UNIVERSITY OF ILORIN

THE TWO HUNDRED AND SIXTY-FOURTH (264TH) INAUGURAL LECTURE

"DISORDER IN THE ORDER OF THE ECONOMIC AND SOCIAL RIGHTS JURISPRUDENCE IN NIGERIA"

By

PROFESSOR AZUBIKE CHINWUBA ONUORA-OGUNO (KSC)
ND (Offa), LLB (Ilorin), LLM. (Pretoria), LLD. (Pretoria)

DEPARTMENT OF JURISPRUDENCE AND INTERNATIONAL LAW,
FACULTY OF LAW,
UNIVERSITY OF ILORIN, NIGERIA.

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The Vice-Chancellor

Professor Wahab Olasupo Egbewole SAN
LL.B (Hons) (Ife); B.L (Lagos); LL.M (Ife); Ph.D. (Ilorin); FCArb; Fspsp

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PROFESSOR AZUBIKE CHINWUBA ONUORA-OGUNO (KSC)
ND (Offa), LLB (Ilorin), LLM. (Pretoria), LLD. (Pretoria)

PROFESSOR OF INTERNATION HUMAN RIGHT LAWS,
DEPARTMENT OF JURISPRUDENCE AND INTERNATIONAL LAW,
FACULTY OF LAW,
UNIVERSITY OF ILORIN, NIGERIA.

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Distinguished Students of the Faculty of Law,
Esteemed Invited Guests,
Gentlemen of the Press,
Great Students of the University of Ilorin,
Distinguished Ladies and Gentlemen.

Preamble

Most often, when we read the story of a man who sought after a city whose builder and maker is God, we think of Father Abraham, the Father of the Jewish nation, the biblical character. However, I am glad to present another character to you today who Twenty-Eight years ago set out on a journey to an unknown destination from the city of Onitsha. That eventual city is the city of Ilorin, with no knowledge of where to lay his head save for a vague knowledge of a certain Rotimi Ogunwale whom he was supposed to locate in the entire city of Ilorin. Like most fairy tales sound surreal, the first set of guys he stopped to ask of the Ogunwales happened to be siblings of Rotimi Ogunwale (Shola and Saheed). Vice-Chancellor, sir, this was the genesis of my

acceptance into a family that I knew not from Adam. The acceptance was overwhelming and edifying that I stand today to appreciate my Father Alhaji Buraihmoh Ogunwale and Deaconess Beatrice Ogunwale for providing me the base for the start of an academic sojourn that has consistently blossomed to date.

The pursuit for admission into the Faculty of Law, University of Ilorin hit the rocks and I took a walk to Federal Polytechnic Offa from where I never relented to chase a dream refusing to settle for the available as a Computer Science student until 2000, when the Joint Admission Matriculation Board sent me an admission letter with an offer for the study of Law in this great University on Merit.

Mr. Vice-Chancellor, the above background is so important to me because it represents my pursuit to the zenith of my academic research. It was a "walk I took in the park" until I discovered the area in which I am excited to profess today, not just as the first in the Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin but also arguably in Nigeria. It is one I can only describe as "Path made by walking" and the unearthing of "Disorder in the Order of the Nigerian Economic and Social Rights Jurisprudence".

My academic path is laced by some notable firsts. My passion for human rights as a discipline started with being the first student to represent the Faculty of Law at the 13th edition of the African Human Rights Moot Court Competition, Dar Saleem, Tanzania with the then Mr. Wahab O. Egbewole, now Prof. Wahab O. Egebwole, SAN, our efficient Vice-Chancellor as team coach. The *compromis* focused on the rights of widows and inheritance. After returning I became a student of Prof. A. A Oba in human right class. Indeed, my choice to pursue human rights was made semi clear from that point. I proceeded to write my long essay titled, "The Right of Women to Inheritance in South-East Nigeria" under the supervision of Prof. J. O. Olatoke, SAN. It was clear to me that I was indeed built to become an advocate of international human rights law. In 2007, I received

what I can describe as one of the most important calls of my career from the Centre for Human Rights, University of Pretoria, informing me of my selection to the most prestigious human rights education programme in Africa (recognised in 2008 as the best in the world by UNESCO). Mr. Vice-Chancellor, the scholarship is noted to be offered to "30 best prospects for human rights education in Africa."

My LLM thesis focused on the indigenous people of Batwa in Uganda exploring the issues of access to education of the group. My thesis under the supervision of Prof. Benjamin Twinomugisha was marked a distinction and exposed me to the multidisciplinary study of human rights.

In 2009, the paths in the park led me to the International Criminal Court (ICC) in The Hague where I worked as an intern in the Office of the Prosecutor, Moreno Ocampo. My task was to engage in analysis of article 13 communications and advice the office on suitability of any information received. My passion for International Criminal Justice thus became an attraction too sweet to depart from. However, considering the many paths in a park, I returned to Nigeria with a lure to manage an NGO for a notable Nigeria which never materialised. In the middle of the near confusion, I started CLAZ Solicitors and Advocates in the city of Onitsha. It was on a beautiful Sunday afternoon that I had conversations with Chief Emeka Ofodile, SAN who looked me in the eyes and said Azubike, you must go to the classroom and drive change. Armed with a recommendation, I presented an application the next day to Prof. Gerald Nwabogu (Handsome Jerry) as fondly called, who was the then Dean of Law of Madonna University Okija. I commenced my academic journey as a lecturer of the Nigerian Legal System and subsequently, International Humanitarian Law in Madonna University. In 2010, I raised a team that beat University of Ilorin amongst others to represent Nigeria at the 11th International Criminal Justice Moot Trials that was held in The Hague, The Netherlands. At that point, it became obvious that I was under poach. In 2011, I landed in University of Ilorin, employed under

the Deanship of our present Vice-Chancellor and Prof. Ishaq Oloyede, CFR as Vice-Chancellor. In 2012, the University of Ilorin won the national rounds of the ICCTC under my tutelage.

Introduction

Vice-Chancellor, sir, the meandering paths in the park, I am bold to confess, was in preparation of a groundbreaking adventure that I look back to today and I am confident to say, that the path has been made by walking (**Onuora-Oguno,** 2014, p3). While out there in the park, and searching for the path, (Egbewole & **Onuora-Oguno**, 2014, p.5) examined the dangers of extra judicial killings, and the future of international law in the context of emerging societies.

The advent of the Boko Haram activities in Nigeria triggered my passion to focus on the impact of their activities on education for my Ph.D thesis. After months of writing and rewriting proposals, my supervisor, Prof. Michelo Hansungule settled for research on the right to education in Nigeria with intent to discover what may have unleashed the violence against education. Researching into this area of law, I must confess; was against the norms of the acceptable jurisprudence in Nigeria and I could well describe same as an unfriendly clime in which I discovered "Disorder in the Order of the Economic and Social Rights Jurisprudence in Nigeria".

As a budding international human rights expert, my research discovered that the law is not the only source of protecting human rights but other socio-economic activities by leveraging on education as a fundamental right (Onuora-Oguno and **Onuora-Oguno**, 2013, p. 2). Armed with both qualitative and quantitative skills, my research adventure boosts of huge scientific empirical findings that lay foundation for several future research. Mr. Vice-Chancellor, as I unveil the "Disorder in the Order of the Economic and Social Rights Jurisprudence in Nigeria", I am optimistic that my research sojourn presents not just a palliative but a solution to the many woes of Nigeria.

During my LLD, my first task as set by my supervisor was to conceptualise human rights not from the European or

Western Perspectives but "Azu what is human right in Igbo, in Yoruba?" Leveraging on the idiomatic sagacity of Prof. Wahab O. Egebwole, and now late Prof. M. M Akanbi, I became armed with sufficient Yoruba jurisprudence to ground my theoretical path. I engaged rigorously with the works of Fafunwa (1974), Ikejiani (1965), Achebe (1983), Kenyatta (1979), Nduka (1964), Ngugi (1981) and the wise sayings of Mandela. Leaning from the wisdoms of the mentioned African sages, I was further convinced that indeed, there was "Disorder in the Order of the Economic and Social Rights Jurisprudence in Nigeria".

Unveiling the Context of Socio-Economic Rights Jurisprudence

Human rights are divided into three broad categories. These are civil and political rights, economic, social and cultural rights, and solidarity or group rights. The Universal Declaration on Human Rights (1948) represents the basis of rights in International Human Rights Jurisprudence. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both of 1966 contain provisions in the first two categories. The African Charter on Human and Peoples' Rights, (ACHPR, 1981) is the first human rights instrument that contains the provision of both Civil and Economic plus group rights in one document. Traditionally, Civil and Political Rights provisions are normally found in most countries' Fundamental Rights section of the Constitutions while the Economic and Social Rights are provided as Fundamentals Principles of State Objective. ESR rights includes rights such as the right to education, the right to health, the right to housing, the right to water, the right to general satisfactory environment, the right to adequate standard of living, to mention but a few. Mr. Vice-Chancellor, for the purposes of my scholarship, I have focused more on the right to education.

In the Nigerian Constitutional Jurisprudence, ESR are enshrined in chapter two of the Constitution. The provisions of Chapter Two remain largely perceived to be non-justiciable (S. 6

6 (C) CFRN 1999). However, through my research endeavors, I have relied on the theories of (Egbewole & Alatise, 2017, p.34), (Viljoen, 2012, p.551) and (Skelton, 2013, p.2) to argue that the provisions of Chapter Two should be treated as guiding principle and not as a norm.

This non-justiciable position further informs the stance of the Nigerian judiciary in several instances. This position as discovered by mine research represents a Disorder in the Order of the ESR jurisprudence. The cases of *Archbishop Olubunmi Okogie & Ors v. Attorney General of Lagos State,* (1981) 1 N.C.L.R. 218) and *Ogboru v. President, Court of Appeal*, (2005) JELR 45299 (CA) are still making impact. This disorder was seemingly entranced in the later, case, where the court specifically held that:

> When a right does not fall under any of the provisions of Chapter IV, no declaration, other determination, or judgment can be made in the name of basic rights. No matter how severely a right was infringed, if it is not expressly listed in Chapter IV, the court cannot raise it to the level of a fundamental right.

However, according to (**Onuora-Oguno**, 2022, p.10) there is a significant shift towards the right direction. Indeed, **Onuora-Oguno and** Silas (2024, p.369) have posited that reliance on legislation that give effect to economic and social rights are strong basis for an emerging jurisprudence. For instance, in *Legal Defence and Assistance Project (LEDAP) GTE & LTD v Federal Ministry of Education & Another* (Ruling) (FHC/ABJ/CS/978/15) [2017] NGFCHC, the UBE Act was relied on to reach a decision that the provision of section 2 (1) of the UBE Act must be read in conjunction with both section 18(3) CFRN 1999 to ensure the realisation of the right to education.

Notwithstanding the municipal challenges, I have also looked beyond the horizons to seek solace in exploring the jurisprudence of supra national judicial bodies in holding states

accountable for the promotion, protection and fulfilling of the right to education. (**Onuora-Oguno**, 2015, p.3)

It is, therefore, on the above premise that I proceed to conceptualise the right to education as a fundamental human rights and theorise the importance of enhancing the jurisprudence as a means of solving the many challenges bedeviling our nation. Education in my research is represented as a classical right on which all other rights must build upon. It holds the magic wand that can end the various spates of crimes that bedevil our nation, Nigeria. Consequently, education became to me a basis on which not just the history and custom of a people is transmitted or preserved but the only basis on which dignity is preserved (**Onuora-Oguno**, 2018, p.7). It is implied that; if the identified disorder must be corrected, the need for a paradigm and pragmatic shift in the jurisprudence of the right to education in Nigeria must be realigned.

Grounding the Jurisprudence of Education as a Fundamental Right

The jurisprudence of rights is premised on the theory of Dembour (2010) that rights are innate and should not be denied any individual. Rights broadly stratified could be natural, protest, deliberative and discourse. This proposition aligns with the early jurisprudential musings of Thomas Hobbes, John Lockeand Christ of Heyns. It includes the understanding that not all rights are absolute but can only be limited within the scope of the rule of law. However, my research finds that the right to education is required for any individual to enjoy and experience a meaningful life (**Onuora-Oguno,** 2018). The right to education is pivotal and central of,and, should not be subject to any limitation. This is already a well settled constitutional praxis in the South African Constitution of 1996. I look forward to the same tale about the Nigerian nation. Quoting, Skelton, Reflecting on the South African Constitution of 1996, (Skelton, 2013, p. 1)

> s29 (1) (a) guarantees the right to a basic education and not merely access to the right; the State must provide education, by taking

reasonable legislative and other measures within available resources, to achieve the progressive realisation of this right.

In the Universal Declaration on Human Rights (UDHR), education is mentioned as a right. Article 26 provides that:

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

Vice-Chancellor, sir, a threefold ambit is uncovered in the above wordings. First is the starting point of education as a right. Second is the content of education and third, role of parents in the education process. I have, during my work engaged with all these core ambits. I am confident to declare that education at all spheres should be treated as a right if our nation will become a competitive nation among the comity of nations. It is my discovery that “the obligation to ensure that education is not used to foster inequality is an important aspect of development” (**Onuora-Oguno,** 2018, p.7).

Digging Deeper into the Jurisprudence of the Right to Education

Mr. Vice-Chancellor, in this section, I show deeper reflections on the content of education and why its discovery as a right elicits the shout of eureka in ensuring that the Disorder in

the Order of ESR Jurisprudence in Nigeria is corrected. I show this by reflecting on my sojourn beyond the horizons and findings.

General Comment (GC) No 13 of International Covenant on Economic and Social Cultural Rights

The General Comment No 13 aside providing deeper context and content to education as a right decries all forms of exploitation and discrimination in education on the ground of religion and culture. An important focus of the General Comment that my research uncovered is the importance of teachers. In (**Onuora-Oguno,** 2017, p.50), I discuss extensively the sad reality of the Nigerian teacher. Today the same fate has befallen us as ministers in the ivory tower of this nation. The leadership of the Academic Staff Union of Universities (ASUU) continues to fight for the soul of education in our dear nation. I, therefore, present to policy makers an important model to adapt if our education woes are to be resolved (**Onuora-Oguno**, 2018, p.70). The model of a right based approach that will elevate education as a fundamental human right in the Nigerian jurisprudence.

In addition, another core component, uncovered in my research is the importance of curriculum development as a tool for realising inclusive education. May I mention at this juncture, Vice-Chancellor, sir, that my incursion into inclusive education and disability rights education led to the establishment of the Disability Law Advocacy Project (DLAP), a platform that attracted the sum of Eighty Thousand United States Dollars to the University for the advancement of disability rights. Similarly, the attraction of the Opeoluwa`Sotonwa Foundation (OSF) that endowed several scholarships to students with disability and donation of One Million Naira Fund to the Faculty of Law.

Inclusive Education Further Unpacked

Vice-Chancellor, sir, (**Onuroa-Oguno** and Chuma-Umeh, 2018, p.30) have reviewed the importance of inclusive education. Inclusive education is a core component of an educational structure that is envisaged to resolve the disorder in our education rights jurisprudence. Inclusive education is enshrined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa and the Convention on the Rights of Persons with Disability. According to (Beiter, 2017, p.1), international law's recognition and protection of education as a right is one that must be emulated and not ignored. In his discourse, Kleven (2013, p.1) projects education as a core tool that every State must ensure is equitably distributed in any democratic society. Veriava and Coomans (2005, p.50) in their treatise, 'the right to education' identify that denial of the right to education is also a denial of the full enjoyment of other right that enable an individual to develop to his or her full potential and participate meaningfully in the society.

Mr. Vice-Chancellor, two models are important in the disability rights jurisprudence, they are the medical and social models. While the medical model deals with medical constraints on individuals with disability, the social model focuses on the societal barriers placed on individuals. Sustaining any form of barriers against persons with disability most not be encouraged and allowed to continue unabated. The model of inclusive education is enshrined in article 24 of the CRPD, stating that 'persons with disabilities are not excluded from the general education system on the basis of disability'.

For education to be inclusive, it must entail an extra effort by the State to ensure support as far as infrastructure is concerned and personnel with skills to ensure effective and quality access to education at all levels for persons with disability. This further entails considering that every child, apart from having a fundamental right to education, must be 'given an opportunity to have an acceptable level of learning and ensuring

that each child's unique interest, abilities and learning needs are protected' (Salamanca Principle, 1994).

I note that physical access by people with disabilities is an ongoing challenge in Nigeria. Transportation and mobility within the campus continues to be a huge challenge for persons with disability. Mr. Vice-Chancellor, this challenge is a crucial component of threshold access as conceptualised by the General Comment No 13. According to the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UN Resolution 48/96 Rule 6):

> General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organisation.
>
> Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.

The emphasis here is on adequate; I have in my research underscored the importance of accurate data collection on the state of disabilities as this will inform adequate planning (**Onuora-Oguno**, 2020, p.15).

The first challenge that must be noted in inclusive education is that put forward by McClain-Nhlapo (2011, p.vii), who reiterates:

> In Africa, exclusion, prejudice and discrimination remain common experiences for millions of people with disabilities. Poverty, malnutrition, *low school enrolment rates for children with disabilities*…as do negative cultural beliefs about disabilities and attitudes towards persons with disabilities remain real and well entrenched.

The above challenges, resonates with the sad reality that disability is majorly linked to evil omen in our cultural settings. (**Onuora-Oguno**, 2013, p.45). **Onuora-Oguno** (2014) identify the use of standup comedian arts as a tool in entrenching discrimination against persons with disability. This discrimination represents a further Disorder in our ESR Jurisprudence which must be corrected. It is reiterated that for an act to be described as education, it must take into cognisance all stakeholders including vulnerable groups and specially persons with disability. I am glad to report Mr. Vice-Chancellor that our research in this area has led the Faculty of Law to provide larger font examination question papers for students with alibinism to eliminate the visibility stress of reading tiny fonts during examination. I am optimistic that this position will be adopted by the University to ensure that all spheres of academic delivery comply with substantive equality protocol. I find interesting the position of Bowels and Gintis (2010, p.61) when they express the view that "…education must ensure that each individual gets an opportunity to escape from the limitations of social groups". In addition, whatever, modus is adopted in delivery of inclusive education must have a sole purpose of emancipation and capacity enhancement for enjoyment of life (**Onuora-Oguno,** 2018, p.100).
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Educational Law and Policy in Nigeria

The right to education was not expressly mentioned in the 1951 Constitution of Nigeria but rather placed responsibility on the regional governments to make policy and decisions on education (The Nigeria Constitution Order in Council, 1951, No 1172, Foreign Jurisdiction, 3rd Schedule). In 1954, the administration of education was provided under part II with specifics on concurrent decision making on issues pertaining to education in Nigeria (The Nigeria Constitution Order in Council, 1954, No 1146, Part II, No 30). In 1979, education was stated as a mere aspiration (CFRN, Section 18). This position remains the same to date in the CFRN 1999 as amended with the Federal Government having more responsibility on education. The above

provision, notwithstanding, the Local Government has the responsibility of managing elementary schools within its council areas (Fourth Schedule Functions 2(a) of a Local Government Council).

In understanding the concept of basic education, I have opined that it covers the learning space from the home through social groups until formal schools setting or what we now call western education. I underscore and note the interchange in use of basic education and universal primary education within the Nigerian space. The free and compulsory nature of basic education in Nigeria is clearly captured in the Universal Basic Education Act (UBE Act 2004). Key aspects of the goals of the Act include, but not limited to:

(a) "ensure that every child of school going age in Nigeria has access to basic education";

(b) "ensure that the style of education employed meet the need of everyone in need of basic education"; and;

(c) "improve the general literacy and numeric ability of every child and lay a foundation for a worthy life beyond the basics".

From my research, it is important to reveal that mere codification of the provisions of the right to education under the Constitution does not guarantee the realisation of the rights to education however, the imperatives of having this codification cannot be overruled. The preference of black and white codification of laws in Nigeria was clearly exhibited by the courts in *Abacha v Fawehinmi*, ((2000) 6 NWLR (Pt 660)228.) where the court strictly upheld the Constitution of Nigeria over and above any provisions of International Law. The point advanced is that for the right to education to be respected more profoundly in the Nigerian legal system, the need to elevate it from Chapter two to Chapter four of the CFRN is important. This significantly represents the path to correcting the "Disorder in the Order of the ESR Jurisprudence in Nigeria".

Mapping the Policy Landscape of the Right to Education in Nigeria

The Universal Basic Education (UBE) Act was rebirth after the failure of the Universal Primary Education (UPE). The Act Comprises 16 sections and the deals with the issues of quality education and fundamental nature of education (Section 1 and 2). I have called attention to the conflict inherent in the UBE Act and the CFRN where in the former education is recognised as a right and in the later, as a mere objective of State Principles (**Onuora-Oguno,** 2018, p.1). Particularly, attention is called to the provision of section 6 of the Act:

> The Magistrate Court or any other State Court of competent jurisdiction shall have jurisdiction to hear and determine cases arising under section 2 of this Act and to impose the punishment specified.

Section 2 of the Act reads:

1. Every government in Nigeria shall provide free, compulsory and Universal basic education for every child of primary and junior secondary, school age.
2. Every parent shall ensure that his child or ward attends and completes his:
   (a) primary school education; and
   (b) junior secondary school education, by endeavouring to send the child to primary and junior secondary schools.
3. The stakeholders in education in a Local Government Area shall ensure that every parent or person who has the care and custody of a child performs the duty imposed on him under section 2(2) of this Act.

My research regrettably notes this as one of the numerous summersaults of educational law and policy in Nigeria, denoting “Disorder in the Order of the ESR Jurisprudence in Nigeria”.

Another core aspect of the Act is enshrined in Part III that relates to financing of education and the need to ensure budgetary allocation to education. This remains unachieved in

Nigeria with education still very poorly funded. It is, therefore, imperative to ensure synergy of the CFRN and the UBE Act if the right to education must be advanced.

A summary, of inquiry into the development of education policies in Nigeria shows that from the colonial era, several ordinances have been initiated to regulate the education space in Nigeria. For instance, the 1926 Ordinance of the Phelps-Stokes Commission put in place the need to ensure the registration of teachers before teaching, and a centralised authority to monitor the establishment of new schools and to ensure the compliance of individual educational curricula to the needs of people. The Education Law of 1955 in the western region, and the Education Laws of 1956 in the Eastern Region created great diversity in the standards of education between all the regions of the federation. Lagos enacted its own Education Ordinance in 1957. Thus, the numerous policy inconsistencies represent a clear Disorder in the Order of the ESR Jurisprudence in Nigeria.

Insecurity and Under-development in Nigeria and the Role of Education

Relying on the theory of an erstwhile Special Rapporteur on Education, Katrina Tomaševski, education is conceptualised from four viewpoints. These are availability, affordability, Acceptability and Adaptability (Tomaševski, 2001, p.44 and Tomaševski, 2009, p. 8). In using the above models, I undertook a historical surgery of the history of education in Nigeria. I found in the writings of scholars such as Ikejiani (1965, p.10) "those colonial policies (education included) favoured the maintenance of colonial territories without intent to adapt to the colonised people. Kenyatta (1969, p. 20) also opines in his work, "Facing Mount Kenya" how "education" was employed as a tool to drive the erosion of dignity of Africans.

This same modus, my research discovered, is culpable in the rejection of education by a certain section of the North of Nigeria (**Onuora-Oguno** and Abdulraheem-Mustapha, 2023, p.359). I conclude that for education to meet the Tomasveski

threshold, it must engage the way of life of a people covering their religion and culture. The availability of education continues to loom large in Nigeria and remain a huge challenge.

Sadly, Mr. Vice-Chancellor, over 15 million Nigerian children are statistically noted to be unable to access education. The violence in the Boko Haram attacked area in the North limits access below threshold access as completion rate in school continues to loom large. The same challenge now bedevils the East of Nigeria, where the Sit at Home crisis affects access to education.

Vice-Chancellor, sir, I come from the riverine area of Anambra State, Igbokenyi to be specific and my people are predominantly farmers and fishermen. We are under perennial influence of over flooding and during these periods of flooding, schools are always closed. The area is described as hard to reach area in my research because teachers are not willing to access the schools and thus children's education is endangered. This challenge speaks to availability, accessibility, and adaptability. It is, therefore, important that education curriculum must be engineered to take these peculiarities into consideration in fashioning education calendar and design of the models and infrastructure.

In 2023, (**Onuora-Oguno** and Abdulraheem-Mustapha, 2023, p.79) in a socio-legal analysis of the menace of the Boko Haram conclude that a right based perspective to education in the North holds a strong solution to the terror on education by the group. The same is the finding by (Egbewole and **Onuora-Oguno**, 2013, p.30) on the rising case of extra judicial killings occasional by the then Bakasi boys in the Southeast of Nigeria.

Resolving the Disorder: How far should the Courts get involved?

Vice-Chancellor, sir, this section stems from the musing on the jurisprudence of education rights. I have interrogated and tested theses and academic musings before audiences at the American Society of International Law (ASIL 2014) and in a Special Deans Lecture (2014) at the Prestigious Thurgood

Marshal Law School in Houston, Texas, and during the Global Alliance for Justice Education India (GAJE 2013) and I can report from research that a right based jurisprudence holds a strong panacea for the many challenges confronting the right to education in Nigeria. That the courts have a huge role to play is not in doubt. I need to reiterate the fact that Judex is the hope of the hopeless as beautifully crafted by (Egbewole, 2014).

I present some ground-breaking cases that my research has relied on in making this path and suggest impactful recommendations towards resolving the Disorder in ESR jurisprudence in Nigeria.

Sachs (2000, p.1388) posited that:

> I think that just about everyone agree that shelter, education, nutrition, clean water, and basic health services should be universally available. That is no controversy… what is controversial is whether claims to such decencies should be regarded as enforceable fundamental rights in the constitutional order in a way similar to civil and political rights.

The above position according to (**Onuora-Oguno**; 2015) should influence the activism of national and supranational judicial bodies such as the ECOWAS Court in reaching decisions and grounding same in very definite terms. I find particularly interesting the case of *Brown v Brown (*347 US 483, 1954)that was centered on the American Declaration of Independence dealing with equality of all humans. The instant case was premised on state sponsored discrimination based on race in accessing education. The courts found that 'separate but equal has no place in public education'. This may lead us to engage with policies such as catchment and other indices that influence access to education in Nigeria.

Restating the dictum of Warren J in the Brown Case here is important, your Lordship opined that:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures

> for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The above dictum is so lucid that our courts must today seek a judicial activist model to engage with the many sad imageries that continue to flood us in the conundrum of the right to education in our nation.

Another clear involvement of the judiciary I discovered was from India. May I state, Vice-Chancellor, sir, that the importance of this jurisprudential cross fertilisation is needful as it is aimed at encouraging the interest of public interest litigation and judicial activism in our country. In 2017, my research adventures attracted the Legal Resource Centre of South Africa to engage in training of Judges here in our University on the right to education and other economic and social rights and the establishment of the International Public Society (I-CONS Nigeria), the only national chapter in Africa, currently chaired by Prof. Wahab O. Egbewole, SAN and myself as the Secretary General.

In *Unnikrishnan JP v State of Andhra Pradesh* (1993 AIR 217, 1993 SCR (1) 594) the case brought to the fore the inalienable nature of rights. The case enunciates further the intrinsic nature of the right to education as encompassing even the right to life. The case called for the interpretation of articles 41 of the Indian Constitution which provides that "The state

shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment; old age, sickness and disablement, and in other cases of undeserved want". And article 45 enshrine that, "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". The interpretation was sought in light of the provisions of article 21 that provides: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine". It will interest Mr. Vice-Chancellor to note that the Indian Constitution initially held education also as a Fundamental Objectives of State Policy and yet the Judex in that clime engaged with education having a clear understanding of the pivotal position of education in national security and development and did not allow a Disorder in the Order of the Indian ESR Jurisprudence.

In the case of *Society for Unaided Private Schools of Rajasthan VUOI & Another (*Writ Petition (C) 95 OF 2010), the court held in clear terms that "States have a duty to protect the rights of a child to education by eliminating all forms of financial barriers". Consequently, the normative content of education as a right is both one of horizontal and vertical obligation (**Onuora-Oguno**, 2018, p. 28).

In another case, *Mohini Jain v State of Karnataka (*1992 AIR 1858, 1992 SCR (3) 658), the twin responsibilities to eliminate all forms of fees and discrimination capable of hindering education was reiterated. Anyanwu and **Onuora-Oguno** (2014, p. 13) in exploring the pitiable state of girl child education discovered that issues of poor sanitary conditions and curriculum content continues to ensure exclusion of the girl child in accessing education. In the case of *Avinash Mehrotra vs Union of India & Ors* (2009) 6 SCC 398), a core aspect of State responsibility relating to the right to education received attention

from the courts, when it was restated, that schools must be safe and conducive for learning and instruction.

Reflecting on the happenings in Nigeria, the safety of teachers and pupils are increasingly becoming worrisome. The recent kidnap of school kids in Kaduna aside the occurrences in Chibok are sad testaments. This aspect of protective mandate of government aside the obligations to promote and fulfill are current research focus of my research post-professorial (**Onuora-Oguno** and Silas, 2024**,** p.369**)**

Within the South African Jurisprudence, several cases are of interest to my research: especially the intersection and interrogation of the right to education in the South African Constitution (Woolman, and Fleisch, 2009).Detailed analysis of relevant cases could be found in my book, The Right to Development and Education in Africa (2018). I need to restate here that the South African Constitution recognises education as an immediately realisable right devoid of the doctrine of progressive realisation. I will later elucidate on this doctrine and relate it to the Nigerian State. For instance, the South African Courts have opined in *The Governing Body of the Juma Musjid Primary School v Essay (Centre for Child Law as Amicus Curiae)* 2011 7 BCLR 651 (CC) para 37 that:

> To understand the nature of the right to 'basic education' under section 29(1) (a) unlike some of the other socio-economic rights this right is immediately realisable. There is no internal limitation requiring that the right to be 'progressively realised' within 'available resources' subject to 'reasonable legislative measures.

I have explored the Welkom, (Case 766 & 767/2011) the Western Forum, ([2010] ZAWCHC 544) Juma Musjid case (*2011 (8) BCLR 761 (CC))* and Textbook cases ([2015] ZASCA 198) and concluded that they present valuable lessons for our nation if this discovered path must be sustained and if the Disorder in the ESR Jurisprudence of Nigeria will be realigned. These cases are quite instructive in changing the narrative in Nigeria's perception of the right to education.

I have found in my research that policy coherence and consistency are key in ensuring that the importance of education is realised. The obligation to fulfill and protect the right of everyone to education is reiterated by (**Onuora-Oguno** 2018, p.5).

At this point, I turn to conceptualize the question of progressive realization as it has remained a constant argument by the government in the face of the unending demands on the resources of the nation.

Progressive Realisation in the Context of Education

The doctrine of progressive realisation captures a consistent and clear pattern and intentional approach by States to ensure that its obligations are realised. The concept is clearly laid down by the General Comment 13 on what is required in this wise. The African Commission on Human and Peoples' Rights have laid down clear modality for accepting the State argument on progressive realisation. In the case of *Jawara v Gambia,* (147/95-149/96) the following tests are laid down:

i. Is it measurable?
ii. Is it realistic?
iii. Is it implementable?

An examination of the Commission's jurisprudence provides strong basis to engage with ESR and education rights (Ssenyonjo, 2011, p. 358 and **Onuora-Oguno**, 2023, p.43).

In the Textbook Case and the Mud School Case, the South African Courts found in line with the jurisprudence of the African Commission and held the State accountable on providing a clear pattern through which textbooks will be supplied and mud schools eliminated. It is the argument of (**Onuora-Oguno** 2017, p.20) that looking "Beyond the Horizon", an inspiration can be drawn by the government of Nigeria. **Onuora-Oguno** (2015, p.30) found that the importance of budgetary allocation in realising the right to education cannot be ignored. In my analysis, I discovered that education continues to receive very poor budgetary allocation. Beiter (2006, p.483) underscores the importance of basic education by finding that 'an education system, premised on false educational ideals, constituted a threat'.

It is important that I reiterate here that Basic education must be free and non-fee demanding. Beiter (2006, p.278) further applauds the importance placed on basic education by the Committee on Economic, Social and Cultural Rights (ESCR Committee) when they obliged state parties to ensure that priority is paid to basic education and development of proper skills in reading and numeracy. (Tomasveski, 2006 p.1) suggests that:

> The oldest international human rights law mandated free and compulsory education for all children up to the minimum age of employment. Thenceforth it specified safeguards for labour rights and trade union freedoms. This provides worldwide protection for the rights of children and their teachers but has been excluded from the World Bank's model. Financial responsibility for education has been transferred from governmental to family budgets, dooming poor children to grow up without the qualification and socialisation which education should provide.

Vice-Chancellor, Sir, in the Western Forum Case, the court went further to link the budgetary obligation of the government to the question of equality between all individuals.

Realigning a Disordered Order for ESR Jurisprudence in Nigeria

Mr. Vice-Chancellor, in my research, I discovered some elephants that have both the statutory and moral premise in correcting the disorder in the order of ESR in Nigeria. In this section, I will discuss some of them briefly. They are:

Nigerian Bar Association

The Nigerian Bar Association (NBA) is a non-profit, umbrella professional association of all lawyers admitted to the Nigeria Supreme Court, as Solicitors and Advocates. It is engaged in the promotion and protection of human rights, the rule of law and good governance in Nigeria. The NBA aside being the umbrella body for lawyers in Nigeria, has a civil

society role to play especially by engaging in public interest litigation and on economic and social rights. I have identified that several of the jurisprudence emanating from South Africa were initiated by NGOs. Presently, in Nigeria, it seems that the Socio-Economic Rights Advocacy Project (SERAP) is the only NGO with passion for engaging in public interest litigation.

My research unveils the NBA as a huge elephant which can effectively contribute to the development of the jurisprudence of education law in Nigeria. This position is advanced especially considering the benefit of a Deliberative Theory Approach (**Onuora-Oguno**, Ike and Barau, 2018, p.3) and public interest litigation (Klaaren, Dugard and Handmaker, 2011 p.3).

Nigerian Union of Teachers (NUT) and Teachers Registration Council of Nigeria (TRCN)

The NUT and TRCN are two big elephants that have very crucial roles to play in the regulation of the teaching profession. Following our recommendation in previous research, it is heartwarming to state that the TRCN is now taking more seriously the regulation and professionalism of teaching as a discipline. We still look forward to the era when teaching will not be an option because of unemployment to other perceived blue-collar jobs in the Nigerian economy. In the same vein, understating the role that the NUT should play and the possible impact on teacher education and the impact on quality education is vital. This is important as my research have construed teacher quality to have a direct proportional impact on quality education (**Onuora-Oguno**, Egbewole and Kleven, 2017, p.2).

Our research finding is corroborated by the findings of a great Nigerian Scholar of education, Oyaziwo Aluede who proposed an enhanced collaboration between the NUT and TRCN to ensure that the organisational goals, of the agencies are realised. In his words, Aludede (2009, p.39) submits that:

> I suggest that the National Union of Teachers should partner with the Teachers Registration Council of Nigeria with a view to making the

Code of Ethics' and Standards for Teachers available to the majority of our teachers, so that they can have a better understanding of their professional responsibilities.

To realise the potential of the TRCN, it is important to ensure that teachers are actively and adequately empowered to be involved in the processes governing the provision of education policies. More importantly, the need to ensure the participation of teachers in curriculum development by way of wide consultation will eliminate the challenges of wrongful implementation of the curriculum when developed (Oloruntegbe, 2011, p. 443).

National Human Rights Commission of Nigeria (NHRC)

In my research, Mr. Vice-Chancellor, the role of the NHRC was put into serious consideration. We found that the enabling Act (2010 Cap N46 LFN 2004) empowers the Commission to engage in promoting and protecting human rights in Nigeria. We queried the ability to enforce fundamental rights as the NHRC is argued by some respondents during our research to not be clothed with judicial powers. We again recommend collaboration with other judicial institutions to drive the realisation of human rights. In elucidating this approach, our research focuses on collective responsibility approach. It is to this concept that I turn next.

The Collective Responsibility Approach

I acknowledge the proposition of my LLD supervisor, Professor Michelo Hansungule who decried the poor involvement of the bourgeoise in Africa education initiative. Sadly, the reward for academic performance is nowhere near the reward for TV reality shows. It is recommended that a revised tax holiday should be embraced towards encouraging individuals and cooperate entities to get involved in closing the infrastructural deficit in our educational system. This recommendation finds some credence in the work of Faller as cited in Nwonu (2011, p.37) when it was reiterated that "education is a fundamental condition for an informed society;

an essential means of enhancing the spread of knowledge and the foundation for the efficient application and distribution of natural resources". Consequently, a better-informed community will make more informed demands for their rights. I will note at this point, Vice-Chancellor, sir, that this is also newfound research focus that I hope to develop further for my post-professorial work, as I examine and engage with the jurisprudence of legal mobilization and legal consciousness towards enhanced access to education. It is, therefore my, submission that the disorder in the order of ESR Jurisprudence in Nigeria must be revisited by both the legal academia, practitioners and the bench to ensure an alignment.

Other Professional and Administrative Contributions

Mr. Vice-Chancellor, I have, during my scholarship and stewardship, served the University in different capacities. At the Departmental level, I recently served as the Head of Department of Jurisprudence and International Law. Under my stewardship, the Department has facilitated several MOUs, notably with the University of Torino, Torino, Italy (Staff and Student Exchanges) have taken place. Chavan University, India, Centre for Human Rights at the University of Pretoria and Temples University, Philadelphia, USA. We have held joint conferences with the University of Free State, South Africa, Legal Resource Centre and other academic think tanks.

In the past, I have served in several committees in the Department, assisting in organising Departmental activities. A testimonial to these efforts is two letters of recommendation from past Heads of Department, Prof. Adedoyin Raji 2012 and Prof. J. O Olatoke 2017.

At the Faculty Level, I am presently, the acting Dean. I have served in the committee that drafted the first proposal that led to the establishment of the Legal Aid Clinic. I also served in the 2012 International Conference "Law, Security and National Development" under the worthy chairmanship of Late Prof. M.M Akanbi. I have served in the Faculty Ethics Committee and Faculty Representative to the Quality Assurance Committee of

the University. I have further served in the following Committees: member, Faculty Postgraduate admissions screening/ interview panels, member technical committee of the Regional Centre of Expertise on Education for Sustainable Development, member Faculty of Law, Research Team, Nigerian Law Teachers Conference 2016. Chairperson, Sub-Committee on Student Satisfaction Survey/Lecturers Assessment; member Faculty Accreditation Committee and member, Organising Committee of International Conference on Law and Religion. I have, in 2024 invited two visiting Professors to the Department who engaged in teaching and research activities. They are Professor Avictus Agbor (North-West University South Africa) and Professor Maria Margherita Salvadori (University of Torino, Italy).

At the University level, I served as a member of the University of Ilorin Alumni Electoral Committee. I currently serve as Desk Officer on several MOUs between the University and other Partners. I have served as Secretary to the Global South Network (GSN), collaborating with the University and a member of the Jurisprudence and Value Inquiry Conference Planning committee. I am currently a member of the University Gender Committee and the Chairman of Action Group 7 of the Quality Assurance Unit on Staff and student Training.

In my community development axis, Vice-Chancellor, sir, I continue to serve my immediate community in Ilorin (Igboniju) community as the legal adviser. I am currently, the Registrar of the Mbamili Anglican Diocese, Church of Nigeria Anglican Communion. In 2012, I served as Coordinator of Humanitarian Services for internally displaced persons (flood induced) in Anambra State, organised by the Anambra West Community Health and Development Service. In Addition, I am popularly known as the Visioner and Convener of Class of 1994 Old Boys Association of Dennis Memorial Grammar School. I am currently the Director of The Empowerment Agenda Initiative (TEA), an NGO that focuses on enhancing education of children in hard-to-reach areas.

Mr. Vice-Chancellor, part of my professorial aspiration is to contribute to the sustenance of the quality of the Department of Jurisprudence and International Law and the various initiatives like the Disability Law Advocacy Project (DLAP) to develop and indeed obtain an observer status before both the African Commission and the African Court. This in my view will enhance the synergy between the town and the gown. This will also increase our impact through scholarship and pursuit for justice for the persons whose rights are violated.

Conclusion

Vice-Chancellor, sir, from my research sojourn in the field of International Human Rights Law, I have identified that indeed there is a "Disorder in the Order of the ESR Jurisprudence in Nigeria". I am confident to conclude that construing education as a fundamental right holds the wand in correcting the disorder. This conclusion stems from an in-depth analysis of national, regional and global human rights instruments. Indeed, the realisation of the right to education is an immediate realisable one and when subjected to progressive realisation at the tertiary level, my research shows that a clear path is laid down on how this should be monitored and implemented.

It is further my conclusion that, the right to education includes quality and inclusive dimensions. My research concludes that the theories of availability, access, adaptability, and acceptability are core to the realisation of the right to education. Furthermore, it is the conclusion from my research that factors such as curriculum content, teacher welfare and safe schools are all important aspects of the right to education that must be protected.

My research has also uncovered the crucial role that the Nigerian judiciary can play in ensuring that the right to education is protected and shielded. It brings to the fore, the importance of relying on emerging jurisprudence beyond the horizon of Nigeria. In establishing the pivotal role of the judex, my research concludes from the several cases analysed from India and South Africa that education is pivotal and bedrock of other rights.

Finally, my research calls out elephants in the room that has important roles to play in driving the realisation of the right to education. It underscores the roles of Institutions such as the NBA, TRCN and the NHRC.

Recommendations

The major recommendations gleaned from my research walk and works can be summarised into nine spectrums. I am convinced that the recommendations have the potential of repositioning the state of education in Nigeria from its present Disorder unto a sustainable path, an Order; once the right based approach is embraced and effectively implemented. I proceed to list my recommendations, Mr. Vice-Chancellor:

1. Strengthening of key institutions in Nigeria to ensure that the right to education is realised. We have identified the place of collaboration and synergy among institutions as a pathway to realising this. Consequently, the primary Institutions such as the NUT, NTI, TRCN, UBEC and SUBEC must all ensure concerted efforts of the realisation of quality in education in Nigeria. An enhanced capacity will enable the institutions and other non-state actors in the field of education rights advocacy realise the potentials they have in changing the narrative (**Onuora-Oguno,** 2018 p. 69).
2. An increased involvement of the judiciary in the matters of economic and social rights. I am unsure, how many cases have come before the Ilorin Judicial Division either by private lawyers or even the NBA and other stakeholders challenging the poor delivery of education or other ESR in Kwara state. The involvement of the Judex to my mind will increase the deliberation of education law and policy in both Kwara State and Nigeria (**Onuora-Oguno**, Ike and Barau, 2018, p.3).
3. Education must be approached from a classical theory perspective. This by my research findings advocates that the right to education must, for the avoidance of debates, be accommodated in the Chapter Four of the Nigerian Constitution. Thus, the position must be taken seriously by the parliament in the entire move to amend the Constitution of the Federal Republic of Nigeria.

4. I recognise the fallibility of the law in certain circumstances and thus make a non-legal recommendation. In this sphere, I recommend a review of the welfare of teachers and stakeholders in the education sector. Equally, the need to ensure that an ethical approach to education delivery is vital. As much as the burden is placed on the State, we recognise the role of pupils, parents, teachers, and the community. The attitude and perception of the values inherent in education trump the praise singing of wealth-especially when the source is illegal and unidentifiable.
5. I recommend that policies and laws relating to education must be aligned from a right based perspective to aid the advocacy of the right to education and adjudication of same. In addition, we must all ensure that the relevant policies are sufficiently adaptive enough to avoid halting of access to education (**Onuora-Oguno**and Igbayiloye, 2020, p.1).
6. It is important to ensure that adequate and verifiable data is available especially as it relates to education needs of persons with disabilities. This will ensure adequate budgetary and logistical plans towards quality and inclusive education (**Onuora-Oguno**, 2020, p.178).
7. I call on the Federal government to support Non-State Actors (NSA) in carrying out their various roles in providing education.
8. As a product of educational activities (in this case the moot court), I call on the Faculty of Law, to create a fund that will support students' involvement in Moot court.
9. Finally, the need to ensure that emerging jurisprudence are tested through clinical legal education activities as this tradition is in danger of extinction for lack of support.

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