabilities fails to consider why in some instances girls may not value education due to the norms and values that influence girls’ preferences, ambitions and aspirations. It also fails to investigate the reasons why in some instances, girls may have access to the same capabilities as boys but are less ambitious or do not value education as much as boys do and therefore end up spending less time in school.\textsuperscript{164}

In practical terms, if a girl’s choice has been influenced by a culture in which she lacks both role models and communities of support, she is also unlikely to receive encouragement from others to pursue choices she has reason to value.\textsuperscript{165} In this instance, the type of education she should receive is the kind that tells her that, as a person, she is not only legally, but also morally entitled to reject the dominant norms that encourage her to see her identity as a subjugated and shameful one.\textsuperscript{166} However if the prevailing cultural norms of power and privilege that men have over women are in operation, girls may perceive their sexual identity as a deep source of shame, and may in a very important sense fail to conceive that they have other options in life: to have a family or to work in an office job, or to play group sports or be educated.\textsuperscript{167}

It is in these instances that the CA is helpful, as it suggests an assessment of norms and values that influence girls and women’s preferences.\textsuperscript{168} The CA suggest that the fact that women and girls do not value education is not a matter just for individual views but stresses the point that with positive freedoms, men and women should be able to value the same things equally and thus women should have the same freedom to value education as much as men do. Implicit in this is that girls should be liberated from other constraints such as being forced to do excessive amounts of domestic labour or to care for siblings, otherwise the real and effective freedom is reduced to an empty opportunity.\textsuperscript{169}

\begin{flushright}
\textsuperscript{164} Unterhalter (n18) \\
\textsuperscript{166} ibid \\
\textsuperscript{167} ibid \\
\textsuperscript{168} Sen (n9) \\
\textsuperscript{169} ibid
\end{flushright}
Indeed, the rise of fundamentalism and the continued gendered division of labour especially the unremunerated care work, have contributed to the increase in gendered inequalities in many areas of social life and in most regions of the world. In Developing Countries informal employment predominates family forms and kinship norms shape women’s incorporation into the labour market in ways that eschew formal equality. Here informal employment is a larger source of employment for women than men and women tend to be in the worst forms of informal employment.\textsuperscript{170}

Furthermore, Unterhalter in a different research on girls’ education in four countries in Africa, notes that there are contrasting influences of absolute and relative poverty on how girls will identify constraints associated with schooling.\textsuperscript{171} Drawing on data from Kenya, South Africa, Tanzania and Nigeria, Unterhalter illustrates how the girls living in absolute poverty were less likely to (be able to) identify constraints to their learning opportunities.\textsuperscript{172} By contrast, girls in peri-urban areas with greater contact with employed adults, better housing and generally better educational facilities were more likely to identify fee waivers, better facilities and other positive action that could help them to achieve their aspirations. She makes the point that, although the girls living in absolute poverty may have been less likely to identify or voice particular constraints, this was not because the constraints did not exist: to the contrary it is because they lack a vision or expectation of how things could be different.\textsuperscript{173}

In another research project titled ‘Transforming Education for Girls in Nigeria and Tanzania’ (TEGINT), Unterhalter and Jo Heslop asked children open-ended questions about what they considered to be the constraints on their education capabilities, and how these might be overcome.\textsuperscript{174} They were asked what they thought the obstacles to them completing school might be, and what would help to overcome them. They were also asked what they envisaged for their future and what would help achieve this. Unterhalter found that in their responses, high proportions of girls mention poverty as a problem, but strikingly in the areas where the incidence

\textsuperscript{171} Elaine Unterhalter and Jo Heslop, Report on Baseline studies for the Transforming education for girls in Nigeria and Tanzania (TEGINT) project. (Vol 3 ActionAid 2011)
\textsuperscript{172} ibid
\textsuperscript{173} ibid
\textsuperscript{174} ibid
of poverty is lowest, more girls mention poverty than do those in the places where it is high.\footnote{Elaine Unterhalter, Inequality, Capabilities and Poverty in Four African Countries: Girls' Voice, Schooling, and Strategies for Institutional Change, (2012) 42(3) Cambridge Journal of Education 307} Although there are other reasons within particular regions that influence these responses yet the survey presents a trend that, in conditions of relative poverty a larger proportion of girls identify problems with their schooling, while in conditions of absolute poverty, fewer girls are able to do this.\footnote{Ibid} The data from Nigeria corroborates trends that were found in other African countries as Table 1 below indicates.

**Table 1. Nigeria: Girls views on the obstacles that will prevent them from achieving their desired level of education (percentage of girls interviewed by state).**

<table>
<thead>
<tr>
<th>Obstacle</th>
<th>Bauchi</th>
<th>FCT</th>
<th>Gombe</th>
<th>Kaduna</th>
<th>Katsina</th>
<th>Nasarawa</th>
<th>Niger</th>
<th>Plateau</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early Marriage</td>
<td>14</td>
<td>28</td>
<td>52</td>
<td>24</td>
<td>78</td>
<td>63</td>
<td>28</td>
<td>90</td>
<td>43</td>
</tr>
<tr>
<td>Poverty</td>
<td>41</td>
<td>100</td>
<td>51</td>
<td>83</td>
<td>83</td>
<td>88</td>
<td>58</td>
<td>100</td>
<td>70</td>
</tr>
<tr>
<td>Parents withdraw from School</td>
<td>20</td>
<td>28</td>
<td>30</td>
<td>12</td>
<td>78</td>
<td>75</td>
<td>15</td>
<td>73</td>
<td>38</td>
</tr>
<tr>
<td>Old for Class</td>
<td>0</td>
<td>10</td>
<td>0</td>
<td>24</td>
<td>6</td>
<td>23</td>
<td>10</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Lack of facilities</td>
<td>0</td>
<td>20</td>
<td>48</td>
<td>39</td>
<td>68</td>
<td>38</td>
<td>13</td>
<td>33</td>
<td>34</td>
</tr>
<tr>
<td>Distance from school</td>
<td>5</td>
<td>3</td>
<td>9</td>
<td>31</td>
<td>48</td>
<td>18</td>
<td>5</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>Ill health</td>
<td>4</td>
<td>43</td>
<td>36</td>
<td>49</td>
<td>71</td>
<td>68</td>
<td>26</td>
<td>100</td>
<td>44</td>
</tr>
<tr>
<td>Pregnancy</td>
<td>0</td>
<td>58</td>
<td>4</td>
<td>23</td>
<td>63</td>
<td>33</td>
<td>23</td>
<td>32</td>
<td>32</td>
</tr>
</tbody>
</table>

Note: Question asked to each girl in English or Hausa as appropriate: ‘What Obstacles do you think will prevent you reaching the level of education you wish for?’

Source: Unterhalter and Heslop\footnote{Elaine Unterhalter and Heslop J. Transforming education for girls in Nigeria and Tanzania. A cross-country analysis of baseline research, Johannesburg: (Action aid 2011)31} and TEGINT\footnote{Ibid}...
From the above table, in the states where there are higher levels of poverty (Bauchi and Gombe), fewer girls mention poverty as a reason they may not complete schooling. In the states where the incidence of absolute poverty is lower but relative poverty is higher (FCT, Niger and Nasarawa), a larger proportion of girls mention poverty. The lack of facilities is a feature of all schools in which the TEGINT is working, but it is particularly bad in Bauchi, where not a single girl identified this as an obstacle to her finishing school. Early marriage is also an issue in all the states in which TEGINT operates, but much higher proportions of girls mention this in the states where it is actually illegal, because the CRA 2003 has been adopted (Nasarawa and Plateau) than in other states.\textsuperscript{179} In Bauchi, strikingly few girls mentioned this as a problem, although Bauchi is a state where popular concern with levels of early marriage is so high that in 2010 the Emir inaugurated a special project to try to end the practice.\textsuperscript{180} A similar trend is evident in table 2 below. In table 2, it can be seen that in states with better levels of gender equality and lower levels of poverty (FCT, Nasarawa, and Plateau), much higher proportions of girls call for abolition of fees and levies. In states like Kaduna and Katsina where there are large numbers of education institutions and where particular attention has been given to building schools, much larger proportions of girls commented on the need to improve the provision of facilities than girls in other states. In Bauchi state, where data collected for TEGINT showed broken down classrooms, non-functioning latrines, and children sitting on the floor because there were no desks, not a single girl commented on the need to provide improved facilities.

Table 2. Nigeria: Girls’ views on how to overcome obstacles to attaining their desired level of education, by district

<table>
<thead>
<tr>
<th>% girls interviewed who mentioned</th>
<th>Bch</th>
<th>FCT</th>
<th>Gbe</th>
<th>Kdn</th>
<th>Ktsn</th>
<th>Nas</th>
<th>Ngr</th>
<th>Plt</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sponsorship</td>
<td>41</td>
<td>100</td>
<td>54</td>
<td>90</td>
<td>88</td>
<td>90</td>
<td>76</td>
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<td>69</td>
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<td>17</td>
<td>33</td>
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</tr>
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\textsuperscript{178} TEGINT. 2011 \textit{Analysis of Baseline Data from Schools in which the TEGINT Project is Working in Nigeria, Abuja, Nigeria: (Action aid Nigeria)}\textsuperscript{8}  
facilities
Stop early marriage 5 38 61 85 85 68 20 87 67
Abolish fees and levies 3 78 56 72 70 88 13 100 65
Family Life Education 0 65 53 83 69 55 24 97 62
Enlightenment of parents 21 33 51 89 83 65 35 73 72

Note: Question asked to each girl in Hausa or English as appropriate: ‘What do you think will help you overcome these obstacles?’

Source: Unterhalter and Heslop\textsuperscript{181} and TEGINT\textsuperscript{182}

The results from the data in table 2 show that often those with least access to commodities and capital may also be least, able or likely, to raise concerns about their circumstances. Unterhalter thus warns of the dangers of only emphasizing the need for pupil voice in research on capability and the dire consequences of failing to take account of the capability to identify constraints.\textsuperscript{183}

She continues by stating that some studies may tend to overlook or underplay the question of adaptive preference and some children’s more limited capacity to articulate capabilities.\textsuperscript{184} This can be associated with particular severe forms of inequality, coercion, or just limitations on their range of opportunities to choose well. The implications of combining a strong emphasis on voice and children’s capabilities, with a failure to consider the ways in which capabilities are constrained for some children, may lead to evaluative errors in thinking about the institutions, such as schools, enrollment and schooling needed to enhance children’s capabilities.\textsuperscript{185}

In the same vein, Terzi Lorella argues that it is important that resources can be converted to actual functionings.\textsuperscript{186} Converting resources means that the sufficient conditions must be in place

\textsuperscript{181} Elaine Unterhalter and Heslop J. Transforming education for girls in Nigeria and Tanzania. A cross-country analysis of baseline research, Johannesburg: (Action aid 2011)\textsuperscript{31}
\textsuperscript{182} TEGINT. 2011 Analysis of Baseline Data from Schools in Which the TEGINT Project is working in Nigeria, Abuja, , Nigeria: (Action aid Nigeria)\textsuperscript{8}
\textsuperscript{183} ibid
\textsuperscript{184} ibid
\textsuperscript{185} ibid
for the exercise of the requisite function.\textsuperscript{187} For example classrooms may be provided to accommodate high pupil enrolment in schools. However, for a girl to convert her capability into functioning she needs social arrangements that are sensitive to her ways of expressing herself and give her opportunities for this. This requires particular forms of classroom pedagogy and management and the resources for this are not only fixed assets such as staff, but also training, and cultures of concern with learners’ difference, that enables them to keep on learning in the future.\textsuperscript{188}

Thus the ability of girls in Nigeria to achieve actual functioning (being educated) requires that they be provided with at least the threshold level of Nussbaum ten central capabilities.\textsuperscript{189} For example, from the TEGIN'T survey, it is evident that there are capability failures when placed alongside Nussbaum’s ‘life’ threshold.\textsuperscript{190} This failure can be attributed to high poverty levels, which means it is unlikely that the girls and their families will live the normal length of their life. Furthermore, the poverty deprives them of ‘bodily health’ and adequate nourishment. It may appear that the girls that lived in places with high levels of poverty, were able to use their senses to ‘imagine, think and reason’ but from their responses were unable to identify poverty as a hindrance to completing their schooling. This demonstrates that they lack adequate information about policies that constitutes basic capabilities for them.\textsuperscript{191} Therefore, some of the girls from Unterhalter’s research particularly those that live in relative poverty, might have the internal capability to engage critically, but are unable to achieve functioning in learning contexts where appropriate learning support is not provided.\textsuperscript{192} It can be said that these girls lack the minimum capabilities threshold to either handle academic work or their ability to handle academic work is constrained.\textsuperscript{193}

\textsuperscript{187} Nussbaum (n10), Women and Human Development: The Capabilities Approach (Cambridge University Press,2000) 84
\textsuperscript{189} Nussbaum (n1)
\textsuperscript{190} ibid
\textsuperscript{191} ibid
\textsuperscript{193} Nussbaum (n1)
Therefore, in order to see greater gender parity and girls’ educational development there has to be behavioural change and attitudinal shift. In this context, mainstream approaches usually treat the household as a homogenous entity with no difference between sexes in intra household power relations. However, behavioural change means the improvement of the position of women in the household, and also a decline in son preference. The CA shifts to bargaining models that treat persons as the target of concern rather than households, in this way, equality between the sexes within the household may become a reality. However achieving such equality in the household may be difficult to conceptualise since caring labour have become feminised, in terms of gender composition in work related to caring which have more women than men, in spite of the fact that women have increased in the workplace.

Furthermore, in order to deal with this approach of targeting individual persons it is necessary to also have within the household a different set of human development policies that puts children and their carers in the center stage of development processes. Development processes that are designed not just for people but also with people in mind. This also implies that the Nigerian government has the duty to promote a decent society and claim responsibility for its individual citizens by taking concrete actions that become visible and add in a much more credible sense the adjective ‘human’ to human development policies or ‘human’ rights.

6.7. CONCLUSION
To conclude, this chapter finds that the access to education cannot constitute a goal in itself, even if it is included as such within the framework of the MDGs and human rights legal framework. Indeed, a high rate of access to education and enrolment may not always reflect the reality of the poor quality of education and the fact that schooling is a site for further gender

196 ibid
199 ibid
stereotyping and disempowerment for girls. For this reason, the type of education available is an essential factor in the high levels of girls that are out of schools and also accounts for the low levels of girls’ education in Nigeria. Thus, paradoxically, relying on access to education and enrolment without thinking this through could have the effect of increasing the number of children that are out of school and particularly girls engaging with domestic work. This paradox makes it necessary to rethink education and ensure that it is non-violent. The CA in being a holistic approach to well-being can be used to justify such a point of view. Beyond the instrumental and positional values of education, the intrinsic value matters. Only if this intrinsic value is taken into account seriously will education give the full meaning to the development of the agency freedom of individuals.

The CA provides an alternative rationale for education rooted in individual freedoms and fostering capabilities that encompass but also stretch the human rights based approach. This chapter argued that the CA redefines a quality education as one that develops whatever capabilities that society and individuals have reason to value. It encourages and feeds into a broader debate about education quality in terms of a focus on the necessary capability inputs and positive and negative freedoms that are required in order to enable learners convert these into capabilities for later life.

This chapter also relied on data from the qualitative and quantitative studies with girl in schools associated with high levels of poverty in four countries. The data revealed some strikingly similar features that might have been obscured if the focus of the research was concentrated on children’s voice and one particular kind of locale. It highlighted the fact that the way in which children comment on constraints differ in areas of relative and absolute inequality relating to school conditions, earnings, and the implementation of legal frameworks on early marriage and pregnancy. These highlight forms of structural and relational coercion that constrain capabilities for girls within their social interactions in the communities in which they are growing up.

Ultimately, the CA is effective for achieving quality education for girls since it pays attention to

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200 Dixon R and Nussbaum C M(n198)
201 Rethinking Access to Education through the Capability Approach: The Case of Street Children in Jerome Ballet, Mario Biggeri and Flavio Commim (eds.) Children and the Capabilities Approach (Palgrave Macmillan, 2011)
the means of realizing a quality education through investigating the cultural norms and values that either enable or stifle the development of capabilities for individual persons.\textsuperscript{203}

\textsuperscript{203} ibid
CHAPTER SEVEN - FINAL CONCLUSIONS

7.1. SUMMARY OF MAIN FINDINGS
This thesis examined the suitability of a Rights Based Approach (HRBA) for achieving education for girls in Nigeria. Indeed, the Millennium Development Goals (MDGs) and the Education for All targets (EFA) represent international commitments to ensure that every child and specifically girls, and every adult receive basic, good quality, education. This commitment is based both on a human rights perspective, and on the generally held belief that education is central to individual well-being and national development.\(^1\) Indeed education enables people to live with dignity, develop their full capacities, participate fully in development and improve the quality of their lives. However, the approaches which have been adopted for its realization for girls and women has focused on the role it has to play in promoting the greater good of society.\(^2\) This is illustrated from a quote from the UK Department for International Development (DFID) ‘Education benefits not just children, but families and communities, and whole countries.’\(^3\) In the sections that follow a summary of the findings in this thesis and the way forward for achieving gender equality and free compulsory basic education for the girl are outlined.

It was discussed in chapter two that human rights are significant because they have a central role in the daily lives of people due to the inalienable character of rights. Furthermore, the language of human rights gives prominence to rights as universally recognised phenomenon because they are essentially political treaties based on compromise, consensus and guarantees by States Parties to respect each other’s sovereignty. Therefore, the framing of international human rights instruments provides a legitimacy and a benchmark for debates among different communities about what is an acceptable standard or otherwise for implementing human rights of people.\(^4\)

The Human Rights Based Approach (HRBA), which is derived from the character of human rights, can be used for various purposes. The HRBA has through its principles made significant progress in the international community. It can be used for addressing issues that affect children and can

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1 UN ComESCR, General Comment no.13, The Rights to Education E/C/12/1999/10
potentially provide solutions for addressing violations of marginalized individuals and groups such as girls. Yet, the HRBA is best seen as a strategy that aims to protect the rights of individuals or groups through the means of the international legal framework. The particular focus is to ensure that the duty bearers fulfill their obligations while empowering the rights holders to make a claim. Hence the HRBA was adopted as a framework for discussing the right to education in chapter three.

The legal framework as outlined in chapter three revealed that children’s rights to education are extensively provided for in international, regional and national agreements. However, while the drafting, adoption and ratification of Instruments on rights for the child may be the surest way of gauging the legitimacy of children’s rights standards, the mere adoption of formal texts or passing of legislation on rights and welfare for children are not indicative of consensus of what the rights for children are, especially for the girl, in any given community.

The HRBA to education in Nigeria has largely focused on the improvement of access to schooling primarily by abolishing school fees, without taking into account the multidimensional ways that girls experience discrimination which in turn affects their attendance at school. Although schooling is a site with the potential for girls to develop skills, gain insight and have the chance to delay early pregnancy and its accompanying challenges, schooling has in many instances become a site where gender stereotypes and girls’ oppression are entrenched, through the curriculum, teaching methods and violence against girls at school or on their journey to school. Furthermore, the HRBA is arguably a top-down approach i.e. it does not give room to its beneficiaries to make contribution in deciding what their desires are. This argument has different implications. One of which is that the beneficiaries do not make sense of what rights mean for them. Another implication is that, it becomes mainly confined to rights which are formally justiciable and thus fails to capture or address the complexity of the many informal gender inequalities and intersecting identity of the girl.

Specifically, the Universal Basic Education (UBE) scheme, examined in chapter four, reveal that initiatives or policies, backed by legislation such as the UBE Act 2004, is a clear example of how

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effective a HRBA enhances the achievement of basic education. However, in chapter five, which examined the limitations of a HRBA makes it clear that the language of the law obscures the position of girls, and that the legal framework, which the HRBA is linked to, fails to take into account the multidimensional ways that girls experience discrimination, means that the HRBA by itself is insufficient and inadequate to produce the desired outcome of achieving gender equality in education. It is for this reason that chapter six considered the Capabilities Approach (CA) as complementary to the HRBA towards achieving and sustaining gender equality in education.

The CA as developed by Amartya Sen and Martha Nussbaum, provides an alternative rationale for education rooted in individual freedoms and fostering capabilities that encompass but also stretch the HRBA. The CA redefines a quality education as one that develops whatever capability that society and individuals have reason to value. It encourages and feeds into a broader debate about education quality in terms of a focus on the necessary capability inputs and positive and negative freedoms that are required in order to enable learners convert these into capabilities for later life. Significantly, no group of boys and girls, women or men is entirely homogenous. All groups include members of social subgroups, defined by age, religion, race, ethnicity, economic status, caste, citizenship, sexual identity, ability/disability, and urban/rural locality. Each of these subgroups may experience various forms of discrimination. Typically however, girls’ experience lower their status more than boys within the same social subgroup and there is resistance to change this status. They therefore experience double discrimination based on the subgroups to which they belong and their sex. An understanding of these subtle ways by which oppression is experienced, requires an examination of other identities which interact with the position of the girl as female and also the effect of the law on her when combined with other identities such as class, race, age, religion and culture. The CA which focuses on what people are actually able to

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7 Ibid
8 Momin Rahman, ‘Theorizing Intersectionality: Identities, Equality and Ontology’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds.) Intersectionality and Beyond (Routledge-Cavendish 2009)353
be and do, gives significant weight to all these various identities when addressing the vulnerabilities that girls and by implication women experience. With regard to education, the CA goes beyond the scope of gender parity in education and evaluates the circumstances that can enhance equality by creating capabilities so that the goal of education for girls can be achieved.

The CA therefore responds to the many often subtle ways in which girls are marginalized. It helps in understanding the intersecting identity of girls that enables policy makers counteract gender bias and adult dominance in the execution of human rights law, so that girls can come to prominence in the landscape of human rights and thus maximize their potentials through education.\textsuperscript{11}

7.2. RECOMMENDATIONS: THE WAY FORWARD

Nigeria’s commitment to redressing problems concerning girls’ education is evidenced through participation in international forums of gender and girls’ education. The country is signatory to almost all international conventions on education. Nigeria has ratified several international instruments on gender and equality.\textsuperscript{12} Therefore Nigeria is among the global communities’ commitment to redressing imbalances related to gender, learning and underdevelopment. Progress has been made towards institutionalism of the strategies but there are still gaps to be closed and challenges to be met in terms of translating the policies into good practices.\textsuperscript{13} With respect to gender inequalities in schooling around the world, global obligations can be satisfactorily seen to have been met if gender parity at all levels of education has been secured and all children complete primary schooling. But as commentators have pointed out, gender parity is not the same as gender equality in education\textsuperscript{14}. Similarly, the right to education cannot

\textsuperscript{10} Leon Tikly and Angeline M Barret, Social Justice, ‘Capabilities and quality of education in Low Income Countries’ (2011) 12 (1) International Journal of Educational Development 3


\textsuperscript{13} ibid

\textsuperscript{14} Dunne, M., Humphreys, S. and Leach, F Gender Violence in Schools in the Developing World (2006) 18 Gender and Education 75
be reduced to merely completing a particular level, instead it is about a quality education that allows girls to achieve beings and doings (functionings) that they choose within the scope of their universal entitlements. This is in essence a quality of education which empowers the girl child for her future world as an adult.

Significantly however, the United Nations has played a facilitating role in the global conversation on the post 2015 development agenda and supported broad consultations. The process has developed from a wide range of participants than that of the MDGs process. Thus the post 2015 development goals known as the Global Goals or Sustainable Development Goals (SDGs) now have a broader coverage of topics and targets. Essentially, it is a plan of action for people, planet and prosperity. The UN Member States recognize that extreme poverty and poverty in all its forms remain the greatest global challenge therefore eradicating it is an indispensable requirement for Sustainable development. To that extent, it has as one of its goals to ensure that all human beings can enjoy prosperous and fulfilling lives, and that economic, social and technological progress occurs in harmony with nature. However this prosperity must go beyond wealth or growth in the economy, it must also go beyond measurement by Gross Domestic Product (GDP). Rather it should be about flourishing, the health of the society, inclusive political institutions, and educated citizens who are actively engaged in framing the future they want.

The UN has thus set out 17 Sustainable Development Goals (SDGs) and 169 targets which were announced on the 29th of September 2015 and which takes effect from January 2016 build on the Millennium Development Goals (MDGs) and aim to complete what was not achieved by the MDGs. The SDGs has its one of its primary targets the achievement of gender equality and the

15 McCowan T. ‘Reframing the Universal Right to Education (2010) 46(4) Comparative Education 509
16 Ibid
21 Transforming our world: the 2030 Agenda for Sustainable Development (n19)
empowerment of all women and girls. The SDGs stress that realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the goals and targets. Thus gender equality, human rights and empowerment of women remain a critical driver to the achievement of the SDGs as in the MDGs. This is because the achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels. Therefore, the SDGs have been put forward as a transformative 2030 agenda that will work for a significant increase in investments to close the gender gap and strengthen support for institutions in relation to gender equality and the empowerment of women at the global, regional and national levels. All forms of discrimination and violence against women and girls will be eliminated. It is against this backdrop and in view of the present challenges which this thesis examined that the next section outlines and discusses some recommendations for achieving gender equality, human rights and empowerment for girls and by implication, women.

7.2.1. Cash or Loan Transfer Programme:
To address poverty and social vulnerabilities, governments have increasingly designed and implemented social protection initiatives to help increase the resilience of poor and vulnerable households. Social protection programmes includes cash transfer or loan programmes. Cash transfer or loan programmes involve a conditional or unconditional offering of a monetary allowance to support and encourage families to function in areas that are identified as requiring support. It is conditional if it is given upon terms which may require the compliance to achieve a certain level of education for the child or children in a family especially girls. For the purpose

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23 UN Charter, Article 1
24 Felogene, ‘From MDGs to SDGs: Stepping into the World We Want’ Girls Globe 4 September 2015
27 ibid
of educating girls, such a programme would mean supporting families to send girls to school and to help to meet the cost of education.28

In the first chapter of her book, Nussbaum tells the story of Vasanti an Indian woman who lived in the town of Ahmedabad in the state of Gujarat in north-western India. She was married to an abusive man and subjected to domestic violence.29 Vasanti eventually left him and returned to her parents. Vasanti who was poor somehow came in contact with an NGO and through the help of the NGO secured a loan that helped her grow a business. As a result of the help she received, she was able to repay the loan and also had aspirations to get an education. The impact of the loan on Vasanti’s life resulted in a change in her outlook on life. It helped her grow socio-economically from the point of her past experience of deprivation and enabled her make choices that she valued.30

The point of this story is that any program of cash or loan transfers to families helps them to expand their opportunities for development and the enjoyment of their fundamental freedoms. Indeed cash or loan transfer programs directly increase household disposable income and consequently the resources available for household food security.31 Cash or loan transfers have also had a positive impact on women’s empowerment, such as women’s control over resources, public speaking, education, mobility, decision-making, power, and self-esteem.32 An example of such impact is seen from Zambia’s Child Grant Programme which extends about twelve dollars per month to all households with a child under age five. The programme began in 2010 and, by 2012, had made such significant impact such that extreme poverty had reduced, food security

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28 Rebecca Holmes, Michael Samson, Wendy Magoronga, Banke Akinrimisi and Jenny Morgan, The Potential for Cash Transfer in Nigeria (Overseas Development Institute 2012)
30 ibid
had increased, and agricultural production had improved as well as improvement of numerous indicators of child health.\(^{33}\)

In Nigeria there are small scale cash transfer programmes that are primarily targeted at health and education.\(^{34}\) The small scale transfer programs are based on a Latin American model usually with conditions linked to education and or health.\(^{35}\) One example of cash transfer programme in Northern Nigeria is the payment of US$31 by UNICEF and DFID to mothers to send their daughters to school.\(^{36}\) However the cash transfer program is not wide spread and certain areas that need support are being overlooked.\(^{37}\) Also, unlike the cash transfer programme in Zambia which has been closely monitored and evaluated, the Nigeria cash transfer programmes have not been adequately monitored and evaluated to assess their progress and impact on families.\(^{38}\) This inadequacy of evaluation and monitoring leads to the next recommendation for appropriate and consistent data collection, monitoring and evaluation of programmes and initiatives.

7.2.2. Data Collection, Compilation and Analysis (DCCA)

DCCA provides a rigorous and objective assessment of State performance towards the fulfilment of its obligations for progressive realisation of economic social and cultural rights, as well as aiding in measuring progress towards the Millennium Development Goals.\(^{39}\) DCCA serves as a requisite tool for the design and implementation stages of a country’s policy frameworks.\(^{40}\) DCCA also provides the basis of information for donors and for decisions on allocation of resources to areas where they are mostly needed. Ultimately DCCA is deployed in ways that help to drive policy goals. Thus it is essential that a comprehensive and up to date statistical data and national collection system be developed for disaggregated data analysis, showing formulation and evaluation of progress made, challenges encountered and the impact assessment of policies and

\(^{35}\) Adato (n32)
\(^{36}\) Patrick Moser (n34)
\(^{37}\) ibid
\(^{38}\) Rebecca Holman and others (n28)
\(^{40}\) ibid
programmes with respect to children. Also a strong collaborative effort among agencies and countries is needed to harmonise agreed international recommendation on methodologies and coordinate support for DCCA for children and women related matters,\textsuperscript{41} such as health, poverty, and vital household indicators.\textsuperscript{42} It is acknowledged that Developing countries have challenges in compiling systematic statistics to inform on gender equality and other issues relevant to the MDGs, therefore it is necessary to identify new resources to support relevant agencies in carrying out the task of DCCA, documentation and dissemination.\textsuperscript{43}

7.2.3. A Shift from Gender Parity to Gender Equality:
A shift from the notion of gender parity to gender equality in education is imperative for the enhancement and achievement of girls’ right to education. Gender parity means that the same proportion of girls and boys enter and complete schooling.\textsuperscript{44} It follows then that where there is no gender parity there will be a gender gap in the classrooms. However, a focus on gender parity is narrow because it implies measuring number of girls as compared with number of boys enrolling in school. The concern with gender parity is complemented by a focus on quality of infrastructure and facilities, number of textbooks and supplies of teaching and learning materials available to teachers and students and the measurement of performance through exam results and number of girls graduating from primary school. Many countries, including Nigeria, are making progress in gender parity but the limited concept of parity means that more challenging dimensions of gender equality and equity are often not considered, analyzed and monitored.\textsuperscript{45}

Therefore, partnership, between institutions of government and also with non-governmental institutions should address problems arising from issues of gender and other education issues together and not treat each separately in order to capture the gender inequalities that affect

\textsuperscript{44} Sheila Aikman and Elaine Unterhalter (eds.), Beyond Access: Transforming Policy and Practice for Gender Equality in Education (Oxfam GB, 2005)
\textsuperscript{45} ibid
girls’ education. Gender equality in this thesis entails developing the freedoms of all individuals irrespective of gender or other markers of discrimination, to choose actions, aspirations and attributes that they have reason to value. Gender equity entails putting in place the social and institutional arrangements that would secure these freedoms. An education system would lack key dimensions of equality if it was discriminatory or did not develop capabilities in children to achieve an education that was personally and socially attuned to developing freedoms.

Some aspects of this equality are the freedom to attend school, to learn and participate there in safety and security, to develop identities that tolerate others, and to enjoy economic and political and cultural opportunities. Putting gender equity in place in the classroom is a key to connecting schooling, citizenship and human right while equity and equality underpin values of care and respect for children and teachers. Gender equality in schools is more than just gender parity.

Research carried out in Zambia on the relationship between gender and education reveals that both teachers, key administrative workers and some non-governmental organisations who were the subject of the research, were not well informed about how gender and education work linked with struggles for women’s rights. The response by a key administrative worker in Zambia when asked about the organization’s gender-equity policy, was that she did not know what it was or where she would find it, even though she was aware that the organization had a position on sexual harassment. In the same research, some staff involved in non-education projects or with work where women’s rights were not a major focus had difficulty in making connections with gender issues. These gaps in perception suggest that the problem of achieving gender equality is partly one of poor understanding of the complex nature of girls and women’s rights. Therefore, within schools there needs to be a shift from focusing on one area of education

47 Amartya Sen, Development as Freedom (Oxford University Press,1999)
48 Aikman and Unterhalter (n44)
50 ibid
51 ibid
for girls to linking other areas of how what is happening at school affects quality education for girls.  

7.2.4. Elevate Girls Voices

As part of measures to develop and enhance girls and women’s capabilities, there should be input from the duty bearers and the girls. This process of participation should not only be in school but also at home. There ought to be behavioral changes that allow girls to be involved in decisions about what kind of life girls and women value. Girls and women should also be able to choose what they value on the basis of reasoned reflection, appropriately nurtured in educational settings and at home. Within the educational setting girls and women can be included in decisions about the value they wish to get from education. This can be achieved in several ways, first by getting girls and women from a wide range of backgrounds to participate in the decision making process of what should be in the curriculum.

Secondly, girls should be provided with education on social policies and from a wide range of context so that they participate with well-informed concept. Thirdly, formal schooling must incorporate the knowledge and skills that girls are familiar with but also go beyond them to provide education that helps them realize their freedoms and participate fully in forms of society that they value. Fourthly, the way the curriculum is taught must reflect values that are away from the existing gender stereotypes that suppress girls and must be marked with girls’ participation in learning as equals. Therefore the relationship between teachers and learners, teachers and teachers, and teachers and others, such as parents, local community must be driven towards achieving the goal of equal participation. Teachers thus need a reorientation to engage in teaching styles that allow girls voices to be heard. Any teaching style that drowns

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52 Elaine Unterhalter and Amy North, ‘Girls Schooling, Gender, Equity and the Global Education and Development Agenda (2011) 23 (3) Feminist Formations 1
53 Babara Greenwood, Learning from Children, Families and Communities to Increase Girls Participation in Primary School <http://www.savethechildren.org/af/cf/%789def2ebe-10ae-432c-9bd0-df91d2e8a74b7%7d/BESOIIISCOPEPDIFINALREPORT.PDF> accessed 9 September 2015
54 Melanie Walker, ‘Educational Transformation, Gender Justice and Nussbaum’s Capabilities’ in Flavio Commim and Martha Nussbaum(eds.) Capabilities, Gender, Equality Towards Fundamental Entitlements (Cambridge University Press, 2014)
55 ibid
56 ibid
girls’ voices is reflective of teachers’ refusal to change their teaching approach.\(^{57}\) It is acknowledged that for teachers to change their belief and approach, there needs to be training by teacher trainers with the aim to develop gender equality in pedagogy through courses that develop teachers’ understanding of equality issues and how to overcome them in the classroom and school environment. The trainer courses also have to aid the teachers’ identify and overcome the taken for granted gender inequalities that are part of the societies in which they live. Teachers could also be supported through building networks of teachers to work together in pedagogies through school clusters and teacher centers.\(^{58}\)

Within the family setting, there also needs to be behavioral changes towards girls’ participation. The significance of this is linked to the fact that the family setting provides the first instance where children are exposed to values, cultures and conflicts.\(^{59}\) This means that parents or carers have certain influence at the initial formation of their children’s humanity. This influence is derived from what parents do and not so much what they say or mean to do. Therefore, it is what parents do in regards to norms they propose which transfers values to their generations.\(^{60}\) Therefore, focusing on parents, shifts the focus of education from being only a school or government problem. Parents should have an active role in fostering the moral sentiments of their children because developing capabilities starts at home and moves to the workplace and other public spaces.\(^{61}\) In light of this movement from home to public spaces, government policies must also consider the cultures and norms that are comprised in families in such a way that reflect the values that girls and women have reason to value.\(^{62}\) Consequently, pro-active policies that involve strong participation of parents and carers should be developed in order to eliminate stereotypical norms that exclude girls from participation.\(^{63}\)


\(^{58}\) ibid


\(^{60}\) ibid

\(^{61}\) Martha Nussbaum, ‘Not for Profit: Why Democracy needs the Humanities’ (Princeton University Press, 2010:8)

\(^{62}\) ibid

\(^{63}\) Flavio Commim and Martha Nussbaum (eds.) Capabilities, Gender and Equality, Towards Fundamental Entitlements (Cambridge University Press, 2014)
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