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CONCEPTUALIZING THE NATURE OF LAND RIGHTS UNDER THE LAND USE ACT (LUA): OWNERSHIP, POSSESSION OR A HYBRID

By Branham-Paul Chima.

ABSTRACT

This paper critically examines the nature of land rights under the Land Use Act (LUA) in Nigeria, positing that the prevailing understanding of land title is fundamentally possessory rather than ownership-based or hybrid. It asserts that ultimate land ownership is vested in the government – at the federal, state, and local levels - thereby redefining the relationship between occupiers and land. Occupants who perceive themselves as landowners are, in fact, exercising possessory rights, which are circumscribed by the provisions of the LUA. Through an analytical discourse, this study highlights the implications of this possessory nature on land tenure security, development policies, and socio-economic dynamics in Nigeria. The findings suggest that clarifying the distinction between ownership and possession is essential for effective land management and governance, ultimately contributing to a more equitable and sustainable land rights framework in the country. The paper concludes that the nature of land title in Nigeria is distinctly possessory and challenges the notion of a hybrid model, advocating for legal reforms that reinforce the nuances of land rights under the LUA.

CONCEPTUALIZING THE NATURE OF LAND RIGHTS UNDER THE LAND USE ACT (LUA): OWNERSHIP, POSSESSION OR A HYBRID?

Following the publication of the Land Use Panel's 1978 report, the Nigerian military head of State, General Olusegun Obasanjo, at the time the Act was promulgated announced in a special broadcast to the country:

"All Nigerians are collectively owners of all land in the country and the rights of all Nigerians to use and enjoy the land of the country ... Ownership of land per se is irrelevant. What is important is the use to which land is put and no Government should abdicate its responsibility in respect of a proper planning of Land Use within its territory."

HISTORICAL PERSPECTIVE BEFORE THE ENACTMENT OF THE LUA 1978¹

In an interim report submitted by the Federal Military Government's Anti-inflation Task Force in 1975, the Task Force identified the country's land tenure system as a major stumbling block to national development and recommended the promulgation of a decree vesting all land in principle in the State government. These recommendations were rejected by the government.

The Federal Military Government appointed a 12 member Land Use Panel under the chairmanship of the Hon. Justice Chukwunweike Idigbe, of the Supreme Court of Nigeria, in May 1977. Its report and recommendations were published in the government's white paper on the Report and Recommendations of the Land Use Panel in 1978, which was established in May 1977; this recommendation was highly persuasive to seeing the promulgation of the LUA.

DEFINITION OF OWNERSHIP & POSSESSION

Possession refers to the right to use a thing, and the enjoyment which goes with it. An owner has possession, but not all who possess or have possessory rights are owners. Ownership denotes absolute right to a thing.²

¹ Federal Ministry Information. Lagos. 1975 Vol. 1 page 292; Nigeria: Report of Rent Panel 1976:67; Nigeria: Land Use Panel 1977:1

² Kobo & Ors. v. Biam (2021) - CA/MK/284/2013; Akintunde Kabir Otubu, "The Land Use Act and Land Ownership Debate in Nigeria: Resolving the Impasse", SSRN Electronic Journal, 10.2139/ssrn.2564539

Ownership expresses the very abstract idea of an object being associated with the name of some individuals, in relation to a rule that states that society will uphold that individual's decision as final when there is any disagreement about what should be done with the object. The person who has been given the privilege of owning an object is known as the owner.³ This is because the property begins with him and ends with him.⁴ It is highly sacred that ownership rests with the person who has the right of last resort to revert to the property.⁵ The flip of this is that a person who has a certain time limit to use a land cannot be said to be an owner.⁶

THE NATURE OF LAND RIGHTS UNDER THE LAND USE ACT 1978 IS THAT OF POSSESSION

This paper argues for and states that the nature of land title in Nigeria, generally, is that of possessory. Land ownership resides in the government - Federal, State, & Local.

Occupiers who think they own land merely have possessory rights, pursuant to the LUA. Further, the nature of land title in Nigeria is not hybrid.

Premised on the above, the following submissions are made:

I. Declaration of all Lands in the Governor by Section 1 Land Use Act 1978

SECTION 1 OF THE LUA provides clearly that subject to the provisions of the Act, all land comprised in the territory of each state in the Federation are vested in the Governor of that state and such land shall be

³ J. Waldron, "The right to private property", Oxford: Clarendon Press, 1988; J.F. Garner, "Ownership and the Common Law" (1976) JPEL p. 403; L Katz, "The Concept of Ownership and the Relativity of Title" (2011) 2(1) Jurisprudence 191–203 also, available on www.ssrn.com (accessed 2/07/13); W. Blackstone, "Blackstone on the absolute rights of individuals (1753)", <<https://oll.libertyfund.org/page/blackstone-on-the-absolute-rights-of-individuals-1783>> accessed 10th August 2022

⁴ Per Niki Tobi, JSC (ahtw) in *Attorney General of Lagos State v. Attorney General of the Federation & 35 Ors.* (2003) 12 NWLR (833)

⁵ O. Kelly & E.A. Kelly, "The law of property" available at <<http://www.oakadvocates.co.ke/userfiles>> accessed 3rd August 2022

⁶ L.M. Qin, "Reform of land system in China 1994", Singapore journal of Legal Studies, 495-520; C.O. Olawoye, "Title to land in Nigeria", Evans Brothers Ltd. (1974) p.1; Professor Nwabueze had suggested in 1972 that a realistic strategy for changing the tenure of land in Nigeria would be to expand state ownership of property functioning in the North to other sections of the country. See: Nwabueze, *Nigerian Land Law*, Nwamife Publishers, Enugu 1972, p. 632

held in trust and administered for the use and common benefit of Nigerians in accordance with the provision of this Act.⁷

In **NKWOCHA V. GOVERNOR OF ANAMBRA STATE**⁸ per Eso JSC, “*The tenor of that Act as a single piece of legislation is the nationalization of all lands in the country by the vesting of its ownership in the state leaving the private individuals with an interest in land which is a mere right of occupancy.*” On the use of the word “vested” in **section 1 of the LUA**, Eso JSC posits that “*the use of the word ‘vested’ in section 1 of the Land Use Act has the effect of transferring to the Governor of a state the ownership of all land in the state.*”

Honourable J.I. Umezulike opines, inter alia, that only one extreme possibility—the expropriation or nationalization of land—is contemplated by section 1 of the Act.⁹ Families, communities, and non-governmental ownership of lands is completely affected.¹⁰

This broad provision vests the Governor with ownership of all Land. The Governor may give an Applicant the right of possession under section 8 of the Land Use Act, which is limited in duration and may be renewed.¹¹

The effect of **section 1 of the LUA** is to irrevocably vest all lands hitherto in the hands of the State.¹²

⁷ Section 49 of the Land Use Act does not revoke the owner's rights to the lands owned by Federal Government & its agencies; on this import see vide C. Ilegbune, “Land ownership structure under the Land Use Act 1978”, (2003) 23 JPPL p. 24-42

⁸ [1984] 6 SC 362 at 404

⁹ Umezulike “Does Land Use Act expropriate” Another view (1986) 5 JPPL p. 61; Vide O.A. Fatula, Fundamentals of Nigerian Real Property Law, Afribic Press Ibadan 2012 p.175

¹⁰ C. Ilegbune, “Ownership structure under the Land Use Act 1978”, (2003) 23 JPPL p. 33

¹¹ Uchendu noted that the Nigerian state is implicitly the logical sovereign in land disputes, while not being officially specified in the statute (decree): Uchendu, State, Land and Society in Nigeria, “A Critical Assessment of the Land Degree”, Journal of African Studies (1978) Vol. 6 pp. 62-74; Papers available at <http://www.course.earthrights.net/node/416>, accessed 10/08/2022; I.O., Smith, Sideline Orthodoxy In Quest For Reality: Towards An Efficient Legal Regime of Land Tenure in Nigeria, An Inaugural Lecture Delivered at the University of Lagos On Wednesday, 18th June 2008 University of Lagos Press, 2008 p 20- 21

¹² This position is shared by L.K. Agbosu, “The Land Use Act and the State of Nigerian Land Law”, Journal of African Law, Vol. 32, No. 1 (Spring, 1988), pp. 1-43 at p.5

II. Residuary nature of land title in the LUA

Dias, in his book on Jurisprudence,¹³ states that someone is the owner of anything when their interest in it will outlast other people's interests in the same thing.¹⁴

By **SECTION 8 LUA**, the fact that a Right of Occupancy is limited to a certain period places the ownership of the land in the Governor. Also, by **SECTION 36 LUA**, those who own customary right of occupancy cannot alienate the Land for other purposes other than agricultural. The limited use/exercise placed on customary rights of occupancy points to the lordship and ownership of Land by the Governor.

CONCLUSION

To conclude, the comment of Ezejiofor is apposite. He said while assessing the provisions of the Northern Nigeria Land Tenure Law - the prelude of the Land Use Act, *"The Law and its predecessors took away from the natives of Northern Nigeria proprietary rights to the lands which originally belonged to them and which they occupied and over which they exercised acts of ownership according to their native laws and customs. In place of their ownership titles they got mere customary rights of occupancy-the right to occupy and use the land-which can be revoked by the Minister or a local authority for good cause and sometimes without payment of compensation for improvements on the land. At no time was any compensation paid to the natives of Northern Nigeria for this act of expropriation."*¹⁵

¹³ R.W.M. Dias, Jurisprudence, 3rd Edition Butterworth & Co. Publishers Ltd, pp 369-70

¹⁴ Dias held his opinion after referring to P.J. Fitzgerald, Salmond on jurisprudence, Sweet & Maxwell 12th ed. 1966

¹⁵ G. Ezejiofor, "Constitutional Guarantee of Property Rights", Nigeria Journal of African Law, Vol. 18, No. 2 (Autumn, 1974), pp. 127-148

CLIMATE CHANGE AND REAL ESTATE LAW IN NIGERIA: ADOPTING LEGAL STRUCTURES FOR SUSTAINABLE PROPERTY MANAGEMENT

By Obiorah Victor Chibuzor

ABSTRACT

Climate change is a global phenomenon that has far-reaching implications for various sectors, including real estate. Nigeria, as a developing country, is particularly vulnerable to the effects of climate change, which pose significant challenges to the real estate sector. The Insurance Bureau of Canada reported that extreme weather events cost the country's insurers an average of \$1.9 billion per year from 1983 to 2008, with some years exceeding \$2.7 billion.¹ Similarly, the United States experienced a record-breaking number of weather-related disasters in 2019, costing an estimated \$45 billion.² These figures illustrate the financial burden placed on the real estate sector and the broader economy due to the increasingly severe impacts of climate change. To mitigate these challenges and promote sustainable property management, it is essential to adopt legal structures that incorporate climate change considerations. This essay will examine the impact of climate change on real estate in Nigeria, explore current legal frameworks, and propose legal structures for sustainable property management.

LEGAL FRAMEWORK

Currently, Nigeria's real estate law does not have specific provisions addressing climate change or promoting sustainable property management. The Land Use Act of 1978 is the primary legislation governing land and property ownership in Nigeria.³ While it provides a foundation for property rights, it lacks specific provisions that address environmental concerns associated with climate change. This limited legal framework undermines efforts to mitigate and adapt to climate change impacts in the real estate sector.

¹ Steve Scherer, Insurers warn government Canada's flood mapping must not take a decade, (Reuters, May 5, 2021)

<<https://www.reuters.com/world/americas/insurers-warn-government-canadas-flood-mapping-must-not-take-decade-2021-05-05/>> accessed 16 November 2023.

² Danielle Ling, U.S. saw 14 \$1B natural disasters in 2019, now the second wettest year on record, (Property Casualty 360,

January 14, 2020) <<https://www.google.com/amp/s/www.propertycasualty360.com/2020/01/14/u-s-saw-14-1b-natural-disasters-in-2019-now-the-second-wettest-year-on-record/%3famp=1>> accessed 16 November 2023.

³ Adeola, Nigerian Land Use Act Of 1978: Everything You Need To Know

IMPACTS OF CLIMATE CHANGE ON REAL ESTATE SECTOR IN NIGERIA

Nigeria, the most populous country in Africa, faces significant challenges due to climate change. This segment aims to examine the impacts of climate change on real estate in Nigeria, providing accurate statistics to support the claims.

1. Rising Sea Levels and Coastal Properties:

Nigeria has a coastline of approximately 853 km, which is vulnerable to rising sea levels as a result of climate change. According to a study conducted by the Nigerian Conservation Foundation (NCF), about 80% of Lagos, Nigeria's economic hub, is at risk of being submerged by 2050 due to sea-level rise.⁴ The impact of rising sea levels is a serious concern for coastal properties as increased flooding and erosion can render them less desirable and even uninhabitable.

2. Increased Flooding and Infrastructure Damage:

Nigeria has experienced a significant increase in the frequency and intensity of flood events in recent years. According to the Nigerian Hydrological Services Agency (NIHSA), an average of

(RealesateinLagos, September 13, 2022 <<https://realestateinlagos.com/nigerian-land-use-act-of-1978/>> accessed 16 November 2023

⁴ Chinedum Uwaegbulam, How rising seas may wipe off Lagos, others by 2050, (The Guardian, 06 November 2019) <<https://guardian.ng/news/how-rising-seas-may-wipe-off-lagos-others-by-2050/>> accessed 16 November 2023.

7.6 million Nigerians were affected by floods annually between 2008 and 2012.⁵ Flooding not only damages real estate properties but also disrupts critical infrastructure such as roads, bridges, and sewage systems, thereby leading to a decline in property values and increased maintenance costs.

3. Declining Agricultural Productivity and Rural-Urban Migration:

Climate change impacts agricultural productivity, which has significant implications for the rural real estate market. Nigeria heavily relies on agriculture for its economy, with the sector employing a significant proportion of the population.⁶ However, changing rainfall patterns, prolonged droughts, and increased temperatures affect crop yields, leading to reduced agricultural incomes. As a result, rural dwellers are forced to migrate to urban areas in search of alternative livelihoods, leading to increased demand for housing in urban areas.

4. Increased Demand for Climate-Resilient Buildings:

As the impacts of climate change become more evident, there is a growing demand for climate-resilient buildings in Nigeria. Developers are increasingly incorporating sustainable design features such as rainwater harvesting systems, energy-efficient appliances, and green roofs. According to the International Finance Corporation (IFC), sustainable buildings can result in

⁵ Leon Usigbe, Nigeria prioritizes climate action to mitigate natural disasters, (UN, August 2023) <<https://www.un.org/africarenewal/magazine/august-2023/nigeria-prioritizes-climate-action-mitigate-natural-disasters>> accessed 16 November 2023.

⁶ Oreoluwa Ibukun Akano, Folasade Olubunmi Oderinde, Abiodun Olusola Omotayo, Agricultural yield, food nutrition and dietary energy supply in Nigeria: Evidence from nationally representative data, (ScienceDirect, March 2023) <<https://www.sciencedirect.com/science/article/pii/S2666154323000327>> accessed 16 November 2023.

energy savings of up to 35% and water savings of up to 40%.⁷ This shift towards climate-resilient buildings presents new opportunities and challenges for the real estate sector in Nigeria.

5. Insurance Costs and Market Uncertainty:

With the increase in extreme weather events, insurance companies are becoming more cautious about providing coverage in high-risk areas. The cost of insuring properties in flood-prone regions has risen significantly due to climate change. This creates uncertainty in the real estate market, as potential buyers and investors may be reluctant to invest in properties located in vulnerable areas.

6. Government Policies and Regulations:

The Nigerian government recognizes the importance of combating climate change and its impact on the real estate sector. Initiatives such as the National Climate Change Policy and the National Adaptation Strategy have been developed to address the challenges posed by climate change. However, effective implementation and enforcement of these policies are essential to mitigate the impact on real estate in Nigeria.

RECOMMENDATIONS

To promote sustainable property management in Nigeria, it is crucial to adopt legal structures that integrate climate change considerations. One possible legal structure is the implementation of mandatory climate change impact assessments for real estate projects. This would require

⁷ Josephine Ogundeji, Real estate sector shifts to renewable energy, (Punch, 9th April 2023)

<<https://punchng.com/real-estate-sector-shifts-to-renewable-energy/>> accessed 16 November 2023.

developers to assess the potential environmental impacts of their projects and propose mitigation and adaptation measures. Similar provisions already exist in some countries, such as the Environmental Impact Assessment (EIA) requirement in the United Kingdom. By incorporating climate change assessments into the development process, Nigeria can ensure that real estate projects are designed and implemented in a way that considers climate resilience.

Furthermore, incorporating green building standards into real estate regulations can enhance sustainability in property management. Green building standards, such as LEED (Leadership in Energy and Environmental Design), promote environmentally friendly building practices, including energy efficiency, materials sourcing, and water conservation.⁸ The adoption of such standards can incentivize developers to incorporate sustainable features into their projects and reduce the carbon footprint of the real estate sector.

In addition to mandatory assessments and green building standards, it is essential to strengthen the enforcement of existing environmental regulations. Nigeria already has environmental regulations and agencies responsible for their implementation. However, enforcement has been a significant challenge, leading to violations such as illegal dumping and improper waste management. Strengthening the enforcement of existing regulations and imposing penalties for non-compliance can foster a culture of environmental responsibility within the real estate sector.

⁸ Stephanie Vierra, Green Building Standards And Certification Systems (WBDG, 03-23-2023) <<https://www.wbdg.org/resources/green-building-standards-and-certification-systems>> accessed 16 November 2023.

Furthermore, providing incentives for sustainable property management can encourage property owners to adopt climate-friendly practices. Tax incentives, such as reduced property taxes for energy-efficient buildings, can encourage property owners to invest in sustainable technologies and practices. Additionally, financial incentives, such as low-interest loans or grants, can support property owners in implementing climate adaptation measures, such as installing flood-resistant infrastructure or energy-efficient systems.

Lastly, promoting public-private partnerships is crucial for sustainable property management. Collaboration between the government, real estate developers, and other stakeholders can facilitate the sharing of resources, expertise, and knowledge. Public-private partnerships can support the implementation of sustainable development projects and promote the adoption of climate-friendly practices in the real estate sector.

CONCLUSION

In conclusion, climate change poses significant challenges to the real estate sector in Nigeria, including increased risks associated with flooding, erosion, and heat stress. To address these challenges and promote sustainable property management, it is necessary to adopt legal structures that incorporate climate change considerations. Mandatory climate change impact assessments, green building standards, strengthened enforcement of existing regulations, incentives for sustainable property management, and public-private partnerships are all crucial components of legal structures for sustainable property management. By adopting these legal structures, Nigeria can navigate the challenges of climate change and foster a resilient and sustainable real estate sector.

MATERNITY LEAVE: FUNDAMENTAL RIGHT OR MOTHERS' PRIVILEGE?

By

Francis A. Wayo* and Faloye E. Adetutu*

ABSTRACT

This paper explores the legal status of maternity leave in Nigeria, analysing whether it should be considered a fundamental right or merely a privilege. While maternity leave is crucial for the health and well-being of mothers and newborns, societal views often paint it as a burden on companies or a “career break” for women.

We delve into the core principles of human rights and fundamental rights as defined by the Nigerian Constitution, emphasizing their universal application, inalienability, and interconnected nature. Examining the legal framework surrounding maternity leave, we focus on Section 54 of the Labour Act, which provides six weeks' leave before and after childbirth. Through a careful comparison with broader human rights principles, we explore whether maternity leave can be implied as a fundamental right, drawing on the right to life and dignity as key arguments. Finally, we examine the implications of recognizing maternity leave as a right for advancing women's rights and building a more equitable work environment in Nigeria.

Introduction

During pregnancy and after delivery, women undergo various health, psychological, and physiological experiences, making maternity a challenging phase in their lives. In recognition of this peculiar circumstance, women are granted maternity leave. While this leave is well-deserving, some people are averse to it as a report once revealed the sentiment “that women who want a big business post should give up all thoughts of maternity leave – or what they prefer to call a "career break".¹ Against this backdrop, we seek to make a legal enquiry into the position of maternity leave as a fundamental right or just mothers’ privilege.

Conceptual clarification

Maternity leave: Maternity, according to the Black’s Law Dictionary, refers to the state or condition of being a mother especially a biological one.² Maternity leave has been defined as leave granted to a worker during pregnancy or after the birth or adoption of a new child.³ It is the period a new mother takes off work after the birth or adoption of a child. Under Nigerian law, maternity leave is contained under section 54 of the Labour Act which provides pregnant women with six weeks before delivery and six weeks after delivery.

Human rights defined: To understand fundamental rights, it will be advisable to start from human rights. In the case of *Afolayan v Ogunrinde and Ors(1990)1 NWLR (pt2.127) 369 at 39*, a right was defined as an interest recognised and protected by the law. In this description, “right” is used in relation to human rights. By description, human rights are “demands or claims which individuals or group make on society or fellow individuals, some of which are protected by rule of law while others remain aspirations to be achieved later.”⁴ They are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, or any other status.⁵ One of the most important characteristics of human rights is its universality because it is applicable to every human being irrespective of one's race, ethnicity, class, etc. Other features are inalienability since they are not subject to governmental power, and interdependency because all rights are equal in importance, and none can be fully enjoyed without the other.

Fundamental rights: Chapter four of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as

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1 Joanna Moorhead, ‘Why does big business hate maternity leave?’ *The Guardian* (16 June 2010) < <https://www.theguardian.com/money/2010/aug/16/maternity-leave> > accessed 18 April 2024

2 Bryan Garner, *Black’s Law Dictionary* (8th edn, West Publishing 2004).

3 BambooHR, ‘What is Maternity Leave and why is it important?’ < <https://www.bamboohr.com/resources/hr-glossary/what-is-maternity-leave> > accessed on 3 April 2024.

4 Igwe Onyebuchi Igwe, Matthew Enya Nwocha, Amaramiro A. Steve, “Enforce ment of Fundamental Rights in Nigeria and the Unsolved Issue of Poverty among the Citizens: An Appraisal” (2019) 10 Beijing Law Review 1 < doi.org > accessed 17 April 2024.

5 United Nations, ‘What are rights?’ < <https://www.ohchr.org/en/what-are-human-rights#:~:text=All%20human%20rights%20are%20indivisible,economic%2C%20social%20and%20cultural%20rights> > accessed on 3 April 2024.

amended) provides a list of rights that are considered fundamental, such as the right to life, right to dignity, freedom of assembly and religion, freedom of movement, expression, etc.⁶ These rights are also contained in the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966. Thus, the rights are sometimes referred to as “fundamental human rights” although the constitution does not use the word “human”. Whether those rights should be called fundamental rights or fundamental human rights is a discussion beyond this discourse. Be that as it may, whatever the definition of fundamental rights may be, it must be understood that they form part of human rights. Falana describes fundamental rights as the aspects of human rights which are entrenched in the constitution of a country.⁷ According to the Black’s Law Dictionary, a fundamental right is a right derived from fundamental law such as the constitution.⁸ In the celebrated case of *Ramsome-Kuti v. Attorney General of the Federation*,⁹ the Nigerian Supreme Court observed that a fundamental right is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself.

Whether maternity leave is a fundamental right or privilege

A privilege is a particular benefit, advantage, or favour; a right or immunity enjoyed by some but not others.¹⁰ A privilege is not equal to a right as it can be given and taken away. It is deemed to be a special advantage or opportunity that is available only to certain people.¹¹ Saying maternity leave is a privilege means that not everyone is entitled to it, and it is seen as a benefit rather than a right. Of course, the fact that it is limited to only women makes it enough to be considered a privilege. However, the challenge with privileges is that they impose little or less obligation compared to legal right such as fundamental rights.

From a reading of chapter 4 of the CFRN which provides for fundamental rights, there is no mention of maternity leave. By implication, maternity leave cannot be considered as fundamental right. However, it may be argued that maternity leave can be implied in sections 33 and 34 dealing with the right to life and dignity of human person as the protection of a pregnant woman cannot be separated from her life and by extension to that of the child.

Recognising the inseparability of maternity leave with other fundamental rights, it was held in the Indian case of *Swornalata Dash vs. State of Odisha and others*¹² that the refusal to grant maternity leave to a female

6 See generally the Constitution of the Federal Republic of Nigeria 1999, sections 33-46.

7 Femi Falana, *Fundamental Rights Enforcement in Nigeria* (2nd edn, Legal Text Publishing Company Ltd 2010)

8 Bryan Garner (n 2)

9 [1985] 5 NWLR (Pt. 10) 211 at 229-230

10 Dictionary.com, ‘Privilege’ < <https://www.dictionary.com/browse/privilege> > accessed 18 April 2024

11 License Lawyers, ‘Professional License Lawyer Defense and License Rights vs. Privileges’ < <https://thelicenselawyers.com/laws-regulations-connecticut-lawyer/rights-privileges/#:~:text=A%20right%20is%20something%20that,available%20only%20to%20certain%20people.> > accessed 18 April 2024.

12 (2023) 07 OHC CK 0174.

employee is "an assault on her dignity as an individual and right to life." Similarly, in the 2022 case of *Sobia Nazir v Province of Punjab*¹³ in Pakistan, the Lahore High Court held that "the availing of maternity leave is a fundamental right of the petitioner despite the fact that the same is not provided in terms and conditions of... service contract."¹⁴ The court reached its decision on the basis that refusal to grant maternity right may be tantamount to infringing a woman's rights under *the Constitution of Islamic Republic of Pakistan 1973*. The rights mentioned included Article 35 of the said Constitution which provides that the State shall protect the marriage, the family, the mother and the child; Article 25 on equality before the law, equal protection of law, and special provision for the protection of women and children; Article 37 covering the provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment, and Articles 9 and 14 of which provide for rights to life and dignity.

Conclusion

From a strict reading of the provisions of the CFRN and understanding of the concept of fundamental right, maternity leave may not fit into the category of fundamental rights. However, a purposive interpretation of human rights law will bring maternity leave into the discussion, the leave is intrinsic to her right to life and dignity as illustrated in the Indian and Pakistani cases. Apart from broadly interpreting fundamental rights to embrace maternity leave, the woman's right to maternity is not mere privilege as it is enshrined in the Labour Act. Thus, the least consideration of maternity leave is to be viewed as a legal right and not just a privilege despite uniquely applying to only women who can be mothers as far as Nigeria's jurisdiction is concerned.

13 W.P.No.16478 of 2022.

14 *Sobia Nazir v Province of Punjab* W.P.No.16478 of 2022, p 12 at par 20.

A CRITICAL APPRAISAL OF THE LEGAL FRAMEWORK FOR COMBATTING THE OUT-OF-SCHOOL CHILDREN CRISIS IN NIGERIA

By Emmanuel Praise

ABSTRACT

This study examined the escalating problem of out-of-school children in Nigeria and critically evaluated the existing legal framework designed to mitigate this crisis. To achieve these goals, the study employed a mixed-method approach, combining qualitative empirical research on the causes and extent of the out-of-school children problem with doctrinal analysis of relevant legal instruments.

In doing this, the study relied on both primary sources, including international laws, legislation and case law, particularly the Convention on the Rights of the Child, the Child Rights Act and the Compulsory, Free Universal Basic Education Act and secondary sources such as journal articles, newspapers and the internet.

The study found that the existing legal framework suffers from significant weaknesses due to loopholes and outdated provisions, and poor implementation resulting from ineffective planning, inadequate monitoring, corruption and mismanagement among others.

To solve the above issues, the study recommended regular reviews to update the laws, increased public awareness of legal obligations, and stronger enforcement mechanisms.

Keywords: Education Law, Out-of-school Children, Right to Education, Basic Education, Universal Basic Education Scheme

1. INTRODUCTION

According to UNICEF, Nigeria, despite comprising less than 3 percent of the world's population, is home to one in five of the world's out-of-school children. This situation is exacerbated by Nigeria's rising poverty rate, highlighting the urgent need for innovative solutions. This article provides a critical appraisal of the legal framework addressing the out-of-school children crisis in Nigeria, identifies existing challenges, and proposes suitable recommendations.

1. 1. Conceptual Clarification

Before delving into the main discussion, it is essential to clarify the concept of 'out-of-school children'. According to UNESCO, the term refers to 'children within the official primary school age range who are not enrolled in either primary or secondary school'.¹⁵ Essentially, it refers to children lacking access to basic education.¹⁶

The term 'out-of-school children' encompasses several categories: children who have never attended school, those who drop out before completing their basic education, and those enrolled in non-formal education systems that do not include literacy and numeracy instruction, such as many Quranic schools.¹⁷

1. 2. The Situation of Out-of-school Children in Nigeria

Education is fundamental to preparing citizens to contribute to societal development, solve problems, and foster economic prosperity and peace.¹⁸ Thus, the existence of out-of-school children impedes national progress and must be addressed urgently.

However, as pointed out earlier, the prevalence of the out-of-school children crisis remains alarmingly high. Statistics from UNICEF indicate that in 2022, Nigeria had approximately 18.3 million out-of-school children, with 10.2 million at the primary school level and 8.1 million at the junior secondary school level.¹⁹ More recent data show a reduction to

¹⁵ UNESCO. Teaching and learning: achieving quality for all; EFA global monitoring report, 2013-2014. Paris: UNESCO, 2014. <<https://unesdoc.unesco.org/ark:/48223/pf0000225660>>

¹⁶ P K Ikiyei and others, 'Out-of-school Children in Nigeria: A Creation by Society and Its Implications for Nation Building' (2022) 2(1) British Journal of Contemporary Education <https://www.researchgate.net/publication/365278554_Out-of-School_Children_in_Nigeria_A_Creation_by_Society_and_its_Implications_for_Nation_Building> accessed 14 August 2024.

¹⁷ Ibid; C N Okoh and others, 'Out-of-school Children: Enhancing Factors and Consequences for Sustainable Development in North Central Geo-Political Zone, Nigeria' (2020) 8(10) American Journal of Educational Research <<http://pubs.sciepub.com/education/8/10/10>> accessed 14 August 2024.

¹⁸ Education (National Minimum Standards and Establishment of Institutions) Act 1985.

¹⁹ UNICEF Nigeria, 'Education opportunities for Out-of-School Children (OOSC)' <<https://www.unicef.org/nigeria/media/7746/file/UNICEF%20Nigeria%20Chart%20Sheet:%20Out-of-school%20Children.pdf>> accessed 15 August 2024.

10.5 million out-of-school children in Nigeria.²⁰

Geographically, there are significant regional disparities with the northern regions accounting for a substantial proportion of the total out-of-school children. States such as Kebbi, Sokoto, and Yobe lead with 67.6%, 66.4%, and 62.9% of their children out of school, respectively, compared to 2-22% in the eastern and western states.²¹

2. REASONS FOR THE OUT-OF-SCHOOL CHILDREN CRISIS

2. 1. Economic Barriers

A major cause of the out-of-school children crisis is poverty, which is escalating in Nigeria due to the state of the country's economy leading to poor parents being unable to pay the requisite tuition fees.²² Even where education is free, parents may not be able to afford the indirect cost of education such as uniform fees, book fees etc.²³ Additionally, financial constraints can impact their ability to provide nutritious food and adequate healthcare, leading to poor school attendance or dropout.

Child labour further exacerbates the issue, as children from impoverished families may be forced into street begging, hawking, or other work to support their families instead of attending school²⁴

The situation is particularly severe for orphans and children from dysfunctional families who may be compelled to leave school to support themselves and their siblings.²⁵

2. 2. Socio-Cultural and Religious Beliefs

Cultural and religious biases significantly contribute to the out-of-school crisis. In some cultures and religions, female children are considered less valuable than male children, resulting in a preference for educating boys over girls.²⁶ Additionally, there is a belief in some communities that educating girls is unnecessary, as their roles are perceived to be

20 UNICEF Nigeria, 'Education' <<https://www.unicef.org/nigeria/education#:~:text=One%20in%20every%20five%20of,years%20are%20not%20in%20school.>> accessed 15 August 2024.

21 S Nwaokolo, 'FULL LIST: Top three states with highest number of out-of-school children in Nigeria' *Nigerian Tribune* (March 20 2024) <<https://tribuneonline.com/full-list-top-three-states-with-highest-number-of-out-of-school-children-in-nigeria/>> accessed 15 August 2024.

22 P K Ikiyei and others, *op. cit.*

23 Ibid.

24 N J Ogunode, C M Adanna and V O Ayoko, 'Out-of-school Children in Nigeria: Causes, Social Implications and Way Forward' (2022) 5(12) *International Journal on Integrated Education*; 82.

25 Ibid.

26 M M Ndanusa, Q K Abayomi and Y Harada, 'Examining the fragments and causes of increasing out-of-school children in Nigeria' (2021) 13(4) *Journal of African Studies and Development* <<https://ir.nilds.gov.ng/handle/123456789/358>> accessed 14 August 2024.

confined to domestic responsibilities. These misconceptions highlight the issue of gender inequality in education.²⁷ In cultures where early or child marriage is practised, girls are often prevented from completing or even starting their education by such marriages.²⁸ Furthermore, the Almajiri system, where children are sent to Islamic scholars for Qur'anic education and often forced into street begging to finance their studies, contributes to the high number of out-of-school children in Nigeria.²⁹

2. 3. Insecurity

Conflicts result in insecurity increasing the number of out-of-school children as parents are forced to withdraw their children in a bid to keep them safe. Such conflicts also disrupt existing educational systems affecting personnel and facilities and forcing learners to live in internal displaced persons (IDP) camps with little to no education.

For example, in the northern part of Nigeria, there is the Boko Haram sect with the belief that western education is injurious to Islam as a result of which they wield a lot of havoc on learners, educators and facilities in the country leading to an increase in the rate of out-of-school children.³⁰

Also, in other parts of Nigeria, the nefarious activities of the IPOB group and the activities of the Niger Delta militants, farmers-herdsmen clashes etc. lead to insecurity which leads to an increase in the rate of out-of-school children in those areas.³¹

2. 4. Population Growth

A high fertility rate, coupled with an already large population, has resulted in a high youth population which is putting significant pressure on the already inadequate educational infrastructure and facilities, leading to an increase in the rate of out-of-school children in Nigeria.³²

2. 5. Poor inclusivity

Lack of sufficient inclusive and special needs schools with the necessary personnel and facilities puts children with disabilities at risk of being excluded from the education system. Also, the nomadic lifestyle can lead to their children being unable to attend school or dropping out.

27 Ibid.

28 Ibid.

29 P K Ikiyei and others, *op. cit.*

30 Ibid.

31 Ibid.

32 N J Ogunode, C M Adanna and V O Ayoko, *op. cit.*; N J Ogunode and C M Adanna, 'An Analysis of Factors Responsible for High Out-of-school Children in Nigeria and Way Forward'

2. 6. Negative Perception & Influence

A negative perception of education as wastage of resources as represented in the popular saying that ‘education is a scam’ by children and their families is also a cause of the out-of-school children crisis.³³ This is due to the inability of most school graduates to secure a white-collar job after graduation because of high competition and nepotism.³⁴ Also, illiterate parents may underappreciate the importance of the education of their children.³⁵ Negative perceptions of education may also be influenced by older siblings and peers.³⁶

2. 7. Geographical Limitations

Children living in rural areas may be unable to access education because of the absence of education facilities and personnel in such areas.³⁷ Geographical limitations also exist in riverine areas where students lack access to appropriate transportation systems, such as canoes.

3. EFFECTS OF THE OUT-OF-SCHOOL CHILDREN CRISIS IN NIGERIA

In a country with a high rate of out-of-school children, illiteracy, lack of skilled labour, unemployment, and security issues, child marriages are common.³⁸ Such country will also suffer from a bad image and over burden on its resources.³⁹

4. THE LEGAL FRAMEWORK FOR COMBATTING THE OUT-OF-SCHOOL CHILDREN CRISIS IN NIGERIA

³³ P K Ikiyei and others, *op. cit.*

³⁴ Ibid.

³⁵ A J James and A R Olaniyan, ‘Tackling the menace of out-of-school children in rural areas through a media integration approach in Oyo State in Nigeria’ (2024) 5(1) *Journal of African Education*;105.

³⁶ A Lucky, ‘The Challenges of Out-of-school Children in Nigeria: Implications for Counselling’ <https://www.researchgate.net/publication/358671876_The_Challenges_of_Out_of_School_Children_in_Nigeria_Implications_for_Counselling> accessed 15 August 2024.

³⁷ K Oyekan, A Ayorinde, and O Adenuga, ‘The Problem of Out-of-School Children in Nigeria’ <https://riseprogramme.org/sites/default/files/2023-03/Problem%20of%20Out-of-School%20Children%20in%20Nigeria_0.pdf> accessed 15 August 2024.

³⁸ Ibid; N J Ogunode, C M Adanna and V O Ayoko, *op. cit.*

³⁹ N J Ogunode, C M Adanna and V O Ayoko, *op. cit.*

4. 1. International Level

At the international level, various international human rights instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) recognise the right to education and require that education be free at the basic level and generally available at higher levels. States are expected to take measures to ensure regular attendance at school and reduce the rate of school dropouts.

For example, Article 28 of the CRC provides;

“1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.”

This is in line with article 26 of the UDHR, article 13 of the ICESCR and article 11 of the African Children Charter. The provisions of free and accessible education helps to combat the twin issues of poverty and geographical limitations.

To ensure inclusivity, the African Children Charter further adds that state should take special measures in respect of female, gifted and disadvantaged children, for all sections of the community. This is in line with the provisions of other human rights instruments, most especially the Convention on the Rights of Persons with Disabilities and the Protocol to the African Charter on the Rights of Persons with Disabilities.

To ensure children are not out-of-school due to social-cultural and religious beliefs, private education is allowed as long as they conform with the minimum standards of education set by the state.

Recognising that child labour can be inimical to the realisation of a child rights to education, the CRC provides that;

“States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

Thus, while a child may be allowed to work under certain circumstances, such work must not negatively affect their education or development. This is also provided in sec 15 of the African Children Charter.

To combat the unhealthy school environment factor, especially as it relates to abuse, section 16 of the African Children Charter, specifically provides that States Parties must protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a...school authority...” Section 21 of the Charter also prohibits child marriage and betrothal.

Also, section 11(6) of the African Children Charter provides for the reabsorption of children out-of-school due to pregnancy.

Lastly, various human rights instruments provide for the protection and care of children in conflict situations such as sec 38(4) of the CRC and sec 22 of the African Children Charter and in line with this, the United Nations adopted the Safe School Declaration which recognises the *Guidelines for protecting schools and universities from military use during armed conflicts* and encourages State Parties to bring them into domestic policy and operational frameworks as far as possible and appropriate.

The Declaration also provides that State Parties are to develop, adopt and promote conflict-sensitive approaches to education in international humanitarian and development programmes, and, where relevant at a national level, and should seek to ensure the continuation of education during armed conflict, support the re- establishment of educational facilities and, where in a position to do so, provide and facilitate international cooperation and assistance to programmes working to prevent or respond to attacks on education.

4. 2. National Level

At the national level there are certain laws put in place to combat the out-of-school children crisis. On the right to education, Section 18 of the Constitution⁴⁰ provides that the government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels and strive to eradicate illiteracy and to achieve this shall as much as possible provide, among other things, free, compulsory and universal primary education and free secondary education;

However, the impact of this section has been severely limited by the provisions of Section 6(6)(c) of the Constitution, which makes the right to education non-justiciable.

There are however other laws which provides for the right to education such as the Child Rights Act (CRA)⁴¹, the Compulsory, Free Universal Basic Education (UBE) Act,⁴² and the Discrimination against Persons (Prohibition) Act (DAPA)⁴³. For example, section 15 of the Child Rights Act provides that “Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education”. This is similar to the provisions of sec 2 of the UBE Act.

In line with these, the court held in *LEDAP v Federal Ministry of Education and anor*⁴⁴, that, by the passage of the Compulsory Free Universal Basic Education Act, in line with the decision of the Supreme Court in *Attorney General of*

40 Constitution of the Federal Republic of Nigeria 1999.

41 Child Rights Act 2003.

42 Compulsory, Free Universal Basic Education Act 2004.

43 Discrimination against Persons (Prohibition) Act 2018.

44 Legal Defence and Assistance Project (LEDAP) GTE & LTD v Federal Ministry of Education & Another (Judgement) (FHC/ABJ/CS/978/15) [2018] NGFCHC 1 (17 April 2018)

Ondo State v. Attorney General of the Federation & 35 Ors,⁴⁵ the right to education in Nigeria has become justiciable and enforceable in the Courts, and thus the ‘failure to adopt and implement free, compulsory and universal primary education and junior secondary education is a breach of constitutional obligation of the government’.⁴⁶

Although the foregoing case established the right to education in Nigeria, it seems to be limited to only basic education which consists of one year pre-primary school, primary school and junior secondary school.

To achieve the realisation of this right, the law has made some specific initiatives to combat the causes of the out-of-school children crisis. On the issue of poverty, the UBE Act establishes the UBE scheme which is run by the Universal Basic Education Commission (UBEC) which is headed by a board.⁴⁷ The Act also establishes the State Universal Basic Education Board⁴⁸ and the Local Government Education Authority⁴⁹ at the state level and local government level respectively to monitor the UBE scheme.

The UBE Scheme is financed through a block grant from the federal government, which must be at least 2% of the Consolidated Revenue Fund.⁵⁰ Additional funding may come from federal guaranteed credits and local or international donor grants.⁵¹ However states have contributed not less than 50% of the total cost of projects as its commitment in the execution of the project.⁵²

Additionally, the UBE Act provides that services in public primary and junior secondary school are to be free and any person who collects any fee commits an offence and is liable on conviction to a fine not exceeding ten thousand naira or imprisonment for a term of 3 months or to both.⁵³

Furthermore, to combat the effect socio-cultural and religious biases, the CRA and UBE Act mandate parents to send their children to school regularly and the Local Government Education Authority, as the stakeholder responsible for education at the local government level, is to ensure compliance.⁵⁴

45 A.G., Ondo State v. A.G., Fed. (2002) 9 N.W.L.R. (Pt. 772) 222.

46 E O Akingbehin, ‘The Justiciability of Right to Free Basic Education Conundrum in Nigeria, South Africa and India: From Obstacle to Miracle’ (2021) 17(1) Acta Universitatis Danubius. Juridica <<https://dj.univ-danubius.ro/index.php/AUDJ/article/view/834>> accessed 15 August 2024.

47 UBE Act 2004,s7.

48 UBE Act 2004,s12.

49 UBE Act 2004,s13.

50 UBE Act 2004,s11(1).

51 Supra n(36).

52 UBE Act 2004,s11(2).

53 UBE Act 2004,s3.

54 UBE Act 2004,s2(2) & 4.

Failure to comply with this provision makes an offender on first conviction, to be reprimanded and ordered to undertake community service, on second conviction, to a fine of 2,000 or 1 month imprisonment or to both; and upon subsequent conviction, to a fine of 5,000 or 2 months imprisonment or both.⁵⁵ However, this does not apply to children in which either they or their parents are resident abroad⁵⁶ or children with mental disabilities.⁵⁷

The Child Rights Act further provides that parents must endeavour to send their children who have finished basic education to senior secondary school but if this is not possible, they should encourage the child to learn a trade.⁵⁸ It also provides that a female child that gets pregnant before finishing her education shall be given a chance to continue her education.⁵⁹

To foster inclusivity, the DAPA affirms the right to education by person with disabilities without any discrimination or segregation and such is free to senior secondary school level.⁶⁰ The National Commission for Persons with Disabilities is to provide education assistive devices.⁶¹

Also, all public schools shall be inclusive with at least a special needs education personnel and special facilities.⁶² Braille, sign language and other methods of communicating with persons with disabilities are to be taught in schools⁶³ and the cost of the education of special needs personnel highly subsidised.⁶⁴

In addition, the Child Rights Act prohibits child marriage and betrothal declaring such null and void.⁶⁵ Any offender is liable to a fine of N500,000; or imprisonment for a term of five years or to both.⁶⁶ The Act also prohibits sexual abuse of

55 UBE Act 2004,s2(4); CRA 2003, s15(6).

56 UBE Act 2004,s2(3).

57 CRA 2003, s15(7).

58 CRA 2003, s15(3) &(4).

59 CRA 2003, s15(5).

60 DAPA 2018, s17.

61 DAPA 2018, s17(3).

62 DAPA 2018, s(1).

63 DAPA 2018, s(2).

64 DAPA 2018, s19.

65 CRA 2003, s21&22.

66 CRA 2003, s23.

children and other acts that can be harmful to their welfare.⁶⁷

The CRA also prohibits exploitative child labour.⁶⁸ Section 28 provides that;

“(1) Subject to this Act, no child shall be-

- (a) subjected to any forced or exploitative labour; or
- (b) employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character; or
- (c) required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development; or
- (d) employed as a domestic help outside his own home or family environment.

(2) No child shall be employed or work in an industrial undertaking and nothing in this subsection shall apply to work done by children in technical schools or similar approved institutions if the work is supervised by the appropriate authority.”

The effect of this provision is that a child cannot be employed anywhere except in his family and such work must not be too much as to affect his development and growth. Failure to comply with this section makes the offender liable on conviction. If an individual, they may face a fine not exceeding fifty thousand naira, up to 5 years imprisonment, or both. If a corporate body, its officers and agents are jointly and severally liable on conviction to a fine of two hundred and fifty thousand naira.

Section 30 of the Act also prohibits the use of a child for the purpose of begging for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purpose, as a slave or for similar practices, for hawking of goods or services on main city streets, brothels or highways or for any purpose that deprives the child of the opportunity to attend and remain in school as provided for under the Compulsory, Free Universal Basic Education Act among other things.⁶⁹ Any offender is liable on conviction to imprisonment for a term of ten years.⁷⁰

The Act provides for the application of Sec 58, 59, 60, 61, 62 and 63 of the Labour Act as applicable to children with similar but more specific provision for the prohibition of child labour per day in situations involving ⁷¹

The National Commission for Nomadic Education Act⁷² establishes the National Commission for Nomadic Education

⁶⁷ CRA 2003, s31-33.

⁶⁸ CRA 2003, s28.

⁶⁹ CRA 2003, s30(2).

⁷⁰ CRA 2003, s30(3).

⁷¹ CRA 2003, s29.

⁷² National Commission for Nomadic Education Act 1989.

which has the duty to establish and maintain nomadic primary schools for children of nomads in Nigeria.⁷³

Most recently, in 2023, the National Commission for Almajiri and Out of School Children Education Act⁷⁴ established the National Commission for Almajiri and Out of School Children Education to provide a multimodal system of education which will tackle the menace of illiteracy, develop skill acquisition and entrepreneurship programmes and prevent youth poverty, delinquency and destitution in Nigeria.⁷⁵

These laws are supplemented by various policies such as the National Policy on Education (2013), National Policy on Inclusive Education in Nigeria (2023), National Policy on Gender in Education (2021), National Policy on Special Needs Education in Nigeria (2015), National Policy on Gender in Basic Education (2006), National Policy on Safety, Security and Violence-free Schools (2021) etc.

5. ISSUES AFFECTING THE LEGAL FRAMEWORK FOR COMBATTING THE OUT-OF-SCHOOL CHILDREN CRISIS IN NIGERIA

5.1. Flawed Legal Framework

A major problem with the legal framework for combatting the out-of-school children is its flaws, which allow children to continue being denied education. One such flaw is the presence of loopholes due to lack of clarity in the language, insufficient relevant provisions, or conflicting provisions. For example, the Constitution defines “full age” as eighteen years and above but also states that any woman who is married shall be deemed to be of full age. This section implicitly legitimises child marriage, which contributes to the out-of-school crisis.

Furthermore, while section 59 to 65 of the Labour Act generally prohibits child labour, some provisions permits its continuation in certain situations For example, section 59(3) allows a young person under the age of fourteen years to be employed a daily wage so long as he returns each night to the place of residence of his parents or guardian or a person approved by them.

This contrasts with sec 30 of the CRA which prohibits using a child for any purpose that deprives them of attending school as mandated by the Compulsory Free Universal Basic Education Act. A child employed in domestic service during the day is likely unable to attend school during that time.

Additionally, the UBE Act does not require states to collect their block grant from the UBEC Commission, resulting in

⁷³ National Commission for Nomadic Education Act 1989, s3.

⁷⁴ National Commission for Almajiri and Out of School Children Education Act 2023.

⁷⁵ H Umoru, ‘Buhari signs into law, National Commission for Almajiri, out of School Children bill’ *Vanguard* (Abuja, May 28 2023) <<https://www.vanguardngr.com/2023/05/buhari-signs-into-law-national-commission-for-almajiri-out-of-school-children-bill/>> accessed 15 August 2024.

many states failing to do so due to the requirement to provide 50 percent of the cost. According to a Universal Basic Education Commission (UBEC) report in 2024, more than twenty-seven states could not access funds in 2023 despite the Commission holding substantial funds with the Central Bank of Nigeria.⁷⁶ This is unfortunate, as these states, with high rates of out-of-school children, urgently need these funds.⁷⁷

Another issue with the legal framework is the lack of necessary regular update to laws. For example, the fines for parents who fail in their duty to send their children to school under the Child Rights Act and the UBE currently stands at 2,000 for a second offence and 5,000 for a subsequent offence which does not, in any way, tally with current day realities.

There have been many initiatives over the years to amend relevant law such as the UBE and the Normandic Education but which have failed to come to fruition.

5. 2. Poor Implementation

Apart from the issues of flaws in the legal and policy framework, there is also the issue of poor of implementation of these laws. For example, although section 2 of the UBE Act prescribes punishments for parents who fail to send their children to school and specifies that the stakeholders responsible for education at the local government level, namely the Local Government Education Authority, are to ensure compliance, many parents whose children are not attending school are not punished law due to the indifference of the relevant agencies.

Also, although the UBE Act prescribes punishments for officers of public schools who charge fees, the incidence of charging fees in public schools is still rampant and has even increased due to the lack of enforcement of the relevant provisions by the relevant agencies.

This poor level of implementation is due to a variety of factors such as poor funding, poor planning, corruption and mismanagement, parents as guardians and violators and lack of political will, among others.

To start with, one factor contributing to the poor implementation of laws and policies is the lack of proper planning. This is because the Nigerian education system has over the years failed to adequately capture the reality of its population growth rate into its planning.⁷⁸ This is due mainly to inadequate funding, insufficient personnel, lack of accurate data, lack of necessary infrastructure and technology, political influence and instability, corruption, poor capacity development of educational planners and lack of political will.⁷⁹

Corruption and mismanagement also contribute to poor implementation of laws and policies as funds meant for implementing laws, policies and programmes like the UBE scheme are mismanaged and diverted the funds for personal use.⁸⁰

76 K Ogunyale, '26 states, FCT, failed to access N36.17bn UBEC grant in 2023' International Centre For Investigative Reporting (22 April 2024) <<https://www.icirnigeria.org/26-states-ct-failed-to-access-n36-17bn-ubec-grant-in-2023/>> accessed 15 August 2024.

77 Ibid.

78 N J Ogunode and C M Adanna, *op. cit.*

79 Ibid.

80 Ibid.

Additionally, the involvement of parents as violators impedes the implementation of relevant child protection laws. For example, while section 30 of the Child Rights Act prohibits the use of children for begging, hawking, prostitution, or any purpose that affects their education, such situations may persist for a long time, as offending parents are unlikely to report themselves to avoid punishment.

6. RECOMMENDATIONS

To reduce the rate of out-of-school children in Nigeria, certain recommendations are made. To start with, regular review of the existing framework has to be prioritised to identify and address existing flaws and therefore strengthen the existing framework. New laws and policies should also be introduced to address emerging situations. Such law-making must be based on evidence drawn from all relevant stakeholders to ensure that the laws, policies and programmes have the necessary impact.

Furthermore, public education and awareness campaigns on the benefits of education and of the relevant laws protecting the right to education must be pursued. Parents and schools officers must be made aware of the consequences of violating the law.

In addition, implementation agencies must be equipped with all necessary funding, personnel, and technology to ensure they perform their duties effectively. Appropriate monitoring and evaluation mechanisms must also be established to further ensure compliance with their mandates.

Apart from the above, there is also a need to economically empower members of the society, improve security measures in Nigerian schools, provide adequate infrastructure and qualified personnel, develop alternative learning programmes that cater to specific categories of out-of-school children and promote collaboration among all relevant stakeholders.⁸¹

7. CONCLUSION

In conclusion, while there is an existing legal framework to combat the out-of-school children crisis in Nigeria, its effectiveness has however been severely limited by flaws and poor implementation. It is therefore necessary to ensure regular review of the legal framework, public education and awareness and the strengthening of enforcement agencies etc. to ensure universal access to education.

⁸¹ P K Kiyei and others, *op. cit*; K Oyekan, A Ayorinde, and O Adenuga, *op. cit*.



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