

The Fulfillment of Key Socio-economic and Fundamental Rights in Nigeria: Akwa Ibom State as a Paragon

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ABSTRACT

This article examines the fulfillment of key socio-economic and Fundamental Human Rights in Nigeria, taking Akwa Ibom State as a noble paragon. Notable among the fundamental human rights of focus are the socio-economic rights to education, health care, housing/shelter, and food/water. The article equally delves into the extent of protection and fulfillment of the rights of the most vulnerable members of society, including the aged women, and children, in accord with the dictates of international human rights law. The paper then weighs the fulfillment of the above rights in a legal balance, noting the security situation in Akwa Ibom State and the entire Niger Delta Region in the light of the provisions of international human rights documents on the rights to security and security of the human person as necessary adjunct to peace, stability, economic progress and human growth. Noting that the right to security/security of the human person cuts across the provisions of the International Covenant on Civil and Political Rights, (ICCPR) first generation of rights and second/third generation of human rights. The paper indepthly examines how a relegation to the background of the right to security of the human person can singularly render nugatory other achievements or progressive developments in terms of promotion, protection and fulfillment of other categories of rights. Despite the security challenges, which have become not just a state, or national challenge but also a global problem, the paper however scores the present administration of Akwa Ibom State (under Governor Godswill Akpabio), very highly for the visionary strides in terms of fulfillment of basic socio-economic rights and responsiveness to the needs and rights of children, women and the elderly.

Keywords: *Key socio-economic, Fundamental Human Rights, Akwa Ibom State*

INTRODUCTION

The present government of Akwa Ibom State, under the leadership of Governor Godswill Obot Akpabio has made some landmark strides towards promotion, protection and fulfillment of basic fundamental human rights in Akwa Ibom

State of Nigeria. One yard-stick for measure of achievements in these regards is to weigh the standards of promotion and fulfillment of key/basic fundamental human rights that make greater impact on the lives of the common person against the provisions and intendment of international human rights instruments. Since the full enjoyment of civil and political rights would be an illusion without the fulfillment of basic socio-economic rights, this article pays greater attention to measurable achievements in regards to functional socio-economic rights that give more meaning to the lives of the common people. These include socio-economic rights to education, health care, housing/shelter, environment and food/water. Another dimension is a focus on the rights of the vulnerable, including women, children, the aged, etc.

Without losing sight of the fact that some rights act as the spring board for the sustenance or fulfillment of other rights, the right to security/security of the human person, a key right that spans through the ambits of first, second and third generation of rights, is given much prominence in this work. This is in the sense that Akwa Ibom State, one of the oil producing states in the presently volatile Niger–Delta region of Nigeria, is equally faced with a number of seemingly insurmountable security problems that tend to make security of the human person a myth. In essence, the international norms on the rights to personal freedom and liberty, security of the person, freedom of movement and association, etc. appear to be seriously mocked at in the face of wanton insecurity, kidnapping and politically motivated assassinations in the Niger–Delta region of Nigeria, including Akwa Ibom State. All these problems of insecurity in turn work in tandem to retard the gains and progress on the fulfillment of basic fundamental human rights and, besides, on other areas of economic gains and human progress. This paper however foresees light and greater hope at the ‘other end of the funnel’ sine the problem of insecurity which has assured natural and global dimensions is now being tackled with global zeal.

Civil and Political Rights as a First Generation Rights: While civil and political rights are generally categorized under the first generation of rights – (rights that receive priority attention in the hierarchy of fulfillment), socio-economic rights follow sluggishly. The reason is that socio-economic rights, the world over, is fulfilled progressively and is made subject to availability of resources. Civil and political rights are often referred to as ‘Sword rights’ in the sense that they act as a protection to the individual from the overwhelming machinery of governmental powers. These rights which are today recognized and protected in the constitutions of most modern states and in international treaties and covenants include:

- The right to life, liberty and security of the person.
- Freedom from discrimination

- Freedom from slavery and involuntary servitude
- Freedom from torture, inhuman or degrading treatment or punishment.
- Freedom of thought conscience and religion.
- Freedom of movement and peaceful assembly.
- Freedom from arbitrary arrest, detention or exile.
- The right to fair hearing
- Freedom of expression
- Freedom of association
- Right to own property and not to be arbitrarily deprived of one's property.

In effect, most civil and political rights are conceived more in the negative (freedom from) than in the positive (right to) terms. They stress the abstention of government from the affairs of nationals, rather than the intervention of governments. First generation rights form the bulk of rights which are protected and made justifiable by most national constitutions.

Socio-economic Rights as a second Generation Rights: The call for socio-economic rights was the aftermath of the fears and concerns of the suffering and downtrodden masses who had experienced extreme abuses and deprivation at the expense of capital development and adoration for civil and political rights. From historical development over a course of time it became apparent that the enjoyment of civil and political rights is predicated upon the enjoyment of socio-economic rights. As an example, the right to life cannot be sustained without certain degree of fulfillment of the rights to nutrition, food, housing and health care. In the same vein, other salient civil and political rights – like the rights to freedom of thought, conscience and religion, freedom of movement, freedom of expression, freedom of association, freedom from discrimination, freedom from torture, inhuman or degrading treatment and the right to fair hearing owe their basis to certain levels of fulfillment of the right to education. Putting the question the other way, without some extent of education, how can one know his right? and, secondly what key components apart from food, nutrition and shelter can be adjudged the primary inputs to fuel life? These give credence to the doctrine of inter-relationship of rights. In the light of the above, it can be seen that ‘Education’ stands out as the singular and most important attribute to all other rights. This work therefore later extols in greater details the Akpabio Administration education agenda for uncommon transformation in Akwa Ibom State.

The Slow but Steady Progress towards Realization of Socio-economic Rights: The path toward the realization of socio-economic rights has been arduous, tortuous, tactful and thorny. The slow but progressive development

in the scenario is occasioned by the deliberate acts of governments, agencies, organizations and individuals who relegate socio-economic rights to the background. A number of reasons, including resource constraints, are advanced as a rationale for this. However, a ray of hope beams as few progressive minded governments have risen above the challenges and accorded socio-economic rights their rightful place in the developmental agenda. In an attempt to render certain socio-economic rights, embraced under the so-called second generation rights, non-justifiable, some states adopt different approaches.

Many constitutions contain a broad array of such rights but these are embodied under the rubric of non-justiciable 'Fundamental Objectives and Directive Principles of State Policy' and not as 'Fundamental Rights which are justiciable and legally binding. The Nigerian constitution and Indian constitution represent this category. In the Nigerian context, socio-economic rights are enshrined in chapter II, sections 13-24 of the Nigerian Constitution 1999, as amended. In contrast, however, some constitutions enshrine socio-economic rights as guaranteed fundamental rights that are both justiciable and enforceable. The South African Constitution/Bill of Rights 1996 is very prominent in this category. Sections 22 – 29 of the South Africa Constitution 1996 contain a mix of civil and political rights and socio-economic rights as enforceable Bill of Rights, most of which have been jurisprudentially confirmed by the courts. A third category that displays extraordinary milestones or developmental strides is a state within the context of unenforceable socio-economic rights enshrined in a country's constitution, but yet still forging ahead, in the midst of scarce resources, to implement key socio-economic rights to the generality of her citizenry. The innovative schemes of the present Akwa Ibom State government in terms of fulfillment of the rights to education, amply demonstrated in the free and compulsory education up to secondary school level; the right to health care in the realm of the free health care services to children, pregnant women and the elderly and other categories of socio-economic benefits are commendable. This paper assiduously examines all of the above aspects with a view to uncovering loopholes and making useful suggestions on the way forward and, particularly, on how to sustain the gains made concerning the protection, promotion and fulfillment of key fundamental human rights, as stepping stones towards further progress, sustainable development, economic growth, human empowerment, peace and general stability in Akwa Ibom State.

Enjoyment of socio-economic rights as a necessary adjunct to enjoyment of civil and political rights: The first concrete dramatization of the international community's resolve to enforce fundamental human rights manifested in the first Charter of the United Nations in 1945, shortly after the

world war. However, the key international human rights documents, which are together known as the international Bill of Rights, are:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.
- The International Covenant on Civil and Political Rights (ICCPR) 1966.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) 1948

The UDHR, adopted in 1948, built upon the UN Charter's promise by identifying specific rights and freedoms that deserved promotion and protection. The Declaration entrenched both civil and political rights, as well as social, and economic rights. Though the UDHR proclaims equal significance of civil and political rights and economic, social and cultural rights, and while its civil and political rights provisions provide an inspiration for the recognition and enforcement of human rights, its socio-economic provisions were not similarly echoed¹.

The UDHR being largely exhortatory and lacking concrete normative force were reasons for the further emergency of the ICESCR and ICCPR. By the coming into force of the two covenants, most of the rights set out in the Universal Declaration were recognized and defined in more details. The two covenants are largely binding treaties whose ratifying states pledge themselves to observe the specific rights enumerated therein. The significant difference between the two covenants is that civil and political rights are capable of immediate implementation. They do not directly depend on the availability of resources for their implementation. Socio-economic rights, on the other hand, certainly do depend on the availability of resources for their implementation. For this, they are seen as incremental rights. The obligations on states with respect to socio-economic rights is described as that of progressive realization of the rights.

The provisions in the ICESCR that states should recognize the rights contained in the covenant and take steps towards achieving progressively the full realization of these rights, subject to the maximum utilization of their available resources, is often times misinterpreted or abused. Many countries or states hide under the cloak of resource constraints and delay the speedy implementation of socio-economic rights. Typical examples concern the slow implementation, all over Africa, of socio-economic rights to education, housing and health care by many African governments. Despite the above state of Affairs, South Africa stands out as a noble example on enforcement of socio-economic rights. South Africa has become the first country in recent times to enshrine a wide range of socio, economic and cultural rights in the Bill of Rights, in the same footing with the civil and political rights. The enshrined

socio-economic rights in South Africa include the following:

- The right of access to adequate housing²
- The right of access to health care services³
- The right to education⁴
- The right to language⁵
- The right to participate in culture⁶
- The right to environment⁷
- The right to fair labour practices⁸

The Constitutional Court of South Africa has, in many decisions, not only protect these rights, as guaranteed in the Bill of Rights, but has enforced them against the State/Government. Some notable decisions are:

- i Republic of South Africa & ORS V Grootboon & Ors⁹ - Where the Constitutional Court enforced the right to housing
- ii Minister of Health & Ors V TAC ORS¹⁰ - Where the Constitutional Court enforced the rights of HIV positive pregnant women to free anti-retroviral treatment
- iii Van Biljoen & ORS V. Minister of Correctional Service¹¹ - Where the Constitutional Court of South Africa enforced the rights of HIV-Positive prisoners to adequate medical treatment.

Noble Paragon for the Enforcement of Socio-economic Rights: Promotion and protection of human rights are handled principally at two levels- international and domestic. At the domestic level, the state, because of its level of political, social, economic, legal and administrative organization, is better placed to ensure the promotion, protection, fulfillment and enforcement of human rights, given the political will to do so. Written constitutional provisions represent important legal instruments from which no other laws may derogate. Promotion, protection and enforcement of human rights are, to a large extent, dependent upon their status and language of incorporation in domestic constitutional provisions. Where human rights provisions are included in the substantive sections of the constitution, they are generally legally binding. However, any imprecise language or wrong wording of such provision may render them non-justifiable and unenforceable.

A clear dichotomy as seen in the provisions of human rights in the South African Constitution 1996 and the 1999 Nigerian Constitution provides a ready example on the above point. Whereas the South African Constitution clearly enshrines, in clear and unambiguous terms, the provision for both civil and political rights as well as socio-economic and cultural rights, in the substantive part, making these provisions justifiable and enforceable, it is not so with the Nigerian Constitution. The Nigerian constitution provides for justifiable and

enforceable civil and political rights in its substantive section of chapter four, imprecise language is rather employed in the entrenchment of some limited socio-economic rights in the generally non-justifiable and unenforceable section of chapter 11 on 'Fundamental Objectives and Directive Principle of State Policy'. Noting that no matter how fundamental a right may be unless it is guaranteed under a given legal system as a positive right, it has no judicial leg to stand on. In this regard, enshrining socio-objectives and directive principles' in the Nigerian constitution implies that enforceable right and obligations have not been created therein.

Emphasis on Socio-economic Rights: The emphasis on socio-economic and cultural rights arose largely in response to the yearnings of the eastern block of countries which had experienced abuse in the name of capital development. The underlying conception of individual liberty that legitimated the exploitation of the working class by the capitalist organizations gave cause for serious concern. This was re-echoed in the famous case of Re-Minerva Mills¹² when Justice P. N. Bhagawati had this to say:

'To the large majority of people who are living in utmost sub-human existence in conditions of abject poverty, and for whom life is one long, unbroken story of want and destitution, notions of freedom and liberation, though representing some of the most cherished values of a free society, would sound as empty words handled about in drawing rooms of the rich and well-to-do, and the only solution for making these rights meaningful to them was to remake the material conditions and usher in a new social order where socio-economic justice will inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured'.

In a related development, in some countries or jurisdictions, despite the non-justifiable nature of some socio-economic rights, as constitutionally provided for under the non-justifiable provisions of fundamental Objectives and Directive Principles of State Policy, creative and dynamic judiciaries still interpret fundamental rights provisions positively, to the extent that life and meaning are still given to the seemingly non-justifiable socio-economic rights, thereby rendering them justifiable, legally binding and judicially enforceable. The Indian case of Olga Tellis V Bombay Municipal Corporation¹³ exemplifies this legal judicial approach. In that case the Supreme Court of India ruled that slum and pavement dwellers could not be evicted from their shelters without the provisions of alternative accommodation for them. The Supreme Court held inter-alia, as follows:

“The sweep of the right to life is wide and far-reaching. It does not mean merely, that life cannot be extinguished or taken away, as for example, by the imposition and execution of the death sentence, except according to procedure established by law. An equally important facet of that right is the right to livelihood because no person can live without the means of living – that is the means of livelihood. If the right to life, then the easiest means to deprive him livelihood is not treated as part of the constitutional right to/of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the right of its effective content and meaning, but would make life impossible to live- Deprive a person of his right to livelihood and you shall have deprived him of life’.

From every indication, it appears that the present Akwa Ibom State Government under Governor Godswill Akpabio, apart from emulating the South African experience on socio-economic rights, has had much to derive from the two cases/decisions above in *Re-Minerva Mills* (Supra) and *Olga Tolls v Bombay Municipal Corps* (Supra). It has noted from the experience of other dynamic nations that the enjoyment of civil and political rights is meaningless without the fulfillment of some medium of socio-economic rights. To this extent, the state government’s identification with the above noble ideals in terms of provision of facilities, infrastructure and programmes to support the fulfillment of some basic socio-economic rights in Akwa Ibom State finds expression in the free health care for children, pregnant women and the elderly; free and compulsory primary/second education; provision of water, electricity and rural infrastructure; and above all, in the Akwa Ibom State child rights acts 2008. The right to education is widely recognized at both the international and national levels as a fundamental right upon which the full exercise of several other rights is dependent¹⁴. It is generally accepted that enjoyment of a number of civil and political rights as well as economic, social and cultural rights are dependent on the right to education¹⁵. The right to vote, freedom of expression, freedom of information, freedom of association, labour rights and the right to participate in the cultural life of one’s community are all intrinsically linked to the right to education. These rights can only meaningfully be exercised in the context of a certain minimum level of education having been achieved¹⁶.

The Right to Education at the International, Regional and National Levels: The Right to education is widely recognized at International level in a number of binding and non-binding instruments. These instruments essentially emanate from two sources. The UN treaty based system and UNESCO.

Besides, some general international documents recognize the right to education. The first International instrument to make express reference to the right to education was Article 26 of the Universal Declaration of Human Rights (UDHR) 1948 which provides for compulsory and free elementary education, and higher education which is to be equally accessible on the basis of merit. It furthermore states that education is aimed at the full development of the person and also guarantees parents right to choose the kind of education their children receive.

Next was the International Covenant on Economic, Social and Cultural Right (ICESCR) 1966. In particular, Articles 13 and 14 enshrine the right to education. Most importantly, the covenant places an obligation on states parties to provide free and compulsory primary education. Also, Article 10 of the Convention on the Elimination of All Kinds of Discrimination against Women (CEDAW) 1979, places an obligation on States parties to take steps to eliminate discrimination against women in education and ensure that they enjoy equal rights with men. Equally, Articles 28 of the Convention on the Rights of the Child 1 (CRC) 1989 contains extensive provisions on progressive realization of the right of the child to education. At the African Regional level, Article 17 (1) of the African Charter on Human and peoples' Right (ACHPR) 1981 guarantees the right to education for every child. On the corollary, Article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC) 1989 equally enshrines the right to education for all children, while also spelling out the duties of states parties towards achieving the full realization of the child's right to education.

Right to Education at the Nigerian National Level: As already discussed, the right to education, as one of the socio-economic rights, is non-justifiable and non-enforceable in Nigeria owing to the ambiguity in the language used to enshrine socio-economic rights in the Nigerian Constitution 1999¹⁷. Recourse could however be had to the African Charter on Human and Peoples Rights which guarantees the Right to education¹⁸ but this option is rarely explored since its provision could be said to be in conflict with the provisions in the Nigerian constitution 1999.

The resultant impact of all of the above in Nigeria is that while the right to education, a socio-economic rights, is not legally enforceable or justifiable, its implementation is however left to the whims and caprices of State Governments. To this extent, individual State Governments in consideration of the peculiar circumstances, available resources, budgetary provisions and priority constraints of the government can decide either for or against the enforcement/fulfillment of the right to education. On this, Akwa Ibom State government has uniquely stands out as one of the leading states in terms of implementation of key socio-economic rights including the right to education.

That education is central to sustainable political and economic development is unquestionable. It was against this background that the current administration in Akwa Ibom State launched the free and compulsory primary and secondary education in September 2008. The Government's policy on education unequivocally expressed the availability of primary and secondary education without charge to children, parents or guardians. Fees and other direct or indirect, costs usually imposed by school authorities, which constitute impediment to education and which may jeopardize the full fulfillment of the objectives of this educational policy, are prohibited. The Policy on free and compulsory education in Akwa Ibom State entails a number of action plans. The policy incorporates, *inter-alia*, the construction of public schools, provision of medical care, and payment of subventions to principals and headmasters to avoid any indirect charges that would undermine the free education scheme, as disclosed by the Akwa Ibom State Ministry of Education in its 2009 Reports. Another integral aspect concerns massive renovation of classroom blocks and other infrastructural facilities in schools. Other schemes include distribution of science equipment, computers and books to schools, distribution of desks, compulsory boarding schools, and recruitment of more teachers/staff, re-training of teachers, construction of e-library and strengthening of the inspectorate Directorate¹⁹. One necessary indicator or yardstick for measuring the extent of fulfillment of substantive legitimate expectation of the Akwa Ibom people in regards to the right to education is the upsurge in enrolment in schools. The data indicate that primary school enrolment went up from 761, 422 to 932, 872, while secondary school enrolment rose from 159,099 to 252, 700 shortly after the introduction of the scheme.

The Right to Health Care: Human rights instruments with focus on the right to health care include the following:

- i The Universal Declaration of Human Rights²⁰ (UDHR) 1948 which guarantees everyone the standard of living adequate for the health and well-being of himself and of his family . . . while motherhood and children are entitled to special care and assistance.
- i On its part, the ICESCR 1966 provides for progressive²¹ realization of the rights recognized in the present covenant, while also recognizing the right of everyone to the enjoyment of the highest attainable standard of physical and mental health²².
- iii The Convention on the Elimination of All Forms of Discrimination against Women²³ (CEDAW) 1979 enjoins states parties to take all appropriate measures to eliminate discrimination against women in the field of health care and to ensure equality of access to health care services.

- iv The Convention on the Rights of the child²⁴ (CRC) 1989 elaborately provides for wide-ranging rights to health care for children. It mandates States Parties to take appropriate measures to diminish infant and child mortality ensure the provisions of necessary medical assistance and health care to all children, with emphasis on the development of primary health care, combat disease and malnutrition, etc.
- v Equally the African Charter on the Rights and Welfare of the Child²⁵ enshrines that every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. It further sets out measures to be undertaken by states parties in order to pursue the full implementation of Children's rights to health.

FULFILLMENT OF LEGITIMATE EXPECTATIONS

Though not a state party to any of the Covenants, the Akwa Ibom State Government has done much to merit the accolades of children, parents and the elderly in fulfillment of the rights to health care. In 2008 the State Government under Governor Godswill Akpabio, developed a new health policy in line with the dictates of international human rights instruments on health care. Under the new health policy, pregnant women, children under the age of five and elderly people over 60 years are entitled to free health care, at state expense.

Rights To Housing: Some key international human rights instruments that enshrine certain degrees of right to housing include:

- The African Charter on the Rights and Welfare of the Child²⁶
- The International Covenant on Economic, Social and Cultural Rights²⁷, particularly article 11 which states:

'The states parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food clothing and housing, and to the continuous improvement of living conditions. The states parties will take appropriate steps to ensure the realization of this right...'

- The Convention on the Elimination of All Forms of Discrimination against Women²⁸. Article 14 provides as follows:

1. *'States parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families'*
2. *State parties shall take all appropriate measures to eliminate discrimination against women in the rural areas in order to ensure ... that they participate and benefit from rural development and, in particular, shall ensure to such women the rights;*

(3) *To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”.*

- The UN Convention on the Rights of the Child²⁹.

On the fulfillment of substantive legitimate expectation of the people, the government of governor Godswill Akpabio has been seen to make meaningful strides towards housing for all in view of the ongoing development of local government housing projects in all the local government areas of Akwa Ibom State. Much more still remains to be done by government to ensure adequate housing for all in the foreseeable future.

Rights To Food and Nutrition: The right to food and nutrition is internationally recognized in the following human rights instruments:

- The African Charter on the Rights and Welfare of the Child³⁰;
- The International Covenant on Economic, Social and Cultural Rights³¹;
- Convention on the Elimination of all Forms of Discrimination against Women³²;
- UN Convention on the Rights of the Child³³;
- Universal Declaration of Human Rights³⁴

Attempts by the Akwa Ibom State Government under Governor Akpabio to fulfill the yearnings, aspirations and substantive legitimate expectation of the masses and grassroots people of Akwa Ibom State show up in the agricultural programmes of the State Ministry of Agriculture. Obviously, the state is still lagging behind in food production even as there is scarcity of fertilizer for rural farmers.

Rights To Water and Environment: Very few international instruments give separate recognition to the rights of access to water. However, the rights to adequate nutrition and healthy environment are linked to the rights to adequate water. Only very few human rights documents mention the rights of access to water directly by name. The convention of the Elimination of All Forms of Discrimination against Women³⁵ obliges States Parties to ensure to rural Women the right to enjoy adequate living conditions, including water supply. The UN Convention on the Rights of the Child³⁶ obliges states parties to implement children's' right to health by taking appropriate measures to combat disease and malnutrition within the framework of primary health care. Adequate nutritious food and clean water should be provided, taking into consideration the dangers and risks of environmental pollution. The African Charter on the Rights and Welfare of the child³⁷ implicitly protects the right to access to water by providing that every child has the right to enjoy the best attainable state of physical, mental and spiritual health. On the provision of water to the rural people, the Government must be commended as many rural water programmes

are being commissioned on daily basis in Akwa Ibom State. Much, however, still needs to be done for each household in the state to have their water supply.

International Instruments on Women's Rights and Fulfillments of Women's Rights in Akwa Ibom State

The Convention on the Elimination of All Forms of Discrimination against Women, 1979 and the Protocol to the African Charter on the Rights of Women in Africa 2004 contain far-reaching provisions that guarantee the fulfillment of a wide – spectrum of women's right in Africa. Much of the rights of women glaringly denied, abused and violated are vigorously addressed and guaranteed by the above instruments touch and concern the adverse impact of traditional practices and customary law on women.

While the above instruments have not yet been domesticated as part of Nigerian or Akwa Ibom State Law, the Akwa Ibom State Government has approached the problem pragmatically, though so much remains to be done in order to actualize those dreams. To this extent, the grassroots orientation programme by which the state law Reform Commission addressed all segments of the society in the three senatorial districts in 2009 on the dangers of obnoxious customs, especially as these affect women, must be taken further. This can be done by legally effecting desired changes by means of positive reformatory laws passed by the State House of Assembly. Besides, the various programmes of the State Ministry of Women Affairs to positively impact on the lives of rural women are commendable.

Children's Rights and Fulfillment of Substantive Legitimate Expectations in Nigeria

The key international instruments that enshrine children's rights are the UN Convention on the Rights of the Child 1989 and the African Charter on the Rights and Welfare of the Child 1989. Various dimensions of Children's rights are guaranteed and protected therein. Nigeria, as a country, domesticated the Child Rights Act in 2006 when the National Assembly passed it into law. The different states in Nigeria have followed suit with the passage into law of their Child Rights Act, Akwa Ibom State of Nigeria is one of such states. The content and philosophical orientation of the Akwa Ibom State Child Rights Act 2008 shall be examined hereunder to ascertain if it meets the substantive legitimate expectations of the people.

The Akwa Ibom State Child Rights Law, 2008, which came into legal force after the Nigerian Federal Legislature had created a similar law in 2003, marks a very important milestone in terms of promotion, protection, enforcement and fulfillment of the rights of the child. The Child Rights Law 2008, embodies most of the provisions and principles enshrined in the UN

Charter on the Rights and Welfare of the Child 1989. A General overview of the Akwa Ibom State Child Rights Law, 2008, confirms that it is composed of twenty three (XXIII) sections/parts; as follows:

Part i: Best interest of a child to be paramount consideration in all Actions:

The section stresses the importance of ensuring that the best interest of the child is given paramount consideration in all actions, while also maintaining that a child shall be given protection and care necessary for his wellbeing.

Part ii: Rights and Responsibilities of a child: This section enumerated the rights and responsibilities of a child to include the following fundamental human rights:

- Rights to survival and development 5.4
- Right to name 5.5
- Freedom of Association and peaceful assembly 5.6
- Freedom of thought, conscience and religion 5.7
- Right to private and family life 5.8
- Right to freedom of movement 5.9
- Right to freedom from discrimination 5.10
- Right to dignity of the child 5.11
- Right to leisure, recreation and cultural activities 5.12
- Right to health and health services 5.13
- Right to personal care, protection and maintenance 5.14
- Right of the child to free, compulsory and universal primary education 5.15
- Right of the child in need of special protection measures 5.16
- Right of the unborn child to protection against harm 5.17
- Contractual rights of the child 5.18
- Responsibilities of the child and parent 5.19
- Parent to provide guidance with respect to child's responsibilities 5.20

Part iii: Protection of the Right of the Child: The section enshrines various legal mechanisms for protection of the rights of the child and makes elaborate provision concerning punishment of person who violates the enshrined rights of the child. These include:

- Prohibition of child marriage and punishment for violation 5.21
- Prohibition of child betrothal and punishment for violation 5.22
- Prohibition of child marriage and Betrothal, and punishment for violation 5.23
- Prohibition of Taboos and skin marks and punishment for violation 5.24

- Prohibition of female genital mutilation and punishment for violation 5.25
- Prohibition of exposure to use, production and Trafficking, of Narcotic Drugs, etc and punishment for violation 5.26.
- Prohibition of use children in other criminal Activities and punishment for violation 5.27.
- Prohibition of Abduction, Removal and Transfer from Lawful custody and punishment for violation 5.28.
- Prohibition of Exploitative labour and punishment for violation 5.29.
- Prohibition of Application of labour law to young persons 5.30.
- Prohibition of buying, selling, or otherwise dealing in children for the purpose of hawking or begging for aims or prostituting, etc. and punishment for violation, 5.31.
- Unlawful sexual intercourse with a child and other forms of sexual exploitation and punishment for violation 5.32-34.
- Prohibition of Recruitment of children into the armed forces and punishment for violation 5.35.

Part iv: Protection of Children: The section provides elaborately for protection of the interest of children by the State, using the court, the police and other agencies.

Part v: Children in Need of care and protection.

Part vi: Care and Supervision

Part vii: Provision for use of scientific tests in Determining Paternity or maternity, etc.

Part viii: Possession and Custody of Children

Part ix: Guardianship

Part x: Wardship

Part xi: Fostering

Part xii: Adoption

Part xiii: The Family Court.

HISTORICAL ANTECEDENT OF THE ACT

The enactment of the Child Right Act in Nigeria, in general and in Akwa Ibom State in particular epitomizes the formal domestication of both the UN Charter on the Right of the Child and the African Charter on the Right and Welfare of the Child – an exercise that had since been long overdue in Nigeria. This development is highly welcome in view of the historical antecedent that trailed the non-enactment of the child Right Act in Nigeria following the long-term abuse, violation and denial of the rights of children in Nigeria. The situation and circumstances with regards to children in Nigeria and particularly in Akwa

Ibom State were deplorable and pathetic. The maltreatment of children diagnosed by spiritual churches as witches and wizards is a case in point. Parents have had occasion to bath such children with hot water and acid, while the unfortunate children are denied parental care and are ostracized from society. The Act clearly addresses such acts of inhumanity and the ministry of justice has commenced prosecution of offenders.

The houseboy/housegirl/housemaid syndrome was a prominent feature that lent credence to child molestation and abuse. Akwa Ibom State was specially noted as a reservoir for exploitation in terms of housemaids. Such housemaids were denied their right to education but rather subjected to hard labour and made to become street hawkers. Such children were frequently exploited and assaulted sexually and made to experience teenage pregnancy and other vices. Another agonizing antecedent of the Child Right Act was the wanton trafficking of young girls/teenagers across state and national borders to serve as prostitutes and sex workers in their new location, with the attendant devastating consequences including sexually transmitted diseases, HIV/AIDS, etc. However, with the coming into force of the Child Right Act, most of the perpetrators of child abuse are fully restrained because of the primary content of the punishment for aiding and abating the different aspects of child Abuse. As a starting point, there is serious scarcity of housemaids now in Akwa Ibom State, earlier known as the great provider, following not only the enactment of the Akwa Ibom State Child Right Act but also the compulsory and free Primary and Secondary Education law. Above all, the Child Right Act has tended to curb or regulate the wide scale customary practices and the obnoxious influence of customary law on children particularly as these concern child marriages, female genital mutilation and other negative traditional practices.

SOCIOLOGICAL AND LEGAL RELEVANCE OF THE ACT

Sociologically and legally, the relevance of the Child Right Act to the circumstances of Nigeria Children and to the greater Nigerian, society can never be over-emphasized. The social antecedents prior to the coming into force of the new law and the social and legal circumstances of children after the enactment of the Act speak for themselves. Children now know their rights, which are protected and enforced by law. A significant impact but innovative of the Child Right Act 2008, as distinct from any other such similar Act, is readily felt in terms of its protection to yet unborn fetus/babies, as provided for in section 17(1). Under the provision of the said section 17(1), yet unborn children whose rights have been violated have the legal right to sue the parents or other third parties who were instrumental to violation of such right once they come of age.

Another needful social and legal relevant of the Act shows up in the Act's overly protection of children to the extent of full prohibition of childhood marriages and stiffer penalties or criminal sanctions for perpetrators of childhood marriages. Another important milestone to mark great social and legal relevance of the Act is the abolition of harmful traditional practices including female genital mutilation, amongst others. Since the Act carries the force of law, while the rights enshrined therein exemplify the weight of fundamental human rights, with clearly spelled criminal sanctions for violation of any of the rights, the sociological and legal relevance of the Act go beyond bounds as a great reprieve/relieve to Nigerian and Akwa Ibom State Children, long deprived, abused, denied and violated of their fundamental human rights.

To effectuate its sociological and legal relevance, the new Child Rights Act 2008 has directly and/or indirectly addressed all issues relative to the prior statutory, common, customary and religious laws or norms affecting children within the relevant framework and within the context of a single comprehensive children's law. Inherent in the vision of this new Act are the twin principles of enabling a Child's growth and development within the family environment and also protecting children in vulnerable situations.

Every human being needs a narrative that he can transform into his own life story; and education provides the platform for such a narrative. To educate a child is to tell him the story of being human. It is to tell him the story of living in dignity, which is the common denominator of our humanity. Education, a noun for learning, schooling, instruction or tutoring is also vital to sustainable development. It is the vehicle for constructing a country's future, developing understandings, the skills and attitudes that underpin economic, political and social transformation. This realization probably explains why the Akpabio Administration decided to make basic-primary and secondary-education free and compulsory in Akwa Ibom State. The foundations that have been laid for free education in the State against the background of the normative framework on the right to education are highlighted hereunder.

Education as One of the Child's Rights

Education is a human right – a claim that everyone is entitled to make in a society simply by being human. The Universal Declaration of Human Rights (UDHR) of 1948, adopted “as a common standard of achievement for all peoples and all nations”, provides that “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups³⁸. The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966³⁹, improves upon the UDHR's provision in three ways:

education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups⁴⁰. The right to education epitomizes the indivisibility and interdependence of all human rights. Education is an economic, a social and cultural right rolled into one. It is also, in many respects, a civil and political right, since it is central to the full and effective realization of those rights. The lack of educational opportunities for children often reinforces their subjection to other human rights violations. Thus, education is both an end and a means; it plays constitutive and instrumental roles. As an empowerment or instrumental right, education is the primary vehicle for economically and socially marginalized people to lift themselves out of poverty and obtain the means to participate fully in their communities⁴¹.

An illiterate citizen, though not necessarily irrational, is incapable of making informed political choices, whereas an educated and empowered citizen is not easily manipulated for egotistic ends. Most uneducated children are incapable of leading healthy lives; and they usually end up living in abject poverty-the poverty that kills. According to UNESCO, child death rates among the poorest 20 percent of the Nigerian population are twice those of the Wealthiest 20 percent; and the gap between rich and poor in child mortality has widened over the years⁴². Uneducated children are also often vulnerable to forced labour, prostitution and other forms of exploitation. There is also a direct correlation between primary and secondary school enrolment levels for girls and reductions in child marriages.⁴³

Standard Setting Instruments on the Right to Education

Global, regional and national human rights instruments guarantee the right to education at different levels and in various forms. The UDHR first embedded the idea that universal access to education was in humanity's common interest. It proclaims, in its Article 26(1), that "everyone has the right to education", which "shall be free, at least in the elementary and fundamental stages". The ICESCR, to which Nigeria is a party retains this fundamental guarantee, though it adds that "Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education⁴⁴. As for higher education, the ICESCR provides that this "shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education⁴⁵.

Since the adoption of the ICESCR in 1966, other child specific global instruments have been adopted to set standards or to proclaim the objectives to which education should be directed. Among these instruments are the Convention on the Rights of the Child Art.29(1) 1989⁴⁶. World Declaration on Education for All 1990⁴⁷; Vienna Declaration and Programme of Action 1993⁴⁸ and the Plan of Action for the UN Decade for Human Rights Education 1994⁴⁹. Major elements of the education-for- all goals have also been incorporated into the UN Millennium Development Goals (MDG) and targets. The MDG commits governments to achieve free primary education and equal access to all levels of education by 2015. While all these texts closely correspond to ICESCR's provision, they also include elements which are not expressly provided for in the Covenant, such as specific references to gender equality and respect for the environment. The African Charter on Human and Peoples' Rights of 1981, which Nigeria ratified and domesticated, guarantees the right to education in its Article 17. The Charter calls on its States Parties to recognize this right and to take legislative and other measures to implement them.

Similarly, the African Charter on the Rights and Welfare of the Child of 1990, to which Nigeria is a party, guarantees the right to education and calls on its States Parties to take necessary measures to implement this guarantee. There are also a plethora of domestic legal instruments that guarantee the right to education. Chapter 2 of Nigerian Constitution commits governments to free compulsory and universal primary education, free secondary and university education as well as free adult literacy programme. Nigeria's Child Rights Act of 2003 equally guarantees the right to education. In 2008, Akwa Ibom State enacted its own Child Rights Act, which synthesized most of the relevant international and municipal human rights for children. Section 15 of the Act guarantees to the child free and compulsory primary and secondary education and calls on every parent or guardian to ensure that his child or ward attends and completes these two levels of education. The section also makes a special provision for a female child who becomes pregnant before completing her education. Such a child shall be given the opportunity, after delivery, to continue with her education on the basis of her individual ability.

The Ingredients of a Right to Education: The Committee on Economic, Social and Cultural Rights sets out four essential ingredients of a right to education: availability, accessibility, acceptability and adaptability⁵⁰. I shall explain each of these concepts in turns.

Availability: This test requires that functioning educational institutions and programmes should exist in sufficient quantity within the jurisdiction of the State concerned. What these institutions require to function depends upon

several factors, including their operational developmental context. For example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for the sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on. Some will also require other facilities such as a library, computers and information technology.

Accessibility: This test requires that educational institutions and programmes should be reachable to everyone, without discrimination, within the jurisdiction of the State concerned. Accessibility has three overlapping dimensions. The first is non-discrimination, which entails that education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The second dimension is physical accessibility, which entails that education should be within safe physical reach, either by attendance at some reasonably convenient geographic location school or via modern technology. The third dimension is economic accessibility, which entails that education should be affordable to all.

Acceptability: This test requires that the form and substance of education, including curricula and teaching methods, should be relevant, culturally appropriate, and of good quality to students and, in appropriate cases, parents.

Adaptability: This test requires that education should be flexible so it can adjust to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

THE AKWA IBOM STATE EXPERIMENT

The gloomy state of our education probably informed Governor Akpabio's decision to put the issue on the front burner of his development agenda. What are the contours of this scheme and what are its prospects? The Akpabio Administration launched the *free* and *compulsory* primary and secondary education in September 2008. The word *free* is unequivocal; it is so expressed to ensure the availability of primary and secondary education without charge to children, parents or guardians. Fees and other direct costs imposed by the authorities constituted disincentives to education and may jeopardize the enjoyment of this right. Such fees are also often highly regressive in effect. Indirect costs, such as compulsory levies on parents-sometimes portrayed as being voluntary when, in fact, they are not – or the obligation to wear a relatively expensive school uniform, also fall into the same category⁵¹. The element of *compulsion* highlights the fact that neither parents, guardians

nor the State is entitled to treat as optional or political the decision whether the child should have access to primary and secondary education.

The declaration of free and compulsory education in Akwa Ibom entailed a number of action plans, which the government is religiously implementing. First, it entails the payment of subvention to principals and head teachers for the running of schools. Official report indicates that the Government currently pays the sum of three hundred naira per student per term to every Post-Primary School as running cost and one hundred naira per pupil per term to Head teachers in Public Primary Schools⁵². More than five hundred million naira has already been disbursed. The second action plan involves massive renovation of classroom blocks and other infrastructural facilities in schools. Available records show that, of the 1143 Primary Schools and 234 Post-Primary Schools, 195 Primary and 46 Post-Primary schools are already beneficiaries, at the cost of over 6 billion naira⁵³. The Government itself acknowledges that “there is still a lot to be done because the approach is to renovate all blocks in each school”⁵⁴, but there is no doubt that this innovation will have a far reaching positive impact on education in the State. Other action plans include distribution of science equipment, computers, and books to schools; distribution of dual desks; compulsory boarding schools; and recruitment of more staff to cope with the projected increases in school enrolments. Others involve construction of e-library and renovation of public existing libraries; and the training and retraining of teachers, with improvement in their welfare⁵⁵. The state has also strengthened its Inspectorate Directorate for intensive and effective inspection of both public and private schools. Meanwhile, Monitoring Teams have also been established to check loitering and hawking in major cities during school periods.

CONCLUSION

The government is the primary bearer of human rights obligations, including those on education. This entails, *inter alia*, the vertical obligation to establish, equip and run public schools. But as Governor Akpabio is quoted to have said, “efforts towards access to education does not stop at student enrolment at no financial cost to parents, but include the provision of quality learning facilities, procurement and distribution of essential equipment, creation of conducive and learner-friendly environment as well as teachers’ motivation, among others”. Hence, if investment in education is one of the sources of government legitimacy, then every government should be bent on providing to its citizens qualitative education at all costs. The current development trajectories in the Akwa Ibom State give cause for hope that the stigma of modernized slavery “house-help” associated with our people can be removed.

The current action plans in pursuit of free and compulsory education policy in Akwa Ibom State have had positive effects on school enrolment. In the 2006/2007 academic year, for example, primary school enrolment stood at 725,302 while post-primary school enrolment stood at 153,096. In the 2008/2009 academic session, primary school enrolment increased to 820,312 while post-primary enrolment increased to 226,775. By 2014/2015 session-when the current scheme would have run for seven years, the number of perfection-primary school enrolment is projected at 1,400,868 while post-primary enrolment should be 532,063⁵⁶. The 1999 Constitution put education in the Concurrent List, thereby making it a matter for which both federal and states have legislative powers⁵⁷.

This constitutional provision means that the Federal Government and the component states have the authority to set minimum standards for public and private educational institutions within their jurisdictions. Implicitly, this development also means that education is a matter of concern for all members of society. A coordinated effort, including improved coherence and interaction, among all actors is necessary for the realization of the right to education. There is also a horizontal obligation on the government to regulate education in the private sector. The purpose of education should be to transmit the accumulated wisdom and knowledge of the society from one generation to the next, and to prepare the youths for their future membership of the society and their active participation in its maintenance and development.⁵⁸ The school experience must be linked to the productive life of the community.

NOTES

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¹ See Uko, E. J. *Human Rights Law* – Livingo Publishers, Uyo (2007) Pgs 7 – 9.

² .S. 26 South African Bill of Right / Constitution 1996.

³ S. 27 South African Bill of Right / Constitution 1996

⁴ S. 29 South African Bill of Right / Constitution 1996.

⁵ S. 30 Sought African Bill of Right / Constitution 1996.

⁶ S. 31 South African Bill of Right / Constitution 1996.

⁷ S. 24 South African Bill of Right / Constitution 1996.

⁸ S. 23 South African Bill of Right / Constitution 1996.

⁹ 2001 (1) SA 46(CC)

¹⁰ 2002 (4) BCLR 356(CC)

¹¹ 1997 (4) SA 441 (CC)

¹² (1980) AIR (SC)

- ¹³ (1968 AIR (Sup Ct) 180
- ¹⁴ See A Compilation of Essential Documents on the Right to Education – Economic and Social Rights Series, Vol. 2; Centre for Human Rights, Pretoria, May 2002, Pg. 1.
- ¹⁵ Ibid Pg. 1.
- ¹⁶ Ibid Pg. 1
- ¹⁷ Chapter two of the Nigerian Constitution 1999 on Fundamental Objectives and Directive principle of State policy.
- ¹⁸ Following the incorporation of the provisions of the African
- ¹⁹ Charter on Human and Peoples’ rights as part of Nigerian Law CAP 10, 1990 Laws of the Federation of Nigeria. Now part of the 2004 Laws of the Federation of Nigeria) Articles 17 (1) of the anchor 1981 which provides for the rights to education for every child is effectively invoked and applied in Akwa Ibom State.
- ²⁰ Art 25, UDHR 1948
- ²¹ Art 2 (1) ICESCR 1966
- ²² See Article of the ICESCR 1966
- ²³ See Art 12 CEDAW 1979
- ²⁴ See Art, 24 CRC 1989
- ²⁵ See Arts 14 (1) and 14 (2)
- ²⁶ See Article 20 of the ACRWC 1989
- ²⁷ See Art. 11 of the ICESCR 1966
- ²⁸ See Article 14 (1) & (2) of CEDAW 1979.
- ²⁹ See Art 27 of the UNCRC 1989
- ³⁰ See Arts 14 and 20 ACRWC 1989
- ³¹ See Art 11 of the ICESCR 1966.
- ³² See Art 12 CEDAW 1979
- ³³ See Arts 24 and 27 UNCRC 1989
- ³⁴ See Arts 25 of UDHR 1948
- ³⁵ See Art 14 (2) (h) CESAW 1979.
- ³⁶ See Arts 24 (1) and (20 © of the UNCRC 1989.
- ³⁷ See Art 14 (1) of the ACWRC 1979.
- ³⁸ Universal Declaration of Human Rights (UDHR) 1948, Art. 26(2).
- ³⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.
- ⁴⁰ See id. Art. 13(1).
- ⁴¹ See the Right to education (Art. 13), CESCR General Comments, E/C.12/1999/10, para. 1 [hereinafter CESCR Comments on Art. 13].
- ⁴² See UNESCO, Regional Overview: Sub-Saharan Africa, available at <http://unesdoc.unesco.org/images/0017/001784/178418e.pdf> (Accessed on 14th September 2009)[hereinafter UNESCO Overview].
- ⁴³ See Plans of Action for Primary Education (Art.14), CESCR General Comments, E/C.12/1999/4 (10 May 1999). Para. 4 [hereinafter Plans of Action].
- ⁴⁴ ICESCR, Art.13(2)(b).
- ⁴⁵ Id. Art. 13(2)(c).
- ⁴⁷ See World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs 1990, para.1 (“Every person-child, youth and adult-shall be able to benefit from educational opportunities designed to meet their basic learning needs”).
- ⁴⁸ See Vienna Declaration and Programme of Action 1993, Part 1, para.33 & Part II, para.80.
- ⁴⁹ See Plan of Action for the UN Decade for Human Rights Education, A/RES/49/184,23 Dec.1994.5 (“Appeals to all Government to contribute to the implementation of the

Plan of Action and to step up their efforts to eradicate illiteracy and to direct education towards the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”).

⁵⁰ See CESCR Comments on Art.13. *supra* note 4, para.6. The Committee has adopted this same analytic approach in relation to other socio-economic rights guarantees. IN its General Comment4, the Committee identified a number of factors bearing upon the right to adequate housing, such as “availability”, “affordability”, and “cultural adequacy”. In its General Comment 12, the Committee identified elements of the right to adequate food, such as “availability”, “acceptability” and “accessibility”. The UN Special Rapporteur on the Right to Education has adopted a similar approach. For Example, her preliminary report to the Commission on Human Rights sets out “four essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptability”. See E/CN.4/1999/49, para.50.

⁵¹ See Plans of Action, *supra* note6, para.7.

⁵² Data supplied by the Akwa Ibom State Ministry of Education (2009).

⁵³ *Id*

⁵⁴ *Id*

⁵⁵ *Id*

⁵⁶ *Id*

⁵⁷ See Constitution of Nigeria 1999, 2nd Sch.pt.II, items27-30.

⁵⁸ See J.K. Nyerere, Freedom and Socialism 267 (1968).