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## NON-PHARMACEUTICAL MANAGEMENT OF COVID-19 PANDEMIC: THE EFFECT ON ACCESS TO UNIVERSITY EDUCATION IN NIGERIA

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### **Abstract**

When Science was yet to find a cure for the COVID - 19 pandemic, one of the non-pharmaceutical measures adopted was avoidance of mass gathering and where desirable social and physical distancing. The UNESCO directed that schools should be closed and as such recommended the deployment of the Information Communication Technology (ICT) and the internet to run e-learning education. COVID - 19 pandemic and the e-learning expose the inadequate infrastructure in Africa, in terms of electricity and the internet, which existed pre-COVID-19 and which development does not adequately support e-learning. The wide disparity in socio-economic positions in countries of Africa, in part explains the unequal access of individuals to the ICT and to the internet which affect the success of e-learning. The paper as such recommends that states should take measures to eliminate discrimination, exclusion and general in-equality in access to the ICT and to education generally.

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**Key terms:** COVID-19 Pandemics; Management; State of Infrastructure; Governments' Obligation; Access to Education

## 1. INTRODUCTION

The right to education is desired to attain full development of the human personality, and for the development of a nation.<sup>1</sup> On account of this, every state has the obligation to make education generally available and accessible, in such a manner that primary school education is made compulsory, available and free, while the higher levels of education are accessible on merit.<sup>2</sup> The paper focuses on access to the university tier of education, as it is the strongest challenge, though it affords greater stake to the beholder in the labour market.<sup>3</sup> This benefit and many more explain the urge for university education from an increasing population in Africa,

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<sup>1</sup> Art. 13(1) International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> (Accessed 2020 October 18th). Olayinka, O.F., "Policies to Prevent Corruption in Nigeria: Enforcement of the Right to Education", 3(1) *Journal of Anti-Corruption Law* (JACL) 2019, pp. 36 – 55, at p. 37.

<sup>2</sup> Art. 26(1) Universal Declaration of Human Rights, 1948; Art. 13(2)(a) –(c) International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; (Accessed 6 June 2020).

<sup>3</sup> Section 11(a)(e) of the Education (National Minimum Standards and Establishment of Institutions) Act Act, Cap E3, Laws of the Federation of Nigeria 2004; Lim, L., "Challenging the Narratives: Higher Education Institutions and Agency in the Creative Economy" in Vickery, J. P. (ed.) *Cultural Economies and Cultural Activism*, 2016(1), Law, Social Justice and Global Development, 2016, at p. 3; Daniel, D., et al, "A Philosophical Outlook on Africa's Higher Education in the Twenty-First Century: Challenges and Prospects", available at <[https://www.researchgate.net/publication/333871265\\_A\\_Philosophical\\_Outlook\\_on\\_Africa's\\_Higher\\_Education\\_in\\_the\\_Twenty-First\\_Century\\_Challenges\\_and\\_Prospects](https://www.researchgate.net/publication/333871265_A_Philosophical_Outlook_on_Africa's_Higher_Education_in_the_Twenty-First_Century_Challenges_and_Prospects)> at p. 3. (Accessed 2020 August 6th)

which is not backed by commensurate increase in carrying capacity in existing universities or an increase in number of universities.<sup>4</sup> Carrying capacities links with the state of infrastructure, such that the existing universities on account of persistent shortfall in budgetary allocation have not assisted in boosting access to universities.<sup>5</sup>

The paper considers access to universities in countries of Africa in contrast to what obtains in the Organization for Economic Cooperation and Development (OECD) countries, which enjoy impressive level of access.<sup>6</sup> The 37 OECD members are able to translate the massive investment in world trade to education of citizens and while it has not been feasible for countries in Africa to replicate the same.<sup>7</sup> The pre-COVID-19 university access rating is now examined in terms of financial commitments of states which are not only to education but to the state of social infrastructure. The poor access to education in Africa is further considered in terms of the state of development of the self and of the nation.<sup>8</sup>

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<sup>4</sup> Dahir, A.L., "Africa Has Too Few Universities For its Fast Growing Population", available at <<https://qz.com/africa/878513/university-education-is-still-a-dream-many-in-africa-are-yet-to-attain/>> 5 January 2017 (accessed 2020 June 24th).

<sup>5</sup> Daniel, et al, "A Philosophical Outlook on Africa's Higher Education in the Twenty-First Century", above note 3, at p. 4.

<sup>6</sup> OECD, "History" 19 May 2020; Amaded, K., "The OECD and Member Countries", 19 May 2020, available at <<https://www.thebalance.com/organization-economic-cooperation-development-3305871>> (accessed 18 October 2020); Olayinka, O.F., "Managing the COVID-19 Pandemic and the Effect on Access to University Education in Africa", 13 July 2020, available at <[researchgate.net](https://researchgate.net)> at p. 13. (Accessed 2020 August 6th)

<sup>7</sup> OECD, "History"; Amaded, "The OECD and Member Countries", *ibid*.

<sup>8</sup> Ige, R.A. & Ngang, C.C., "The Right to Development: An African Feminist View" in Ngang, C.C., *et al* (eds) *Perspectives on The Right to Development 2018* Pretoria University Law Press (PULP) 97 -119, at p. 98; Olayinka, O.F., "Women's Right to Active Participation in Governance: The Post - Beijing Nigerian

The COVID-19 pandemic is also known as the coronavirus 2019 global disease and it is caused by severe acute respiratory syndrome.<sup>9</sup> The Government of South Africa adopts the Zimbabwean definition of “COVID-19” as the Novel Coronavirus (2019-nCov), which is an infectious disease caused by a virus which emerged in 2019.<sup>10</sup> South Africa’s definition nonetheless stresses the fact that the virus, has assumed the status of a global pandemic, by the World Health Organisation (WHO) ratings, and that the virus is yet to be scientifically tested in man.

The virus is primarily spread in the course of close physical contact; particularly, infection is effected when an individual touches a contaminated surface and subsequently rubs his face.<sup>11</sup> The Corona virus infection was recorded in Wuhan, China, on 1 December 2019.<sup>12</sup> The World Health Organization considered the

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Experience”, (Paper presented at the National Conference organized by the Nigerian Women Trust Fund (NWTF) with support from Ford Foundation, themed “25 Years Since Beijing: Accelerating Commitments in Nigeria”, FCT – Abuja, Nigeria, 27 – 30 September 2020, available at <researchgate .com>, pp. 12, 13.

<sup>9</sup>World Health Organization (WHO), "Naming The Coronavirus Disease (COVID-19) and The Virus That Causes it", available at <[https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it)> (accessed 24 June 2020).

<sup>10</sup> Zimbabwe Legal Information Institute, “Public Health (COVID-19 Prevention, Containment and Treatment) Regulations, 2020 Statutory Instrument 77 of 2020”, available at <<http://zimlil.org/zw/legislation/si/2020/77>> (accessed 20 October 2020). South African Government, Notice No. 318 of 18 March 2020, as amended by Government Notices Nos. R. 398 of 25 March 2020, R. 419 of 26 March 2020, R. 446 of 2 April 2020 and R. 465 of 16 April 2020.

<sup>11</sup> Centers for Disease Control and Prevention (CDC), "How COVID-19 Spreads", available at <<https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>> (accessed 24 June 2020).

<sup>12</sup> WHO, "Novel Coronavirus—China", available at <<https://www.who.int/csr/don/12-january-2020-novel-coronavirus-china/en/>>(accessed 24 June 2020).

alarming levels of spread and severity of COVID -19 and declared the outbreak a Public Health Emergency of International Concern on 30 January 2020, it confirmed it as a global pandemic on 11 March 2020.<sup>13</sup> In the course of international trade and globalization, the COVID-19 pandemic spread to Africa on 14 February, 2020, with the first confirmed case recorded in Egypt,<sup>14</sup> and the first confirmed case in sub-Saharan Africa was in Nigeria.<sup>15</sup> On 13 May, 2020, Lesotho reported a case of COVID-19 and is thus the last Country in Africa to record infection.<sup>16</sup>

The COVID-19 virus is very contagious, even though it took the WHO some time to endorse vaccines to tackle the virus.<sup>17</sup> The virus is then being managed by WHO, UNICEF, UNESCO and other bodies, in conjunction with the Centre for Disease Control of each

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<sup>13</sup> World Health Organization, "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19—11 March 2020", available at <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> (accessed 28 June 2020).

<sup>14</sup> Egypt Today, "Egypt Announces First Coronavirus Infection", available at <<https://www.egypttoday.com/Article/1/81641/Egypt-announces-first-Coronavirus-infection>> (accessed 24 March 2020).

<sup>15</sup> BBC, "Nigeria Confirms First Coronavirus Case", available at <<https://www.bbc.com/news/world-africa-51671834>> (accessed 24 June 2020).

<sup>16</sup> WABE, "African Countries Respond Quickly to Spread of COVID - 19" available at <<https://www.wabe.org/african-countries-respond-quickly-to-spread-of-covid-19/>> (accessed 24 June 2020).

<sup>17</sup> Spinney, L., "Coronavirus Vaccine: When Will it be Ready?", available at <<https://www.bbc.com/news/health-516654976>> (accessed 24 June 2020); WHO, 'WHO lists additional COVID-19 vaccine for emergency use and issues interim policy recommendations, 7 May 2021 available at COVID-19 vaccine <https://www.who.int/news/item/07-05-2021-who-lists-additional-covid-19-vaccine-for-emergency-use-and-issues-interim-policy-recommendations> (Accessed 20 October 2021) Endorsed vaccines include Pfizer/BioNTech, Astrazeneca-SK Bio, Serum Institute of India, Janssen and Moderna vaccines for emergency use and addition of the Sinopharm.



country and other relevant institutions towards prevention, and by recommending a set of measures for observance. The UNESCO mandates that the gates to all schools, including the universities be temporarily closed to staff and students, while the lockdown orders and physical distancing measures are observed and recommends the adoption of e-learning.<sup>18</sup>

The work examines whether the UNESCO considers the peculiarities in Africa, the level of preparedness of universities in Africa, in terms of infrastructural inadequacies and then decay, epileptic power supply and ineffective internet services.<sup>19</sup> Access to education is considered in terms of location, by way of the rural-urban dichotomy, wherein “rurality” is synonymous with isolated geographical settlement, lacking in socio-economic amenities.<sup>20</sup>

The apparent digital inequality among university students, who are rural dwellers, is considered in terms of discrimination in accessing education.<sup>21</sup> It finally considers whether the pre-COVID-19 access challenge is not being compounded, just as very many students from Africa now keep more distance to the university gates for their

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<sup>18</sup> UNESCO, "290 Million Students Out of School Due to COVID-19: UNESCO Releases First Global Numbers and Mobilizes Response", available at <<https://en.unesco.org/news/290-million-students-out-school-due-covid-19-unesco-releases-first-global-numbers-and-mobilizes>>(accessed 24 June 2020); UNESCO, "COVID - 19 Educational Disruption and Response", available at <<https://en.unesco.org/themes/education-emergencies/coronavirus-school-closures>> (accessed 24 June 2020).

<sup>19</sup> Art. 22 UDHR, 1948; Olayinka, O.F., “Implementing the Socio-Economic and Cultural Rights in Nigeria and South Africa: Justiciability of Economic Rights”, 27(4) *African Journal of International and Comparative Law*, 2019, pp. 564–587, at p. 568.

<sup>20</sup> Chakaninka, W.W., et al, “The Challenges of Rural Education in Africa”, *South Africa Rural Educator*, 2012, 9.

<sup>21</sup> Arts. 2(2) and 13(1) ICESCR.

inability to access the internet and ICT, to learn from home under COVID-19 pandemic.

## 2 ACCESS TO THE CONVENTIONAL EDUCATION SYSTEM

Education relates to levels of formal education, access to education, the standard and quality of education, and the conditions under which it is given.<sup>22</sup> Education refers to a formal or professional instruction imparted within a national, provincial or local education system, whether private or public.<sup>23</sup> Formal education has to do with schools, colleges, universities and training institutions.<sup>24</sup> The World Bank defines formal education as the “hierarchically structured, chronologically graded ‘education system’”, running from primary school through the university and in addition to general academic studies, a variety of specialized programmes and institutions, for full-time technical and professional training.<sup>25</sup>

A state has the duty to provide primary, secondary and higher levels of education, provided that the latter is made available on merit.<sup>26</sup>

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<sup>22</sup> Art. 1(2) of the UNESCO Convention Against Discrimination in Education, 1960; Dahiya, S., et al, “Enhancing Quality of Education Through Information and Communication Technologies”, *Journal of Emerging Technologies and Innovative Research (JETIR)* www.jetir.org 2018, 5(2), p. 1220; Kamga, S.D., “Forgotten or Included? Disabled Children’s Access to Primary Education in Cameroon”, *African Disability Rights Yearbook* 2013, p. 128.

<sup>23</sup> Kamga, “Forgotten or Included”? Ibid.

<sup>24</sup> Art. 13(2)(a)(b)(c) ICESCR, 1966; “informal non-formal and formal education – a brief overview of some different approaches infed.org”, available at <<https://infed.org/mobi/informal-non-formal-and-formal-education-a-brief-overview-of-some-different-approaches/>> (accessed 26 June 2020).

<sup>25</sup> World Bank, “Attacking Rural Poverty; How Non-formal Education Can Help”, available at <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/656871468326130937/attacking-rural-poverty-how-nonformal-education-can-help>> (accessed 10 October 2020).

<sup>26</sup> Art. 26(1) UDHR, above at note 2.

The difference between higher education and other levels of education is the production of a high-level work force, raised to contribute to the social and economic development.<sup>27</sup> The graduate as such has an opportunity of an enhanced qualification for job entry, and the prospect of a better standard of living.

The right to education is contained in a number of international and regional human rights treaties. The African Charter on Human and Peoples' Rights (African Charter) for instance, provides that every individual has a right to receive education.<sup>28</sup> The Universal Declaration of Human Right (UDHR) in its provision on the right to education alludes to the essentiality of the element of access as it provides that education at the elementary stage shall be free and be made compulsory for everyone.<sup>29</sup>

Access to education is an aspect of the right to education because the former is a condition precedent to the enjoyment of the latter.<sup>30</sup> "Access" as such represents the extent to which the Joint Admission and Matriculation Board (JAMB) and each university admit and place eligible individuals to universities,<sup>31</sup> and the prospects of the students successfully running through the

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<sup>27</sup> Education Act, above at note 3; Lim, "Challenging the Narratives", above at note 3, p. 3; Daniel, et al, "A Philosophical Outlook on Africa's Higher Education", above at note 3, p .3.

<sup>28</sup> See art 17 of African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A9, Laws of the Federation of Nigeria, 2004.

<sup>29</sup> Art. 26(1) UDHR, above at note 2.

<sup>30</sup> Right to education is contained in international and regional instruments like Art. 13(2)(a)(b)(c) ICESCR, 1966; Art. 11 of the African Charter on the Rights and Welfare of the Child (1990); and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).

<sup>31</sup> Section 5(1)(c) of the Joint Admission and Matriculation Board Act (Cap J1), LFN 2004; Art. 13(2)(a)(b)(c) ICESCR, 1966, above at note 1; Art. 26 (1) UDHR, 1948 above at note 2.

education system.<sup>32</sup> Access to education entails that students who gain admission should graduate as at when due, except for disciplinary sanction(s) or for academic deficiencies. This calls for a stable academic calendar, where there are no irregular school closures such as obtains under the COVID-19 pandemic,<sup>33</sup> which enhances students' drop-out rates. In which case, when a student secures admission, the learning environment should support his development and should not be frustrating to the extent that he is expelled or has to abandon his academic programme.

The conventional education or formal education requires physical access to education; given a traditional classroom setting with the "chalk and talk" or the "face-to-face" learning process.<sup>34</sup> The conventional education prescribes a standard, which gives conditions under which education runs.<sup>35</sup> This is based on the assumption that if education shall accomplish the full development of the human personality, it has to meet a set standard.<sup>36</sup> A system where certain countries in Africa undertake a similitude of education and turn round endorsing same as "education" is rather an act in

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<sup>32</sup> Sec 10, Education Act, Above at note 3; Daniel et al, "A Philosophical Outlook on Africa's Higher Education", above at note 3, p. 4.

<sup>33</sup> Section 4(1)(b) of the National Universities Commission Act Cap N81, Laws of the Federation of Nigeria, 2004; UNESCO, "COVID - 19 Educational Disruption and Response", above at note 18; Olayinka, O.F., "Institutional Autonomy and the Realisation of Objects of Universities in Nigeria", Unpublished LLD Thesis, University of Pretoria, 2015, at p. 143; Olayinka, "Managing the COVID-19 Pandemic", available at note 6 above, at p. 13; Olayinka, O.F., "University Students' Right to Fair Trial: How Adequate is Legal Protection"? 7(3) *International Journal of Human Rights and Constitutional Studies*, 2020, 248.

<sup>34</sup> Telmesani, M., "Faculty's Perceptions of Online Education: A Qualitative Study", available at <<https://umanitoba.ca/faculties/education/media/Telmesani-10.pdf>> at pp. 11 & 13 (accessed 24 June 2020).

<sup>35</sup> Art 1(2) of the UNESCO Convention against Discrimination in Education 1960. Kamga, "Forgotten or Included"? above at note 22.

<sup>36</sup> UDHR, above at note 2; Olayinka, "Managing the COVID-19 pandemic", available at note 6 above, at p. 12.

self-deceit, just as “mis-education” produces half-baked graduates. The next section examines how COVID-19 pandemic disturbs the learning and impartation of knowledge in the formal and conventional setting.

### 3 THE COVID-19 PANDEMIC

Human history has records of pandemic which threaten human existence, such as the “Black Death” of between 1347 and 1351; the Spanish flu of 1918 and Covid-19.<sup>37</sup> The COVID-19 pandemic is also known as the coronavirus 2019 global disease, which is caused by severe acute respiratory syndrome.<sup>38</sup> Most people in their forties and beyond are prone to ailments such as diabetes, heart disease, respiratory disease, hypertension, coupled with failing body immunity which expose them more to Coronavirus infection. The Center for Disease Control advises that this category of people stay more at home to avoid community infection.<sup>39</sup>

The novel coronavirus overwhelms the best healthcare systems in the world, which is a huge concern to humanity; it makes the healthcare more precarious in Africa, which is already engaged with diseases such as malaria, measles and cholera.<sup>40</sup> By 26 May 2020,

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<sup>37</sup> Chirikure, S., “How Ancient African Societies Used Social Distancing To Manage Pandemics”, 18 May 2020, available at <<https://qz.com/africa/1858278/how-ancient-african-societies-managed-pandemics-like-spanish-flu/>> (accessed 20 October 2020).

<sup>38</sup> WHO, above at note 9.

<sup>39</sup> Leffler, C.T., & Hogan, M., “Age-Dependence of Mortality From Novel Coronavirus Disease (COVID-19) in Highly Exposed Populations: New York Transit Workers and Residents and Diamond Princess Passengers”, 7 May 2020, available at <[researchgate.net](https://researchgate.net)> at p. 4. (accessed 20 October 2020).

<sup>40</sup> Adebowale, N., “Coronavirus: Four of Nigeria’s 36 States Without a Single Infection, Death in Over 20 days”, available at <<https://www.premiumtimesng.com/health/health->

more than half of all African countries were experiencing community transmission,<sup>41</sup> with five countries such as South Africa, Algeria, Nigeria, Egypt and Sudan having over 70% of infections recorded in Africa,<sup>42</sup> and of which the casualty figure in the Continent is 8,621 as at 24 June 2020.<sup>43</sup>

Nigeria is one of the worst COVID-19 affected countries in Africa, with 44,890 infections and 927 deaths as at 6 August 2020, being the third most infected, in the Continent, coming behind South Africa and Egypt.<sup>44</sup> The pandemic could have been worst off in Africa, considering the low quality health facilities, when compared with what obtains in other continents. Nonetheless, Africa is the least affected Continent and this development suggests that Africa may have to adapt the global - COVID - 19 management measures to local circumstances.

### 3.1 Non-Pharmaceutical Management of The Pandemic

COVID-19 pandemic threatens the existence of man just as the confirmed COVID-19 cases surpassed nine million and is still

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interviews/416983-coronavirus-four-of-nigerias-36-states-without-a-single-infection-death-in-over-20-days.html>( accessed 26 September 2020).

<sup>41</sup>Akinwotu, E., "Experts sound alarm over lack of Covid-19 test kits in Africa" available at <<https://www.theguardian.com/global-development/2020/may/26/africa-concerned-over-lack-of-coronavirus-testing-kits>> (accessed 24 June 2020).

<sup>42</sup> The Guardian, "Global Report: WHO Warns of Accelerating Covid-19 Infections in Africa", available at <<https://www.theguardian.com/global-development/2020/may/26/africa-concerned-over-lack-of-coronavirus-testing-kits>> (accessed 24 June 2020).

<sup>43</sup> Shaban, A.R.A., "Coronavirus in Africa: 324,559 Cases; 8,621 Deaths; 154,386 Recoveries", available at <[africanews.com](http://africanews.com)> (accessed 24 June 2020).

<sup>44</sup> *ibid*; Omondi, J., "Nigeria Extends Second Phase Nationwide COVID-19 Lockdown by Four Weeks", available at <<https://africa.cgtn.com/author/omondijerry/>> (accessed 6 August 2020).

counting.<sup>45</sup> Scientists as such work towards developing vaccines and effecting treatments to put a stop through the treatment of cases of attack.<sup>46</sup> Vaccines strengthen and immune the body against viruses and bacteria attack, such that disease-causing germs are destroyed.<sup>47</sup> This informs the efforts of WHO and partners as they work together in tracking the pandemic, advising on critical interventions, distributing vital medical data, all in a bid to find a vaccine.<sup>48</sup>

Notwithstanding that not less than 20 life-threatening diseases already have vaccines, COVID-19 did not immediately have a vaccine to prevent the virus.<sup>49</sup> The option to manage the COVID-19 virus is thus informed by the absence of the right vaccine for Corona Virus.<sup>50</sup> This is without prejudice to the Madagascar COVID-19 herbal cure,<sup>51</sup> and the Nigerian University Scientists vaccine inventions,<sup>52</sup> both of which are yet to receive the formal endorsement of the World Health Organization.

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<sup>45</sup> Radcliffe, S., "Here's Exactly Where We Are With Vaccines and Treatments for COVID-19", available at <<https://www.healthline.com/health-news/heres-exactly-where-were-at-with-vaccines-and-treatments-for-covid-19>> (accessed 6 August 2020).

<sup>46</sup> *ibid.*

<sup>47</sup> WHO, "Vaccines and Immunization", available at <[https://www.who.int/health-topics/vaccines-and-immunization#tab=tab\\_1](https://www.who.int/health-topics/vaccines-and-immunization#tab=tab_1)> (accessed 26 September 2020).

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.* The WHO eventually endorsed certain COVID-19 vaccines. See WHO, 'WHO lists additional COVID-19 vaccine,' above at note 17.

<sup>50</sup> Spinney, "Coronavirus Vaccine" above note 17.

<sup>51</sup> Shaban, A.R.A., "COVID-Organics: Madagascar Launches Africa's First Cure for Virus", *Africanews*, 22 April 2020.

<sup>52</sup> Ihejerika, P., "Breakthrough As Nigerian Scientists Unveil Covid-19 Vaccine", *Leadership Nigeria Newspaper*, 20 June 2020.

In the circumstances however, the pandemic has to be prevented pending the production of the right vaccine.<sup>53</sup> Thus, recourse is made to non-pharmaceutical interventions that are effective in preventing further spread of the virus. The WHO considers the manner of transmission of the Corona Virus and prescribes managerial principles for the observance of various countries. Consequently, social distancing is adopted as an aspect of the non-pharmaceutical countermeasures (NPCs), which aim at minimising physical contact between individuals with a view of reducing the possibility for new infections.

At the community level, citizens are mandated to observe physical distancing, avoidance of mass gathering, self-quarantine, limiting travel, avoiding crowded areas, using no-contact greetings, and general physical distancing. Social distancing is an aspect of the non - pharmaceutical counter-measures, which aims at minimizing physical contact between individuals, with a view of reducing the rate of new infections.<sup>54</sup> Personal protective measures include regular hand wash, respiratory hygiene, cough etiquette and the use of facemasks and minimizing the sharing of objects and routine cleaning of public spaces.<sup>55</sup>

Flowing from the global regulation, many other preventive measures have been implemented in different countries of the world. There are state regulations on travel restriction, closure of

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<sup>53</sup> CDC, "Coronavirus Disease 2019 COVID-19 Centers for Disease Control and Prevention", available at <<https://www.cdc.gov/coronavirus/2019-ncov/index.html>> (accessed 26 June 2020).

<sup>54</sup> Olayinka, O.F., "Managing the COVID-19 Pandemic", available at note 6, at pp. 8, 9 & 10.

<sup>55</sup> Anderson, R.M., "How Will Country-Based Mitigation Measures Influence the Course of the COVID-19 Epidemic?", available at <[https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(20\)30567-5.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(20)30567-5.pdf)> (accessed 26 July 2020).



countries' border to foreigners,<sup>56</sup> to curb the spread of the corona virus. The suspension of all incoming and outgoing flights and nationwide lockdowns are just some of the measures adopted to hold the spread of the virus.<sup>57</sup>

In Africa, South African Government effected a closure of schools and put in place partial care facilities from 18 March 2020 until 15 April 2020, and extended the same.<sup>58</sup> On 17 March 2020, the Government of Libya closed the Country's borders, suspended flights for three weeks and banned foreign nationals from entering the Country; schools, cafes, mosques and public gatherings were also closed.<sup>59</sup> In Zimbabwe, the Government declared a national emergency, putting in place travel restrictions and banning large gatherings.<sup>60</sup>

Nigeria, the Africa's most populous Country implemented a lockdown, applicable to Lagos, Abuja and Ogun, being the three major states that host not less than 30 million people, in a bid to

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<sup>56</sup> Salcedo, A., Yar,S., and Cherelus, G., "Coronavirus Travel Restrictions, Across the Globe", available at <<https://www.nytimes.com/article/coronavirus-travel-restrictions.html>> (accessed 21July 2020).

<sup>57</sup> Salcedo, A., Yar,S., and Cherelus,G., "Coronavirus Travel Restrictions, Across the Globe", *ibid*.

<sup>58</sup> South African Government Gazette Prevention and Prohibition of Gatherings 3, Vol. 657 18 March 2020 No. 43107 available at <https://sacoronavirus.co.za/wp-content/uploads/2020/04/Consolidated-Regulations-DMA-17-April.pdf> accessed 12 September 2020.

<sup>59</sup> "Libyan Gov't Suspends Flights in Wake of COVID-19", available at <https://www.aa.com.tr/en/middle-east/libyan-govt-suspends-flights-in-wake-of-covid-19/1768168/> (accessed 24 June 2020).

<sup>60</sup> Bloomberg, "Zimbabwe, Namibia Declare National Emergencies Over Virus", available at <<https://www.bloomberg.com/news/article s/2020-03-17/zimbabwe-namibia-declare-national-emergencies-over-coronavirus>> (accessed 24 June 2020).

limit the spread of the new coronavirus.<sup>61</sup> The Government also effected an inter-state lock-down, just as it assures that the freedom forsaken by its citizenry was desirable to stop the further spread of the virus.<sup>62</sup>

Consequently, UNESCO mandates that the gates to all schools, including the universities be temporarily closed to staff and students except for members of staff rendering essential services,<sup>63</sup> in an attempt to contain the spread of COVID-19.<sup>64</sup> As of 7 June 2020, approximately 1.725 billion learners representing 98.5 percent of the world's student population were at home over the school closures in response to the directive of UNESCO. COVID-19 and shut down of educational institutions have been having a huge effect on graduate students and their research activities.<sup>65</sup>

In the late March 2020, the WHO and other health bodies substituted the term "social distancing" with "physical distancing", so as to allow inter-personal relationships other than by physical contacts.<sup>66</sup> The new preferred physical distancing strategies to prevent transmission of the disease are now employed. They include individual's staying at home, limiting travel, avoiding crowded areas, using no-contact greetings, and general physical

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<sup>61</sup> Mbah, F., "Nigeria Announces Lockdown of Major Cities to Curb Coronavirus", *Al Jazeera News*, 30 March 2020.

<sup>62</sup> Buhari, M., "Nigeria: Lockdown Continues as Long as Necessary", Twitter Handle, Government of Nigeria, 12 April 2020.

<sup>63</sup> UNESCO, "Education: From Disruption to Recovery", available at <<https://en.unesco.org/covid19/educationresponse>>(accessed 18 October 2020).

<sup>64</sup> UNESCO, "COVID-19 Educational Disruption and Response" available at <<https://learningportal.iiep.unesco.org/en/blog/covid-19-educational-disruption-and-response>> (accessed 18 October 2020).

<sup>65</sup> UNESCO, "COVID-19 Educational Disruption and Response", *ibid*; Thapa, S., "Impact of COVID-19 Lockdown on Agriculture Education in Nepal: An Online Survey", 5(4) *Pedagogical Research*, 2020, at p. 4.

<sup>66</sup> Adlhoch, C., et al., "Considerations Relating to Social Distancing Measures in Response to COVID-19 - Second Update", (accessed 24 June 2020).

distancing.<sup>67</sup> Other measures include the maintenance of overall good personal hygiene, hands washing, the use of face masks or cloth face coverings, more generally by members of the public to limit the spread of the virus.<sup>68</sup>

The preference of physical distancing is based on the fact that lockdown orders, made by states to address the COVID-19 pandemic violate the citizens' freedom of movement and the right to assemble, which further hinders other social economic and political rights.<sup>69</sup> Lockdown orders of states aim at protecting lives of citizens, but nonetheless exposes the poor to death, through hunger, while it prevents death through virus infection.<sup>70</sup> The development comes on the fact that most countries in Africa are too poor or the public sector corruption is so endemic, such that it is not feasible for the state to provide palliatives for the poor citizens. The absence of palliatives makes it a tall dream to effect the lock-down orders most times. Non-compliance with the stay-at-home orders and distancing measures as such escalate the further spread of the pandemic.

There is now a relaxation of inter-state lockdown, travel restrictions, local and international flight cancellations and general border

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<sup>67</sup>WHO, "Advice For Public", available at <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>> (accessed 10 October 2020).

<sup>68</sup> Vogel, G., "New Blood Tests for Antibodies Could Show True Scale of Coronavirus Pandemic", available at <<https://www.sciencemag.org/news/2020/03/new-blood-tests-antibodies-could-show-true-scale-coronavirus-pandemic>> (accessed 26 June 2020).

<sup>69</sup> BCDTRAVEL, "COVID-19 Information for Travel", available at <<https://www.bcdtravel.com/covid-19-information/>> (accessed 10 October 2020).

<sup>70</sup> Abu-Bakarr, J., "Severe Hunger Threatens Africa During COVID-19 Lockdowns", *AFP/M. Longari*, 22 April 2020.

closures.<sup>71</sup> This is attributed, in part, to the view in certain quarters that the general travel bans are not very effective non-pharmaceutical measure to contain the COVID 19 pandemic.<sup>72</sup> The Government of South Africa maintained its ban on all international travel, though it gave concessions to airlines conveying its nationals from foreign countries.<sup>73</sup>

As of 1 August 2020, Kenya opened its international airports to regular air traffic. All arriving passengers on international flights, whose body temperature were under 37.5 °C (99.5 °F); passengers not suffering from persistent cough, nor having difficulty in breathing or other flu-like symptoms. Such passengers having negative PCR based COVID – 19 tests, carried out within 96 hours before travel, and who are from countries considered low to medium risk COVID – 19 transmission areas were exempted from quarantine.<sup>74</sup> Nigeria reopened its local flights and reopened its airports to international

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<sup>71</sup> Oliveira, Y., "Angola Closes Borders for 15 Days", available at <<https://informante.web.na/angola-registered-its-first-coronavirus-case/>> (accessed 24 June 2020).

<sup>72</sup>Financial Times, "Denmark, Poland and Czechs Seal Borders Over Coronavirus", available at <<https://www.ft.com/content/4e89ec5c-6565-11ea-b3f3-fe4680ea68b5>> (accessed 12 March 2020).

<sup>73</sup> South African Government, "Travel – Coronavirus Covid-19", available at <<https://www.gov.za/Coronavirus/travel>> (accessed on 8 May 2020).

<sup>74</sup> Forbes, "Communique on the Resumption of International Air Travel on 1st August 2020", available at <<https://www.transport.go.ke/index.php/news-and-events/395-communique-onthe-resumption-of-international-air-travel-on-1-st-august-2020>> (accessed 31 July 2020); FORBES, "Kenya Reopens for Tourism— But You Can Watch The Great Migration on Video", available at <<https://www.forbes.com/sites/lauriewerner/2020/08/03/kenya-reopens-for-tourism-but-you-can-watch-the-great-migration-on-video/#58072f4b3752>>(accessed on 8 October 2020).

flights,<sup>75</sup> from 5 September 2020, such that other countries can visit Nigeria under existing visa rules.<sup>76</sup>

The extension of relaxed lock-down regulations is the direction that the primary and secondary schools in Nigeria should resume fully as from 12 October 2020.<sup>77</sup> The school administrators have been directed to seek the support of parents and students on the curtailment of the spread of COVID-19. The tertiary institutions, including the universities are warming up to resume.<sup>78</sup> The prospect of resumption of universities is an indication that admission seekers in Africa can commence their yearly admission ventures. The Federal Ministry of Education, the Presidential Task Force (PTF) on COVID-19 and the Nigerian Centre for Disease Control (NCDC) as such warn schools to devise measures to mitigate transmission, such that everyone gaining access to each school is screened properly, he wears a mask and sanitizes his hands. In that respect, the boarding schools must have trained health staff, provided with Personal Protective Equipment (PPE).<sup>79</sup> The next section as such explores the link between the non-pharmaceutical approaches to

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<sup>75</sup> Adebowale, "Coronavirus", above at note 40.

<sup>76</sup> REUTERS, "Nigeria to Resume International Flights From Sept 5: Aviation Authority", available at <<https://www.reuters.com/article/us-health-coronavirus-nigeria-aviation-idUSKBN25N2PG>> (accessed 10 October 2020).

<sup>77</sup> Sanni, K., "COVID-19: UN Urges Nigerian Government to Ensure Safety Protocols in Schools Ahead Resumption", available at <https://11.wp.com/media/premiumtimesng.com/wp-content/files/2018/09/Pic.28.-Schools-resume-in-Lagos.jpg?fit=1287%2C703&ssl=1>. (accessed 9 September 2020).

<sup>78</sup> Adebowale, "Coronavirus", above at 39.

<sup>79</sup> Adedigba, A., "COVID 19: PTF Gives Fresh Guidelines For Reopening Of Schools", available at <<https://www.premiumtimesng.com/news/top-news/419348-covid-19-ptf-gives-fresh-guidelines-for-reopening-of-schools.html>> (accessed 10 October 2020).

eradication of COVID – 19 and how it disturbs the admission seekers' prospects of gaining admission to universities.

#### 4.0 COVID-19 PANDEMIC AND ACCESS CHALLENGE IN UNIVERSITIES IN AFRICA

An admission seeker enjoys “access to a university” when he secures enrolment, and when there is an absence of those institutional challenges which can hinder a student from graduating from the university. Access to university education in countries of Africa is inadequate,<sup>80</sup> and when students secure admission, some do abandon this university education, given an environment that is not conducive. Efforts to stem the spread of COVID-19, through non-pharmaceutical interventions and preventive measures explain why the UNESCO recommends the use of e-learning and open educational applications and platforms for impartation of knowledge, while gates to the conventional universities remain closed.<sup>81</sup> The UNESCO's directive aligns with record of past infectious diseases which prompted widespread school closings around the world, with appreciable levels of effectiveness, ranging from 29% and 37% reduction in influenza transmission.<sup>82</sup> The COVID-19 pandemic and the UNESCO's preference for the open educational applications to impart knowledge has been impressive.<sup>83</sup>

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<sup>80</sup> Dahir, “Africa Has Too Few Universities”, above at note 4.

<sup>81</sup> UNESCO, “290 Million Students Out of School due to COVID-19”; UNESCO, “COVID-19 Educational Disruption and Response”, above, at note 18.

<sup>82</sup> NIH Research Matters, “Flu Pandemic Study Supports Social Distancing”, available at <<https://www.nih.gov/news-events/nih-research-matters/flu-pandemic-study-supports-social-distancing>> *NIH Research Matters*, (accessed 6 June 2020); Wardrop, M., “Swine Flu: Schools Should Close to Halt Spread of Virus, Ministers Told”, available at <[https://www.researchgate.net/publication/340849956\\_Impact\\_of\\_the\\_2019-20\\_coronavirus\\_pandemic\\_on\\_education](https://www.researchgate.net/publication/340849956_Impact_of_the_2019-20_coronavirus_pandemic_on_education)> (accessed 10 October 2020).

<sup>83</sup> UNESCO, “290 Million Students Out of School Due to COVID-19”, above at note 18.

Given the temporary or indefinite global school closures ordered by the UN and agencies such as UNESCO, WHO, UNICEF and the others, to slow the spread of COVID-19 pandemic, by 29 March, 2020, nearly 90% of the world's learners suffered access challenge.<sup>84</sup> The effect of the pandemic is more damaging in Africa which produced the world's oldest universities. The University of Al Qarawiyyin, Fez in Morocco was founded in 859 AD and the Al-Azhar University in Egypt was founded in 970 AD.<sup>85</sup> Nonetheless, African Universities do not rate excellently globally, just as the best university in Africa, the University of Cape Town, was 272 on the world university ranking, coming short of the 250 best university rating.<sup>86</sup> The less impressive global rating of universities in Africa is attributed to infrastructural challenges, which situation is not made better by the COVID-19 global pandemic. The declining standard of university education is attributed partly to corruption in public sector in most countries of Africa.

Corruption in Africa is a social virus which is a hybrid of traits of fraudulent anti-social behavior bequeathed by the colonial administration and nurtured within the political structure of the post-colonial dispensation.<sup>87</sup> The corruption virus has fully developed

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<sup>84</sup> NIH Research Matters, "Flu Pandemic Study Supports Social Distancing", above at note 81; Wardrop, "Swine Flu: Schools Should Close to Halt Spread of Virus", above at note 82.

<sup>85</sup> Daniel, et al, "A Philosophical Outlook on Africa's Higher Education in the Twenty-First Century", above at note 3.

<sup>86</sup> Webometrics, "Ranking Web of Universities 2019", available at <<http://www.webometrics.info/en/Africa>> (accessed 26 June 2020); Daniel, et al, "A Philosophical Outlook on Africa's Higher Education in the Twenty-First Century", above at note 3.

<sup>87</sup> Osakede, K. *et al*, "Corruption in the Nigeria Public Sector: An Impediment to Good Governance and Sustainable Development" 4(8) *Review of Public Administration and Management* 2015, pp. 76-87 at p. 78; Olayinka, "Policies to Prevent Corruption in Nigeria", above at note 1, at p. 42.

now and it kills more in Africa than the dreaded Corona virus.<sup>88</sup> Misappropriation of funds in the public tertiary institutions of Africa as such leads to the inadequate teaching infrastructure and the compromise of academic standards,<sup>89</sup> with the consequent havoc of “half-bake” and “mis-education” virus deeply rooted in the Continent.

Okojie as such attests to the pre - COVID - 19 induced wide gap in the carrying capacity and the qualified candidates seeking university admission. The United States of America has access rate of about 85 per cent, about 65 per cent in Europe, and more than 40 per cent in South Africa and about 15 per cent in Nigeria.<sup>90</sup> The access rate of 40 and less than 15 per cent is rather attributed to the geometric increase in population and application for university admission and the arithmetic progression in the budgetary allocations to education, which results in funding shortfalls for many years.<sup>91</sup> The declining funding of education rather explains the downward access to about 6% of admission seekers in Sub-Saharan Africa getting enrolled in tertiary institution, while about 80% chance is open to admission seekers in the Organization for Economic Cooperation and Development (OECD) Countries.<sup>92</sup>

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<sup>88</sup> Olayinka, “Policies to Prevent Corruption in Nigeria”, above at note 1, at p. 43; Olayinka, “Managing the COVID-19 Pandemic”, available at note 6, at p. 12.

<sup>89</sup> Article 12 of UNCAC and Article 11 of the AU Convention on Preventing and Combating Corruption; Olayinka, “Policies to Prevent Corruption in Nigeria”, above at note 1, at p. 43.

<sup>90</sup> Okojie, J., “NUC: Undaunted in Regulating Universities”, *The Guardian*, Thursday 11 October 2012, 62.

<sup>91</sup> Saint W. *et al* (2003) “Higher Education in Nigeria: A Status Report” 16 *Higher Education Policy* 2003, pp. 1-30 at p. 17; Olayinka, “Policies to Prevent Corruption in Nigeria”, above at note 1, at p. 41; Olayinka, “Managing the COVID-19 pandemic”, above at note 6, at p. 13.

<sup>92</sup> OECD, “History”, above at note 6; Amaded, “The OECD and Member Countries”, above at note 6.



The OECD is an association of 37 nations in Europe, the Americas, and the Pacific and the Middle East. Its members and key partners represent 80% of world trade and investment.<sup>93</sup> Every three years, the OECD conducts evaluation of education systems around the world, using the data to recommend ways to improve equity in education.<sup>94</sup> This no doubt impact positively in boosting access to university education in the OECD Countries. Africa is a contrast on access to university education. The poor access to education denies admission seekers from Africa the freedom to choose a way of life that can lead to development of the self and of the nation.<sup>95</sup>

The COVID-19 lock-down and the school closures in preference for e-learning weighs more against female students in Africa with records of conflict between culture and western education.<sup>96</sup> The culture and tradition of major part of Northern Nigeria, for instance, conflict with the provisions of the Child's Rights Act, 2003, which describe a child as a person under the age of 18 and set the minimum legal age of marriage as 18 years.<sup>97</sup> On account of the conflict of culture and the law, out of the 36 states in the Country, 11 states are yet to domesticate the Child Rights Act which was passed into law since 2003.<sup>98</sup> Consequently, those States apply

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<sup>93</sup> *ibid.*

<sup>94</sup> OECD. "FAQ - PISA." 19 May 2020; Amaded, "The OECD and Member Countries", above at note 6.

<sup>95</sup> Ige & Ngang, "The Right to Development", above note 8, at p. 98; Olayinka, "Women's Right to Active Participation in Governance", above note 8, pp. 12, 13.

<sup>96</sup> Peters, M.A., "Western Education is Sinful: Boko Haram and The Abduction of Chibok Schoolgirls", 12(2) *Policy Futures in Education* 2014, p. 186.

<sup>97</sup> See section 277 of the Child's Rights Act, 2003, the Convention on the Rights of the Child (CRC) was adopted by the General Assembly of the United Nations by its resolution of 20 November 1989.

<sup>98</sup> Olayinka, O.F., "Women's Right to Active Participation in Governance", above note 8, pp. 12, 13; Tallen, P., "Nigeria: 11 States Yet to Domesticate Child Rights Act", available at <<https://allafrica.com/stories/202010140147.html>> (accessed 18 October 2020).

Islamic Law provisions, which allow marriage of persons as low as 12 years.<sup>99</sup> In the present circumstances, comparatively, more students, particularly female students, are not likely to return to the higher institution of learning in Africa after the pandemic, as they opt for marriage institution.

#### **4.1 ICT, the Internet and the Creation of Access to Education**

Complementing education in the physical environment is the ICT, which relates to the deployment and usage of services provided by technology and devices, including telecommunications' devices and computers. The characteristics of mobile technologies such as spontaneity, informality, context, portability, ubiquity, and pervasion are supportive learning devices to handle topics, anytime and from anywhere.<sup>100</sup> This is feasible on account of the ICT having a feature of flexibility,<sup>101</sup> as it allows networking, collaboration and interaction among students, facilitators, academic staff and faculty members without the barrier of time and location. Inadequacies in terms of the physical learning environment are most times addressed when the ICT is deployed and this ultimately brings improvement in quality, just as it enhances access to education.

Internet prone infrastructure as it enhances access to education is more feasible as "Google" is particularly deployed to do research,

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<sup>99</sup> Wellbeing Foundation, "Nigeria- Child Marriage Around the World Girls Not Brides", available at <<https://www.girlsnotbrides.org>> (accessed 6 May 2020); Peters, M.A., "Western Education Sinful", above at note 95, at p. 186; Olayinka, "Women's Right to Active Participation in Governance", above at note 8, at pp. 12, 13.

<sup>100</sup> Ishtaiwa, F.F., et al, "Faculty Members' Perceptions of the Integration, Affordances, and Challenges of Mobile Learning", (30)( 2) *International Journal of E-Learning and Distance Education*, 2015, at p. 2.

<sup>101</sup> *id.*, at p. 1.

looking for new ideas, to access information immediately unavailable and to do other transactions that are of domestic concerns.<sup>102</sup> The Massive Open Online Course (MOOC) Platforms such as Skype, WeChat Work, WhatsApp; Google Classroom – Helps all, enable classes to connect remotely, to communicate and to stay-organized, the Zoom – Cloud platform,<sup>103</sup> allow for video and audio conferencing, collaboration, chat and webinars are also useful for academic exercises. The ICT as such assists students' learning and avail the teachers with a wide range of pedagogies for quality education.<sup>104</sup>

The physical environment to learners, teachers and other stakeholders in the impartation of knowledge is the natural or human-built setting, effecting close relationship, comfort, intimacy, safety, and serenity.<sup>105</sup> E-learning as such provides students with another variety to the conventional learning style. This is particularly convenient for students who are learning and working at the same time.<sup>106</sup> The internet-based applications are deployed to impart knowledge.

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<sup>102</sup> Pruneau et al "Future Teachers' Relationships With Physical and Technological Environments", below at note 105, at pp. 73, 75.

<sup>103</sup> Dumbuya, M., Johnson Mayamba, J., & Loua, F.F., "The Impact of Technology on Mental Health During COVID-19", *AFRICLAW*, available at <<https://africlaw.com>>2020/05/22> (accessed 27 May 2020).

<sup>104</sup> Dahiya, S. et al, "Enhancing Quality of Education Through Information and Communication Technologies", 5(2) *Journal of Emerging Technologies and Innovative Research*, 2018, at p.1220.

<sup>105</sup> Pruneau, D., et al, "Future Teachers' Relationships With Physical and Technological Environments", (3) 4 *European Journal of Sustainable Development* 2014, pp. 71- 82 at p. 72.

<sup>106</sup> Dahiya, et al, "Enhancing Quality of Education Through Information and Communication Technologies", above at note 22, at p. 1221.

The UNESCO as such recommends open educational applications and platforms for teaching under the COVID-19 state lockdowns and physical distancing.<sup>107</sup> The ICT dispenses with the physical learning environment and some universities in Africa officially deploy ICT and the internet to impart knowledge, in compliance with state's lock-down regulations on COVID-19 pandemic.<sup>108</sup> Under the COVID-19 pandemic, there is a near zero congregation on various activities, which are substituted with virtual meetings and activities.<sup>109</sup> Consequently, schools in states of the world are resuming their classes by digital means like Zoom and Google except that such are not accessible to everyone particularly those who are based in developing countries.<sup>110</sup>

The COVID-19 e-learning enables students to control the pace and rhythm of their studies, given the fact that they are barred under lock-down regulations from coming together under a physical environment.<sup>111</sup> The COVID-19 pandemic and quarantines make people more reliant on the internet to communicate, work, learn and stay entertained. Internet as such qualifies as an environment where people live, learn, evolve, and socialize.

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<sup>107</sup> UNESCO, "COVID -19 Educational Disruption and Response", above at note 18.

<sup>108</sup> Orr, D, et al., "How is Digitalisation Affecting the Flexibility and Openness of Higher Education Provision? Results of a Global Survey Using a New Conceptual Model", (1) *Journal of Interactive Media in Education*, 2019, pp. 1–12, at p. 1.

<sup>109</sup> The Jerusalem Post, "The Long-Term Effects Of The Coronavirus", available at <<https://www.jpost.com/Opinion/The-long-term-effects-of-the-coronavirus-619118>> (accessed 10 October 2020).

<sup>110</sup> UNESCO, "COVID-19 Educational Disruption and Response", above at note 18; Thapa, "Impact of COVID-19 Lockdown on Agriculture Education in Nepal", above at note 65, at p. 4.

<sup>111</sup> Pham *et al.*, "Does e-Learning Service Quality Influence E-Learning Student Satisfaction and Loyalty? Evidence From Vietnam", (16)(7) *International Journal of Educational Technology in Higher Education*, 2019, at p. 2.

Consequently, for the internet and the ICT to adequately fill the learning gap, following the COVID-19 pandemic and the induced lock-down, or at any other time, and for access to education to be realised in the circumstances, focus subsequently shifts to the inequality of access to the internet and of the desired infrastructure.

## 4.2 Unequal Access to ICT and the Internet

Every university has the mandate to provide facilities for learning and for the realisation of the objectives of such university.<sup>112</sup> The UNESCO under the COVID-19 state lockdowns and physical distancing approves that learning may go on in schools and academic institutions using open educational applications and platforms for teaching.<sup>113</sup> The COVID-19 pandemic and the new demand for the ICT and internet exposes the unequal socio-economic positions in countries of Africa, leading in part, to the unequal access of individuals to Information Communication Technology (ICT) and internet usage.<sup>114</sup>

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<sup>112</sup> Sec 4(I)First Technical University, Ibadan, Oyo State, Nigeria (Amendment Law), 2018, available at <<https://tech-u.edu.ng>> (accessed 26 June 2020); Sec 24(2)(b)(ii) of the Statute of the University of Pretoria, Higher Education Act, 1997, Republic of South Africa. <https://www.up.ac.za/media/shared/409/higher-education-act-1997.zp86770.pdf>

<sup>113</sup> UNESCO, "COVID -19 Educational Disruption and Response", above at note 18.

<sup>114</sup> Lasame, Z., "Bridging the Digital Divide in South Africa and Selected African Countries," in Lasame, N.C., (ed.) *New Media Technology and Policy in Developing Countries*, 2005, available at <<https://www.bing.com/search?q=Lasame%2C+Z.%2C+%E2%80%9CBridging+the+Digital+Divide+in+South+Africa+and+Selected+African+Countries%2C%E2%80%9D+in+Lasame%2C+N.C.%2C+%28ed.%29+New+Media+Technology+and+Policy+in+Developing+Countries+%282005%29+3>>> (accessed 2 November 2020) at p. 3.

Access challenge to education and the opportunity to retain one's studentship is violated where a student loses his studentship on account of inadequate infrastructure, which he has no control upon. The discriminatory loss of access to the ICT and the internet robs students of the desired skills, and denies the development of the person and dignity which education confers on students.<sup>115</sup>

Non-discrimination assumes an environment which affords equality on account of social, political or economic status, such that students who are vulnerable are fully included as of right, free of every impediment. The African Charter provides that every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the Charter without any let on account of social origin, birth or other status.<sup>116</sup> The CRPD also provides on equality and non-discrimination against persons, including children with disabilities. Article 5 as such provides: "States parties must prohibit all discrimination on the basis of disability. Persons with disabilities are entitled to equal protection and equal benefit of the law, which requires States parties to take appropriate measures to ensure reasonable accommodation is provided".

Article 1 of the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979 as such defines "discrimination" as "any distinction, exclusion or restriction made on the political, economic, social, cultural, civil or any other field". Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and which right may be better realized given the enjoyment of the right to peaceful

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<sup>115</sup> See also Article 13(1) ICESCR; Olayinka, "Managing the COVID-19 Pandemic", available at note 6, at pp. 16, 17.

<sup>116</sup> art 2, African Charter.

assembly.<sup>117</sup> Education is a human right and an essential tool for development, which informs why the right to education has been given recognition in international and regional human rights instruments such as the CEDAW 1979; Convention on the Right of the Child and the African Charter on Human and Peoples' Rights.<sup>118</sup>

Lack of access to technology or fast, reliable internet connectivity is an obstacle to continued learning. Poverty of parents affects the prospects of students' access to the ICT. Africa has the world's largest concentration of poor families who incidentally are unable to afford ICT and internet service for their children and wards in the COVID-19 University calendar.<sup>119</sup> In the poverty circle, persons with disabilities feature prominently, constituting not less than 80 per cent of persons living in poverty.<sup>120</sup> Disability is thus a development issue wherein poverty enhances the disability in a disabled person, just as disability without access to desired empowerment leads to poverty.

The SDG as such provides precisely for the achievement of full and productive employment, decent work, and equal pay for work of equal value, for persons with disabilities, it as such recommends provision of decent work and economic growth for this class of

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<sup>117</sup> Art. 21 ICCPR.

<sup>118</sup> Art. 10 of the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979; arts. 23, 28 & 29 of Child Right Convention; art 17 of the African Charter on Human and Peoples' Rights; Olayinka, "Implementing the Socio-Economic and Cultural Rights in Nigeria and South Africa", above at note 19, at p. 565.

<sup>119</sup> Kathleen, B, et al., "Poverty in a Rising Africa, Africa Poverty Report", Overview by World Bank, Washington, available at <<https://openknowledge.worldbank.org/>> (accessed 10 October 2020) at p. 16.

<sup>120</sup> Brolan, C.E., "A Word of Caution: Human Rights, Disability, and Implementation of the Post-2015 Sustainable Development Goals", MDPI 2016, at p. 3.

people.<sup>121</sup> This operates with a view of attaining economic liberation of peoples with disability. Obutte as such considers the issue of poverty and access to telecommunications services as he submits that subscribers and consumers should enjoy access, without any discrimination against low income earners.<sup>122</sup>

The issue of access to education as above discussed has to do with location, such that the ease of attendance of classes by digital means links with the “developing - developed countries-divide”, whereby citizens of the developing countries are usually at a disadvantage.<sup>123</sup> The unequal access in the developing countries is also experienced under “the rural-urban” divide. To Wangal et al,<sup>124</sup> “rurality” covers geographical settlements which are isolated from urban areas, such that they are in remote places, countryside, in forest and or mountains, which causes the lack of access to socio-economic amenities, infrastructure and internet services.

Internet service providers are private organizations that are motivated by profit and most times find the extension of their networks to the rural areas as unviable venture. This results in discriminatory and unfavourable working conditions in the rural areas. This is not affirming that the available network service in the urban centers are at the best, as service and network are sometimes very slow, erratic and epileptic, as businesses are shut

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<sup>121</sup> Goal 8, Target 5 SDG.

<sup>122</sup> Obutte, P.C., “ICT Laws in Nigeria: Planning and Regulating a Societal Journey Into the Future”, (17)(1) *PER / PELJ* , 2014, at p. 435.

<sup>123</sup> UNESCO, “COVID-19 Educational Disruption and Response”, *ibid*; Thapa, “Impact of COVID-19 Lockdown on Agriculture Education in Nepal”, note 64 above, at p. 4.

<sup>124</sup> Chakaninka, et al, “The Challenges of Rural Education in Africa, 2012”, above at note 20, at p.9.



down for hours on end, even for days.<sup>125</sup> Consequently, even, if the education stakeholders in the rural areas are computer literates and can afford to have personal computers, internet access is a challenge. The declining socio-economic amenities as such imply that for the education sector in Africa to expand, more has to be done to provide teaching infrastructure in rural areas.

Related to this is the absence of power supply without which the ICT and the internet may not be deployed. Africa is struggling to catch up with the rest of the world, in terms of power infrastructure. On power supply deficit, West Africa's electricity access rate is put at 47 per cent, Southern Africa is at 43 per cent, Central Africa is at 25 per cent and East Africa is at 23 per cent.<sup>126</sup> In contrast, China's access rate is 100 per cent, India's access rate reached 82 per cent in 2016 and Brazil has an access rate of 97 per cent.<sup>127</sup> To deploy the ICT and the internet in the impartation of knowledge in Africa, electricity deficit in the Continent has to be fixed. The problem is acute in the rural areas which put village based university students at a disadvantage.<sup>128</sup> Lack of access to electricity in many rural areas has a negative impact on many aspects of teaching, particularly, the teaching of science subjects, just as science laboratory needs electricity supply. The areas that do not have

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<sup>125</sup> Ezike, E.O., "Online Contracts in Nigeria: An Overview", 11 *Nig. Juridical Review*, 2013, pp. 53 - 82, at p. 68.

<sup>126</sup> Africa Oil, "Beating Africa's Power Problem: The Issues Holding Africa Back", available at <<https://www.nigeriaelectricityhub.com/2018/12/28/beating-africas-power-problem-the-issues-holding-africa-back/>> 28 December 2018, (accessed 10 October 2020).

<sup>127</sup> Africa Oil, *ibid.*

<sup>128</sup> Kathleen, B., et al, "Poverty in a Rising Africa, Africa Poverty Report", above at note 119.

access to the national hydro power grid should be considered for solar power supply.<sup>129</sup>

The endorsed e-learning education under the COVID - 19 pandemic implies that the academic staff in the technology driven distance education are expected to be well trained for the task of impartation of knowledge.<sup>130</sup> This entails possession of adequate technological skills in the use of computer, to search for information online, and to impart knowledge. This is based on the fact that the quality of the instructors to a large extent determines the quality of instruction that is given. To DiPietro *et al*,<sup>131</sup> exceptional organization skills are needed to provide effective support for learners.

On the part of the students, the technological skills to contact and chat with the instructor and to build knowledge is essential.<sup>132</sup> The education stakeholders in the rural areas have always been denied the advantage of acquiring the desired technological skills.<sup>133</sup> This in turn affects the efficacy of the ICT in learning and impartation of knowledge in the rural areas. Most rural schools in Africa are staffed with a collection of untrained teachers,<sup>134</sup> while the urban areas

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<sup>129</sup> Chakaninka, et al, "The Challenges of Rural Education in Africa, 2012", above at note 20, at p. 12.

<sup>130</sup> Awoyinfa, S., "Obasanjo Asks Admission Seekers to Enroll in NOUN", *The Punch* 27 August 2015, at p. 12.

<sup>131</sup> DiPietro, M., *et al*, "Best Practices in Teaching K-12 Online: Lessons Learned From Michigan Virtual School Teachers", 7(1) *Journal of Interactive Online Learning*, 2008, pp.10, 35.

<sup>132</sup> Murray, J., Hale, F. & Dozier, M., "Use and Perceptions of Second Life by Distance Learners: A Comparison with Other Communication Media", 30(1) *International Journal of E-Learning and Distance Education*, 2015, at p.3.

<sup>133</sup> Compion, J. et al, "Meeting Challenges in Rural African Education: A Zambian Case Study", 44(1) *Acta Academica*, 2012, pp. 159-190, at p. 165.

<sup>134</sup> Chakaninka, et al, "The Challenges of Rural Education in Africa, 2012", above at note 20, at p. 9.

have concentration of trained teachers who reject postings to rural areas. Teachers' concerns include the rural working environment, the unacceptable quality of teaching facilities, and the poor state of classrooms, dilapidated library facilities and public facilities, poor residential accommodation, lack of easy access to professional improvement. Most of these teachers in the rural areas as such feel isolated and lonely.<sup>135</sup> To make up on the staffing inadequacies, incentives have to be provided to woo teaching staff who are based in the urban centers.<sup>136</sup>

Another category of persons who are vulnerable and seriously discriminated against in the deployment of the ICT in the learning and impartation of knowledge are the disabled teachers and students, whose impairment and wellbeing requires support.<sup>137</sup> Disability in the context of this work is viewed not as a problem of the person with impairment but as a social issue which vests a duty on the community to give support. The support is essential for the person with disability to participate effectively and on an equal basis with others.<sup>138</sup> On that basis, the SDG which is a universal agenda applying to everyone, everywhere, provides that persons with disabilities have to be empowered to access quality education.<sup>139</sup> This is hinged on an effective learning environment, in a manner

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<sup>135</sup> Chakaninka, et al, "The Challenges of Rural Education in Africa, 2012", above at note 20, at p. 10.

<sup>136</sup> *ibid.*

<sup>137</sup> Pearson, V, et al., "Embedding and Sustaining Inclusive Practice to Support Disabled Students in Online and Blended Learning", (1)(4) *Journal of Interactive Media in Education*, 2019, pp. 1–10, at p. 5;

Olayinka, "Managing the COVID-19 Pandemic", above at note 6, at p. 16.

<sup>138</sup> Msipa, D., "How Assessments of Testimonial Competence Perpetuate Inequality and Discrimination for Persons With Intellectual Disabilities: An Analysis of the Approach Taken in South Africa and Zimbabwe", 3 *African Disability Rights Yearbook*, 2015, at pp. 65, 66.

<sup>139</sup> SDG Goal 4, Target 5.

which qualifies as inclusive and equitable quality education, capable of promoting lifelong learning opportunities for all. The next focus is the role of the Government, pre-COVID-19 and now on the provision of the desired enabling environment, fit for the deployment of the ICT and internet for the dissemination of knowledge, under the COVID -19 lockdown.

## 5 CONCLUSION AND RECOMMENDATION

A state is expected to set its minimum standards on teaching infrastructure which shall be construed to include ICT,<sup>140</sup> staffing and a general environment that has to be conducive to learning. Each state is obliged to take steps, individually and through international assistance and cooperation, especially economic and technical, including the adoption of laws or other measures as may be necessary to give effect to the right to education. The realization of SERs depends on the Government's commitment of substantial resources, which itself is a function of available resources.<sup>141</sup>

The socio-economic divide and the general wide gap between the rich and the poor in countries of Africa leads to un-equal access to the Information Communication Technology (ICT) and internet usage,<sup>142</sup> while the COVID-19 pandemic continues. If countries in Africa will enjoy commendable access to university education as it obtains in the OECD countries,<sup>143</sup> Africa has to tackle public sector

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<sup>140</sup> Santally, M., "An Evaluation of the African Leadership in ICT Programme From a Quality Assurance Perspective", 19(2) *European Journal of Open Distance and E-Learning*, 2019, 114; Olayinka, O.F., "Managing the COVID-19 Pandemic", available at note 6 above, at p. 17.

<sup>141</sup> See Article 22 UDHR.

<sup>142</sup> Lasame, "Bridging the Digital Divide in South Africa and Selected African Countries", above at note 114, at p. 3.

<sup>143</sup> OECD; Amaded, "The OECD and Member Countries", above at note 113, at p. 6.

corruption and misappropriation of funds which sustains unequal economic relations. It is when funds that are budgeted for education are judiciously expended that there can be adequate teaching infrastructure and assured academic standards.<sup>144</sup> Government should also take measures on cultural re-orientation such that female sex, of school going ages are discouraged from going into matrimonial institutions.<sup>145</sup>

The Convention on the Elimination of Discrimination Against Women (CEDAW) directs that States shall take all appropriate measures, including legislation, to ensure the full development and advancement in the enjoyment of human rights and fundamental freedoms, without any discrimination.<sup>146</sup> The requirement of funding to the maximum of a state's available resources is established in international instruments and as domesticated in various states.<sup>147</sup> This position was interpreted in *Soobramoney v the Minister of Health (Kwazulu-Natal)*,<sup>148</sup> the Court held that the right to emergency medical treatment had to be interpreted in the context of the availability of health facilities and human resource which are generally available. Consequently, SERs may not be realised immediately and at the right standard except at the readiness of states.<sup>149</sup> Political leadership is enjoined to put in place in their

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<sup>144</sup> Article 12 of UNCAC and Article 11 of the AU Convention on Preventing and Combating Corruption; Olayinka, "Policies to Prevent Corruption in Nigeria", above at note 1, at p. 43.

<sup>145</sup> Wellbeing Foundation, "Nigeria - Child Marriage Around the World Girls Not Brides", above at note 99; Peters, M.A., "Western Education Sinful", above at note 96, at p. 186; Olayinka, "Women's Right to Active Participation in Governance", above at note 8, at pp. 12, 13.

<sup>146</sup> Article 1, 3 CEDAW

<sup>147</sup> Art. 2(2) ICCPR; Art 2(1) ICESCR; Santally, "An Evaluation of the African Leadership in ICT Programme", above at note 140, at p. 114; Olayinka, "Implementing the Socio-Economic and Cultural Rights in Nigeria and South Africa", above at note 19, at p. 585.

<sup>148</sup> 1998 1 SA 765 (CC).

<sup>149</sup> Art. 2 of the ICESCR.

countries the standard of education, medical and general infrastructure which they and their families get in western countries.

COVID-19 pandemic presents an excellent opportunity for countries in Africa to showcase the state of infrastructure resulting from social economic and political blending since flag independence. Incidentally, most of the states have insignificant percent of annual budgetary provisions for ICT and the internet and of course, e-learning. The discretion in funding and timing towards the realization of quality education has most times not been exercised justifiably by states, such that in the 21 Century, access to the ICT, which is required under a COVID 19 education session, remains an issue in Africa. This inadequate funding gives a state of infrastructure which is not adequate for the e-learning under the COVID-19 pandemic. The quality of university education which is available under the right to education is thus compromised.

Prior to COVID-19 pandemic, university education in countries of Africa ran through the conventional “chalk and talk medium”. The carrying capacities established in states were not impressive because of persistent shortfall in budgetary allocation to education, which has not assisted in boosting access to universities.<sup>150</sup> The issue of location which border on the “developing - developed country” consideration, operates such that Countries of Africa trail behind the developed countries that enjoy impressive level of access,<sup>151</sup> on account of the generous investment in the education sector.<sup>152</sup>

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<sup>150</sup> Daniel, et al, “A Philosophical Outlook on Africa’s Higher Education in the Twenty-First Century”, above note 3, at p. 4.

<sup>151</sup> OECD, “History” 19 May 2020; Amaded, K., above at note 6.

<sup>152</sup> *ibid.*

The work established that the UNESCO failed to consider the peculiarities in Africa, the level of preparedness of universities in terms of infrastructural adequacies such as power supply and internet services.<sup>153</sup> The e-learning and the right to education in Africa in the course of the COVID-19 pandemic is not effective in the development of the human personality, and for the development of countries in Africa.<sup>154</sup> This is attributed to the fact that e-learning is not feasible without the ICT and the internet. Consequently, the university students who are based in the rural areas are prejudiced in respect of access to social and economic support, desired under e-learning. Digital inequality of university students who dwell in rural areas limits their access to education.<sup>155</sup>

For the internet and the ICT to adequately fill the learning gap, under an e-learning arrangement, or at any other time, and for access to education to be realised in the circumstances, constant power supply, for Africa is a task to accomplish.<sup>156</sup> The pre-COVID-19 access challenge is thus made worse as very many students from Africa now keep more distance to the university education for lack of access to the internet and to the ICT to learn from home, under COVID-19 academic session.

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<sup>153</sup> Art. 22 UDHR, 1948; Olayinka, "Implementing the Socio-Economic and Cultural Rights", above at note 19, at p. 568.

<sup>154</sup> Art. 13(1) International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), above at note 1. Olayinka, "Policies to Prevent Corruption in Nigeria", above at note 1, at p. 37.

<sup>155</sup> Arts. 2(2) and 13(1) ICESCR.

<sup>156</sup> Olayinka, "Managing the COVID-19 Pandemic", available at note 6, at p. 15.

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