

REINVENTING THE LEGAL POLICY OF STATE REGULATIONS OF EDUCATION FOR EXPANDING THE FRONTIERS OF NATIONAL DEVELOPMENT IN NIGERIA*

Abstract

The importance of the human rights to education and national development and their link is highly evident. No serious government takes the right to education of the citizens lightly because education impacts on national development. Certain efforts have been made by the Nigerian government to grant the right to education, among which are free, universal basic education and special intervention funding of tertiary institutions which has been limited to public tertiary institutions. A doctrinal study of the relevant legal frameworks and statistics available shows that the government needs to show more commitment to grant the basic level of education rights it is posturing to be serious about. The study also shows that there are gaps in the coverage of the laws regulating free basic education and in funding of tertiary education through the tertiary education tax but not with respect to Petroleum Technology Development Fund, both of which has not been applied to favour private tertiary institutions. This paper recommends some legal and policy thrusts to make the grant of free universal basic education more meaningful; to extend the application of the proceeds of tertiary education funds to all tertiary institutions, public and private, and to place priority on scholarship and research sponsorship in Nigerian tertiary institutions; all with the goal of enhancing national development.

Keywords: Right to Education, National Development, Free Universal Basic Education, Funding of Tertiary Institutions, Nigeria

1. Introduction

Education plays multifarious roles in human life and national development. Ensuring that citizens get good education is so important that Chapter II of Constitution of Federal Republic of Nigeria, 1999 (CFRN 1999) sets out the objective of granting free education at all levels to all Nigerians. That is quite a tall order, but in the interim, efforts are being made to expand the grant of the right to education. The right to education is an important human right which impacts on the human right to national development. Everything possible that can be done at present to enhance the grant of this right should be done. In this light, this paper looks at some areas the right to education should be presently enhanced without labouring on the futuristic, aspirational benefits which would depend more on availability of resources. Some of the necessary legal and policy measures to enhance the interconnected rights to education and national development without over stretching the available commitment of the law and government capability are highlighted as this paper traverses six sections to make the necessary recommendations.

2. Clarification of Terms

Education

Education has been defined and conceptualized in several ways. According to Aristotle, 'Education is the creation of a sound and mind in a sound body. It develops man's faculty especially the mind so that he may be able to enjoy the implementation of supreme goodness and beauty of which perfect happiness essentially consists.'¹ John Dewey sees it as 'the development of all those capacities in the individual which will enable him to control his environment and fulfil his responsibilities.'² Socrates wrote that 'Education means the bringing out of the ideas of universal validity which are latent in the mind of every man.'³ It has also been defined as 'the transmission of knowledge, skills and character traits',⁴ and as '1. The process of receiving or giving systematic instruction, especially at a school or university 2. An enlightening experience.'⁵ Education thus is the process of passing on knowledge to another person. It may take place formally or informally or non-formally. Informal education occurs in the course of everyday living while formal education⁶ requires a systematic arrangement for passing on knowledge such as takes place in a formal school. Non formal education takes place outside the formal education as for example, adult education. Education develops the capacity of the educated person to reason more critically and control his environment.

National Development

The words 'national development' means development of the nation, that is to say, the aggregation of the development of a nation's peoples by the national who make it up. The word 'development' has several perspectives which could be

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¹ Education<education.blogspot.com> accessed 25th March, 2025

² Ibid

³ <https://infed.org> accessed 25th March, 2025

⁴ Dictionary.com <https://www.dictionary.com> accessed 25th March, 2025

⁵ Google<Definitions from Oxford languages> accessed 25th March, 2025

⁶ There are three levels of formal education: Primary, Secondary and Tertiary. Primary education refers to the first stage of education after kindergarten education. It comes before secondary school. Secondary education comes after primary school and before tertiary education. Tertiary education comes after secondary education. However, the definition depends on the official specifications for education-content, and age associated with the levels of education. Tertiary Education Trust fund (Establishment, Etc) Act, 2011 (TETFUND Act, 2011) defined 'tertiary education institution' to mean a university, a polytechnic or a college of education. (See s. 28, TETFUND Act, 2011 (Act No. 16 of 2011))

religious or spiritual or social or emotional. Development is however mostly perceived from the economic point of view. Yet, it has been said that 'development is not purely an economic phenomenon, it also involves changes in structure, institution and attitude as well as acceleration of economic growth, the reduction of inequality and the eradication of absolute poverty.'⁷ Given that within the context of the subject of this paper, economic development is the central concern, it should yet be noted that gauging economic development may be approached from different perspectives: per capita income, gross national product and sustainable development. These approaches may not yield the same measure as to whether there is development or not; they are however interrelated.⁸ Sustainable development is however regarded as a better index of national development. It connotes material and economic prosperity as well as social inclusiveness or all citizens or nationals. 'Sustainable development connotes a process of advancement or to use something to grow gradually and become more advanced or better organized.'⁹ Accordingly, it may be said that material and economic prosperity in a repressive state cannot engender sustainable development because 'the actual measure of sustainable development is the well-being of the individual.'¹⁰ However, national development indices may also be associated with some non- political and non- religious measures related to poverty, hunger, disease, environmental condition and others which are components of the Millennium Development Goals.

3. Right to Education and Development as Natural Rights Derivatives

Right to Education

Greek Stoic philosophers are known to have originated the thoughts on the idea of natural law,¹¹ founded on the equality of all men everywhere. Natural law holds that natural rights are innate in all humans.¹² This implies that in a state and in all human societies, all men ought to be granted equal opportunity for self actualisation. The primary concern of the natural rights- mainly European and American -movement of the 19th century, which latched upon the natural law ideas propounded by Greek philosophers was the first generation rights to life, liberty, freedom of association, right to one's property and freedom of expression and their closely appurtenant perspectives. This was because the undemocratic governments that then ruled most part of the world manifested repressiveness which impacted directly in denying the first generation rights¹³ which ought to be granted absolutely, subject of course, to the right of others in the society. Further developments brought the second generation rights to the fore as rights which basically, may not be granted absolutely, but which the state should strive to provide within the limit of resources available. The second generation rights have been referred to as 'modern'¹⁴ and 'aspirational rights,' and as economic and social rights.' The second generation rights, including the right to education, are also wh inhere to 'individuals by virtue of their humanity, not their status, and therefore by definition encompass the least privileged, the 'excluded' and the 'outsider''¹⁵

In the order of human life, education or lack of it plays a major role in the development of social status, political status, and work-place status; in upward social and economic prosperity and attainment of individual fulfilment. This being so, it is only logical that the right of access to good education should be granted to all as a level platform for all humans to become their best. Denial of this right is thus a portent way to de-humanise and subjugate those denied. Article 26(1) UNDRH states that:

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

The demands of the UDHR as it relates to the right of education is instructive. But there is no doubt that no State has granted this right to its uttermost. Among other things, social inequalities and other limitations of various kinds make it near impossible for this right to be fully granted. It has therefore remained as an aspirational right even in the developed western societies where human rights are reputed to have been taken most seriously by the State and citizens. African Charter of Human and Peoples' Rights, 1981¹⁶ also granted this right in Article 17 (1): 'Every individual shall have the right to education.' Child Rights Act, 2003¹⁷ also made provision for the child's right to free and compulsory universal basic education in section 15 of the Act. Section 18 of CFRN 1999 states education objectives as follows:

⁷ Clement Chigbo, 'Issues of National Security, Human Rights and National Development in Nigeria,' *NAUJPPL* (2002) (12) 120, 126

⁸ Matthew Enya Nkwocha, 'A Legal Examination of the Economic Development Process in Nigeria' *Nigerian Journal of Contemporary Legal Education* (2017) (1)109,117

⁹ E.A. Odiike, 'Furthering good governance and sustainable development in Nigeria-the Imperatives of anchoring Democracy on the Rule of Law,' *Nigerian Journal of Contemporary Legal Education* (2017) (1) 35,54

¹⁰ Ifeoma P Enemuo and John Funsho Olurunfemi, 'Human Rights and National Development in Nigeria' *Law and Policy Review* (2011) (2) 21, 23

¹¹ (n 10) 23

¹² Okpara O; 'History and Concept of Natural Law (1)' in Okpara O. (Ed.), *Human Rights Law and Practice in Nigeria* (vol. 1, Enugu, Chenglo Limited, 2005) 4

¹³ R Aduche Wokocha, 'Democratic Governance, the Rule of law and Sustainable Democracy in Nigeria' *Port Harcourt Law Journal* (1999) (1) 112, 117

¹⁴ Tamara K. Hervey and Jeff Kenner 'Introduction' in Tamara K. Hervey and Jeff Kenner, *Economic and Social Rights under the EU Charter of Fundamental Rights* (Hart Publishing, Port Land, 2003) vii

¹⁵ Ibid, ix

¹⁶ Domesticated by African Charter of Human and Peoples Rights Act, 1983(Act No. 2 of 1983, Cap. A9, LFN 2004)

¹⁷ Act No. 26 of 2003, Cap. C70 LFN, 2004

- 1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
- 2) Government shall promote science and technology.
- 3) Government shall strive to eradicate illiteracy; and to this end government shall as and when practicable provide:
 - a) Free, compulsory and universal primary education.
 - b) Free university education; and
 - c) Free adult literacy programme

Like most human rights documents, the objectives of section 18 are bold and laudable. However, they are primarily non justiciable. In *Okoye v AG Lagos State*,¹⁸ it was held, interpreting section 18 of Constitution of the Federal Republic of Nigeria, 1979, which is *in pari materia* with section 18, CFRN 1999, that the obligation of government as required by the educational objectives cannot be enquired into by any court; that the electorate and the legislature are the arbiters for any breach of the rights set out in Chapter II of the Constitution. It was also held by the court that private organisations cannot be barred from providing educational services in exercise of their right of free enterprise under section 16 of the 1979 Constitution (which is *in pari materia* with section 16, CFRN 1999).

Right to Development

Also founded on natural law ideas propounded by Greek philosophers is the right to development. Article 1(1), United Nations Declaration of Right to Development, 1986¹⁹ states as follows:

The Right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all humans' rights and fundamental rights can be fully realised.

The right to development is a third generation right often considered as a group right. It was popularised by Keba M Baye and Karrel Varsaik.²⁰ It is obvious however that it is not only a right that inheres on a group of persons but also on the individual. This is acknowledged in Article 1(1) of the UN Declaration of Right to Development, 1986 as well as in Article 2(1) thereof, which states that the central subject of development is the human person, who must be an active participant and beneficiary of the Right to Development. In line with this reality, the process of development requires the empowerment of local actors in the society.²¹ Thus, the right to development is a right accruing to the group as well as the individual. The process of granting this right requires enhancement of welfare targeted at both the individual and the group. One of the major measures towards this is to grant access to education to the individual and to the group or society to which he belongs.

4. Legal and Policy Thrusts for Achieving National Development through Formal Education in Nigeria

Link between Education and National Development

As different aspects of human rights, education and development are considered different but the linkage between them is glaring. Apart from the truism that all human rights are interrelated and interlinked, as acknowledged by the UN Vienna Declaration and Programme of Action, 1993²² thus: 'All human rights are universal, indivisible, interdependent and interrelated and these rights are to be enjoyed by all human beings...' the theoretical link between education and national development is very pronounced. An illiterate nation will not be able to achieve national development. It is through education, basically, that the knowledge of arts, science and technology and so on which enable nationals to participate effectively in the enhancement of economic production and activities, is acquired, shaped and sharpened. If then, as section 14(2)(b), CFRN 1999 keynotes, the purpose of government is the security and welfare of the people, and section 16 grants the people the right to participate in economic activities,²³ those rights will not be effectively enjoyed by the uneducated. Education builds capacity; and as noted by Aristotle, creates a sound mind in a sound body.²⁴ It makes people easy to govern but difficult to enslave.²⁵ Indeed, human growth,²⁶ of course, consisting in individual as well as collective growth, is the truer test of the right to development and 'the actual measure of sustainable development in the wellbeing of the individual.'²⁷ Both rights are thus highly interrelated. Over the years, governments in Nigeria have made positive efforts to enhance their enjoyment.

¹⁸ (1981) 2 NCLR 337. See also *State of Madras v Champakam* (1951) SCR 252

¹⁹ Resolution 41/128 of 4 December, 1986. See also Article 22 ACH & PR 1981

²⁰ M O U Gasiokwu, *Human Rights, History, Ideology and Law* (Fab Anieh Nigeria Limited, Jos, 2003) 241; Simon Uche Ortuanya, 'The Rise and Growth of Human Rights: An Overview of Emerging Human Rights Issues; Rights to Self Determination, to Development and Right to Social Solidarity' *Journal of Nigerian and Comparative Law* (2012) (1) 28,34

²¹ Simon Uche Ortuanya, 'The Rise and Growth of Human Rights: An Overview of Emerging Human Rights Issues; Rights to Self Determination, to Development and Right to Social Solidarity' *Journal of Nigerian and Comparative Law* (2012) (1) 28, 37, 38

²² UNDOCA CONF. 151/23 Paragraph 15

²³ See *Okogie v AG, Lagos State* (1981) 2 NCLR 337, 345 which the FCA Lagos Division held that the Government of Lagos State has no right to abolish private schools.

²⁴ (n 1)

²⁵ Ibid

²⁶ Kingsely Osinachi N Onu, 'The Legal Status of the Rights to Development in Nigeria,' *NAUJCLP* (2022) (9)(2) 131, 133

²⁷ (n 9) 22,23

Government Strategies to Enhance the Right to Education

i) Establishment of Public Educational Institutions and Quality Control of Public and Private Educational Institutions

The governments at federal, state and local government levels establish primary schools. Secondary and tertiary institutions are established by the federal and state governments. To these ends, some provisions of CFRN 1999 are notable. Item 60, Part I of the Exclusive Legislative List, Second Schedule of the Constitution provides that for:

60. Establishment and regulation of authorities of the federation or any part thereof.

(a) To promote and enforce the observance of the fundamental Objectives and Directives Principles contained in the constitution.

(e) To prescribe minimum standards of education at all levels.

Item 17, Part II, Concurrent Legislative List of the Constitution provides that the

National Assembly may make laws for the federation or any part thereof with respect to –

(c) The establishment of research centre of agricultural studies; and

(d) The establishment of institutions and bodies for the promotion of financing of industrial, commercial or agricultural projects.

Also, Items 21-30, Part I, Concurrent Legislative List, CFRN 1999 provides:

21 The National Assembly may make laws to regulate or coordinate scientific and technological research throughout the federation.

22 Nothing shall preclude a House of Assembly from establishing or making provisions for an institution or other arrangement for the purpose of scientific and technological research.

27 The National Assembly shall have power to make laws for the federation or any part thereof with respect to University Education, technological Education and such professional Education as may from time to time be designated by the National Assembly.

28 The power confined on the National Assembly under paragraph 27 of this Item shall include power to establish an institution for the purpose of university, post-primary, technological or professional education.

29 Subject as herein provided, a House of Assembly shall have power to make laws for the states with respect to the establishment of institutions for the purpose of university, technological or professional education.

30 Nothing in the foregoing paragraphs of the items shall be construed as to limit the power of the House of Assembly to make laws for the State with respect to technological, post-primary or other forms of education, including the establishment of institution for the pursuit of education.

With respect to Local Government Councils, Forth Schedule to the Constitution provides for ‘the main functions of local councils’ in Item 1, not including education, but in Item 2 provides for other items included for ‘...participation of such council in the government of a state in respect of (a) in provision and maintenance of primary, adult and vocational education;’ and (d) such other functions as may be conferred on a local government council by the House of Assembly of the State.’

Education (National Minimum Standards and Establishment of Institutions) Act, 1985²⁸ is one the enabling laws for regulation of establishment and standards of primary, secondary and tertiary institutions and the content of training and education they offer. From a combined reading of these provisions, the following may be deduced: the federal government has the overriding power to regulate the manner and quality and standards of education in Nigeria.²⁹ States and private individuals and organisations may establish educational institutions, subject to the standards and conditions prescribed by the federal government. The standard and prescriptions prescribed by the federal government shall constitute the minimum by virtue of the provisions under consideration and by virtue of the legal doctrine of ‘covering the field.’³⁰ However, it is clear that the federal government cannot prevent the states or private persons from establishing any kind of institution provided that the enabling law is complied with. In *Okogie v Government of Lagos State*,³¹ the then Federal Court of Appeal held that a private organisation cannot be banned from doing the business of running private educational institutions, thus, the banning of private institutions by the Lagos state government was unconstitutional.

Quality control of primary educational standards throughout Nigeria is undertaken by the Universal Basic Education Commission³² established ³³ under Compulsory, Free Universal Basic Education Act, 2004 (UBEC Act 2004). The commission oversees among others, provision of adequate basic education facilities³⁴ and to carries out audit of teaching

²⁸ Act No. 16, Cap. E53 LFN, 2004.

²⁹ This is the obvious literal interpretation applicable to the provisions.

³⁰ See AG, Abia State v AGF (2002) 6 NWLR (Pt. 763) 264

³¹ (n 18)

³² S.9(c), UBEC Act, 2004 (Act No. 8, Cap. C4 LFN, 2004)

³³ S.7(i)

³⁴ S.9(ii)

and non-teaching staff³⁵ in concert with states and local governments.³⁶ National Secondary School Education Commission Act 1999³⁷ established the National Secondary School Education Commission and States Secondary Schools Board for FCT and each state of the federation.³⁸ The commission oversees secondary school education in the federation and prescribes standards for quality of teachers and education in consultation with relevant bodies.³⁹ Universities are established by Acts of the federal legislature.⁴⁰ Polytechnics and colleges of technology are established with the advice of the National Board of Technical Education⁴¹ established by National Board for Technical Education Act, 1977.⁴² Colleges of Education are established upon the advice of National Commission for Colleges of Education⁴³ established by National Commission for Colleges of Education Act, 1989.⁴⁴ There are other institutions which take part in offering education⁴⁵ and others which enhance research in the tertiary institution.⁴⁶ The National Universities Commission established under National Universities Commission Act, 1974⁴⁷ sets the standards of university education, while the National Board of Technical Education and the National Commission for Colleges of Education sets standards for polytechnics and colleges of technology, respectively. There are other institutions that set standards for professional education.⁴⁸

ii) Funding of Public Educational Institutions

In response to the need to grant free education at primary level, UBEC Act, 2004 was enacted which provides that every government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age,⁴⁹ save those outside Nigeria.⁵⁰ Parents and stakeholders are to ensure that every child/ward attend and conclude primary and junior secondary education.⁵¹ 'The services provided in public primary and junior secondary schools shall be free of charge.'⁵² Parents who fail to ensure that their child or ward attend and complete primary and junior secondary school and any person who charges fees for services provided are criminally liable.⁵³ The following features of the Act will be further noted:

- (a) Free and compulsory education is not available for a child that is above primary or junior secondary school age. This is clear from the provision of section 2(1) (despite the provision of section 4(1)) which the prescribed age as 6 years to 16 years.⁵⁴
- (b) Public schools may thus charge fees to provide such education for wards and children outside the age range.
- (c) Children outside Nigeria are entitled to fee and compulsory junior and primary school education under the Act.
- (d) A child or ward placed in a public 'class for religious instruction, a trade center, a training college or any other institution intended solely the education of adult,' is not entitled to free and compulsory education.
- (e) Children or wards placed in private institutions are not barred from paying fees for their education (and provision of educational services).

Financing of Universal Basic Education is through federal government funds and local and international donations.⁵⁵ Tertiary education is mainly funded by the governments and through fees paid by students of the tertiary institutions. One of the major interventionist efforts came through Tertiary Education Fund (Establishment) Act, 2011⁵⁶(TETFUND Act 2011) which among other things, imposed tertiary education tax on companies registered in Nigeria,⁵⁷ established the tertiary education trust fund(TETFUND),⁵⁸ and established a Board of Trustees of the fund.⁵⁹ The Board of Trustees

³⁵ S. 9(f)

³⁶ S.11

³⁷ Act No. 47, Cap. N73, LFN 2004. See s. 1

³⁸ S. 11

³⁹ Part ii, s.6

⁴⁰ E.g. University of Port Harcourt (Establishment) Act, 1979(Act No. 84, Cap. U3 LFN, 2004)

⁴¹ See s.5, National Board of Technical Education Act, 1977

⁴² Act No. 9, Cap. N9 LFN, 2004

⁴³ See s.5, National Commission for Colleges of Education Act, 1989

⁴⁴ Act No. 3, Cap. N17 LFN, 2004

⁴⁵ E.g National Institute for Policy and Strategic Studies, established by National Institute for Policy and Strategic Studies (Act No. 20 of 1979, Cap. N5 LFN, 2004); National Teachers Institute, established by National Teachers Institute Act, 1978 (Act No. 7, Cap. N79 LFN, 2004)

⁴⁶ E.g Nigerian Educational Research and Development Council established by Nigerian Educational Research and Development Council Act, 1988 (Act No. 53, Cap. N105 LFN, 2004)

⁴⁷ Act No. 1, cap. N81, LFN 2004

⁴⁸ Eg the Council of Legal Education established by Legal Education Council Act, 19, Cap. L10, LFN 2024

⁴⁹ S. 2(1), UBEC Act, 2004

⁵⁰ S. 4(2), UBEC Act, 2004

⁵¹ S. 4

⁵² S.3 See also s.4(1)

⁵³ S.4(4)

⁵⁴ See s. 15(1) Definition of 'Child or Ward' and 'Primary School Age'

⁵⁵ S. 11

⁵⁶ Act No. 65 of 2011

⁵⁷ S. 1(1)(2) TETFUND Act, 2011

⁵⁸ S.3

⁵⁹ S.4

is charged with the responsibility among others, of monitoring and ensuring the commercial of the fund⁶⁰ and to apply the fund to provide and maintain:

- (a) Essential physical infrastructure for teaching and learning
- (b) Instructional material and equipment.
- (c) Research and publication
- (d) Academic staff training and development
- (e) Any other need which, in the opinion of the board of trustees, is critical and essential for the improvement of quality and maintenance of standards in the higher education institutions.

Private tertiary institutions are excluded from benefiting from the fund.⁶¹ Another interventionist law is Petroleum Development Fund Act, 1973.⁶² It established the Petroleum Technology Development Fund (PTDF) which could be applied to support both private and public universities through scholarships, bursaries, endowments in faculties, financing seminars, *et cetera*.⁶³

iii) Establishment and Funding of Private Institutions

Private institutions in Nigeria at all levels established and funded by their proprietors. As already considered in this paper, government sets the standards for all levels of education to be complied with by all public and private educational institutions in Nigeria. The attitude of Nigerian governments to private institutions in terms of allowing their establishment has progressed from pessimism to mild optimism. Perhaps, the first attempt to establish an indigenous private university was made by Dr. Nnanna Ukaegbu who named his university Imo Technical University Imerienwe, admitted students and commenced physical infrastructural development. The State government took out an action against him. The court declared the university illegal and granted an injunction to stop the running of the institution.⁶⁴ Thereafter the Military Government enacted Private Universities (Abolition and Prohibition) Act, 1984⁶⁵ which made it unlawful to establish private universities and similar institutions.⁶⁶ This Act was later repealed.⁶⁷ The ghost of government pessimism about private tertiary institutions still exists in lack of government financial support to private tertiary institutions.

5. New Frontiers for Enhancing National Development through Expansion of Grant of the Right to Education and Funding of Private Tertiary Institutions

Expansion of the scope of free Education under UBEC Act 2004

UBEC Act 2004 limits free universal basic education to children in public primary and junior secondary schools who are between six to sixteen years of age.⁶⁸ This age range should be raised to at least 18 years if not more. Normally, no child will desire to remain in a class populated by his or her younger classmates except for serious commitment to get education which was not possible earlier on, perhaps due to some social handicaps. If there are social problems associated with placing much older persons in a class populated by younger persons, creation of special schools for such older children could be the way out rather than denying them the right to free, compulsory universal basic education. The exclusion of all classes of Nigerian children outside the country from mandatorily getting free education under UBEC Act, 2004 should be reconsidered. Some parents traffic their children outside Nigeria for all kinds of slave labour rather than take advantage of the free primary and junior secondary education grant. Parents who are ordinarily resident in Nigeria and who do not ensure that their children are given free education in Nigeria as granted, ought to be made culpable for allowing their children to be outside Nigeria without getting reasonable and proper primary and junior secondary school education in the foreign country. It does not seem very clear why a child or ward placed in a trade centre, a training college or any other institution intended solely for training for adults should be excluded from getting free universal basic education under UBEC Act, 2004. This provision is undesirable. It appears to legally excuse the parent or guardian from ensuring that the child receives such standard of education as is available under primary school and junior secondary school curricula unless the 'religious institution,' 'training institution' or 'trade centre' also provides similar quality of education as available in the public schools. Without compelling those institutions to provide adequate standard education for the child, the education of children placed in such schools will be hampered. A parent ought not to place his child in a trade centre that concentrates only on teaching a trade in a narrow scope that will not help for overall human development of the child.

Proper Enforcement of UBEC Act 2004

By far, the more pestilent problem with UBEC Act, 2004 is poor enforcement of the law. The enactment of the Act without serious enforcement suggests that government merely put it up as a smokescreen of government unwillingness to take the education of the nationals serious. The report is that there are about twenty million out of school children in

⁶⁰ S. 6

⁶¹ See s.7 which restricts the benefits of the fund to 'State and Federal' Tertiary Institution

⁶² Act No. 25, Cap. P15 LFN, 2004

⁶³ See s. 2

⁶⁴ See *A. G. Imo State v Ukaegbu* (1981) IMSLR 149

⁶⁵ Act No 19 of 1984. Cap 368 LFN, 2004

⁶⁶ Ss 1-3

⁶⁷ By s. 2, Education (National Minimum Standards and Establishment of Institutions) (Amendment) Act, 1993(Act No. 9)

⁶⁸ S. 2(1), UBEC Act 2004

Nigeria⁶⁹ who ought to benefit under UBEC Act, 2004. This is a staggering statistics. In the midst of this, it is doubtful if any parent or guardian has been brought before the law to answer for breach of the responsibility of ensuring that a child attends school. Children are out there in the streets begging and hawking things for their parents and guardians at normal school hours. There is need for the government to enforce the law against defaulting parents and guardians.

Extension of TETFUND and PTDF funding to Private Tertiary Institutions

No doubt, the presence of private institutions is not just a profitable venture for the proprietors, but an important means of providing the right to education and enhancing the development of the nation. Besides, it is an important deflator of the very possible social implosion that could result from the lack of adequate opportunities for education of teeming Nigerian youth. Non provision of tertiary education admission placements for qualified youths is a time bomb if the number of disappointed admission seekers is not controlled. No doubt, private universities are closing this gap. As at 2024 there were one hundred and forty nine (149) out of two hundred and seventy four (274) private and public universities.⁷⁰ Thus there are now more private universities in Nigeria than public universities absorbing some of the teeming population of qualified youths seeking for admission into tertiary institutions. The availability of private universities and other tertiary institutions is also conserving foreign exchange depletion in Nigeria. Up to the 1970s, private primary and secondary school institutions were perceived to be inferior and not fashionable. Not so today; public primary and secondary schools are generally perceived to be inferior and do not attract the children of the middle and upper class of the society. Poor supervision of government institutions and dilapidated facilities have much to do with this trend. It is apparent that private tertiary institutions are now better at providing higher standards of certain facilities and infrastructure available for education in Nigeria than their public counterparts. The problem of poor facilities and harsh living conditions in public universities and other tertiary institutions may soon place public tertiary institutions below the private tertiary institutions in all parameters as it happened with primary and secondary school education.

It is apparent that running private tertiary institutions is a heavy burden on proprietors.⁷¹ The benefit of TETFUND grants should be extended to private tertiary contrary to the provision of section 7 of the TETFUND Act, 2004 which provides otherwise. PTDF is not limited for use in public tertiary institutions. Unfortunately, no private institutions is known to have benefited from the fund. Governments should radically extend these funding to private tertiary institutions. Government intervention funding in private tertiary institutions is obtainable elsewhere in the world. For example, the US government gives research and technology grants and grants study aids in private universities, *et cetera*.⁷² It is not justifiable to offer government sponsorships to students to study in universities abroad for courses that could be provided by universities, public and private, in Nigeria. This should be legally enforced as a means of saving foreign exchange, shoring up the value of the naira and affording the private and public universities in Nigeria the opportunity for more development; and above all, to enhance education and national development.

6. Conclusion and Recommendations

The human right to education is a key second generation right, enshrined in CFRN 1999 as an aspirational right and is intricately linked with the quest for development of the nation. Government has made some progress in granting this right but quite a lot needs to be done. Not too demanding or a great strain on what has been so far done by government is the need to put up legal and policy measures to enhance education and national development by improving on the scope of free education granted under UBEC Act 2004, to enforce the Act against defaulting parents and guardians and to assist private tertiary institutions to run them as obtainable elsewhere in the world. This paper recommends the proper enforcement of UBEC Act 2004 and its amendment to raise the age range of benefitting children; to rein in parents and guardians who allow their children and wards to go outside the country at the expense of educating the children, and to ensure that children placed in certain institutions meant for adults are not excluded from getting good basic education. It is also recommended that TETFUND Act 2011 be amended to enable government funding of studies, worthy projects and research in private tertiary institutions. PTDF funding should also be extended to private tertiary institutions. Government sponsorship of students and research in foreign universities should be legally limited to unavoidable cases.

⁶⁹ UNESCO<<https://www.unesco.org>>accessed 17 April, 2025

⁷⁰ Statistica<<https://www.statistica.com>>accessed 17 April, 2025

⁷¹ Nora Omorogie, 'Issues and Challenges in Private University Education in Africa: Funding of private Universities in Nigeria' *Journal of Contemporary Research* (2011) (8)(4) 272, 276

⁷² Grantford, Do Private Universities get Federal Funding<grantford.org/post/do-private-universities-get-federal-funding>accessed 17 April, 2025