

EXAMINING NIGERIA'S MINIMUM AGE POLICY FOR UNIVERSITY ADMISSION: CONSTITUTIONALITY, HUMAN RIGHTS IMPLICATIONS, AND IMPACT ON CHILD DEVELOPMENT AND EDUCATION

*David Bassey Antia**

ABSTRACT

This Article critically examines the constitutionality and international human rights implications of a policy restricting access to university education based on age, specifically requiring students to be at least eighteen years old to write entrance exams. The former Minister for Education in Nigeria, Professor Mamman, justified this policy by arguing that younger students lack the maturity and understanding necessary for university education. This writer disagrees with Professor Mamman's views considering that a great population of students in universities all over the world including Nigeria are recording academic successes and significant advancement in their career pursuit despite being below the age of eighteen when they got admission into their respective institutions of higher learning.

Through a careful analysis of relevant constitutional provisions, international human rights treaties, and judicial precedents, this Article argues that such a policy constitutes discrimination and violates the fundamental rights of a child to education, development, and equality. By exploring the relevant provisions of domestic and international law, this Article aims to contribute to the ongoing debate on the subject by demonstrating the imperative of repealing the policy to ensure inclusive access to education for all, regardless of age.

UPDATE

This paper was originally submitted in response to the Nigerian government's July 2024 decision to set the minimum age for university admission at eighteen years, thereby excluding applicants under that threshold from consideration for tertiary education. However, in November 2024, this policy was reversed, with the minimum age for admission subsequently lowered to sixteen years. Despite this revision, the broader debate surrounding equitable access to education in Nigeria remains unresolved. This paper continues to contribute meaningfully to the ongoing discourse on the right to education in Nigeria, analysed through the lens

* Faculty of Law, Topfaith University, Mkpatak, Nigeria.

of the Constitution, domestic legal frameworks, and the international human rights regime.

I. INTRODUCTION

The Nigerian government's recent policy declaration, mandating a minimum age of eighteen for university entrance examinations,¹ has sparked controversy and raised fundamental questions about the right to education and development of a child.² Professor Mamman, the Minister for Education, justified this policy by arguing that younger students lack the maturity and understanding necessary for university education.³ However, this Article contends that such a policy contravenes constitutional provisions and international human rights norms which guarantees the right to education and development for all children.

The proposed policy poses a significant risk of excluding exceptionally gifted, self-motivated, and younger students from accessing higher education at their preferred institutions.⁴ In an era of rapid digitalization and globalization, this policy may likely hinder Nigeria's progress and competitiveness. Universities worldwide compete for top talent, and such a policy would undermine Nigeria's ability to attract and nurture exceptional students.⁵

The exemplary case of Oluwafemi Ositade, a seventeen-year-old secondary school student who secured fourteen scholarships, including one to Harvard University, totalling \$3.5 million,⁶ starkly illustrates the policy's implications. Implementing this policy would unjustly deny Ositade and similarly exceptional students the opportunity to capitalize on their achievements and pursue higher education at esteemed

¹ Francis Ikuerowo, *Nigeria's New University Admissions Policy Undermines Citizens' Right to Education*, AFR. LIBERTY (Feb. 7, 2025), <https://www.africanliberty.org/2025/02/07/nigerias-new-university-admissions-policy-undermines-citizens-right-to-education/>. The policy applies to not only universities but all institutions of higher learning. *Id.* Though reference is made to "university" in this Article, the author refers to all institutions of higher learning when using the term.

² Samuel Nwite, *Nigeria's New Education Policy That Limits Tertiary Education Age to 18 Sparks Backlash*, TEKEDIA (Aug. 27, 2024), <https://www.tekedia.com/nigerias-new-education-policy-that-limits-tertiary-education-age-to-18-sparks-backlash/>.

³ Suyi Ayodele, *Minister Tahir Mamman and His Varsity Age Limit*, NIGERIAN TRIB. (May 7, 2024), <https://tribuneonlineng.com/minister-tahir-mamman-and-his-varsity-age-limit/>.

⁴ Nwite, *supra* note 2.

⁵ *Id.*; see Ayodele, *supra* note 3.

⁶ Amakla Anagor-Ewuzie, *Meet Femi Ositade, a 17-Year Nigerian Who Gained Scholarships from 14 Varsities*, BUS. DAY (Nigeria), Apr. 28, 2024, at 8, <https://businessday.ng/e-edition/article/businessday-28-apr-2024/>.

international institutions, stifling the growth and development of Nigeria's most talented youth.

Furthermore, the imposition of age-based exclusion for university admission in Nigeria lays a foundation for an egregious dichotomy between Nigerian citizens residing domestically and those in the diaspora. While Nigerian children abroad enjoy unfettered access to higher education, their counterparts at home would, by this policy, be subjected to arbitrary restrictions.⁷ This policy therefore disproportionately affects indigent families, who lack the pecuniary means to send their children overseas to circumvent the restriction.⁸ Conversely, affluent families can effortlessly bypass this limitation by sending their children to study abroad, thereby exacerbating the already existing social disparities and inequality.⁹ Consequently, this policy is inherently discriminatory and perpetuates unequal access to education and opportunities for social ascension.

II. WHO IS A CHILD?

According to Black's Law Dictionary, the word "child" has two meanings in law:

(1) In the law of the domestic relations, and as to descent and distribution, it is used strictly as the correlative of "parent," and means a son or daughter considered as in relation with the father or mother. (2) In the law of negligence, and in laws for the protection of children, etc., it is used as the opposite of "adult," and means the young of the human species, (generally under the age of puberty,) without any reference to parentage and without distinction of sex.¹⁰

Article 2 of Children and Young Person's Law define a "child" as "[a] person under the age of fourteen (14) years" while a "young person" means

⁷ Nyeche Michael Felix, *Education or Restriction? How Nigeria's Age-Based University Policy Risks Stifling Our Brightest Minds*, THIS DAY LIVE (Nigeria) (Aug. 30, 2024), <https://www.thisdaylive.com/index.php/2024/08/30/education-or-restriction-how-nigerias-age-based-university-policy-risks-stifling-our-brightest-minds/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Child*, BLACK'S LAW DICTIONARY 196–97 (2d ed. 1910); see *Miller v. Finegan*, 7 So. 140 (Fla. 1890) (discussing the Texas Court's process of selecting a definition of "children" and echoing the two uses of the term given in Black's Law Dictionary).

“a person who has attained the age of fourteen (14) years and is under the age of seventeen years (17).”¹¹

The Child’s Right Act of Nigeria¹² is the most pivotal national legislation which provides a definitive and authoritative answer to the question “who is a child?” The Act states, in clear and unambiguous terms, that a child is an individual who has not yet reached the age of eighteen years.¹³ This explicit definition provides a reliable benchmark for determining childhood status, and its clarity and precision make it an indispensable reference point for resolving any ambiguities or disputes related to the definition of a child.

Children’s rights encompass the fundamental human rights of a child with a focus on the special protection and care necessitated by their vulnerability, developmental needs, and unique identity.¹⁴ These rights include the basic necessities of life, such as access to nutritious food, universal state-funded education, quality healthcare, and a juvenile justice system tailored to their age and developmental stage.¹⁵ The recognition and realization of these rights are essential for ensuring the well-being, dignity, and empowerment of children, allowing them to grow and thrive into capable and compassionate individuals.¹⁶

It is axiomatic that, as minors, children are bereft of the legal agency to make autonomous decisions in any jurisdiction globally.¹⁷

¹¹ Mariam A. Abdulraheem-Mustapha, *Child Justice Administration in the Nigerian Child Rights Act: Lessons from South Africa*, 16 AFR. HUM. RTS. L.J. 435, 440, n.38 (2016) (citing Children and Young Persons Law (1958) Cap. (C10), § 2 (Nigeria)).

¹² Child’s Right Act No. (26) (2003).

¹³ *Id.* at A597 § 277; see also U.N. Convention on the Rights of the Child art. 1, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 44; African Charter on the Rights and Welfare of the Child art. 2, *adopted* July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (entered into force Nov. 29, 1999).

¹⁴ See *Children’s Human Rights*, AMNESTY INT’L, <https://www.amnesty.org/en/what-we-do/child-rights/> (last visited Jan. 25, 2025) (citing U.N. Convention the Rights of the Child, *supra* note 13, pmbl, arts. 3, 8, 19, 39.).

¹⁵ See G.A. Res. 1386 (XIV), Declaration of the Rights of the Child (Nov. 20, 1959); African Charter on the Rights and Welfare of the Child, *supra* note 13, art 17 (“Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth . . .”).

¹⁶ See U.N. Convention on the Rights of the Child, *supra* note 13, pmbl., art. 3.

¹⁷ International human rights instruments therefore make provisions for the rights of parents of a child to be respected in choosing what is good for the child within the acceptable legal framework. *E.g.*, Convention Against Discrimination in Education art. 5(1)(b), Dec. 14, 1960, 429 U.N.T.S. 93. (“It is essential to respect the liberty of parents, and where applicable, of legal guardians, first to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities, and secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and

Consequently, their adult caregivers, including parents, social workers, teachers, youth workers, and others, are vested with the fiduciary authority to make decisions on their behalf.¹⁸ This legal framework recognizes the inherent vulnerability and dependence of children, acknowledging that they require sagacious guidance, protection, and support from adults to ensure their optimal well-being and development.¹⁹

It is a widely-held contention among scholars of children's rights that the prevailing legal framework disenfranchises children from exercising sufficient autonomy over their lives, thereby rendering them susceptible to vulnerability.²⁰ An erudite author, Louis Althusser, has lamented the legal machinery governing children, characterizing it as oppressive state apparatuses that perpetuate adult exploitation and abuse.²¹ Structures, such as government policies, have been criticized by commentators for obscuring the egregious realities of child poverty, limited educational opportunities, and child labor.

Against this backdrop, the recent policy barring students under eighteen from taking university entrance exams in Nigeria is an egregious manifestation of oppression, repression, injustice, and inequity.²² In light of the stark limitations on their agency, children can aptly be regarded as a marginalized minority group which necessitates a shift in societal attitudes and behaviours towards them.²³

A. The Right to Education: International and National Framework

The right to education is revered as a sacrosanct and indispensable cornerstone within the pantheon of international human rights, for it is

no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction . . .”).

¹⁸ Child's Right Act No. (26), A460, A464, §§ 2, 20 (2003) (Nigeria); U.N. Convention on the Rights of the Child, *supra* note 13, pmbl, art. 5.

¹⁹ Gerison Lansdown, *Children's Welfare and Children's Rights*, in *CHILD WELFARE AND SOCIAL POLICY: AN ESSENTIAL READER* 117, 117 (Harry Hendrick ed., 2005).

²⁰ See, e.g., Noam Peleg, *A Children's Rights Dilemma - Paternalism Versus Autonomy*, in *THE RIGHTS OF THE CHILD* 7, 8–11 (2023); Jonathan Herring, *Vulnerability and Children's Rights*, 36 *INT'L J. SEMIOTICS L.* 1509, 1512–14 (2022).

²¹ CHRIS JENKS, *CHILDHOOD* 40–41 (2d ed. 2005) (discussing the concept of ideological state apparatuses as developed in LOUIS ALTHUSSER, *IDEOLOGY AND IDEOLOGICAL STATE APPARATUSES* (1970)).

²² The author is not alone in this position. E.g., Afeez Bolaji, *Student Under 18 Are Too Young for HE, Minister Decides*, U. WORLD NEWS: AFR. ED. (July 22, 2024), <https://www.universityworldnews.com/post.php?story=20240722050050570> (National Association of Nigerian Student's (NANS) President Pedro Obi is quoted saying, “NANS is saying no to the plans by the federal government to set the minimum age for admission of students into higher institutions at eighteen; it is unfriendly, unjust and not equitable.”).

²³ JENKS, *supra* note 21, at 145.

perceived as the luminous portal to unlocking the transformative power of empowerment, dignity, and freedom.²⁴ As the paramount catalyst for personal and societal development, education takes an esteemed position as an important factor or coefficient of social justice that illuminates the path to self-actualization and enables individuals to transcend the shackles of ignorance and oppression, and to ascend to the pinnacle of human flourishing.²⁵

At the risk of sounding pedantic, it must be emphasized that the exponential impact of education has the profound power to catapult a society to unprecedented heights of dignity, where each member can unlock their full potential, foster personal growth, and embark on a shared journey towards self-actualization and collective prosperity.²⁶ In fact, the right to education is as essential as the right to life itself. As the venerable education philosopher John Dewey so aptly put it, “[e]ducation is not preparation for life; education is life itself.”²⁷ This fundamental truth confirms the indispensable role of education in shaping individual and societal destinies, thus making it an inalienable right that deserves unwavering recognition and protection. On the import of education on the personal development of every human and the progress of societies, Article 5(1)(a) of the UNESCO Convention Against Discrimination in Education, 1960 posits:

The States Parties to this Convention agree that: (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace²⁸

The recognition of the right to education in international and regional legal instruments, such as treaties, conventions, covenants, and charters, is unsurprising yet profoundly significant.²⁹ It represents a universal

²⁴ Convention Against Discrimination in Education, *supra* note 17, arts. 5–6; Declaration of the Rights of the Child, *supra* note 15.

²⁵ FRANCIS THAISE CIMENE ET AL., EMPOWERING NATIONS THROUGH EDUCATION: STRATEGIES FOR SUSTAINABLE DEVELOPMENT iii, 6–7 (2023).

²⁶ *Id.* at 87, 90–91.

²⁷ Kandan Talebi, *John Dewey - Philosopher and Educational Reformer*, EUR. J. EDUC. STUDS. 1, 1 (2015).

²⁸ Convention Against Discrimination in Education, *supra* note 17, art. 5(1)(a).

²⁹ See, e.g., U.N. Convention on the Rights of the Child, *supra* note 13, arts. 15, 23, 24, 28–29, 33–34, 40; International Covenant on Economic, Social and Cultural Rights, art. 13,

sentiment and a collective effort to establish a robust bulwark against ignorance and oppression. These instruments do not create this right *ex nihilo*, but rather, they declaratively affirm what is inherently inalienable to every human being.³⁰ By pronouncing on the sacrosanct entitlement to education, they confer their imprimatur, thereby crystallizing its status as a fundamental human right.³¹ Furthermore, they provide a template for implementation and realization by every government, ensuring that this right is not merely aspirational, but actionable.³² These instruments therefore exist to move the welfare of these rights from conscience to consciousness; in the social justice equation, it moves this right from the point of mere rhetoric and abstraction to a tangible reality.³³

There has been considerable scholastic pontificating on the effects of treaties and soft law in international instruments, with many scholars weighing in on the matter.³⁴ However, it remains essential to clarify from the outset that treaties precipitate concrete obligations for states and create binding commitments that are enforceable under international law.³⁵ In contrast, soft law generates mere moral imperatives, devoid of legal consequences, serving as non-binding guidelines or recommendations.³⁶ This distinction is crucial, as it determines the extent to which states are legally accountable for their actions and the consequences of non-compliance.

To become legally bound by a treaty, a state must go beyond mere signature and formally ratify the agreement, as signature alone is insufficient and may only constitute a declaration of intent rather than a

Dec. 16, 1966, 993 U.N.T.S. 4; Convention Against Discrimination in Education, *supra* note 17, art. 5; Declaration of the Rights of the Child *supra* note 15, arts. 5, 7.

³⁰ See U.N. Convention on the Rights of the Child, *supra* note 13, pmbl., arts. 19, 23–24, 28–29, 32–33, 40; International Covenant on Economic, Social and Cultural Rights, *supra* note 29, pmbl., arts. 10, 13–14; Convention Against Discrimination in Education, *supra* note 17, at 6; Declaration of the Rights of the Child, *supra* note 15, arts. 5, 7.

³¹ U.N. Convention on the Rights of the Child, *supra* note 13, pmbl., arts. 19, 23–24, 28–29, 32–33, 40; International Covenant on Economic, Social and Cultural Rights, *supra* note 29, pmbl., arts. 10, 13–14; Convention Against Discrimination in Education, *supra* note 17, arts. 5–6; Declaration of the Rights of the Child, *supra* note 15, arts. 5, 7.

³² See International Covenant on Economic, Social and Cultural Rights, *supra* note 29, art. 2; U.N. Convention on the Rights of the Child, *supra* note 13, art. 4; African Charter on the Rights and Welfare of the Child, *supra* note 13, art. 1.

³³ See Clara Sandoval, *Transitional Justice and Social Change*, 11 SUR INT'L J. ON HUM. RTS. 181, 181 (2014).

³⁴ E.g., Matthias Goldmann, *We Need to Cut Off the Head of the King: Past, Present, and Future Approaches to International Soft Law*, 25 LEIDEN J. INT'L L. 335, 335–39 (2012); Dinah Shelton, *Soft Law*, in HANDBOOK OF INTERNATIONAL LAW 1, 7–14 (2008).

³⁵ Vienna Convention on the Law of Treaties art. 26, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

³⁶ Shelton, *supra* note 34, at 4; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. No. 95, ¶ 70 (July 8).

definitive commitment.³⁷ Ratification, on the other hand, constitutes a state's consent to be legally bound.³⁸ Without further elaboration on the significance of treaties, it is important to note that since the landmark adoption of the Universal Declaration of Human Rights in 1948,³⁹ the right to education has been consistently upheld, reaffirmed, and reinforced through a plethora of international and regional treaties, conventions, and covenants.⁴⁰ This solid normative framework has resulted in a gradual but positive strengthening of the legal imperative for states to guarantee access to education, thereby solidifying its status as a fundamental human right.⁴¹

1. International Framework

The Universal Declaration of Human Rights adopted in 1948 states in Article 26: “[e]veryone has the right to education.”⁴² Since then, the right to education has been enshrined in a number of landmark instruments, including the: (1) UNESCO Convention Against Discrimination in Education,⁴³ (2) International Covenant on The Elimination of All Forms of Racial Discrimination (1965),⁴⁴ (3) International Covenant on Economic, Social and cultural Rights (1966),⁴⁵ (4) Convention on The Elimination of All Forms of Discrimination Against Women (1979),⁴⁶ (5) Convention on The Rights of The Child (1989),⁴⁷ (6) International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families (1990),⁴⁸ and

³⁷ Vienna Convention on the Law of Treaties, *supra* note 35 (providing that a state's consent to be bound is merely formalized with the respective state representative's signature).

³⁸ *Id.* art. 14; *Glossary of Terms Relating to Treaty Actions*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml (last visited Mar. 3, 2025).

³⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

⁴⁰ *E.g.*, *id.* art. 26; International Covenant on Economic, Social and Cultural Rights, *supra* note 29, arts. 13–14; U.N. Convention on the Rights of the Child, *supra* note 13, arts. 28–29.

⁴¹ Hannah Ritchie et al., *Global Education*, OUR WORLD DATA, <https://ourworldindata.org/global-education> (last visited Feb. 10, 2025) (depicting the positive trend of global education).

⁴² Universal Declaration of Human Rights, *supra* note 39, art. 26.

⁴³ Convention Against Discrimination in Education, *supra* note 17.

⁴⁴ G.A. Res. 2106 (XX), International Covenant on the Elimination of All Forms of Racial Discrimination, arts. 5(e)(v), 7, (Dec. 21, 1965).

⁴⁵ International Covenant on Economic, Social and Cultural Rights, *supra* note 29.

⁴⁶ Convention on the Elimination of All Forms of Discrimination Against Women art. 10, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 14.

⁴⁷ U.N. Convention on the Rights of the Child, *supra* note 13, art. 28.

⁴⁸ G.A. Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 30 (Dec. 18, 1990).

(7) Convention on The Rights of Persons with Disabilities (2006).⁴⁹ The right to education has been recognised in International Labour Organization (ILO) conventions and International Humanitarian Law, as well as in regional treaties.⁵⁰

While certain treaties like the UNESCO Convention Against Discrimination in Education and the International Covenant on Economic, Social and Cultural Rights, enshrine the right to education in a broad, general and unqualified manner,⁵¹ others tailor their protection of this right to specific demographics such as children, women, and minorities, or to particular contexts such as education in armed conflicts and education and child labor.⁵² What we shall consider is the protection of this right as it specifically applies to a child.

Article 26 of the Universal Declaration of Human Rights provides:

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

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations,

⁴⁹ Convention on the Rights of Persons with Disabilities art. 24, *adopted* Dec. 12, 2006, 2515 U.N.T.S. 70.

⁵⁰ *E.g.*, Convention Concerning Paid Educational Leave arts. 1–3, *adopted* June 24, 1974, 59 ILO 1, 1023 U.N.T.S. 243 (entered into force Sept. 23, 1976); African Charter on the Rights and Welfare of the Child, *supra* note 13, art. 11; African Youth Charter art. 13 (July 2, 2006), https://au.int/sites/default/files/treaties/7789-treaty-0033_-_african_youth_charter_e.pdf. *See generally* KRISTIN HAUSLER ET AL., PROTECTING EDUCATION IN INSECURITY AND ARMED CONFLICT: AN INTERNATIONAL LAW HANDBOOK (2d ed. 2019) (discussing relevant international law frameworks in increasing access to education).

⁵¹ *International Law, RIGHT TO EDUC.*, <https://www.right-to-education.org/page/international-law> (last visited Feb. 22, 2025); *see* International Covenant on Economic, Social and Cultural Rights, *supra* note 29; Convention Against Discrimination in Education, *supra* note 17, pmbl.

⁵² *See, e.g.*, U.N. Convention on the Rights of the Child, *supra* note 13, art. 28; Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 46; International Covenant on the Elimination of All Forms of Racial Discrimination, *supra* note 44; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 4, *adopted* June 8, 1977, 1125 U.N.T.S. 609; Worst Forms of Child Labour Convention (No. 182), *adopted* June 17, 1999, 2133 U.N.T.S. 161, pmbl., art. 7; *International Law*, *supra* note 51.

racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.⁵³

Similarly, Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1966 provides:

The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

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

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

(c) *Higher education 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 education;*

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

⁵³ Universal Declaration of Human Rights, *supra* note 39, art. 26 (emphasis added).

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.⁵⁴

The UNESCO Convention Against Discrimination in Education took on a painful but fruitful expedition to tackle what discrimination against the enjoyment of this right entails.⁵⁵ Article 1 of the Convention, it is provided thus:

1. For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

(a) of depriving any person or group of persons of access to education of any type or at any level;

(b) of limiting any person or group of persons to education of an inferior standard;

(c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or

(d) of inflicting on any person or group of persons conditions which are in-compatible with the dignity of man.

⁵⁴ International Covenant on Economic, Social and Cultural Rights, *supra* note 29, art. 13 (emphasis added).

⁵⁵ See Convention Against Discrimination in Education, *supra* note 17, pmbl.

2. For the purposes of this Convention, the term ‘education’ refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.⁵⁶

To prevent and eliminate discrimination within the meaning of Article 1, the States party to this Convention are employed under Article 3 to undertake:

- (a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
- (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;
- (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;
- (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;
- (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.⁵⁷

2. Regional Framework

As a prominent regional instrument, the African Charter on Human and Peoples’ Rights (hereafter the “ACHPR” or simply the “Charter”), plays a vital role in safeguarding the right to access education for all individuals.⁵⁸ Nigeria, having acceded to this Charter, is unequivocally bound by its provisions and is obligated to eradicate any policies or practices that violate its commitments.⁵⁹ By ratifying the Charter, Nigeria has explicitly undertaken a legal duty to harmonize its domestic

⁵⁶ *Id.* art. 1.

⁵⁷ *Id.* art. 3.

⁵⁸ African Charter on Human and Peoples’ Rights arts. 17, 25, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3 (entered into force Oct. 21, 1986).

⁵⁹ *Id.*

laws, policies, and practices with the Charter's provisions, particularly regarding the right to education.⁶⁰

Article 17 of the Charter provides as follows, "Every individual shall have the right to education."⁶¹ Article 25 provides that

State Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.⁶²

Similarly, Article 11(3)(c) of the African Charter on the Rights and Welfare of the Child provides that "States Parties to the present Charter shall take all appropriate measures . . . to make the higher education accessible to all on the basis of capacity and ability by every appropriate means."⁶³

B. Assessing The State's Fiduciary Duty to Guarantee Children's Right to Development

The child's right to education is the key to the child's right to development because it unlocks the inherent potential of the child and fosters his transformative journey towards self-actualization.⁶⁴ Development, in this context, transcends mere material prosperity, it encompasses the empowerment of the child to participate meaningfully in the civic, social, and cultural building of the society.⁶⁵ It is the cornerstone of human dignity, autonomy, and freedom.⁶⁶ The child's enjoyment of the right to development is, therefore, inextricably linked to the creation of an enabling environment that nurtures his holistic growth, intellectual,

⁶⁰ *Id.* arts. 17, 47.

⁶¹ *Id.* art. 17(1).

⁶² *Id.* art. 25.

⁶³ African Charter on the Rights and Welfare of the Child, *supra* note 13, art. 11(3)(c).

⁶⁴ See CIMENE ET AL., *supra* note 25, at 87, 90–91.

⁶⁵ Wale Adesoye, *Beyond the Classroom: How Education Empowers the Next Generation*, CORESTART FOUND., <https://corestartfoundation.org/beyond-the-classroom-how-education-empowers-the-next-generation/> (last visited Mar. 3, 2025); Venera G. Zakirova & Ekaterina L. Nikitina, *Developing the Pedagogical Culture of Parents by Means of Social Partnership with a Supplementary Education Institution*, 11 INT'L J. ENV'T SCI. EDUC. 2099, 2100, 2107 (2016) (discussing the social and cultural importance of effective education in childhood development).

⁶⁶ Peter Lawler, *Human Dignity and Higher Education*, NEW ATLANTIS, No. 26, 2010, at 86, 88.

emotional, and psychological well-being.⁶⁷ Conversely, the denial of a child's access to tertiary education constitutes a violation of this right, effectively relegating the child to the periphery of society and stifling his potential to contribute to the collective good.⁶⁸ This is not only a mockery on our moral and ethical sensibilities but also a legally cognizable infringement of the child's inherent rights, warranting a sharp condemnation as offered by this writer. The right to development was first explicitly recognized as a distinct individual and collective right in 1981, as enshrined in Article 22 of the ACHPR.⁶⁹ Article 22(1) provides that "[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind."⁷⁰

This right was subsequently proclaimed by the United Nations in 1986 in the "Declaration on the Right to Development" which was adopted by the *United Nations General Assembly Resolution 41/128*.⁷¹ It is a group right of peoples as opposed to an individual right and was reaffirmed by the 1993 *Vienna Declaration and Programme of Action*.⁷² The right to development is inextricably linked to the right to education, as the latter serves as a catalyst for the former in fostering the empowerment, self-actualization, and participatory agency of individuals and groups.⁷³ Consequently, children as a group have a right to development,⁷⁴ and the denial of access to education at any level constitutes a violation of the right to development and perpetuates a cycle of marginalization, exclusion, and oppression.⁷⁵ The recent policy which seeks to foster age-based exclusion of children from the enjoyment of this right can best be described as

⁶⁷ See generally Noam Peleg, *Reconceptualising the Child's Right to Development: Children and the Capability Approach*, 21 INT'L J. CHILD. RTS. 523 (2013) (explaining how the Capability Approach to child development views the child as one with rights to choose, thereby creating the proper environment for development).

⁶⁸ *Denial of Right to a People to Pursue Development*, ENCYC. WORLD PROBS. & HUM. POTENTIAL, <https://encyclopedia.uia.org/problem/denial-right-people-pursue-development> (last visited Mar. 10, 2025).

⁶⁹ African Charter on Human and Peoples' Rights, *supra* note 58, art. 22.

⁷⁰ *Id.* art. 22(1).

⁷¹ G.A. Res. 41/128, Declaration on the Right to Development (Dec. 4, 1986).

⁷² World Conference on Human Rights, *Vienna Declaration and Programme of Action*, pmbl., ¶ 1, U.N. Doc. A/CONF.157/23 (June 25, 1993).

⁷³ Surya Subedi, *Introductory Note for the Declaration on the Right to Development*, U.N. AUDIOVISUAL LIBR. INT'L L. 4, 6–7 (Jan. 2021), <https://legal.un.org/avl/ha/drd/drd.html>.

⁷⁴ *Id.* at 4.

⁷⁵ See Fons Coomans, *Identifying Violations of the Rights to Education*, RTS. ED. INITIATIVE, 2007, 125, 128–32.

retrogressive, draconian, discriminatory, misguided and ill-conceived.⁷⁶ It is incumbent upon the federal government to recognize, respect, and fulfil this right, by ensuring that all peoples including children can realize their full potential and contribute meaningfully to the global community.⁷⁷

It is important to take cognizance of the fact that the right to development has been unequivocally enshrined in the mandate of various United Nations institutions.⁷⁸ The preamble of the Declaration on the Right to Development succinctly articulates the notion that development constitutes a multifaceted process which encompasses economic, social, cultural, and political dimensions, all aimed at perpetually enhancing the well-being of the entire populace and all individuals—predicated on their active, free, and meaningful participation in development, as well as the equitable distribution of benefits accruing therefrom.⁷⁹ In light of this understanding, this critical analysis poses a pivotal question: does the policy which precludes students under the age of eighteen from sitting for university entrance examinations, comport with the imperative of guaranteeing unfettered access to development for the Nigerian child, as enshrined in national legislations and international human rights law?

Notwithstanding the plethora of aforementioned laws and the fact that the right to education for children has attained a justiciable status in our jurisprudence, as exemplified by the groundbreaking decision in *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*⁸⁰ before the Economic Community of West African States (“ECOWAS”) Community Court of Justice, the Nigerian government still makes policies like the current one to undermine the right of access to

⁷⁶ National Policy on Inclusive Education in Nigeria 1–2 (2023), FED. MINISTRY OF EDUC., <https://education.gov.ng/national-policy-on-inclusive-education-in-nigeria-2023/>; Bolaji, *supra* note 22.

⁷⁷ See generally U.N. EDUC., SCI., CULTURAL ORG., EDUCATION FOR SUSTAINABLE DEVELOPMENT: A ROADMAP (2020) (emphasizing the importance of governmental effort to improve education globally and implementing initiatives to that effect).

⁷⁸ Subedi, *supra* note 73, at 4, 6; see also *Main Bodies*, UNITED NATIONS, <https://www.un.org/en/about-us/main-bodies> (last visited Mar. 17, 2025).

⁷⁹ Declaration on The Right to Development, *supra* note 71, pmbl.

⁸⁰ *SERAP v. Nigeria*, ECW/CCJ/APP/12/07, Community Court of Justice ECOWAS Law Reporter [CCJELR], Judgment (Nov. 30, 2010), <http://www.courtecawas.org/wp-content/uploads/2023/04/CCJE-LAW-REPORT-2010-ENGLISH.pdf>. The Socio-Economic Rights and Accountability Project’s (“SERAP”) suit followed a petition sent by SERAP to the Independent Corrupt Practices and Other Related Offences Commission (“ICPC”), which led to the discovery by the ICPC of massive corruption and mismanagement of the UBEC funds. The investigation also resulted in the recovery of stolen N3.4 billion, meant to improve the quality of education and access to education of every Nigerian child. The organization used the ICPC findings as the basis for its suit before the ECOWAS Court. *Infra* notes 82–84 and accompanying text.

education of citizens.⁸¹ In this landmark ruling, the court unequivocally declared that all Nigerians possess a legal and human right to education, that can be enforced by citizens.⁸² The court dismissed the Federal Government's objections, raised by the Universal Basic Education Commission ("UBEC"), that argued education constitutes a mere directive policy rather than a legal entitlement.⁸³ This seminal decision, rendered on November 30, 2010, followed a suit initiated by the Socio-Economic Rights and Accountability Project ("SERAP") against the Federal Government and UBEC, alleging violations of the right to quality education, dignity, and economic and social development, as guaranteed by Articles 1, 2, 17, 21, and 22 of the ACHPR.⁸⁴

III. CONSTITUTIONALITY OF THE POLICY: A LEGAL ANALYSIS

Before embarking on the contentious inquiry into the constitutionality and legality of the policy in question, it is essential to establish the justiciability of the right to education within our legal framework. This approach, to the author's mind, will obviate the risk of engaging in a futile exercise. Accordingly, the issue of justiciability of the right to education under the Nigerian Constitution will be examined next.

A. Is the Right to Education of a Child Justiciable Under the 1999 Constitution of Nigeria?

In Nigeria the question has always been asked whether there is a fundamental right to education. This is because there is no section under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999

⁸¹ See Basit Jamui, *Minister of Education Clarifies Controversial 18-Year Age Limit for University Admissions in Nigeria*, LEGIT (Oct. 11, 2024, 8:46 AM), <https://www.legit.ng/education/1618747-minister-education-clarifies-controversial-18-year-age-limit-university-admissions-nigeria/> (discussing the limit on university admission test being for eighteen-year-olds and older); see also Samuel Anyanwu, *Federal Government Reverts Tertiary Admission Age to 16 at Ministerial Inaugural Briefing*, FED. MINISTRY INFO. & NAT'L ORIENTATION (Nov. 6, 2024), <https://fmino.gov.ng/federal-government-reverts-tertiary-admission-age-to-16-at-ministerial-inaugural-briefing/> (citing FED. REPUBLIC OF NIGERIA, NATIONAL POLICY ON EDUCATION iv (6th ed. 2013)) (explaining the reversion to a policy restricting university admission to those sixteen years and older with an exception for gifted individuals).

⁸² SERAP v. Nigeria, ECW/CCJ/APP/12/07, Judgment, at ¶ 26 (supporting the human right to education); SERAP v. Nigeria, ECW/CCJ/APP/12/07, Community Court of Justice ECOWAS Law Reporter [CCJELR], ¶¶ 19, 30, 32, Ruling (Oct. 27, 2009), <http://www.courtecawas.org/wp-content/uploads/2023/04/CCJE-LAW-REPORT-2010-ENGLISH.pdf> (explaining that the human right to education can be enforced by citizens).

⁸³ SERAP v. Nigeria, ECW/CCJ/APP/12/07, Ruling, ¶¶ 14, 17, 19.

⁸⁴ SERAP v. Nigeria, ECW/CCJ/APP/12/07, Judgment, ¶¶ 1–9.

(hereafter the “Constitution”)⁸⁵ which provides for a fundamental right to education. It is however noted that this ostensible lacuna in the Constitution is mitigated by the provision for education in Section 18 of Chapter II.⁸⁶ The said Section provides:

- (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
- (2) Government shall promote science and technology.
- (3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide:
 - (a) Free, Compulsory and Universal Primary Education;
 - . . .
 - (c) Free University Education; and
 - (d) Free Adult Literacy Programme.⁸⁷

Notwithstanding its categorization under Chapter II, titled “Fundamental Objectives and Directive Principles of State Policy,” Section 18, though often misconstrued as merely hortatory, is mandatory.⁸⁸ The Constitution, through Section 6(6)(c), is often misconceived as ostensibly precluding citizens from seeking judicial redress for the government's failure to implement these provisions.⁸⁹ Assuming (without conceding) that the said provisions are non-justiciable, that does not imply that the government should be indolent in its implementation or that the benefits enshrined therein should be cavalierly dismissed. This is in accord with the opinion of the Supreme Court in the case of *Attorney General of Ondo State v. Attorney General of the Federation & Ors* wherein the Court in interpreting the provisions of Chapter II vis-à-vis Item 60(a) of the Exclusive List, declared as follows:

[E]very effort is made from the Indian perspective to ensure that the directive principles are not a dead letter. What is necessary is done to see that they are observed as much as practicable so

⁸⁵ See generally CONSTITUTION OF NIGERIA (1999), ch. IV (listing the fundamental rights of all people).

⁸⁶ *Id.* ch. II, § 18.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Stanley Ibe, *Implementing Economic, Social and Cultural Rights in Nigeria: Challenges and Opportunities*, 10 AFR. HUM. RTS. L.J. 197, 198, 200–02, (2010) (discussing the misconceptions surrounding Section 6(6)(c) of the Constitution of Nigeria).

as to give cognizance to the general tendency of the Directive. It is necessary therefore to say that our own situation is of peculiar significance. We do not need to seek uncertain ways of giving effect to the Directive Principles in Chapter II of our Constitution. The Constitution itself has placed the entire Chapter II under the Executive Legislative List. By this, it simply means that all the Directive Principles need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together, to give expression to any one of them through appropriate enactment as occasion may demand.⁹⁰

Besides, against the backdrop of the decision of the Supreme Court in the case of *Federal Republic of Nigeria v. Anache & Ors., in Re Olafisoye*, the non-justiciability of Chapter II—which of course includes the provisions of Section 18 of the Constitution—is neither sacrosanct nor total, as the subsection provides a leeway by the use of the words “except as otherwise provided by this Constitution.”⁹¹ This means that if the Constitution otherwise provided in another section, which makes a section or sections of Chapter II justiciable it will be so interpreted by the Courts. The purpose of this assertion by the Supreme Court in this case implies, amongst other things, that if the National Assembly in the exercise of its powers under Item 60(a) enacts a law or act on any of the subjects of Chapter II, that subject matter automatically becomes justiciable, because the National Assembly cannot, by any law in a democratic society, oust the jurisdiction of the Court.⁹²

However, the Federal Government of Nigeria, through the National Assembly, has, pursuant to the objectives of Section 18, enacted an act known as Compulsory, Free and Universal Basic Education Act 2004 (“UBE Act”).⁹³ The major objective of the Act is to provide compulsory, free and universal education for children up to junior secondary school. Section 2 of the UBE Act provides as follows:

2(1) Every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary age.

2(2) Every parent shall ensure that his child or ward attends and completes his:-(a) primary school education; and(b)junior

⁹⁰ Attorney General of Ondo State v. Attorney General of the Federation [2002] 111 Federation Weekly Law Reports [FWLR] 1972, 2144 (Nigeria).

⁹¹ Federal Republic of Nigeria v. Alhaji Mika Anache, in re Olafisoye [2004] ALL FWLR (Pt. 186) 1106, 1153.; CONSTITUTION OF NIGERIA (1999), ch. I, § 6(6)(c).

⁹² CONSTITUTION OF NIGERIA (1999), sched. 2 § 60(a), ch. II.

⁹³ Compulsory, Free Universal Basic Education Act (2004).

secondary school education by endeavouring to send the child to primary and junior secondary school.

2(3) The stakeholders in education in a Local Government shall ensure that every parent or person who has the care and custody of a child performs the duty imposed on him under section 2(2) of this Act.⁹⁴

Section 3(1) provides that “[t]he services provided in public primary and junior secondary schools shall be free of charge.”⁹⁵ Section 3(2) makes it an offense for anyone to contravene the provisions of Section 3(1) of the Act.⁹⁶

In 2003 the Federal Government of Nigeria enacted the Child’s Rights Act.⁹⁷ The provisions of Section 15 of the Child’s Rights Act are in *pari materia* with those of Section 2 of the UBE Act, thereby reinforcing the legislative intent to guarantee the right to education.⁹⁸ In a democratic polity, the National Assembly cannot, through legislation, divest the judiciary of its jurisdiction to adjudicate on matters pertaining to fundamental rights.⁹⁹ By exercising its powers under Item 60(a) of the Exclusive Legislative List, the National Assembly has effectively resuscitated and concretized the benefits enshrined in Chapter II (including Section 18) of the Constitution, particularly through the enactment of the UBE Act and the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.¹⁰⁰

Consequently, the right to education has evolved into an enforceable fundamental right in Nigeria, empowering citizens to compel the government to provide education if they so desire.¹⁰¹ This proposition is unequivocally supported by the decision of the Economic Community of West African States Court of Justice in the case of *Registered Trustees of the Socio-Economic Rights and Accountability (SERAP) v. Federal*

⁹⁴ *Id.* § 2(1)–2(3).

⁹⁵ *Id.* § 3(1).

⁹⁶ *Id.* § 3(2).

⁹⁷ Child’s Rights Act (2003).

⁹⁸ *Id.* § 15; Compulsory, Free Universal Basic Education Act (2004), § 2.

⁹⁹ Johnny Okongwu et al., *The Legal Framework for Judicial Review in Nigeria*, 6 AFR. J.L. & HUM. RTS. 17, 17 (2022).

¹⁰⁰ CONSTITUTION OF NIGERIA (1999), sched. 2, § 60(a), ch. II; Compulsory, Free Universal Basic Education Act (2004); African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act (1983) Cap. (A9).

¹⁰¹ SERAP v. Nigeria, ECW/CCJ/APP/12/07, Community Court of Justice ECOWAS Law Reports [CCJELR], ¶¶ 19, 30, 32, Ruling (Oct. 27, 2009), <http://www.courtccowas.org/wp-content/uploads/2023/04/CCJE-LAW-REPORT-2010-ENGLISH.pdf>.

Republic of Nigeria and Anor, which affirmatively established that every Nigerian has a justiciable right to education.¹⁰²

It is important that governments at both federal and state levels take concrete steps to actualize this fundamental right, rather than merely paying lip service to education. The time for political rhetoric is over; it is now incumbent upon the government to demonstrate its commitment to education through tangible actions.

*B. Is the Policy of Excluding Children from Sitting
for National Examinations Constitutional or Legal
Under Current Nigerian Law?*

Having established the justiciability of the right to education, we can now proceed to examine the constitutionality of the policy in question by invoking the provisions of the Child's Rights Act and other relevant legal frameworks. This will entail scrutinizing the policy's implications and assessing its compatibility with our corpus juris.

The Child's Rights Act, as a legislative instrument, provides a crucial framework for evaluating the policy's constitutionality.¹⁰³ The Child's Rights Act provides in Section 3(1) thus: "The provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to Fundamental Rights, shall apply as if those provisions are expressly stated in this Act."¹⁰⁴

By the implication of the above-stated provision of the Act, there is no gainsaying that every child is protected under the provisions of Chapter IV of the Constitution and therefore has entitlements to the rights contained therein.¹⁰⁵

Section 39(1) of the Constitution unequivocally guarantees the right to freedom of expression which encompasses the liberty to hold opinions, receive, and impart ideas and information *without any hindrance*.¹⁰⁶ The relationship between freedom of expression and freedom of education is palpably clear, as we know that restricting one can have a deleterious impact on the other. "Without being educated and literate the right to freedom of speech is near insignificant."¹⁰⁷ In the same way,

[t]he right to life is meaningless when there is no right to food and adequate healthcare. This idea is reinforced by the Supreme

¹⁰² *Id.*

¹⁰³ Child's Rights Act (2003).

¹⁰⁴ *Id.* § 3(1).

¹⁰⁵ *Id.*; CONSTITUTION OF NIGERIA (1999), ch. IV.

¹⁰⁶ CONSTITUTION OF NIGERIA (1999), ch. I, § 39(1).

¹⁰⁷ DAVID ANTIA, ARGUMENT AGAINST THE NON-JUSTICIABLE STATUS OF CHAPTER II OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS AMENDED 12 (Feb. 19, 2024), <https://ssrn.com/abstract=4731935>.

[C]ourt of India in the case of *Francis Coralie v. Union Territory of [Delhi]*, where it held that:

The right to life includes the right to live with human dignity and all that goes with it, namely the necessities of life such as adequate nutrition clothing and [shelter] . . . the magnitude and [content of the] component[s] of this right will depend on the extent of economic development of the country, but it must[,] in any view of the matter, include the ba[sic] necessities of life . . . the fundamental principle of life which is the most precious human right . . . must be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure years to come and enhance the dignity of the individual and the worth of human person. . . . we think that the right to life includes the right to live with dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter.¹⁰⁸

Similarly, it was decided by the Supreme Court of India in the case of *Mohini Jain v. State of Karnataka* that the right to education is a fundamental right under Article 21 of its Constitution, one which cannot be denied to citizens because the right to life and the dignity of an individual cannot be secured without the right to education.¹⁰⁹

The right of access to education is inextricably linked to the freedom to express oneself freely.¹¹⁰ Conversely, denying a child the right of access to education at any level, as potentially occasioned by the current policy, is tantamount to a violation of the fundamental right to freedom of expression that is entitled to every child.¹¹¹ By denying a child access to education, the state is, in effect, stifling the development of his critical thinking skills, intellectual curiosity, and autonomy, all of which are

¹⁰⁸ *Id.* at 12–13 (quoting *Mullin v. Union Territory of Delhi*, (1981) 2 SCR 516, 517–18, 529 (India)).

¹⁰⁹ *Mohini Jain v. Karnataka*, (1992) 3 SCR 658, 661 (India) (discussing India Const. art. 21).

¹¹⁰ Comm. on Econ., Soc. & Cultural Rts., Implementation of the Int'l Covenant on Econ., Soc. & Cultural Rts. (implementation Nov. 15-Dec. 3, 1999), ¶¶ 9, 39, 14 n.4, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999).

¹¹¹ Universal Declaration of Human Rights, *supra* note 39, arts. 19, 26 (affirming a right to freedom of expression and opinion and requiring access to education for all children).

essential for the exercise of freedom of expression.¹¹² This contravenes the Constitution's guarantee of freedom of expression.

Furthermore, the policy in question is discriminatory and contravenes the spirit and letter of Section 17(1)(2) of the Constitution, which enshrines the principles of equality of rights and opportunities before the law.¹¹³ This provision unequivocally states that “every citizen shall [enjoy] equal[] rights . . . and opportunities,” and that “governmental actions shall be humane.”¹¹⁴

The policy's restriction on access to education for individuals under the age of eighteen raises a critical question: can a law that impedes a young person's ability to realize their full potential solely based on age be considered humane? Such a law cannot be deemed humane, as it inherently violates the fundamental principles of equality and human dignity.¹¹⁵ By denying access to higher education, the policy effectively perpetuates a systemic inequality against a child—relegating the child to a disadvantaged position solely due to age. This is antithetical to the Constitution's guarantee of equal rights and opportunities.¹¹⁶

It is apposite to recall that Section 17(3)(a) of the Constitution mandates “[t]he state [to] direct its policy towards ensuring that all citizens, without discrimination on any ground whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.”¹¹⁷ In light of this provision, it is manifestly evident that the restriction on young people's access to university education constitutes a blatant infringement on their right to “secur[e] adequate means of livelihood.”¹¹⁸

University education is a crucial pathway to securing suitable employment and acquiring the necessary skills to navigate the complexities of the modern workforce.¹¹⁹ By denying young people access

¹¹² Yotam Barkai, Note, *The Child Paradox in First Amendment Doctrine*, 87 N.Y. UNIV. L. REV. 1414, 1436 (2012) (arguing that children's expression is linked to their critical thinking, inquisitiveness and confidence).

¹¹³ CONSTITUTION OF NIGERIA (1999), ch. I, § 17(1)–(2).

¹¹⁴ *Id.* § 17(2)(a), (c).

¹¹⁵ See Funmilayo Adeyemi, *Analysis: Is Nigeria's Move to Enforce 18 Years Admission Benchmark the Right One?*, PREMIUM TIMES (Aug. 18, 2024), <https://www.premiumtimesng.com/news/headlines/725475-analysis-is-nigerias-move-to-enforce-18-years-admission-benchmark-the-right-one.html> (discussing the limit on university admission test being for eighteen-year-olds and older); Universal Declaration of Human Rights, *supra* note 39, pmbl.

¹¹⁶ See generally CONSTITUTION OF NIGERIA (1999), ch. IV (laying out the fundamental rights in Nigeria).

¹¹⁷ *Id.* ch. I, § 17(3)(a).

¹¹⁸ *Id.*; Adeyemi, *supra* note 115.

¹¹⁹ Marta Favara et al., *Nigeria: Skills for Competitiveness and Employability*, WORLD BANK GRP. 1 (June 1, 2015), <http://documents.worldbank.org/curated/en/>

to this opportunity, the policy effectively perpetuates a cycle of disadvantage, relegating them to a precarious existence devoid of economic security.¹²⁰

The Constitution's emphasis on non-discrimination and equal opportunities is starkly at odds with the policy's restrictive nature, which unfairly disadvantages young people solely based on their age.¹²¹ This is a clear violation of the state's obligation to ensure that all citizens have equal access to “opportunit[ies] for securing adequate means of livelihood,” and the author therefore submits without any equivocation that such policy is unconscionable and unconstitutional.¹²²

Article 18(3) of the ACHPR mandates the State to eliminate all forms of discrimination against children and “ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”¹²³ This provision has far-reaching implications, as it renders all international human rights treaties pertaining to child protection applicable in Nigeria.¹²⁴ Notably, Nigeria has ratified the Convention on the Rights of the Child, which prompted the National Assembly to enact the Child's Rights Act, comprehensively safeguarding every child's right to access education.¹²⁵

Article 1 of the UNESCO Convention Against Discrimination in Education defines “‘discrimination’ [as] any distinction, exclusion, limitation or preference” based on various grounds, including age, that “nullif[ies] or impair[s] equality of treatment in education.”¹²⁶ This Convention unequivocally prohibits the exclusion of any individual or group from access to education at any level.¹²⁷ It is inconceivable to suggest that a student under the age of eighteen is not protected under this Convention.

Having ratified the African Charter, Nigeria is obligated to promote international cooperation, consolidate universal peace, and eliminate discrimination in all its forms (for example, the titular one in the

886411468187756597/pdf/96420-WP-P148686-PUBLIC-Nigeria-Skills-report-January-5-Final-Draft-report.pdf.

¹²⁰ Precious Chibuike Ukaegbu, *JAMB 2024 Policy: Minimum Age Requirement and Socioeconomic Implications*, ECON. OF THINGS (July 19, 2024), <https://economicsofthings.substack.com/p/jamb-2024-policy-minimum-age-requirement>.

¹²¹ CONSTITUTION OF NIGERIA (1999), § 17(2)(a); Adeyemi, *supra* note 115.

¹²² CONSTITUTION OF NIGERIA (1999), § 17(3)(a).

¹²³ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (1983) Cap. (A9), art. 18(3).

¹²⁴ *Id.*

¹²⁵ U.N. Convention on the Rights of the Child, *supra* note 13, art. 28; Child's Rights Act (2003), § 15.

¹²⁶ Convention Against Discrimination in Education, *supra* note 17, art. 1.

¹²⁷ *Id.*

UNESCO Convention Against Discrimination in Education).¹²⁸ Respect for international law and treaty obligations is paramount.¹²⁹ The government must ensure that its policies and actions align with these international commitments, by guaranteeing every child's right to education without discrimination.¹³⁰ Moreover,

In *Abacha v. Fawehinmi* the Supreme Court held that all arms of government must obey and enforce provisions of the African Charter pursuant to the Ratification Act, save the provisions are suspended or repealed by a later statute. In the leading judgment of the court, Ogundare J.S.C. rightly held that if there is a conflict between the African Charter Act and another statute, “its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation.”¹³¹

This is in line with Section 12(1) of the Constitution which requires every treaty entered between the Federation and another country to be enacted into law by the National Assembly before it acquires the force of law in Nigeria.¹³² The African Charter has met this condition for enforceability in Nigeria.¹³³

Section 42(1) of the Constitution unequivocally prohibits discrimination against any citizen of Nigeria.¹³⁴ In instances where discriminatory policies have been brought before the courts, the judiciary has consistently demonstrated a commitment to upholding this constitutional provision. A notable example is the landmark case of *Dr. Olisa Agbakoba SAN v. Attorney General of the Federation (AGF) and Anor*, where the Federal High Court declared the decades-long state-based quota system for admission into federal government colleges (unity

¹²⁸ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (1983) Cap. (A9); Convention Against Discrimination in Education, *supra* note 17, at 96.

¹²⁹ U.N. Charter pmb.; Vienna Convention on the Law of Treaties, *supra* note 35, arts. 26–27.

¹³⁰ Vienna Convention on the Law of Treaties, *supra* note 35; African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (1983) Cap. (A9); Convention Against Discrimination in Education, *supra* note 17, art. 1.

¹³¹ Femi Falana, *Chapter 2 of 1999 Constitution: Why Nigerian Judiciary Must Be Proactive*, NIGERIAN TRIB. (Mar. 9, 2022) <https://tribuneonline.ng/chapter-2-of-1999-constitution-why-nigerian-judiciary-must-be-proactive-falana/> (quoting *Abacha v. Fawehinmi* [2000] 6 NWLR 228).

¹³² CONSTITUTION OF NIGERIA (1999), ch. I, § 12(1).

¹³³ African Charter on Human and Peoples' Rights, *supra* note 58, pmb. n. 1.

¹³⁴ CONSTITUTION OF NIGERIA (1999), ch. IV, § 42(1).

schools) unconstitutional.¹³⁵ In his ruling, Justice John Tsoho held that the Minister of Education's application of disparate requirements for candidates seeking admission into unity schools violated Section 42(1) of the 1999 Constitution.¹³⁶ This judicial precedent shows the court's willingness to strike down discriminatory policies.

Therefore, it is crucial to note that Nigeria's Constitution does not specify a minimum age requirement for university admission.¹³⁷ Instead, individual universities have the autonomy to establish their own admission criteria, including age requirements, through legislation such as the University of Lagos Act (Section 8(1) and 8(2)(e)) and similar provisions in other university Acts (e.g., University of Ibadan Act, Section 6(1) and 6(2)(f)).¹³⁸ This results in varying age requirements across institutions. The case of the fifteen-year-old candidate who scored the highest mark in the 2019 Unified Tertiary Matriculation Examination ("UTME") but was denied admission by the University of Lagos highlights this issue.¹³⁹ Age should not be a barrier to tertiary education. Rather, the focus should be on whether the applicant possesses the necessary intellectual capacity to secure and sustain university admission. Criteria based on academic performance are more relevant. Denying admission to a candidate who has demonstrated intellectual capacity by passing the examination, solely due to age, constitutes discrimination.¹⁴⁰

The requirement that a young student must attain the age of eighteen before qualifying to write the entrance exam into university constitutes a similarly egregious form of discrimination. Such a policy is antithetical to the principles of equality and non-discrimination enshrined in the Nigerian Constitution.¹⁴¹ It is imperative that this policy be struck down, as it has no place in our constitutional framework.

¹³⁵ Dr. Olisa Agbakoba, *SAN v. Attorney General of the Federation & Anor*, [1993] LPELR-SC.214/1991; see also *Public Interest Litigation*, HURILAWS, <https://hurilaws.org/public-interest-litigation/> (last visited Apr. 5, 2025).

¹³⁶ See *Public Interest Litigation*, *supra* note 135.

¹³⁷ CONSTITUTION OF NIGERIA (1999) ch. II § 18, sched. 2 pt. II §§ 27–29.

¹³⁸ University of Lagos Act (1967), §§ 8(1), 8(2)(e); University of Ibadan Act (1963) Cap. (U6), §§ 6(1), 6(2)(f).

¹³⁹ *Admission of Infant/Underage Geniuses into Universities*, VANGUARD NEWS (June 5, 2019), <https://www.vanguardngr.com/2019/06/admission-of-infant-underage-geniuses-into-universities/> (discussing the student's rejection because of his age).

¹⁴⁰ Since the time of my original writing of this Article, a court has come to recognize exactly this. See Ebenezer Adurokiya, *JAMB's Minimum Admission Age Unconstitutional, Court Rules*, NIGERIAN TRIB. (Feb. 28, 2025), <https://tribuneonline.ng.com/jambs-minimum-admission-age-unconstitutional-court-rules/> (stating that the standing to be able to sue over this policy comes from the fact that the policy is discriminatory in nature).

¹⁴¹ CONSTITUTION OF NIGERIA (1999), pmb1.

IV. LESSONS FROM OTHER JURISDICTIONS

The United States, for instance, has no federal minimum age requirement for university admission.¹⁴² Notably, Norbert Wiener earned a bachelor's degree in mathematics at fourteen and a Ph.D. at eighteen from Harvard University.¹⁴³ Some U.S. universities admit students as young as twelve or thirteen, provided they meet academic requirements.¹⁴⁴

Similarly, the United Kingdom considers applicants' maturity and academic ability over age, allowing exceptional students to enter university earlier.¹⁴⁵ Australia's Early University Entrance Scheme enables students to enter university at a younger age if they demonstrate academic readiness, as seen in the case of Indian-Australian Akshay Venkatesh, who attended the University of Western Australia at thirteen.¹⁴⁶ The requirement is academic maturity and capability, not age.

Germany and Finland also prioritize academic qualifications and aptitude over age.¹⁴⁷ In Canada, Erik Demaine was admitted to Dalhousie

¹⁴² 42 U.S.C. §§ 6102, 6107(4)(B) (2024).

¹⁴³ Larry Hardesty, *The Original Absent-Minded Professor*, MIT TECH. REV. (June 21, 2011), <https://www.technologyreview.com/2011/06/21/193920/the-original-absent-minded-professor/>.

¹⁴⁴ See *PEG Living Learning Community*, MARY BALDWIN UNIV., <https://marybaldwin.edu/student-experience/peg-admissions/> (last visited Jan. 16, 2025) (explaining that the Program for the Exceptionally Gifted is designed for gifted women between the ages of twelve and sixteen to get a jumpstart on higher education); see also Suzanne Baker, *13-Year-Old Skipping Middle and High School to Attend College*, CHI. TRIB., (May 16, 2019, 10:58 AM), <https://www.chicagotribune.com/2016/07/08/13-year-old-skipping-middle-and-high-school-to-attend-college-2/>.

¹⁴⁵ See *Policy and Procedure for Students Under the Age of 18 Years*, Loughborough Univ., <https://www.lboro.ac.uk/study/apply/support/under-18/> (May 8, 2024) (stating that all applicants are treated as independent, mature individuals, regardless of age); see also *Do Oxford Undergraduate Courses Have a Minimum Age Requirement?*, Univ. Oxford, (May 24, 2021, 1:20 PM), https://uni-of-oxford.custhelp.com/app/answers/detail/a_id/557/~/~do-oxford-undergraduate-courses-have-a-minimum-age-requirement (explaining that all courses of study, except the medicine course, do not have an age requirement).

¹⁴⁶ See *Maths Professor Elected Member of the National Academy of Sciences*, UNIV. W. AUSTRALIA, (May 17, 2023), <https://www.uwa.edu.au/news/article/2023/may/maths-professor-elected-member-of-the-national-academy-of-sciences>; *Early Offer Schemes for Year 12 Students*, UNIV. AUSTRALIA, <https://www.uac.edu.au/current-applicants/undergraduate-applications-and-offers/early-offer-schemes-for-year-12-students> (last visited Mar. 10, 2025).

¹⁴⁷ See *What Is the Abitur?*, MENTORA GYMNASIUM, <https://www.mentora-gymnasium.de/en/magazine/blog/what-abitur/> (last visited Jan. 20, 2025) (explaining that the Abitur is an education certificate that allows students to apply to university); *University Entrance Qualification (Hochschulzugangsberechtigung, HZB)*, UNIV. HOHENHEIM, <https://www.uni-hohenheim.de/en/university-entrance-qualification> (last visited Jan. 20, 2025) (listing the multiple pathways students may receive a university entrance qualification in Germany); *Matriculation Examination*, MINISTRY EDUC. & CULTURE,

University at twelve and became a Professor at MIT at twenty.¹⁴⁸ Australia has similar examples, including Juliet Beni, who obtained her Ph.D. at nineteen,¹⁴⁹ and Sho Yano, who gained admission to Loyola University at nine and received his Ph.D. in Molecular Genetics at eighteen.¹⁵⁰ These examples illustrate that age-based exclusion in Nigeria hinders human progress and places the country behind in the global landscape of academic achievement and innovation.

V. CONCLUSION

In an era where nations are embracing social objective principles such as inclusivity and expanding access to education, Nigeria's regressive policy of age-based exclusion from university education is a complete anomaly.¹⁵¹ As we bear witness to the global trend of democratization of education, our nation should not wilfully retreat into the shadows of discrimination.

We should take jurisprudential lessons from other countries that have democratized education. The Constitutions of South Africa and Algeria, for instance, enshrine education as an enforceable fundamental right.¹⁵² In contrast, the Nigerian Constitution remains taciturn on this matter.¹⁵³

We should be talking about the urgent need for the National Assembly to amend the Constitution for it to explicitly protect education as a fundamental right. Regarding this policy, the question persists: what arcane knowledge or mystical experience within university walls necessitates the exclusion of young minds? Is there something inherently immoral or injurious within the hallowed halls of academia that warrants the denial of access to those deemed too young?

<https://okm.fi/en/finnish-matriculation-examination> (last visited Jan. 20, 2025) (explaining that completion of the Finnish matriculation examination enables students to apply to university).

¹⁴⁸ *Prodigy Prof Skipped School Until He Started College at 12*, MIT NEWS (Feb. 26, 2003), <https://news.mit.edu/2003/demaine-0226>.

¹⁴⁹ *10 Youngest People Ever to Achieve a Doctorate Degree*, GRAD SCH. HUB, <https://www.gradschoolhub.com/lists/10-youngest-people-ever-to-achieve-a-doctorate-degree/> (last updated June 3, 2021).

¹⁵⁰ *Id.*

¹⁵¹ See Evan Schofer & John W. Meyer, *The Worldwide Expansion of Higher Education in the Twentieth Century*, 70 Am. Socio. Rev. 898, 898–900, 909, 916–17 (2005) (arguing the dramatic increase in worldwide university enrollment after World War Two is largely due to trends toward increasing democratization and human rights).

¹⁵² S. AFR. CONST., ch. 2, § 29, 1996; CONSTITUTION DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE, tit. II, ch. 1, art. 68, 2020 (Alg.).

¹⁵³ CONSTITUTION OF NIGERIA (1999), § 18 (stating that “equal and adequate educational opportunities” is a fundamental objective and directive principle of state policy rather than a fundamental right).

This author posits that the answer lies not in the immaculate realm of pedagogy, but in the murky depths of discrimination and prejudice. After all, our universities issue out certificates to deserving graduates who are found to be worthy in character and learning. It is in the paramount interest of a child to have access to institutions that can build his character and prepare him to be useful to himself and the society.¹⁵⁴ Also, if a child is able to partake in and pass a university entrance exam, then such child has demonstrated a capacity for learning.¹⁵⁵

Moreover, admitting young and gifted Nigerians to higher education institutions aligns with the provisions of Section 11(g) of the Education (National Minimum Standards and Establishment of Institutions) Act.¹⁵⁶ This Section states that one of the purposes of higher education in Nigeria is to promote and encourage scholarship and research.¹⁵⁷ By admitting exceptional students, Nigerian universities are put in a better place to foster academic excellence, innovation, and intellectual curiosity, ultimately contributing to the country's socio-economic development.¹⁵⁸

Thus, the inescapable conclusion is that the policy barring students under the age of eighteen from accessing higher education in Nigeria is a reprehensible affront to the principles of equality and non-discrimination. It is a blight on our collective consciousness, a betrayal of our commitment to the advancement of knowledge and the betterment of society. This policy must be consigned to the waste basket of oblivion, that we may reclaim our place among the comity of nations as a nation that cherishes the child's universal right to education.

¹⁵⁴ See Aynur Pala, *The Need for Character Education*, INT'L J. SOC. SCIS. & HUMAN. STUD., July 2011, at 23, 25–27; Wolfgang Althof & Marvin W. Berkowitz, *Moral Education and Character Education: Their Relationship and Roles in Citizenship Education*, 35 J. MORAL EDUC. 495, 511–13 (2006).

¹⁵⁵ See David Leonhardt, *The Misguided War on the SAT*, N.Y. TIMES (Jan. 7, 2024), <https://www.nytimes.com/2024/01/07/briefing/the-misguided-war-on-the-sat.html> (discussing how recent research on entrance exams in the United States shows standardized test scores help to predict levels of success at universities).

¹⁵⁶ Education (National Minimum Standards and Establishment of Institutions) Act (1985), § 11(g) (Nigeria).

¹⁵⁷ *Id.*

¹⁵⁸ See Anna Valero & John Van Reenen, *The Economic Impact of Universities: Evidence from Across the Globe*, 68 ECON. EDUC. REV. 53, 54, 57, 59, 65–66 (2019) (finding that the presence of universities contributes to GDP per capita growth by increasing human capital and innovation channels).