

POLICY BRIEF

On

The Legal Framework For Achieving 12
Years of Free Education for Children in Line
with SDG4 in Nigeria





Introduction

The United Nations has set a goal under SDG4 for countries to prioritise the need to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. The adoption of the sustainable development goals by Nigeria has placed a duty on them to make policies and legislation that would assist in attaining the seven targets that leads to the achievement of the goal set down by the UNDP.

The targets under the SDG 4 include:

- I. free primary and secondary education;
- II. equal access to quality pre-primary education;
- III. affordable technical, vocational and higher education;
- IV. increased number of people with relevant skills for financial success;
- V. elimination of all discrimination in education;
- VI. universal literacy and numeracy; and
- VII. education for sustainable development and global citizenship.

However, Nigeria is still on the verge of achieving this vital goal.

Introduction

Education is both a goal within the United Nations' Sustainable Development Goals and also stands as a tool to achieve sustainable development and human advancement. Its importance cannot be overemphasised because it is a preventive mechanism to conflicts, poverty, economic destruction and boost democratic advancement amongst many other benefits and importance.

Nigeria, like most countries, commenced implementing plans for free and accessible education for children in line with the provisions of Sustainable Development Goal 4 which mandates provision for and ensuring sustainable, free, quality, and safe education for all children to the secondary school level. The various policies and legislative framework adopted includes; Vision 2030, the enactment of the **Compulsory, Free Universal Basic Education Act (UBE Act 2004)** and the **National Secondary Education Commission, etc., Act. (NSEC Act 2004)**.

The UBE Act has mainly made tremendous progress in achieving the goals to a large extent; however, decades later, Nigeria is still short of achieving this goal and accounts for 45% of school drop-outs in West Africa¹. All attempts at amending the Acts has never for once reached a conclusive stage but always ends up at the doorstep of the lawmakers. A fast track to the present is simple and short, and the headline reads: with just 8 years to the 2030 SDG conference Nigeria is decades behind on attaining the goal of quality education amongst others.

This Policy Brief is requisitioned to advance the attainment of the goals through legislative review and processes. The review of the extant laws will assist us to ascertaining the limitation in the achievement of the development goals.

¹ Guardian Nigeria (29th October 2018) Nigeria accounts for 45% of out of school children in West Africa, says UNICEF <<https://guardian.ng/news/nigeria-accounts-for-45-out-of-school-children-in-west-africa-says-unicef/>> Accessed on the 9th of February, 2022.



THE ANALYSIS OF THE EXTANT LAWS

The paradigm to analyse the extant law is SDG 4, a model for all laws on quality education. It encouraged and required the laws of member states to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. The ultimate aim of this goal is to direct member States to advance free, quality, and safe education beyond primary education (which a significant amount of the States already provided for their citizens²), to secondary education, affordable vocational training, access to higher education, and so much more.

The SDGs could not have come at a better time, as the dropout rate in Nigeria continues to soar. It has been emphasised that priority should be placed on the female children who, after their primary and junior secondary education (secured by the government), are married off or made into caretakers and maids. The justification from their perspective is that it is the only available option of securing their future. However, in the long run, we simply have a society filled with illiterates who cannot secure jobs. This simple occurrence would set off a chain of other events, and society is affected adversely. The question is: “what laws are in existence to solve this problem headlong?”

The Compulsory Universal Basic Education Act³ was passed to repeal the National Primary Education Act⁴. It states in Section 1 that ***“the Federal Government’s intervention under this Act shall only be an assistance to the States and Local Government in Nigeria for uniform and qualitative basic education throughout Nigeria”***.

² Statistics of the United Nations Development Programme shows enrollment rates reaching %91 in developing countries.

³ LFN 2004.

⁴ See Section 14 of the UBE Act 2004.

Section 2 of the act provided further for the rights of children to free basic education. It states thus.

1. *Every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age.*
2. *Every parent shall ensure that his child or ward attends and completes his—*
 - (a) *primary school education; and*
 - (b) *junior secondary school education,**by endeavouring to send the child to primary and junior secondary schools.*
3. *The stakeholders in education in a Local Government Area shall ensure that every parent or person who has the care and custody of a child performs the duty imposed on him under section 2 (2) of this Act.*

The law goes further to clear all ambiguity regarding the educational services in Section 3 of the **Compulsory Universal Basic Education Act**⁵ where it states:

1. *The services provided in public primary and junior secondary schools shall be free of charge.*
2. *A person who receives or obtains any fee contrary to the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding N10,000.00 or imprisonment for a term of three months or to both.*

The Act further established the duty of every parent to ensure that his child receives full-time education suitable to his age, ability and aptitude by regular attendance at school⁶. It also empowers the magistrate court to hear and determine cases arising in contravention of the provisions of the UBE Act and impose appropriate punishment⁷.

For effective implementation of the provisions of the UBE Act, it established the Commission⁸, their functions⁹, tenure of office¹⁰, the appointment of the Executive Secretary and other staff¹¹. It further provides for the funding of the UBE Act to be consisting of

- a. *Federal Government block grant of not less than 2% of its Consolidated Revenue Fund;*
- b. *funds or contributions in form of Federal guaranteed credits; and*
- c. *local and international donor grants.*

For any State to qualify for the Federal Government block grant pursuant to sub-section (1) of this section, such State shall contribute not less than 50% of the total cost of projects as its commitment in the execution of the project.

*The administration and disbursement of funds shall be through the State Universal Basic Education Board*¹².

⁵ LFN 2004.

⁶ See Section 4(1) of the UBE Act 2004.

⁷ See Section 6 of the UBE Act 2004.

⁸ See Section 7 of the UBE Act 2004.

⁹ See Section 9 of the UBE Act 2004.

¹⁰ See Section 8 of the UBE Act 2004.

¹¹ See Section 10 of the UBE Act 2004.

¹² See Section 11 of the UBE Act 2004.

In the concluding sections, the UBE Act established the State Universal Basic Education Board¹³ and the Local Government Education Authority¹⁴, both of which, would work hand in hand with the UBE commission to ensure the objectives of the Acts are met. Such an impressive law but then, let's take a look beyond the obvious.

The downsides of this laudable legislation are;

1. the lack of strong enforcement mechanisms. The major attempt at such enforcement framework is the provision of Section 2(4) of the UBE Act which provides that parents who contravene section 2(2) would on first conviction be reprimanded and subsequently on conviction, a fine of 2 thousand or a one-month jail term. The fine increases to 5 thousand and a two-month jail term for a subsequent conviction. It is however contended on the other hand that a stiffer punishment may portray our country's image adversely internationally. This need to be balanced within the local context of ensuring compliance with the law by guardians and or parents, especially given the enormous financial contributions of the government towards attaining the SDG4 goals. It is advised that this issue should not be pursued vigorously.
2. It is also noteworthy that the law provided for no oversight body to ensure compliance with the UBE Act. In effect, children continue dropping out of school by the hundreds. The Commission at the Federal and the State levels have not prioritised the need to have a strong enforcement team to date. Civil society organizations should enhance the advocacy on this issue.
3. It is also noted that the law is not expansive, and the framework adopted is outdated.
4. The functions of the Board are also vague and ambiguous
5. Stakeholders provided in Section 2 is also equivocal.

Notably, within the terms of the provisions stated above, it is clear that the National Assembly has made laws to ensure the existence of free primary and junior secondary education for all children in the country; however, it is clear that free Senior Secondary education is not provided for in the extant law. In essence, provisions are being made for nine years of basic education, falling short of the intent and purpose of SDG4. It is safe to conclude that the realisation of this vacuum led to the creation of the **National Secondary Education Commission Act**.

It is the expectation that NSEC Act would have filled the vacuum inherent in the UBE Act, but it failed, and is intriguing to ascertain the essence of its passage. The NSEC Act is simply an act establishing yet another commission¹⁵, providing functions¹⁶, appointing staff¹⁷, establishing secondary education fund¹⁸ and state secondary education board.

- It lacks an objective, an application and is largely ambiguous.
- The establishment of the duplicating commission has not increased the number of students completing their secondary education, in fact, presently, more students are taking their last step into classrooms prematurely, and

¹³ See Section 12 of the UBE Act 2004.

¹⁴ See Section 13 of the UBE Act 2004.

¹⁵ See Section 1 of the NSEC 2004.

¹⁶ See Section 6 of the NSEC 2004.

¹⁷ See section 7 *supra*.

¹⁸ See Section 10 *supra*.

- The Act has failed to establish or provide a compliance mechanism.
- Importantly, NSEC Act also failed to provide for a penalty where a guardian or parent committed the offence provided in the Act.

It is not surprising that the law has remained non implemented to date.

THE PROPOSED AMENDMENTS TO UBE Act 2004, AND NSEC Act 2004



The stakeholders in the education sector have been concerned from time to time with the gaps inherent in the two laws and the complexities of having duplicating bodies attempting to implement the laws. Various legislators had sponsored several propositions and Bills to amend the two laws in one form or the other. We shall analyse these propositions and consider how they filled the gaps identified above to enable us to find a poignant solution.

The most recent amendment bill is the National Senior Secondary Education Commission Bill 2021 before the House of Representatives as an Executive Bill. It is the best attempt to cure the lopsidedness in the extant laws. It is much more profound than its preceding NSEC Act. The bill in section 1 states its objective to enforce standards and provide Federal Government intervention towards repositioning senior secondary education in Nigeria¹⁹. Section 2 of the bill goes further to state that it shall apply to provide infrastructure and qualitative senior secondary education in Nigeria.

The bill once again goes beyond the NSEC Act²⁰ regarding the commission's functions. In line with

the SDG4, the bill mandates the commission to collaborate with relevant agencies and organisations to promote science, technology, engineering, art and design, and mathematics (STEAM), technical, vocational education and training (TVET) and entrepreneurial skills at the senior secondary education level²¹. It also mandates the commission with the duty of implementing the Senior secondary education Programme, coordinating the implementation of the senior secondary education-related activities in collaboration with non governmental and multi-lateral agencies, etc²². Although the National Senior Secondary Education Commission Bill 2021 has its inherent flaws and contradictions, it is, however, a very progressive and deliberate effort to meet the SDG4 goal on sustainable quality education. We shall revert to the flaws of the latest executive Bill shortly. It is worthy at this point to consider a number of other proposed amendment bills of the UBE Act, the most recent one sponsored by Hon, Oluga Taiwo, which sought to amend the UBE Act 2004 and expand the scope of basic free education in Nigeria to include Senior Secondary Education To do this, the provisions of Section 2 of the Amendment bill provides that:

¹⁹ See Section 1 of the National Senior Secondary Education Commission Bill, 2021.

²⁰ See LFN 2004.

²¹ See section 9(m) of the National Senior Secondary Education Commission Bill, 2021.

²² See Also Section 9 Supra.

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

(2) Every parent shall ensure that his child or ward attends and completes his—

- (a) primary school education; and
- (b) junior secondary school education,
- (c) Senior Secondary education,

by endeavouring to send the child to primary and secondary schools.

The amendment bill also sought to introduce the teaching of Nigerian history, peace studies, and civic education in Primary, Junior Secondary and Senior Secondary School²³.

Prior to the UBE Act amendment bill 2020 by Hon. Oluga Taiwo, Hon, Victor Mela Danzario sponsored an amendment and establishment bill in 2019. This bill sought to amend the Compulsory, Free Universal Basic Education (establishment) Act, provide for the return of unused Federal Government Block Grant to the Federation account, make provision for rehabilitation of delinquent children²⁴, make parents who are resident abroad but whose children reside in Nigeria liable to obligations imposed by the Act, provide comprehensive definitions for free services, stakeholders and child or ward as captured in the principal Act and generally enriched the Principal Act whose fundamental objective is to eradicate illiteracy in Nigeria.

The last proposed amendment bill to UBE Act 2004 was also made in 2019 and sponsored by Hon, Kolade V. Akinjo and it sought to amend the UBE Act by providing a role for community-based organizations in the enrolment of out of school children and the development of basic education in states and local government in Nigeria.

COMMENTS ON THE EXTANT LAW AND PROPOSED AMENDMENTS

It is almost conclusive that the existing UBE Act 2004 and the NSEC Act 2004 have both failed to guarantee qualitative free education and truthfully cannot move us forward in accomplishing the SDG 4 because they are both outdated, the dynamic nature of society has made the penalties of the UBE Act irrelevant and the NSEC is just a document of vague and ambiguous provisions.

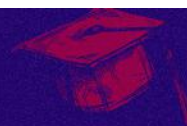
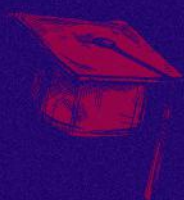
²³ See Section 9 of the UBE Act amendment bill 2020.

²⁴ See Section 2(S) of the UBE Act amendment bill 2019.



It is noted that one of those ambiguous provisions in the UBE Act is a reference to `services`, word services used to describe the education that would be made available to children is highly contentious, especially by lawyers; it could be interpreted to mean a whole lot of things, services could be teaching without books, books without teaching, teaching and books without classroom materials etc. The legislators are advised to review the use of this phrase in the consolidated Bill on the UBE Act. The second issue is to punishment for parents failing to send wards to school. It is important to distinguish parents who are recalcitrant and relies on unreasonable religious-cultural grounds and parents genuinely unable to afford extrinsic fees not amounting to `services`, which is a common phenomenon. In most cases, these parents honestly wish to educate their children but cannot because of poverty and other economic factors. This is the basis of our contention that the issue of sanction and penalty for breach of the law must be balanced and not pursued with all seriousness. It is imperative that there are no loopholes in the implementation of the Act thereby ensuring that sanctions will not be poorly metted out to parents who flout the law.

- The proposed amendments bill of the NSSEC 2021 is a step forward in the right direction towards securing and protecting the right of children in Nigeria to Senior Secondary Education and ultimately eradicating illiteracy. The same could be said for the UBE Act amendment bills, they each contain significant provisions that would be beneficial to the educational sector. However, they are both diametrically opposed to each other and are inherently contradictory in terms of implementation and discharging the oversight functions expected of these two cross-cutting bodies. It is tempting to believe that they cannot individually solve the problem we are confronted with and that there is a need to reassess and analyze each and eventually merge them. This proposition is fraught with its own serious challenges when properly scrutinized.
- The significant point is that the UBE Act 2004 and the NSEC 2004 are seriously in need of reviews and amendments, however, we would have to contend with the reality of whether we would even need the NSEC if the UBE Act is made an all-encompassing law and body in ensuring and promoting sustainable, free, safe and quality education in Nigeria. Again, this proposition is fraught with its inherent challenges as it would not only take a long time to properly draft and enact the perfect law, considering the time limit for the present 9th National Assembly, but it would also require another lengthy period to properly implement the proposed best fitted UBE law.
- The other option of having the two laws and oversight bodies run side by side has its own difficult challenges but is much preferred. The operationality, funding and good working relationship of both bodies appear almost an impossibility in the light of Nigerian factors and limited resources of the government. The real challenge is affording the government to approve and assent to the proposed Bill granting autonomy to the new NSSEC. The major stakeholders and institutions will most probably not concede to the new structure, even if they do, the internal wrangling between the two institutions may not permit the effective implementation of the laws and institutions. The economic implication of having another educational agency in existence stands as yet another contentious issue.



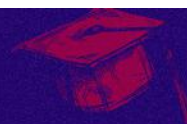
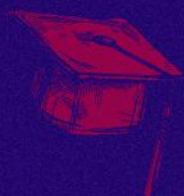
One major flaw identified with the NSSEC Bill is the provision of clause 23 (1) which states that

“The NSSEC Fund shall be disbursed to senior secondary under the Federal Unity Colleges, State Senior Secondary Education Board, and FCT Senior Secondary Education Board in accordance with needs and in the proportion directed by the President from time to time.”

This provision is interpreted to mean that the needs of the funds and the proportion proposed by the President are major requirements for the fund allocation. This is very ambiguous and prescribed significant reliance on the President who could misuse the power at any given time

In conclusion, the lopsidedness of having the two institutions running side by side is real but perhaps a surmountable option than enlarging the scope of UBE Act outrightly. The choice of having two parallel co-existence of the two laws and institutions appears more realistic in view of the recent appointment of a new Executive Secretary by the President for NSEC. This particular development is an indication that the Executive is amenable to the co-existence of the two institutions. The proposed NSSEC 2021 will appear to certainly be a way forward towards the accomplishment of the SDG4 objectives of free, safe and qualitative education for senior secondary inclusive. The other option of extending the remit of UBE Act to extend to Senior Secondary School is a more complicated, intrusive and huge disruption to the existing structure, operations and financial planning of the UBE Act. In any event, it begs the question; what will happen to the existing structure of NSEC in the event of considering this option.

Another innovative option muted by stakeholders is to have the NSSEC work as a sub-commission or sub-unit of the UBE Commission. Thus, UBEC is still one big commission centred around the education of Nigerian children with the UBE commission taking care of the first 9 years and the NSSEC taking care of the remaining 3 years. However, the challenge with this would be that the Executive secretaries may engage in power tussles and at what point does one commission's interference stop and the other begins.





RECOMMENDATIONS AND CONCLUSION.

1. It is recommended that efforts should be focused on the amendment of NSEC Act 2004 to incorporate free senior secondary school with strategic provisions. The proposed amendments to the UBE Act 2004 by a number of sponsors excluding conferring free senior secondary school are great initiatives that are worth taking on board to strengthen UBE Act. However, these amendments should be consolidated by the National Assembly in one Bill.
2. The proposed amendment bill to the NSEC Act 2004 by the Executive is a step in the right direction. It has strengthened the extant law by providing specifically for objectives and application in the proposed Bill. It strengthened the Commission and its functions are more pronounced and distinct.
3. The amendment of clause 23 (2) of the NSSEC Bill 2021 to the extent that allocation of funds should not be left at the discretion of the President. The departure from the UBE Act in terms of equal disbursement to States and provision on a need assessment and performance-based is commendable. However, clause 23 (2) should be reviewed to state categorically that: funds shall be allocated to states based on assessed needs, the peculiarity of the State and on recommendation of technical experts, based on empirical findings to the President. The President shall be guided by the recommendation of the technical experts
4. There is the need to explore stakeholders' buy-in into the NSSEC Bill 2021 in order to achieve the purpose and objectives of SDG4. The Presidency has indicated interest in the NSSEC Commission through the recent appointment of an Executive Secretary. The Proposed NSSEC 2021 Bill should be bold enough to mandate that senior secondary school should be free for all citizens excluding the WAEC examination fees which could also be covered in instances of exceptional performance from students in state conducted mock examinations. The challenges on the financial specifics should also be cleared. The source of funding for the proposed NSSEC 2021 Bill must be clearly and robustly defined by experts as an advocacy tool. It is reassuring to know that a Policy Brief on financial issues has been instructed.
5. It is recognized that there is a need for the extant laws to review the penalties for contravening the law and enhanced it through the proposed Bills. However, it is recommended that in view of the likely adverse impact on the image of our country internationally, where tougher penalties are prescribed, there is the need to either retain the current penalties or slightly vary or remain silent on the advocacy for such penalties. In any event, there should be a robust discussion on the merit or otherwise of stiffer penalties by stakeholders, considering the fact that the proposed Bills' provisions for penalty are still largely insignificant and inconsequential if compliance with the law is to be strictly enforced.
6. Social workers should be made to investigate every child`s case as each circumstance would differ and individuals who are found to have been financially restrained from going to school should be recognized and recommended to the state government.

7. It is recommended that efforts should be directed by the demand side also towards monitoring compliance by parents to their ward's attendance at school, rather than only on the level of compliance by the governments on funding. In any event, both sides of compliance should be prioritized.
8. There is also a need to advocate for the creation of a monitoring body or a monitoring committee that would ensure the effective compliance of guardians to their wards. This would be relevant to both the UBE and NSEC Act.
9. It is recommended that a proper sensitization of citizens on the impact of education and being educated should be prioritized and strengthened. The sensitization must be handled strategically and conscientiously with a view to raising awareness on efforts of the government of the day to meet their international obligations and mechanism for achieving free qualitative education up to senior secondary school for all.
10. The demand side should galvanize strategic lobbying for the passage of the UBE Act Amendment bill and the NSSEC Bill 2021 through links with the Principal members of the National Assembly and Clerks to the committees on education in the National Assembly.
11. There is a need to improve the educational facilities made available to children. There should be provisions ensuring allotment of funds for not only qualitative education but also equality and a sustainable educational environment to encourage children to attend.

In conclusion, it is a common saying that proposing a solution is easy but working on the solution itself is the hard part. States, by all means, should demonstrate and showcase its interest and prospects in improving the education sector. However, a state showcasing the prospect of success is a reassuring factor that the goal is achievable, given the required positive response and determination by the policymakers.

There must be a positive response and determination by not only the lawmakers who are going to pass the bills intended to create sustainable quality education but also, the executive who are tasked with implementing the bill. In fact, an Executive Order by the President could be issued to demonstrate the immediate interest of the executive arm of government in implementing and achieving the goal of sustainable quality education as proposed by Agenda 2030 for Sustainable Development Goals and the African Union Agenda 2063.

About the partners



YouthHubAfrica is a youth-focused organization that provides opportunities and access to resources for young people in Nigeria and across the African continent.

As youth advocacy and policy-oriented organization, YouthHubAfrica works with stakeholders to provide advisory and technical support for development communications, the use of social media to drive advocacy and campaigns as well as structuring youth engagements on national and regional levels. YouthHubAfrica also partners with reputable organizations to deliver impactful projects for young people across its three (3) main thematic areas- Governance and Accountability, Sexual and Reproductive Health Rights, Education and Girl Child Literacy

YouthHubAfrica envisions young people as catalysts of Africa's sustainable development. Our Mission is to empower young people with knowledge and skills to harness their potential and take centre stage for Africa's development. In achieving its vision and mission, YouthHubAfrica works and partners with non-governmental organizations and government agencies in Nigeria, Kenya, Uganda, Ethiopia, Ghana and other countries across Africa.



Rise Up is a non-governmental organization that aims to transform the lives of women and girls, families and communities for a more just and equitable world through investment in local solutions, strengthening leadership and building movements. The organization's network has more than 600 leaders who have successfully advocated for 120 new and improved laws and policies impacting the lives of 135 million people since 2009.

With the support of the Public Health Institute, Rise Up has its global movement for gender equity rooted in the voices and visions of a network of powerful leaders advocating for the rights and wellbeing of women and girls.

Rise Up works to advance gender equity and justice in education, health, and economic opportunity by partnering with visionary local leaders around the world. Rise Up builds power with women, girls, and their allies by providing training, funding, and connection



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