

**THE COMPULSORY, FREE UNIVERSAL BASIC EDUCATION ACT 2004
AND THE REALITY OF OUT OF SCHOOL CHILDREN IN NIGERIA**

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Abstract

Globally, the growing population of out-of-school children has become a major concern to education stakeholders. It is more of concern in Nigeria, as the available data suggests it has the highest population of the out-of-school children in the world. This concern has generated debates globally as regards what should be done to mitigate this problem. The enacting of Compulsory, Free Universal Basic Education Act (CFUBEA) 2004 was designed to make basic education accessible to all children. Years after its enactment, the issue of out-of-school children is still trending with the population growing. A review of Nigeria law reports was made to see if there had been prosecution of violators of CFUBEA 2004 between 2008-2018, however, no case related was found. This gave an expose on the extent to which the punitive clause of CFUBEA 2004 have been enforced. It was recommended that the government should ensure the enforcement of the CFUBEA 2004.

Keywords: Act, Enforcement, Out of school children, Universal Basic Education

Introduction

All over the world, there has been growing concern for out of school children to be brought into the education fold, most especially in Africa where their population has kept increasing. According to UNESCO (2018) the new figures on the number of children out of school worldwide reveal that, despite decades of efforts to get every child into the classroom, the progress has come to a standstill. This assertion was supported by data from the UNESCO Institute for Statistics (UIS), which stated that about 263 million children, adolescents and youth worldwide (or one in every five) are out of school. The UIS figures confirmed that across Sub-Saharan Africa one in every three children, adolescents and youths are out of school, and that for every 100 boys

of primary school age out of school, there are 123 girls denied the right to education (UNESCO, 2018).

More so, UNESCO (2015), pointed that out of the 59 million children of primary school age who were out of school in 2013, 30 million lived in Sub-Saharan Africa. Globally, 41% or 24 million of out-of-school children have never attended school and will probably never start if current trends continue. About 20% of these children attended school in the past but could not continue their education, and 38% are likely to start late and will be overage for their grade. The situation is most extreme in Sub Saharan Africa, where one-half of the 30 million out-of-school children will never enrol (UNESCO, 2015).

It is important to note that Nigeria has been identified to be housing over 10 million children that are out-of-school. Nigeria, being the most populated country in Sub-Saharan Africa has features that are really not different from what is obtainable generally in Sub-Saharan Africa. It is noteworthy that, 8.7 million children are out of school in Nigeria as at 2010 (UNESCO, 2015). It should be noted that the population had increased to over 10 million as at 2018 (The Nation, 2019). The status of out-of-school children in Nigeria is such that seems to paint a scary picture of what the future holds for development in the reality of happenings in the education sector. This anomaly has continued despite several policies put in place by the federal and state governments to check it. The issue of out-of-school children suggests that these children are likely not to have access to education and may not likely attend school. It is generally believed that the once out-of-school children, especially in the Northern part of Nigeria are the ones being recruited by the insurgents, and no doubt, the current population of these out-of-school children are likely to become social miscreants in the nearest future. In agreement with the constitution of the Federal Republic of Nigeria, the Federal Government thought it wise to introduce an education programme aimed at making education accessible to every children by compulsion.

This education programme is called the Universal Basic Education (UBE) that is free and compulsory. It is a 9 years of basic education stipulated for every Nigerian child which includes 6 years of primary education and 3 years of junior secondary school (UBEC, 2015). The UBE programme was designed to cater for all children of school age 6-11 years, including nomadic population, migrant people in isolated settlements, urban slums, adult illiterates, school drop-outs as well as people with special needs (Aboyi 2004, cited by Benjamin 2014).

According to Ocheta and Olele (2009) UBE is a mandatory education policy for Nigerian children irrespective of bottlenecks and challenges associated with location, occupation, religion, race and gender. This implies that factors such as socio-cultural, religion, economic and location should not hinder accessibility of any child to basic education in Nigeria. The introduction of UBE programme is backed up by an Act of parliament, named the Compulsory, Free Universal Basic Education Act, (CFUBEA) 2004. This Act stated expectations and punitive measures aimed at strengthening the compulsory clause of the policy. Several years after the enactment of CFUBEA 2004, the issue of out-of-school children has not only persisted, but has been on the increase. This situation is despite that the Act stipulated that basic education is compulsory. It is likely going to be a mirage to expect that there could be any meaningful development if issues surrounding compliance and enforcement of CFUBE Act 2004 are not discussed and brought to public glare for probable solution to the problems.

The concern in this research paper is to contribute to the debate of reducing out-of-school children population by making a review of the functioning of the UBE. This has been done in relation to the CFUBEA 2004 as regards the extent to which identified stakeholders have played their roles. This is aimed at giving an expose on the extent to which enforcement have been done as regards compliance with the Act. This will help to identify the likely areas for intervention by policy planners/makers and give policy implications of non enforcement of the UBE Act.

Out-of-school children in Nigeria: An overview

The National Bureau of Statistics NBS (2017) defined the out-of-school children as the number of children of primary school age who are not attending school and those attending preschool. This however, differs from the UN definition which excludes the children attending preschool. This differentials in definition no doubt affects the calculation of the population of out-of-school children given by these agencies.

The issue of the population of out-of-school children have become sort of controversial in Nigeria, such that different figures have been credited to different sources. This has generated certain rebuttals. For example, the Executive Secretary of Universal Basic Education Commission (UBEC), Hammid Bobboyi, who was represented by the director of social mobilisation, Bello Kaigara, said the 2015

Demographic Health Survey shows that the figure of out-of-school children in Nigeria has since increased to 13.2 million from 10.5 million (Premium Times, 2018). However, fact-checking by the International Centre for Investigative Reporting (2018) showed that the figure was false and that there was no Nigeria Demographic Health Survey conducted by UNICEF in 2015. In an attempt to get the correct data for the number of out-of-school children, the Federal Ministry of Education, in conjunction with the Universal Basic Education Commission, National Population Commission, and National Bureau of Statistics conducted a National Personnel Audit of both public and private schools in Nigeria. The Minister of Education, Adamu Adamu, at a press conference in Abuja, while giving the audit report of the 2018/2019 Annual School Census revealed that Nigeria has 10,193,918 out-of-school children (The Nation, 2019). The Minister also alluded to the conflicting figures of the population of out-of-school children by stating that, "In 2015, conflicting figures of out-of-school children were given, and it ranged from 10 to 13 million"(Punch, 2019). It is obvious that there are different data representing the population of out-of-school children in Nigeria, this disparity, however, supports the fact that the problem exists. The seriousness of this problem reflects in the fact that one in every five of the world's out-of-school children is in Nigeria (UNICEF 2013).

The population of out-of-school children in Nigeria have been plagued by the thinking in certain quarters that the insurgency in the Northeastern part have seriously contributed to it. This is understandable and premised on the ravaging insurgency which has prevented schooling activities from taking place. Several households have been displaced and their children likely discouraged by the kidnappings of children by the insurgents. The assumption then is that the states in the Northeastern part of the country would have the largest percentage of the out-of-school children population. However, a closer look at the available data suggests otherwise. A report of the 2018 National Personnel Audit for primary school has shown that Kano, Akwa Ibom, Katsina, Kaduna and Taraba states top the list of states with the highest number of out-of-school children in Nigeria. A breakdown of the figures shows that Kano State had the highest figure of 989, 234 population of out-of-school children, Akwa Ibom has 581, 800 to come second, Katsina has 536, 122 to come third and Kaduna has 524, 670 to come fourth while Taraba is fifth with 499, 923 (The Nation, 2020). A synopsis of this report shows that Kano and Akwa

Ibom states which are not located in the Northeastern zone of Nigeria where Boko Haram insurgency is happening have the highest percentage of out-of-school children. It is even more troubling to see in the report that Oyo State was in the number ten position, with 418,900 out-of-school children. This shows that Oyo State has the highest population of out-of-school children in the southwestern states of the country (The Nation, 2020).

These states Kano, Akwa Ibom and Oyo States, are having high percentage of out-of-school population and they are at least not experiencing insurgency, same for some other states that contributed to the population of out-of-school children in Nigeria. The discussion in this paper technically exempted the states experiencing insurgency and focused on the states/regions where there is no pronounced insurgency situation. This exemption is premised on the agreement with the thinking that the insurgency situation in the Northeastern states of Nigeria actually contributed to the population of out-of-school children. Although, the situation of rising population of out-of-school children have been in existence before the advent of insurgency in the region, it has aggravated the situation. It is a known fact that huge sums of money had been spent on human, material and educational programmes aimed at ensuring accessibility of quality education by the children. However, the situation seems to have defiled all efforts. These happenings suggest that there could be other factors responsible for this continued growth in population of out-of-school children.

The Role of Stakeholders in the UBE Implementation in Nigeria

The Universal Primary Education (UPE) programme was originally introduced in 1999, but was adjusted to be Universal Basic Education (UBE) programme afterwards. This was backed up by legislation named Compulsory, Free Universal Basic Education Act 2004 (Universal Basic Education Commission, 2005). This law stipulated the specific roles to be played by different stakeholders for the attainment of the stated objectives of the programme.

The UBE stakeholders as regards the implementation of UBE were clearly stated in the UBE Information Handbook (2009). This handbook was put together by the Universal Basic Education Commission (the agency in charge of implementation of early childhood care development and education) to provide information on the key issues and expectation from various stakeholders on which the success or failure of the UBE programme lies. The key UBE stakeholders are:

- Federal Ministry of Education (FMoE) and State Ministries of Education (SMoE)
- Universal Basic Education Commission (UBEC)
- National and State Legislatures
- State Universal Basic Education Board (SUBEB)
- Local Government Universal Basic Education Authorities (LGUBEA)
- Host Communities of Basic Education Institution
- Traditional Rulers/Community Leaders
- Schools (their administration and school management committees)
- Parents
- Teachers
- Pupils
- Judiciary and Law Enforcement Agencies
- Development partners (including multilateral agencies)
- Private Sector/Corporate Organisations
- Non-governmental Organisation (NGOs), Community Based Organisation (CBO), Civil Society Organisation (CSOs) including Faith Based Organisation (FBO) etc.
- Private Schools/Community Operation/Proprietors
- Local Government Chairmen
- The Media

A look at the list of the different stakeholders suggests that they can be categorised into three, regarding the role they play in the implementation of the UBE, which are: regulators, overseers, and end-users. The regulators in this context are the different related government agencies/persons of authority in government (federal/state ministries of education, Universal Basic Education Commission (UBEC), national and state legislatures, State Universal Basic Education Board (SUBEB), Local Government Universal Basic Education Authorities (LGUBEA), local government chairmen). It is the responsibility of the people in this category to enforce compliance of all the stakeholders, most especially the end-users who are the direct beneficiaries of the programme.

Overseers are the people that have unofficial oversight functions in ensuring that the CFUBEA 2004 is complied with, by expressing their opinions either privately to the regulators/end-users or

publicly to the society at large. In this category are (Host Communities of Basic Education Institution, Traditional Rulers/Community Leaders, Schools (their administration and school management committees), Teachers, Judiciary and Law Enforcement Agencies, Development partners (including multilateral agencies), Private Sector/Corporate Organisations, Non-governmental Organisation, Community Based Organisation, Civil Society Organisation including Faith Based Organisation, Private Schools/Community Operation/Proprietors, and the Media). The oversight function of the people/associations/organisations in this category transcends just advising the regulators, it includes engaging relevant stakeholders on the issues pertaining to education, suggesting better ways of ensuring the success of the programme and ensuring that they pressure the regulators, policy makers, and the end-users towards compliance with the Act.

The end-users are the people this programme directly impacts, as they are the direct beneficiary of the UBE programme. The parents and their children (pupils) are in this category. The parents are mandated by the Act to make sure that their children of basic education age attend school, either public or private. It is important to note that it is only this category that has punitive clauses in the Act against non-compliance with the relevant section.

The concern here for policy planners is to ask pertinent questions bothering on the compliance of stakeholders, with the UBE policy. It is trite that a law is as good as the extent to which it has been complied with, and this brings to mind the importance of knowing the extent of stakeholders compliance with the CFUBEA 2004. To start with, the role of the regulator is to ensure compliance through enforcement, however, the effectiveness of the government at various levels towards ensuring compliance with the Act is partly questionable. This assumption is largely because the number of out-of-school children kept increasing, which is in direct conflict with the objective of UBE policy which states that compulsory and free basic education must be provided for every Nigerian child of school age (FRN, 2014). The premises on which this study aimed at hinging this concern bothers on knowing how many violators (end-users) of the UBE Act that have been prosecuted. This is important, as this information will help further enquiry into the way forward at ensuring enforcement of the Act and reducing the population of out-of-school children in Nigeria.

It should be assumed that when there is evidence of

prosecution of violators of the CFUBEA 2004, it would serve as deterrence to parents that would not ensure that their children attend school. This should be ideal action if truly the government is committed to ensuring that the stated objectives of UBE programme are to be achieved.

Operational Legal Framework of UBE

The legal framework on which UBE functions is the Compulsory Free Universal Basic Education Act 2004 and other Related Matters (Universal Basic Education Commission, UBEC 2005). This Act underlines the effort of the Federal Government of Nigeria in ensuring that the basic human rights of children to have access to quality education is protected. Sections 1, 2 and 4 of Part 1 of the Act covered the responsibilities and penalties for parents as it pertains to this study, and it is as follows:

Part 1, Section 1: Federal Government intervention for uniform and qualitative basic education.

Without prejudice to the provisions of item 30 of Part II of the Second Schedule and item 2 (a) of the Fourth Schedule to the 1999 Constitution dealing with primary school education, the Federal Government's intervention under this Act shall only be an assistance to the States and Local Government in Nigeria for the purposes of uniform and qualitative basic education throughout Nigeria.

Section 2: Right of a child to compulsory, free universal basic education, etc

- 1) Every Government in Nigeria shall provide free, compulsory and universal basic education to every child of primary and junior secondary school age.
- 2) Every parent shall ensure that his or her child or ward attends and completes his or her:
 - 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 or her under section 2 (2) of this Act.

- 4) A parent who contravenes section 2 (2) of this Act commits an offence and is liable—
 - a) on first conviction, to be reprimanded;
 - b) on second conviction, to a fine of ~~N~~2,000.00 or imprisonment for a term of one month or to both; and
 - c) on subsequent conviction, to a fine of ~~N~~5,000.00 or imprisonment for a term of two months or to both.

Section 4: Duty of a parent to ensure the education of his or her child

- (1) Every parent shall ensure that his or her child receives full-time education suitable to his or her age, ability and aptitude by regular attendance at school.
- (2) The provisions of sections 2 (2) and 4 (1) of this Act shall not apply to any parent who, for the time being, is resident outside Nigeria.

A rider to the above extracted sections of the Act as related to this study is that it stated the roles of different stakeholders (regulators, overseers and end-users) in the implementation of the UBE. It however, specifically prescribed punishment for the end-user which is the parent. The implication of the punishment clause in the Act is that parents ought to be held responsible and sanctioned when their basic education aged children are not enrolled in a school. The analogy here is that the out-of-school children are products of a family and this parent have a responsibility to make sure that their children are enrolled in a school. Failure which, they have violated the relevant section of the CFUBEA 2004. This implies that the regulators who are expected to ensure compliance may not have really done their part of ensuring that the Act works. Also the parents of the out-of-school children are also guilty of non-compliance with the Act.

Assessment of Compulsory, Free Universal Basic Education Act 2004 Enforcement

It is a good assumption that a law is as good as the extent to which it has been obeyed, and as such, the usefulness of the CFUBEA 2004 to achieve its objectives is as good as the extent to which it has been enforced. Although, the Act tactically touched on the roles of the different stakeholders in the implementation UBE programme, which was particular about the end-users. The Act clearly spelt out the responsibilities of the parents and stipulated punitive measures aimed

at keeping them in check to comply. A clause in the Act that mandated parents and guardians to compulsorily send their basic education aged children/wards to school placed a legal burden on them as end-users of the programme. This burden suggests that the parents/guardians of out-of-school children ought to be held responsible by the regulators/relevant agencies for violation of the CFUBEA 2004. There is another part of the burden on the regulators/policy makers who ought to prosecute violators of the CFUBEA 2004. This suggests that parents of out-of-school children should be prosecuted for violation of the Act, most especially with the growing population of out of school children. If the population of out of school children is growing, then the assumption should be that the regulators did not enforce compliance with CFUBEA 2004, which is likely to be an indictment. The question then is, how many parents/guardians have been prosecuted for this violation, in the event of growing population of out-of-school children? To know the extent to which there has been prosecution of any parent/guardian for violation of CFUBEA 2004, a review of the Nigerian Weekly Law Reports (NWLR) for a period of ten years (2008-2018) was done. Although these law reports covered Supreme and Appeal courts judgements, no case was found on prosecution of violators of CFUBEA 2004. Even though, some lawyers consulted said this law is unjustifiable, as it contradicts section 2 of the constitution of the Federal Republic of Nigeria. This is likely to be the reason for non availability of related court cases as regards violation of the CFUBEA 2004, this however appears debatable. The thinking here is that the formulators of the Act must have reasons for the inclusion of punitive clauses, believing that such is enforceable.

This appears to be an indictment of the government/agencies responsible for the successful implementation of the UBE programme. If the parents of the out-of-school children are to be blamed on one hand, then the government should also be blamed on the other for not prosecuting the violators of the CFUBEA 2004. This created a gap for the concern of policy planners/makers for adjustment and improvement. The prosecution of violators of this Act should be taken seriously so as to compliment the other efforts being put in place to reduce/eradicate the growing population of out-of-school children in Nigeria.

Conclusion

The essence of UBE programme is to make basic education aged children have access to quality education that is free and compulsory. This implies that every child in the age bracket of 6-12 must be enrolled in a school as a matter of compulsion. The CFUBEA 2004 was enacted to give legal backing to the programme, with the hope that all children, not minding their religion, sex, socio-cultural status and location have access to basic education. Despite that the Act stipulated the responsibilities for parents and punishments for its violation or violators, the population of out-of-school children has kept increasing, without any known prosecution of parents who have violated the Act, with an exception for those in the insurgency infested areas. This portends that the UBE programme might not be achieving the lofty objectives of bringing into the education fold, all children of basic education age. The concern to find a solution to this anomaly brought about the thinking that enforcement of the Act should ensure that parents of this out-of-school children be located and prosecuted. This is with the assumption that it serves as deterrence to other parents who might violate the Act.

Recommendations

- It is suggested that governments/regulatory agencies in care of UBE programme ensure the enforcement of the CFUBEA 2004.
- There should be more awareness as regards parents role in ensuring that their children are enrolled in a school.
- Parents should be made to understand the legal implications of not sending their children to school.

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