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## A Critical Analysis of the Legal Framework for Primary Education in Nigeria

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BY

**AKPAN, E. Ebenezer, *Ph.D, FCICN, AP, PPGDCA, PHDCDPM***  
**Corporate Institute of Research and Computer Science**  
**140 Ikot Ekpene Road**  
**Uyo, Akwa Ibom State**

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### ABSTRACT

*This study critically examined the legal framework for primary education in Nigeria. Primary education is typically the first stage of formal education, coming after preschool and before secondary school. This statement confirms that the fact that primary level of education is the most crucial to the success of other levels. Hence the need for the stakeholders to do everything possible to lay a solid foundation for the sustainability. The study concluded that every state government regulates primary education according to the United States Department of Education and providing children with this education has many positive effects including inculcation of permanent literacy, numeracy and the ability to communicate effectively. Also, in Nigeria well detailed SSD Guidelines on protection of Primary Education has been formulated and this has a strong guide to the operations in our primary educational system. Besides, Nigeria has committed to several legal frameworks or protocols (international, regional and national) that relate to, and ensure protection of education. Finally, Nigeria has also initiated and developed several legal frameworks that seek to protect education. One of the recommendations was that the legal framework must define the rights and obligations of parties to debt contracts in the primary and secondary markets for issuers, investors, and intermediaries.*

**KEYWORDS: Legal Framework, Primary Education and Nigeria**

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### Introduction

Education as a development agent, is valued by all nations of the world because it has brought total liberation to man. It has transformed man from ignorance and misery to knowledge and happiness. It has made man useful to himself, his generation and beyond. As rightly observed by Umoh (2006), education helps the individual to develop physically, mentally, morally, spiritually, and emotionally by providing suitable environment, teaching him new knowledge, attitudes and skills that will enable him to be useful to himself and his society.

Equally, Primary Education, according to The Federal Republic of Nigeria (2004), refers to education given to children aged 6 to 11 plus in primary schools and that the primary level is the key to the success or failure of the whole system since the rest of the education system is built upon it. This statement confirms the fact that the primary level of education is most crucial to the success of other levels, hence the need for the stakeholders to do everything possible to lay a solid foundation for its sustainability. For primary education to be the bedrock of educational

system, Umoh (2006), maintains that it must bring to the learners elementary and general knowledge of science, by teaching them to use and operate scientific objects and gadgets so that they may be conversant with such foundational knowledge as they advance to other levels.

### **Concept of Primary Education**

Primary education is typically the first stage of formal education, coming after preschool and before secondary school. Primary education takes place in primary school, the elementary school or first and middle school depending on the location. Primary education is the education given to children aged 6-12 years. As pointed out by Saidu (2008), and Sen (2010), primary education is the foundation for a child's learning on which every other level of learning depends. Furthermore, Olaniyan and Obadara (2008), submit that apart from the home as the first agent of socialization, primary school is the first that introduces formal education or literacy to the children. In other words, primary school education is a foundation upon which all other levels of education are built. Armstrong (2008) affirms that certainly, primary and secondary educations are both important elements of the sector, not least because they feed directly the quality of higher levels of education.

Primary school levels range from grade 1 to grades 4-7, depending on the state and school district policies. Primary education provides students with fundamental skills that will be the foundation for the rest of their academic careers (Learn.org, 2013). The International Standard Classification of Education considers primary education as a single-phase where programmes are typically designed to provide fundamental skills in reading, writing and mathematics and to establish a solid foundation for learning. Every state government regulates primary education, according to the United States Department of Education. Some states also supervise the curriculum, processes and standards of elementary schools to ensure students receive a quality education regardless of the school they attend. Most states require children to receive a primary education to learn basic concepts. According to the United Nations Children's Fund (UNICEF), providing children with this education has many positive effects, including:

The objectives of primary education according to FRN (2013) are to:

- a. Inculcate permanent literacy, numeracy and the ability to communicate effectively;
- b. Lay a sound basis for scientific, critical and reflective thinking;
- c. Promote patriotism, fairness, understanding and national unity;
- d. Instill social, moral norms and values in the child;
- e. Develop in the child the ability to adapt to the changing environment; and
- f. Provide opportunities for the child to develop life manipulative skills that will enable the child function effectively in the society with the limits of the child's capability

In pursuance of these objectives:

- a. Primary education shall be compulsory, free, universal and qualitative'

- b. Teaching shall be participatory, exploratory, experimental and child-centered;
- c. The medium of instruction in the Primary school shall be the language of immediate environment for the first three years in monolingual communities. During this period, English shall be taught as a subject;
- d. From the fourth year, English shall progressively be used as a medium of instruction and the language of immediate environment and French and Arabic shall be taught as subjects; and
- e. Specialist teachers shall be provided for particular subjects such as: Mathematics, Basic Science, Basic Technology, Physical and Health Education, Language Arts (in relation to English, Arabic, French, Sign Language and Nigerian Languages), Music, Fine Art, Home Economics and Agriculture.

The United Nations Children's Fund (UNICEF), believes that providing children with primary education has many positive effects. It

- Decreases poverty
- Decreases child mortality rates
- Encouraging gender equality
- Increases environmental understanding.

In agrarian cultures, the skills of agriculture, husbandry, bartering, and building skills can be passed on from adults to children or master to apprentice. Societies agree on the need for their children to learn and absorb their cultural traditions and beliefs and they attempt to do this informally in the family, or by gathering the children together and employing one adult to handle the task, a tutor.

### **Concept of Legal Framework and the roles**

*Legal Framework* means the Platform Rules, each Contribution Agreement and each Fund Description that constitute a legal basis for the cooperation between Contributors in relation to the management of Contributions.

The fundamental parts of the legal framework supporting an efficient domestic government securities market usually include an explicit empowerment of the government to borrow, budgetary rules for the issuance of government securities, rules for the organization of the primary market, role of central bank as agent for the government, the debt-management framework, rules governing issuance of government securities, and rules pertaining to the secondary market. In this way, the legal framework defines incentives for all market participants—the issuing government, the central bank, regulatory agencies, market intermediaries, end investors, and any SROs. Some of the more important areas where the legal framework will affect the development of government securities markets include (i) defining the exact parameters under which fiscal budgeting processes will be linked to government securities

issuance, (ii) limiting issuance, via debt ceilings or other devices such as sinking funds, and (iii) defining the legal properties of government securities and their use as collateral in transactions such as repos.

At another level, the legal framework must define the rights and obligations of parties to debt contracts in the primary and secondary markets for issuers, investors, and intermediaries. This definition should include (i) minimum guidelines for disclosure of material information, (ii) liability for entities involved in distributing securities and for entities handling third-party investment accounts, and (iii) vehicles to allow proper legal recourse against mutual funds, pension funds, and even the government as an issuer. Investment regulations need to permit sufficient flexibility for investors, yet create adequate safeguards for prudent operations and for the safeguarding of fiduciary obligations, as in the case of pensions.

### **Existing Legal Frameworks**

There are international, regional, and national legal frameworks that seek to guard against activities that could undermine or disrupt education (EiEWGN, 2011).

***International Frameworks:*** As regards International Frameworks, Nigeria is a signatory to numerous international legal frameworks that protect education. The Universal Declaration of Human Rights of 1948 (UDHR) is considered the foundation of international human rights law. Article 26 of the UDHR protects the right of every child to education. The Declaration of Geneva, which was adopted on 26 September 1924, provided a declaration on the Rights of the Child that gave recognition to children after the First World War as recipients of welfare (Kaime, 2009 cited in Isokpan, 2016). This recognition continued further with the United Nations Declaration of the Rights of the Child in 1959. The declaration formed the basis of the Convention on the Rights of the Child (CRC), which was adopted in 1989. Nigeria ratified the CRC in 1991 and domesticated it in 2003. Under the CRC, amongst others, state parties agree to secure the rights of the child to life, survival, development, and non-discrimination, and right to be heard and to have the child's best interest as the primary consideration. Article 38 under this convention makes provisions to secure the rights of children in situations of armed conflict.

***Regional Frameworks:*** Nigeria has committed to several regional frameworks or protocols that relate to, and ensure protection of education. They include the following:

*The African Charter on Human and Peoples' Rights* which was initiated to promote and protect human rights and basic freedoms within the African continent. In 1983, Nigeria ratified and domesticated the African Charter which recognises and gives equal importance to the observance of civic and political rights, as well as economic, social, and cultural rights.

*The African Youth Charter* which was adopted in 2006, enforced in 2009, and ratified and domesticated by Nigeria in 2009. It refers to the rights, freedoms, and duties of young people in Africa, including the right to education (EiEWGN, 2011). It recognises the right of every young person to education of good quality. It refers to multiple forms of education, including non-formal and informal. It also provides for gender equality and the use of African languages in teaching.

*The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* of 2003 (the Maputo Protocol) aims to eliminate discrimination against women and to ensure their protection as stipulated in international declarations and conventions. It was ratified by Nigeria in 2004 and domesticated in 2005. This charter also makes provision for protecting education. It provides for the right to education and training based on the principles of non-discrimination and equal opportunity. It calls for the elimination of all stereotypes and the integration of gender sensitisation at all levels of the education curricula, and refers to protection against sexual harassment.

*The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (the Kampala Convention) (2009), was ratified and domesticated by Nigeria in 2012. It binds governments to provide legal protection for the rights and well-being of those forced to flee their homes or countries due to conflict, violence, natural disasters, or human rights abuses. Article 9.2 (b) of the convention refers to maintenance of access to education.

***The National Framework:*** Nigeria has initiated and developed several legal frameworks that seek to protect education. These include:

*The Constitution of Federal Republic of Nigeria 1999* provides for the general protection of human rights as contained in Chapter IV. Section 18 provides that government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels (EiEWGN, 2011). The government is equally urged to strive to eradicate illiteracy and, where practicable, provide free, compulsory, and universal primary education and free secondary, university, and adult literacy education.

*The Child Rights Act (CRA)*, enacted in 2003, domesticated the CRC in Nigeria. It is the principal law recognising the rights of children. Section 15 of the CRA obligates the Nigerian government to provide free and compulsory basic education to every child in Nigeria. The act also emphasises the protection of children, including those in situations of armed conflict. However, the CRA has not been translated into an improved child's right protection throughout the federation because while enacted at the national level by the National Assembly, the states must formally adopt the act for domestication as state laws (Iguh, and Nosike, 2011). Thus, the CRA 2003 is only effective in states that have adopted it as a state law.

*The Compulsory, Free Universal Basic Education Act of 2004* (the UBE Act) confirms the right to compulsory, free, and universal basic education for every child in Nigeria.

*The Nigerian Strategic Framework for Violence Free Education in Nigeria*, which was initiated and implemented in 2007, emphasises the protection of children from any forms of violence.

### **Legal Framework and protection of Primary Education**

Children's right to education in Nigeria has been put under threat by the incessant attacks that have taken place against educational establishments. For the purposes of this document, attacks on education are defined as 'any intentional threat or use of force —carried out for political, military, ideological, sectarian, ethnic, religious, or criminal reasons —against students, educators, and education institutions' (GCPEA). In Nigeria, both within and outside of

environments of armed conflict, school children and staff have been killed, kidnapped, or otherwise severely harmed; school premises have been taken over and occupied by miscreants; and to fight insurgents, the Nigerian Army has sometimes set up makeshift barracks in school premises. These examples, among others, fall under the category of ‘attacks’ on education. This review is an attempt by a coalition of stakeholders, led by EiEWGN, to develop an improved set of laws to provide legal protection against such attacks on the Nigerian educational establishment. The EiEWGN is a coordination structure that serves as a pressure group to facilitate provision of quality education opportunities that meet the physical protection, psychosocial, developmental and cognitive needs of people affected by emergencies. The aim is to enable structured learning to continue in times of acute crisis or long -term instability.

### *The SSD Guidelines on protection of Primary Education*

The Safe Schools Declaration is a commitment entered into and endorsed by independent states to express their shared interest in ensuring the protection and continuation of education in times of armed conflict and in implementing the SSD Guidelines. The SSD provides Guidelines to ensure the protection of education in times of conflict, which signatories commit themselves to fulfilling. The guidelines are:

- Educational institutions are protected from being used to advance military efforts.
- Educational institutions are protected from being occupied or used except for specially identified extenuating circumstances under the Guidelines.
- Educational institutions should not be used as retribution during combat.
- There should be consideration and exhaustion of all options or alternatives before attempting to destroy educational institutions under extenuating circumstances.
- Fighting forces should be restricted from providing security for educational institutions except in extenuating circumstances where alternatives are not feasible.
- The Guidelines recommend the incorporation, internalising, disseminating, operationalising, and implementing of the Guidelines committed to.
- In defining and developing the Guidelines for the Protection of Education, it is necessary to ensure that certain requirements, conditions, conditionalities, processes, and procedures are considered and adopted. These Guidelines must ensure that the safety, security, interests, and basic rights of children are upheld, protected, and defended. They must ensure an accountability and responsibility system or structure that measures safety, compliance, and adaptability in its development and implementation.

The Guidelines must ensure that due process is followed, incorporating the views of the stakeholders and actors involved in and impacted by the decisions or recommendations, to ensure ownership, their active engagement and collaboration, implementation, sustainability, and monitoring and evaluation over time, with the goal of ensuring success and improving and enhancing performance. The Guidelines must incorporate adapted global best practice measures and approaches that are preventive and precautionary, interventive, and remedial, and that ensure

reforming minimum standards. These minimum standards are in relation to the SSD and Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict. This refers to the recommendations by the Safe Schools Declaration requiring implementing agencies or offices to reform minimum standards or processes necessary for ensuring safety and security of schools and personnel. The expectation is that the domestication of the SSD implementation would address and consider this.

### ***Roles of Legal Framework in Primary Education***

The discourse around children's rights and education is often a rosy one, focused on positive images of protecting children from harm, enabling their development and empowering them. Sloth Nielsen (1996) has described this as a 'chicken-soup' approach to children's rights, suggesting that children's rights are commonly presented as uncontentious while, in reality, just like other human rights, they are sources of conflict and tension.

The Office of Civil Rights and the Equal Employment Opportunity Commission, through their regulatory activities, review claims of discrimination in primary schools and initiate suits against school districts for non-compliance with civil rights laws. The Environmental Protection Agency regulates compliance with national health and safety concerns designed to assure the safety of students and employees.

At no point does the federal Constitution refer to education. This, coupled with the language of the Tenth Amendment (...powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people), vested in state government the legal responsibility for the control and direction of primary education. Thus, while federal authority is restrictive concerning primary education, the state has complete authority to provide a primary education system. State-level sources of law include the state's constitution, state statutes, state administrative agencies, and case law.

Notably, the roles of legal framework include:

### **Discipline**

School disciplinary policies have long been a source of contention. Across the world, legislation and courts give schools and teachers authority to punish children for behaviour which their parents do not object to, and this inevitably generates resentment and conflict (Global Initiative to End All Corporal Punishment for Children, 2017). One of the areas where human rights issues abound is in the area of school uniform policy, with cases often founded on arguments related to freedom of expression or religious freedom (Lundy, 2005). There have been many claims of discrimination in relation to the wearing of religious symbols with some countries, such as France, taking a strictly secular approach and others, such as the UK, allowing students to wear religious dress and then finding themselves challenged about the boundaries and limitations of their approach (Lundy, 2005). However, even states that have taken a secular approach need to find ways of accommodating freedom of conscience. As stated by the Global Initiative to End All Corporal Punishment for Children, (2017), in a case between Singh and France in 2012, the Human Rights Committee found that the State had not provided compelling evidence that the wearing of the keski (a small turban) by a Sikh pupil posed a threat to the rights and freedoms of

other pupils. The Committee also found that the permanent expulsion of Mr. Singh from public school was disproportionate to the stated aims, namely the need to respect the religious freedom and the physical safety of pupils in state schools. Likewise, in *Sumayyah Mohammed v. Moraine and Another* in 1995, (Armstrong, 2008) stated that the High Court of Trinidad and Tobago found that the refusal to let a female pupil wear her jilbab was discriminatory and unreasonable. States are afforded a high degree of freedom as to their uniform policies. However, they have to show good reason to justify any restrictions on freedom of conscience or expression.

### **Access to Education**

The reasons that certain children do not or cannot attend, or do not stay in school, are varied. However, they are often connected to poverty and broader forms of social exclusion. The educational experiences of Roma children in Europe serve as a key example of this and the Committee frequently identifies them as a group that is unjustly excluded (Lundy, 2012). Exclusion and the breach of the right to access to education come in a number of guises, one of which is the hidden or additional costs of supposedly 'free' education. For example, in Bulgaria (2011), the European Court of Human Rights decided that a requirement for Russian nationals who did not have Bulgarian residence permits to pay additional fees in order for their children to access education was discriminatory. It observed that: 'Under Article 28 of the United Nations Convention on the Rights of the Child, the State had the duty to assist children in their drive to become fully fledged members of society. By erecting insuperable obstacles to the completion of their secondary education, the State was preventing them from developing in that way.' (Bulgaria, 2011).

Another reason why many migrant children are excluded is that they lack registration documents. This can mean that they miss out on education completely (Todres, 2003) or end up in inferior private arrangements with adverse consequences for equality (Chen and Feng, 2013). The Committee emphasizes, in its concluding observations, the barrier that the lack of registration documents creates. For example, it recently expressed a concern in relation to Cameroon about: 'The disproportionate impact on indigenous, refugee and asylum-seeking children and children living in remote areas of the requirement to produce a birth certificate to qualify for the secondary school entrance exam' (UN, 2017). Other forms of exclusion that jeopardise the right to access to education occur at the point of entry, with seemingly objective admissions criteria resulting in discriminatory outcomes. Places at schools are social goods and the distribution of these through admissions policies can result in certain groups of children being excluded, directly or indirectly (West, 2006). Research in New Zealand and elsewhere has demonstrated that the drawing of geographical boundaries operates against the most disadvantaged pupils (Morris and Perry, 2016). Academic selection tests and secondary school criteria that prioritise children on the basis of good attendance at a primary school are also questionable since the latter can disadvantage children who have long term illnesses, whose families are nomadic or who are just poor, given the long-established link between poor attendance at primary school and lower socio-economic status. Moreover, an obvious form of exclusion occurs when a child is expelled or temporarily suspended from school as a result of disciplinary mechanisms. Research suggests that these exclusions fall disproportionately on children with special educational needs and children from certain ethnic backgrounds (Morris and Perry, 2016).

Discrimination and segregation are practices that occur within schools that breach the rights of children to a child-friendly and empowering education. In one case in the United States, ten Native American families claimed that the schools in their district discriminated against Native American students in disciplining them, were hostile towards Native American families, and took statements from students involved in disciplinary matters that were later used to prosecute them in juvenile and criminal courts. The case was settled and a set of measures implemented to counteract the indirectly discriminatory effects. The Committee on the Rights of the Child has also been prompt to identify similar patterns of indirect discrimination, recommending for example that the United Kingdom take measures to reduce disparities in the number of black and ethnic minority children excluded from school (UN, 2016).

### **Curriculum**

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment."

Another breach of children's rights in relation to the aims of education advanced in schools can be found in a curriculum that promotes intolerance towards other cultures, an intolerance that is expressed in the resulting teaching materials and practices. Educational curricula, being the prime opportunity for a government to promote its own national identity, are often directly or indirectly xenophobic; texts written to promote a particular dominant ideology or group convey messages of intolerance or racial superiority as part of the so-called 'hidden curriculum.' Examples can be found in textbooks that only offer images of certain ethnicities and exclude others, or materials that explicitly disseminate and reinforce negative stereotypes (Burman, 2011), unless these are employed to encourage critical reflection.

### **Issues in Legal Framework for Primary Education**

Issues faced in Legal Framework as regard for Primary Education are as follows:

#### ***Issues in student records***

Issues in student records as regard protecting pupils'/students' information include:

- (a) Attendance Registers:
- (b) Teachers' Attendance Register:
- (c) Records of Time-tables:
- (d) Examination Result's Records:
- (e) Teachers' Log-book:
- (f) Conduct Register:
- (g) Punishment Register:
- (h) Cumulative Records:

### *Issues in Safety –*

Issues in safety for teachers and pupils/students include:

- Poor time management. ...
- Non-data based decisions. ...
- School boards being asked to make decisions without essential data.
- Poor use of technology to handle the mundane tasks. ...
- Lack of effective on-going interactive community wide communications.

### *Copyright*

As regards copyright, making sure class materials are legally used and distributed. As a well-known fact, Copyright is a type of intellectual property that applies to creative work. It is a legal right that gives exclusive rights to the creator of an original work to use and distribute it. ... The issue with copyright is that it only safeguards the expression of ideas by the creator and not the underlying idea.

### **Conclusion**

The study concluded that every state government regulates primary education according to the United States Department of Education and providing children with this education has many positive effects including inculcation of permanent literacy, numeracy and the ability to communicate effectively. Interestingly, in Nigeria well detailed SSD Guidelines on protection of Primary Education has been formulated and this has a strong guide to the operations in our primary educational system. In addition, Nigeria has committed to several legal frameworks or protocols (international, regional and national) that relate to, and ensure protection of education e.g. The African Charter on Human and Peoples' Rights, the African Youth Charter, The African

Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa etc. Nigeria has also initiated and developed several legal frameworks that seek to protect education e.g. *The Child Rights Act (CRA)* The aim is to enable structured learning to continue in times of acute crisis or long -term instability.

### **Recommendations**

1. The legal framework must define the rights and obligations of parties to debt contracts in the primary and secondary markets for issuers, investors, and intermediaries.
2. Investment regulations need to permit sufficient flexibility for investors, yet create adequate safeguards for prudent operations and for the safeguarding of fiduciary obligations, as in the case of pensions.
3. Societies should agree on the need for their children to learn and absorb their cultural traditions and beliefs and they can attempt to do this informally in the family, or by gathering the children together and employing one adult to handle the task.

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