

Issues of Human Right to Basic Education and Equality of Educational Opportunity in Africa: A Case Study of Nigeria

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1 INTRODUCTION

The African region has been slow in stirring commitment towards the development of equality of opportunity in education for deserving learners and peoples in Africa. In order to address part of the constraints towards the realisation of the targeted Millennium Development Goals of 2015 in Africa, and as part of achieving the African Union's (AU) Agenda 2063, examining the issues concerning the equalisation of educational opportunity on the continent is paramount. The achievement of universal primary education was among the critical goals that needed to be engaged with in guiding plans and programmes of states towards national development in the long run. This is no doubt traceable to an appreciation of the importance of realising the right to education, which

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has often been described as being central to human and national development.¹ As a result, the significance of creating equal opportunity for all learners in Nigeria, albeit in an African context, cannot be undermined.

The visibility in protecting equal educational opportunity under African regional human rights instruments is considered piecemeal. The African Charter on Human and Peoples Rights (ACHPR)² provides for the right to education as equal right to education for everyone in article 17. In doing so, it universalises formal equality by seeking to suggest that unequals be treated alike. However article 18(4) of the ACHPR impliedly addressed the issue of equality of opportunity by requiring states to take ‘special measures of protection’ (emphasis mine) that are responsive to the ‘physical and moral needs of the aged and disabled persons’. In other words, article 18(4) introduced the opportunity to consider the varying needs of the aged and ‘disabled persons’ with regard to the provision of equal opportunity in the enjoyment of human rights, like the right to education. But the ACHPR failed to extend similar protection to other vulnerable groups as well as individuals who equally require equal educational opportunity in education.

However, the African region sought to remedy the oversight and later extended equality of opportunity in education of children and women when it adopted the African Charter on the Rights and Welfare of the Child (African Children’s Charter),³ and more recently the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (African Women’s Protocol).⁴ The African Children’s Charter follows the provision of the African Charter by the use of the words ‘special measures of protection’ while the protocol on women specifically made reference to ‘equality of opportunity and access in the sphere of education and training’.⁵

In spite of this gradual visibility of the provision of equal educational opportunity for vulnerable groups such as the aged, disabled persons, children and women under the African regional system, concerns still exist. One is that the manner as well as factors to be considered in providing this protection was not specified. Secondly, the rest of the population who do not come within the protected categories seem to have been left at the whims and caprices of national jurisdictions.⁶ Indeed, the oversight has serious implications for learners in Nigeria and within the region as it suggests a lack of awareness as to the urgency of securing equal opportunity in education for all learners in Africa.

Holistically, achieving equal opportunity in education for all learners in Africa must consider the social background, environment and socio-economic factors of all learners, if we are to realise the AU's Agenda 2063. What is important is to appreciate that securing equal opportunity in education cannot be assuaged by the rhetoric of rights to a selected category of citizens. It also cannot be assuaged without an articulation of the methods of implementation and distribution. The method of distribution must, of necessity, involve discriminatory distribution of educational resources in a compensatory manner. It must also be articulated to envisage all citizens that genuinely deserve it.

A commitment towards achieving equality of opportunity is synonymous with seriously taking the manner of distribution and redistribution critically. Particularly in the Nigerian context where there is huge socio-economic inequality, the realisation of equal opportunity in education for the least favoured in the society under considerations of learner's background, socio-economic and environmental factors is vital to achieve equality for all learners in Nigeria. Within this premise, Nigeria is used in this study, to reflect the region's scenario with reference to challenges regarding the provision of equal basic educational opportunity.

Nigeria is considered based on the reasoning that Nigeria has diverse linguistic groups, internally displaced persons, different cultures and a large population. Furthermore, Nigeria has an underdeveloped economy, poverty is prevalent and literacy level is very low. Comparably, it has been found that Nigeria shares most of its developmental problems with most African countries,⁷ even though some African states like South Africa have begun to enact progressive education laws and valuable decisions. Reports also indicate that literacy level in most African states is still low.⁸ Out of the 52 countries in Africa, only 10% has a literacy level that is above 85% while more than 35% has a literacy level of less than 50%.⁹ Granted that literacy level may not be a perfect measure of educational results, but it is considerably compelling for international comparisons.

Specifically, the Federal Government of Nigeria, in a bid to further the Millennium Development Goal of achieving universal basic education for all and to consolidate its National Policy on Education, established through an Act of the National Assembly, the Universal Basic Education Act (UBE) in 2004. The objective of the UBE is that at the end of 6 years of primary school and 3 years of junior secondary school, every child in Nigeria must have acquired the relevant knowledge and skills needed for socio-economic independence and be able to contribute to

national development. Basically, the UBE Act provides the legal framework for the implementation of compulsory free basic education in Nigeria. This is in view of the fact that the Nigerian Constitution failed to specifically guarantee the right to education. The vision of Nigeria's Federal Government in relation to its educational policy and the UBE Act can be seen as a move in the direction of equalisation of educational opportunities as it provides at a minimum the compulsory level to which all children in Nigeria would be educated.

However, the provision of physical access to education is not considered sufficient in terms of realising equal opportunity in basic education. It will therefore be argued that the UBE Act like the Constitution failed to provide a clear approach on how educational resources are to be distributed, in view of the realities of learners' socio-economic and diverse background for instance. This lack of a definition of a method of distribution constitutes a serious omission and poses a great challenge to the commitment of realising the right to equal education for all. The situation is even made worse when juxtaposed with the Constitution's presumption of equality of status which discounts concrete inequality in the scheme of distribution.

This chapter has four sections: the first section—the present section—is the introduction. The second section highlights the challenges that Nigeria faces in the provision of equal educational opportunity for all learners, and it also analyses pertinent concepts such as formal equality and substantive equality. Section three further advances Nigeria's approach regarding the provision of equal opportunity in education for all learners. Section four is the conclusion.

2 THE ENORMITY OF THE CHALLENGE

Presently in Nigeria, everyone seeks education. The desire is either for oneself or for one's other immediate or distant relations. This is because education has been identified in numerous literature as a sure means of socio-economic participation and mobility.¹⁰ For instance, since after the Nigerian civil war, most educated people were able to secure jobs, skills or better social positions relatively easier than their uneducated counterparts. Thus, acquired skills, qualifications and certificates became equivalent to meal tickets.¹¹ Having identified education as an equaliser of opportunities among societies, the Nigerian government saw mass education as the best starting point for the achievement of its development

objectives. To be able to provide equal educational opportunities for all its citizens, the Nigerian government adopted the National Policy on Education in 1977.¹²

Although the Federal Government of Nigeria stated in the policy that government will multiply and make educational and training facilities adequate and accessible to all citizens, for the purpose of providing equal educational opportunity, neither the 1977 issue of the National Policy nor the revised editions or even the present edition entrenched as a value what the state should do to advance or realise equality of opportunity in basic education.¹³ It is therefore feared that since states of the federation have started to implement the National Policy on Education without a defined implementation process, each state will contrive and apply its own method. The unintended consequence will be multifaceted interpretations and practice of equal educational opportunity which might not show strong convergence with the AU's Agenda of a prosperous Africa based on inclusive growth and sustainable development.¹⁴

Considering the fact that the objective of the Nigerian National Policy on Education is to develop a self-reliant, free, egalitarian and democratic society with full bright opportunities for all citizens,¹⁵ a corresponding normative ethic ought to be adopted in the distribution and redistribution of educational resources in order to achieve equal educational opportunity. In this regard, the educational resources contemplated include adequate manpower, equipment/facilities, good environment and structures, as well as funding. Thus, equal educational opportunity in this study is imagined as making the provision and process of education equal in order to ensure that each learner is provided the needed accommodations required to acquire education.¹⁶

Indeed, it could be argued that there are various interpretations of the meaning of equality of educational opportunity.¹⁷ On the other hand, some authors have suggested that it might mean nothing at all.¹⁸ Our purpose is not to undertake a detailed exploration of the various meanings of equality of opportunity.¹⁹ Rather, the purpose is to align this discourse with the ideas of non-discrimination and equality in the context of education. The study is particularly interested in exploring understandings of formal and substantive equality in relation to the demand of equal educational opportunity, so as to secure equality of outcome or benefit.

Ultimately, equality has emerged as a fundamental principle for attending to the discrimination and marginalisation suffered by individuals or groups in the scheme of distribution.²⁰ Meanwhile, it does not have an

agreed definition,²¹ but formal equality and substantive equality approaches have become known as the core counterpoints, with each approach contending to remedy inequality in different modes and proportions.²²

2.1 *Formal Equality*

Under the 1999 Constitution of the Federal Republic of Nigeria (Constitution), the idea of equality is one of its founding values.²³ To avoid inequalities between different categories of individuals in the society, the Constitution provides in section 42 that:

1. A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion, shall not by reason only that he is such a person:
 - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religious or political opinion are not made subject; or
 - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, either groups, place of origin, sex, religion or political opinions.²⁴
2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.²⁵

Accordingly, a law or conduct violates the equal protection clause under the Nigerian Constitution if a differentiation not accorded to any Nigerian is made, even when it is ethically appropriate or when a rational purpose demands that differentiations be made. This provision under the Nigerian Constitution regarding equality is also characteristic of formal equality traceable to the equality conceptions of historical international human rights instruments.²⁶

Formal equality according to Albertyn and Goldblatt assumes that individuals are equal and that differential conduct or idea is always inexorably suspect or unreasonable.²⁷ This presumption of equality of status often masks practical inequalities that exist among categories of persons in the society. It ignores, for instance, that learners are heterogeneous

with respect to social and historical background, geographical development, economic status, school type, sex and disability. Formal equality does not appreciate human difference and perceives positive differentiation or discrimination in favour of vulnerable persons or groups as discriminatory and inconsistent with the right to equality. It is a conception of equality that does not consider the ‘all fingers are not equal’ mantra which appreciates the fact that all persons are not similarly situated.

Formal equality seeks to apply the same standards to everyone regardless of any dissimilar impact on certain individuals and groups. Because of its non-recognition of difference and assimilatory characteristics, formal equality would be inappropriate to recognise the legitimacy of treating individuals unequally, as it were, in order to realise equal educational opportunities. It turns out to be a problem when educational resources are distributed equally to learners of unequal development level or unequally to beneficiaries of equal development status. In essence, a fairly greater attention to compensate the less advantaged to benefit equally distributed educational resources as much as the dominant majority is not usually envisaged.

2.2 *Substantive Equality*

Against the backdrop of formal equality, substantive equality has the prospect to remedy the effects of the formal equality model. For Day and Brodsky,

A substantive model of equality, which considers inequality in conditions and imbalances of power among groups, anticipates a deeper level of change. It posits that the functioning of institutions and the structure of relationships among groups must change significantly, and that working towards equality is a process to transformation, not a minor adjustment.²⁸

Day and Brodsky separate substantive equality from formal equality, which according to them implies that

Existing frameworks are acceptable, except that there are occasional incidents of prejudice and perhaps some marginalisation of certain groups. The situation is to conciliate between individuals when there are incidents of prejudice and to ensure that all groups are included in existing institutions by being treated the same as those that are already inside. In other words, this version of equality anticipates little change in the functioning of institutions.²⁹

Contrariwise, substantive equality appreciates that genuine equality can only be realised if regard is given to the historical, social and economic circumstances of individuals in the distribution of educational resources. It imagines that barriers within the sociopolitical that prevent individuals from enjoying the right to equality are dismantled, and the responsibility to do this lies with the state general education system and not the learners. Substantive equality does not assume that everyone has the same need and the same future to be non-discriminatorily satisfied using similar measure. It therefore goes beyond similar treatment to consider justified differentiation in order to remedy past and systematic inequalities.

The difference between substantive equality and formal equality can be likened and explored in the light of Wollheim's argument concerning 'everyone having an equal right to education' and 'everyone having a right to equal education'.³⁰ The proposition that 'everyone has an equal right to education' countenances that 'what' education each individual has right to may be laid down by society or law as given without specifying the criterion.³¹ This is hardly a realistic objective.

The second proposition that 'everyone has a right to equal education' seems to imply that everyone has a natural right to the same educational facilities and resources in relation to processes and procedures enjoyable according to individual needs. This second interpretation appears realistic and amenable to a heterogeneous society like Nigeria and other African states as it acknowledges positive discrimination and consequently confers legitimacy to substantive equality.

Philosophically, the notion of substantive equality ultimately appeals to the idea of distributing the benefits and detriments of democratic societies in a discriminatory and compensatory manner.³² It calls for transcending conceptions of equality which require that socio-economic positions are open to all regardless of difference. In responding to both socio-economic exclusions, substantive quality seeks to bring about the substance of what Thomas Kleven, in his moral theory of social justice, has called 'equitable sharing' for a truly democratic society.³³ For Kleven, the concept of equitable sharing is imagined as a social ideal that expects the sociopolitical environment to take everyone's interest into account and fairly accommodate everyone's needs.

Kleven's point is that the imperative of securing self-determination and equality values is foundational to any democracy, which in essence requires that all aspects of social life be equitably shared among all society's members. This he further situates in the belief of the inherent

equality of all people. Therefore, implicit in Kleven's argument is the appeal to an egalitarian distribution. It emphasises the need for a distribution and redistribution of the goods of social life in accordance with people's needs in order to enable all participate inclusively.³⁴ Ultimately, responding to people's needs require the eradication of the formal equality model so as to embrace substantive equality. A distribution and redistribution through substantive equality speaks to systematic inequality, which would otherwise be left untouched by mere equal treatment or formal equality.³⁵

3 PARADOX OF SCHOOL CREATION AND THE REDUCTION OF INEQUALITY IN NIGERIA

There exists a dilemma in the creation and reduction of inequality through educational equality in Nigeria. Therefore, the argument is that the recognition of disparity in the plurality of individuals precipitates the ground for different and unequal treatment during the allocation of educational resources. The Compulsory Universal Primary Education Programme is a grandiose education scheme in Nigeria to equalise educational opportunity for all citizens.³⁶ It is considered a political interpretation of the concept of equality with a view to satisfy the legal and formal conceptions attached to constitutional right of all citizens to equal and adequate educational opportunities at all levels.³⁷

It is, however, observed that the magnanimous provisions under Nigeria's 2004 UBE Act and the Revised National Policy on Education of 2013 (NPE) have not resulted in the imagined equitable objective envisaged. The UBE Act and the NPE have not enjoyed popular commendations as a result of the discrimination implicit in their contrivance and issuance. First, comparable equal achievement or outcome, difference in individual abilities and capacities, social and family background, parents' economic status, geographical location, language, religion and culture were not contemplated. Second, upon execution heed was not paid to the individual needs of each learner.

Recognising and addressing the differences in individuals as those mentioned above is necessary for attaining equality of educational opportunity. It is also observed that assessments and examinations as a means of equalising education opportunities are biased towards strict formal practices and Western urban culture developed elsewhere. Thus, learners in the rural areas or from different socio-economic and cultural

backgrounds may experience school as largely an introduction of foreign culture, directly or indirectly presented as superior to their own.³⁸ This type of conception implicitly sees the school as perpetuating 'hierarchical citizenship'. One feels that this fact is not unconnected with the *Boko Haram* sect conception of education in Nigeria.

Boko Haram is an Islamic extremist group in north-eastern Nigeria. The group's name *Boko Haram* is a Hausa statement, which upon translation into English means 'western education is sinful'. The group is opposed to everything that is of Western origin, especially Western education ideologies and systems. This also happened earlier in the northern part of Nigeria. According to Fafunwa, parents refused to send their children to school for fear of the children being converted to Christianity while they were Muslims.³⁹ The obvious dilemma in this conception of education can also be blamed on the absence of appropriate ideology regarding the normative values animating equality in education. Even in the face of Nigeria's compulsory universal primary education, it is not likely that equality of opportunity will be achieved.

The general implication is that educational syllabus, arrangements and administration do not adequately represent the interest of each learner. Thus, the need for some enlightenment and some other flexible modes of assessment and examination as a means of evaluating and equalising opportunities for learners ought to be articulated, so that the whole population can take up the opportunity of access to school, which is provided to everyone under the recognition that there are different educational needs of individuals. The school should expose learners to challenges commensurate with their identities as well as abilities, and learners should be made to appreciate the criteria for examination grades and assessments as a means of offering equal educational chance.

If equal participation in education is to have any meaning as a means towards equality of educational opportunity, there must also be an opportunity for different groups and individuals to decide what education shall be about. It is considered expedient that barriers within the sociopolitical environment which influence and limits variables to equality of educational opportunity should be identified and eliminated accordingly, for the realisation of equal life chances. Educational resources ought to be presented in a manner that harmonises the background of learners of all classes.

The premise is that inequalities in education should be remedied. But there often exists a serious paradoxical problem in the equality

interpretations adopted for this needed remedy. Almost every African country engages in educational reform. However, the main thrust is usually in the direction of closing widening disparities in access to education without intensifying normative measures for achieving equality in education in law and in fact. While South Africa is an example of an African State that is decisively moving away from the conception of equality as formal equality, it can also be seen to illuminate normative conceptions of equality in their constitutional text within which all statutory documents and jurisprudence are grounded.⁴⁰

Equality as conceived within the jurisdiction of South Africa has been described as a pervasive value and right under the South African Constitution.⁴¹ It has also been articulated as the Constitution's key transformative value and right in the attainment of inclusive citizenship.⁴² The admirable content of the right to equality under the South African Constitution and the extent to which it subscribes to inclusive citizenship and equal opportunity for every citizen can be gleaned and confirmed from the South African Constitutional Court's equality jurisprudence.

The Constitutional Court of South Africa has in several cases reiterated that the type of equality contemplated under section 9 of the Constitution is substantive equality and not just formal equality.⁴³ The Court's exacting approach to the determination of unfair discrimination has been stated to be particularly instructive of the Constitutional Court's approach to substantive equality.⁴⁴

Although the Constitutional Court has borrowed its equality jurisprudence from foreign jurisdictions such as Canada and India, it has formulated its own standards and stages for determining discrimination in any circumstance in the popular case of *Harksen v Lane NO & Others*.⁴⁵ In the highlighted case, the Constitutional Court enunciated the relevant stages for determining unfair discrimination and unequal treatment against individuals. This as summarised by Ngwena⁴⁶ involves: whether there is a reasonable and legitimate justification for the policy, law or practice; whether the differentiation amounts to unfair discrimination; and if unfair discrimination is established, whether it can be justified in terms of the limitation clause under section 36 of the Constitution.

Additionally, the Court emphasised that differentiation amounted to unfair discrimination if it impairs the human dignity of the individual or group concerned.⁴⁷ On this basis, the major factor which rendered discrimination unfair was obviously the effect or impact it had on the

individual or group concerned⁴⁸ and in determining the impact of discrimination, the Constitutional Court considered the following factors cumulatively relevant: (a) the position of the complaint and whether the complainant belongs to a social group that have suffered patterns of disadvantage, (b) the nature of the provision or power and the purpose it seeks to achieve and whether the provision or power is intended to achieve a worthy societal goal, and (c) the extent to which the discrimination has affected the rights or interests of the complainant and whether it has led to an impairment of the fundamental human dignity of the complainant.⁴⁹

Indeed, this legal and juridical approach to equality within the South African jurisdiction has the attainment of substantive equality and human dignity as its objective. It not only suggests a commitment to recognising each person's worth as a human being, regardless of differences.⁵⁰ It also signifies a constitutional commitment to remedying systematic subordination and marginalisation in order to attain a type of equality which recognises human difference and inclusive citizenship. It demonstrates a significant convergence between the vision of equality of the South African Constitution and that of some foreign jurisdictions such as Canada and India that have moved to establish admirable legal and juridical background towards the attainment of concrete equality.

Even though one can argue that there are still gaps in relation to meeting the learning needs of every learner within the South African jurisdiction, the major problem within the South African system one thinks is with implementation and conduct of the state education officials as exemplified in the facts of most relevant cases identified.⁵¹ However, the idea behind exemplifying South Africa's equality jurisprudence lies in informing useful achievements that can be emulated and mistakes that must be avoided. Care must be taken to avoid certain practices, submissions and decisions that portray attributes of restrictive equality which may serve to attenuate rather than assist in developing African states equality jurisprudence including Nigeria as far as realising equal opportunity in education for all is concerned within the region.

Comparatively, Nigeria and other African states that are yet to give positive interpretations and expressions to equality as a way of offering concrete opportunities for the attainment of equal educational opportunity can emulate the inspiring principles inherent in South Africa's equality jurisprudence. Since differences exist among learners, it is advocated

that differences in treatment should be applied so that equal benefit may be realised.

4 CONCLUSION

The implication of the observation in this chapter is that equal distribution of educational resources by the state will enhance the opportunities for Nigerian learners as Africans to get more education and more from education in terms of access and equality. Emphasis is on schools offering quality and inclusive education in terms of achievements and outcomes. Again, differentiation should apply when educational resources are distributed to schools. It should be such that the method of distribution compensates the disadvantaged positions of schools and less advantaged learners. Each school whether in urban or rural, regular or special should offer educational training and resources in a comparably related manner.

In the Nigerian context, there is an obvious need for a conceptual definition regarding inclusive equality in education—at least one that is expressive and practicable. In popular right concept of equality of educational opportunity, no education of a people would tantamount to denial of educational opportunity—a right which is constitutional.⁵² However, it has been an uphill task entrenching and achieving the somewhat universalisable concept of equality due to the failure of the Nigerian ruling class to internalise, establish and effectuate the prerequisites for successful implementation. Such neglect only brings about the stagnation of education and conscious denial of the rights in education to most learners and individuals in the society.

The idea that we are all created equal in spite of the apparent inequality within Nigeria's educational system and in the larger social context ignites considerable concern so much so that it is most difficult if not impossible to contemplate an education system that does not pay attention to the status, background and circumstances of learners. What should be really obtained is the substantive equality model where educational resources are distributed in a relevant disproportionate form. Such a method ameliorates the position of the underprivileged learners and strengthens capacities for implementation and attainment of vision 2063 in line with the shared aspiration of good governance, respect for human rights, justice and rule of law. It would also mean that each learner will be well educated, and no learner subjected to any form of discrimination.

NOTES

1. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13, The Right to Education (Art. 13 of the Covenant), Adopted at the Twenty-first Session of the Economic, Social and Cultural Rights December 1999, E/C.12/1999/10; Kishore Singh, 'Promotion of the equality of opportunity in education' Report of the Special Rapporteur on the right to education (2011) United Nations General Assembly (UNGA) A/HRC/17/29.
2. Adopted on 27 June 1981, and entered into force on 21 October 1986.
3. Adopted on 11 July 1990, and entered into force on 29 November 1999.
4. Adopted on 11 July 2003, and entered into force on 25 November 2005.
5. See article 11 of the African Charter on the Rights and Welfare of the Child (n. 3 above) and article 12 of the African Charter on Human and Peoples' Rights on the rights of Women in Africa (African Women's Protocol) (n. 4 above).
6. For example, internally displaced persons, national minorities, indigenous people, HIV positive/Aids victims etc.
7. Charity Ojogwu, "The challenges of attaining millennium development goals in education in Africa by 2015", *College Student Journal* 43 (2009): 375 (Ojogwu 2009).
8. Central Intelligence Agency World Fact book (2015), <http://www.cia.gov/library/publications/the-world-factbook/fields/2103.html#136>, accessed 1 November 2016; The African Economist (2013), Ranking of African Countries by literacy rate, <http://www.theafricaneconomist.com/ranking-of-african-countries-by-literacy-rate-zimbabwe-no-1#>, accessed 29 October 2016 (Central Intelligence Agency World Fact book 2015; The African Economist 2013).
9. As above.
10. Patience U. Enaibe, "Need to promote women education and participation in politics for sustainable national development", *International Journal of Educational Research and Development* 19 (2012): 1; Peter O Ejikeme, "Education as key to national development: Issues, challenges and the way forward", *Journal of Humanities and the Social Sciences* 6 (2014): 20; Noah Berger & Peter Fisher, "A well educated workforce is key to State prosperity" (2013), *Economic Analysis and Research Network*. Washington DC: Economic policy institute, accessed 29 October, 2016, <http://hdl.voced.edu.au/10707/294721> (Enaibe 2012; Ejikeme 2014; Berger and Fisher 2013).
11. Chima B. Iwuchukwu, "The Myths and Realities of equal educational opportunities in Nigeria" (PhD thesis, University of Nigeria Nsukka, 1988).

12. Nigeria National Policy on Education (1977).
13. Nigeria has adopted quite a number of policies on education. The first was the 1977 edition, which was successively followed by a revised 2nd, 3rd, and 4th editions of 1981, 1988 and 2004 respectively as well as a draft 2007 5th edition. The 2013 NPE is the 6th and latest edition, representing 10 years of basic education, 3 years of senior secondary education and 4 years of university education of 2013.
14. See the Aspiration 1 of the Vision and African Union Aspirations for 2063 as compiled in the African Union Commission Framework Document (2015) v.
15. See Nigeria National Policy on Education 6th Edition (2013) section 1; The Constitution of the Federal Republic of Nigeria as Amended, 1999 (Nigerian Constitution) section 18 (Nigeria National Policy on Education 2013; Constitution of the Federal Republic of Nigeria as Amended 1999).
16. Jones A. Akinpelu, *An introduction to philosophy of education* (London: Macmillan, 1981), 717 (Akinpelu 1981).
17. Christopher Jencks, "Whom must we treat equally for educational opportunity to be equal", *Ethics* 98 (1988): 518; Frankel Charles, "Equality of Opportunity", *Ethics* 81(3) (1971): 191.
18. As above.
19. Andrew Mason provides an insight into the different understandings of equality of opportunity, see Andrew Mason, "Equality of opportunities: Old and new", *Ethics* 111 (2001): 761 (Mason 2001).
20. Charles G. Ngwená, "Equality for people with disabilities in the workplace: an overview of the emergence of disability as a human right issue", *Journal of Juridical Science* 29 (2004): 167 (Ngwená 2004).
21. Louis P. Pojman and Robert Westmoreland, *Equality: Selected readings* (Oxford: Oxford University Press, 1997), 1 (Pojman and Robert 1997).
22. Charles Ngwená, (n. 20 above) 169.
23. Preamble to the Nigerian Constitution.
24. Section 42 (1) (a) & (b) of the Nigerian Constitution.
25. As above, section (2)
26. For instance, the United Nations Charter is a treaty that established the United Nations and professes to protect the interest of *all* men from fear and want adopted the formal equality approach. The Charter was signed on 26th June 1945. The Universal Declaration on Human rights (UDHR) also conceive equality in terms of formal equality; Adopted 10 December 1948, GA Res. 217 A (III) Art 1 & 2 expresses that *all* human beings are born free and equal and endowed with reason. The International Bill of Human Rights, comprising of International Covenant on Civil and Political Rights (ICCPR) and International

- Covenant on Economic, Social and Cultural Rights (ICESCR) similarly recognise equality for all persons as formal equality, Adopted by the UN General Assembly on 16th December 1966 G.A. Res 2200 A (XXI).
27. Cathi Albertyn & Beth Goldblatt, "Facing the challenge of transformation: Difficulties in the development of an indigenous jurisprudence of equality" *South African Journal on Human Rights* 14 (1998): 248 (Albertyn and Goldblatt 1998).
 28. Shelagh Day & Gwen Brodsky, "The duty to accommodate: Who will benefit?" *Canadian Bar Review* 75 (1996): 433 (Day and Brodsky 1996).
 29. As above.
 30. Richard Wollheim, "Equality" *Proceedings of the Aristotelian Society* (1955–56) 56:281–300. Reprinted as "Equality and equal rights", in *Justice and social policy: A collection of essays*, ed. Frederick A. Olafson (Englewood Cliffs: Spectrum books, 1961), 111 (Wollheim 1961).
 31. Drawn from a reading of Wollheim as above.
 32. Thomas Kleven, *Equitable Sharing: Distributing the benefits and detriments of democratic society* (Maryland: Lexington books, 2014) (Kleven 2014).
 33. As above.
 34. As above, 7–21.
 35. CG Ngwena, "Western Cape Forum for intellectual Disability *V Government of the Republic of South Africa*: A case study of contradictions in inclusive education" *African Disability Rights Yearbook* 1 (2013): 139 (Ngwena 2013).
 36. See Nigeria National Policy on education, 6th edition (2013) Section 2 para 12. See also Nigeria Universal Basic Education Act, 2004 (Nigeria National Policy on education 2013; Nigeria Universal Basic Education Act 2004).
 37. See section 18 of the Nigerian Constitution.
 38. Kjell Eide, 'Some key problems of equality in education' education', in *Planning education for reducing inequalities: International Institute for Educational Planning*, ed. Mark Blaug & Zsuzsa Ferge (Paris: UNESCO Press, 1981), 95 (Eide 1981).
 39. Aliu B. Fafunwa, *History of Education in Nigeria* 1974. (London: Macmillan 1974), 48 (Fafunwa 1974).
 40. See equality guarantee under section 9 of the 1996 Constitution of the Republic of South Africa on protection against discrimination. See also the Employment Equity Act (EEA) of 1998 and the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (The Equality Act). The EEA provides protection against discrimination in the workplace for a long list of protected groups and enables affirmative action in relation to

designated groups, while the Equality Act provides comprehensive protection against unfair discrimination in the public and private spheres, apart from where the EEA is applicable. I am grateful to Sandra Fredman for this information (Employment Equity Act 1998; Promotion of Equality and Prevention of Unfair Discrimination Act 2000).

41. Charles Ngwena, (n. 35 above) 152.
42. Cathi Albertyn & Beth Goldblatt, (n. 27 above) 249–250; Marius Pieterse, ‘What do we mean when we talk about transformative constitutionalism?’ *South African Public Law* 20 (2005): 155 (Pieterse 2005).
43. For instance, *President of the Republic of South Africa & Another v Hugo* 1997 (6) BCLR 708 (CC) para 41; *Prinsloo v Vander der Linde & Another* 1997 (6) BCLR 759 (CC); *Harksen v Lane NO and Others* 1998 (1) SA 300 (CC) para 53, *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others* 2000 (1) BCLR 39 (CC) para 62; *Minister of Finance v Van Heerden* 2004 (6) SA 121 (CC) para 26.
44. Charles Ngwena, (n. 35 above) 153.
45. *Harksen v Lane NO and Others* 1998 (1) SA 300 (CC).
46. Charles Ngwena (n. 35 above) 153.
47. *Harksen v Lane NO and Others* (n. 45 above) para 51.
48. As above.
49. *Harksen v Lane NO and Others* (n. 45 above) para 51–53.
50. *Prinsloo v Van der Linde* 1997 6 BCLR 759 (CC) para 31.
51. *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another* 2011 5 SA 87 (WCC); *Tripartite Steering Committee and Another v Minister of Basic Education and Others* (2015) 3 ALL SA 718.
52. See section 18 of the Nigerian Constitution.

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Education Law, Strategic Policy and Sustainable
Development in Africa

Agenda 2063

Onuora-Oguno, A.C.; Egbewole, W.O.; Kleven, T.E. (Eds.)

2018, XXIX, 306 p., Hardcover

ISBN: 978-3-319-53702-3