

OUT -OF -SCHOOL CHILDREN IN NIGERIA: MAKING EXTANT LEGISLATIONS COUNT

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1.0 INTRODUCTION

As statistics suggest¹, the existence of legislations does not appear to have made any significant stride in halting the increase² in the number of out-of-school children in Nigeria.

Children being in-school instead of out-of-school is important to Nigeria because studies³ seem to suggest that there is a relationship between education and national development. There are several models put forward to explain the relationship between education and national development. One of the models is the Linear model theory. Within this Model there are three groups of social scientists namely the structural fundamentalist, human capitalist theories and the modernization theorist⁴. The human capitalist theory and to a certain extent modernist theory constitutes the framework for building cases to show that education enhances national development⁵. Thus an educated populace is likely to lead an increase GDP. A slight increase in the percentage of the educated will likely result in a slight increase in GDP.

A number of factors contribute to the persistent rise in the numbers of out-of-school children in Nigeria. These factors include gender inequality, insurgency, child marriage, natural disasters and child labour. Added to this are other negative socio-cultural norms.

Although legislations exist in this area, they have so far been relatively ineffective⁶ in curbing the gradual and continuous rise in the figures of out-of- school children in Nigeria.

¹ The steady rise in the figures of out-of- school children in Nigeria in the past few years belie the existence of legislations in this area. See Part 2.0 of this paper.

² For in 2015 the number of out of school children in Nigeria was put at 7.5 million. As at 2017 and 2018 the figures bandied around were 10.5 million and 13.2 million children.

³ See for instance, Kim Lewis, "Study Reveals Economic Impact of Uneducated Children" <https://www.voanews.com/africa/study-reveals-economic-impact-uneducated-children> (accessed 27/6/2019)

⁴ "Relationship Between Education and Development" <<https://www.ukeassys.com> (3/12/2018)

⁵ Ibid

⁶ The recent figures on the increase in the numbers out-of-school children in Nigeria supports this position.

Our solution to this problem is a restructuring of our legislations in this area to de-emphasis the “stick” approach⁷ in favour of the “carrot” method.⁸ This, we believe, will make parents and wards to send their children to school.

2.0 THE GRIM STATISTICS

The figures of Nigerian children that are currently out of school as at 2018 apparently vary depending on the government official presenting it. At the opening of the Pre-Conference briefing of Northern Nigeria Traditional Rulers Council on out- of-school Children held in Abuja on 4th October 2018, the Executive Secretary of Universal Basic Education Commission (UBEC)⁹ Hamid Boboyi¹⁰ claimed that the number of out of school children in Nigeria increased from 10.5 million to 13.2 million between 2010 and 2015. He surprisingly explained further that a joint Demographic Health Survey (DHS) which was jointly conducted by UNICEF and the Federal Ministry of Education revealed this figure but that “up to 2015 the figure was 10.5 million”¹¹. In another breath, he claimed that “over the last few years” due to insurgency challenges and with increasing number of births, the DHS jointly conducted by UNICEF and Federal Ministry of Education revealed the figure to be 13.2 million¹². The then Minister of Education, Adamu Adamu, however, has a different and apparently contradictory narrative. In January 2018, the Minister claimed that figure of 10.5 million had indeed dropped in the three years following the ascension of the current Federal government to 8.6 million as at 2017¹³. He attributed this “feat” to the effort of the President especially the school feeding programme.¹⁴ It is however claimed that this figure which is 8.7 million, predates the current government, and is a 2014 figure based on UNESCO reassessment of its previous position of 10.5 million¹⁵. Despite this, in July 2017, the Federal Ministry of Education’s permanent secretary, Adamu Hussaini, claimed that there were 10.5 million Nigerian children that were out of school¹⁶ and in the process admitting that this figure was the highest in the world ¹⁷. Hussaini’s assertion is not strange but apparently a

⁷ Emphasis on penal sanctions

⁸ reward based.

⁹ A government agency.

¹⁰ Represented by the Director of Social Mobilisation, Bello Kagara.

¹¹ <<https://www.dailytrust.com.ng/out-of-school-children-in-nigeria-increases-from-10-5m-t>>(accessed 14/11/2018)

¹² *Ibid*, Yekeen Akinwale “Nigeria’s Out- of-school Children Population increases to 13.2m” <www.icirnigeria.org/nigeria-out-of-school-children-population-increases-to-13.2m-ubes> (accessed 14/12/2018)

¹³ < www.konbini.com/ing/lifestyle/10-5-million-nigerian-children-school/> (accessed 14/11/2018)

¹⁴ *Ibid*

¹⁵ Allwell Okpi, Number of out-of-school children in Nigeria didn’t ‘drop’ to 8.7 million under Buhari, africheck.org/spot-check/number-school-children-nigeria-didn-t-drop-8-7-million-buhari (accessed 19/11/2018)

¹⁶ < <https://www.bbc.com/news/world-africa-40715305>> (accessed 14/11/2018).

¹⁷ *Ibid*

reiteration of a pre-2017 UNESCO position¹⁸ which dates back to 2013¹⁹ Indeed, a UNICEF report²⁰ also confirmed the position on Nigeria housing 10.5 million out-of-school-children, the highest number of out-of-school children in the world²¹. The statistics as we have them²² should rightly be a serious cause for concern. There are many reasons for us to be worried by these statistics. As we noted earlier, there is a link between education and development²³. Development within the context of nation state has been seen as “freedom from national impotence”²⁴ There are several models of the relationship between education and development.²⁵ As we noted earlier one of such model is the Linear Model²⁶. One of the theories under this Model is the human capitalist theorist. This theory postulates that the most efficient path to national development lies in the improvement of a country’s population and the best way to do this is through education and various forms of training²⁷. To them, the most efficient path to national development lies in the improvement of human capital through education and that the two pre-conditions for economic growth and development in any nation were investment in education and improvement in technology²⁸ On their part, the modernization theorists believe that society cannot develop unless its population holds modern attitudes and values. They therefore see a direct relationship between education and socio-economic development in that education brings about a change in outlook in the individual which promotes productivity and work efficiency²⁹ Not everyone agree with this link. It is contended that the elements of social inequality takes on special prominence in the concept of development in the context of nation state. It postulates, on this basis, that by sorting people out into categories of its own making (PhDs, High school graduates, and dropouts) formal education as embodied in western schools leads to class stratification and actually promotes social inequality³⁰. Further proponents of this view contend that formal education system produce a sense of dependence and helplessness among those who they purport to help for instance they argue that people learn to mistrust their power to engage in meaningful learning outside a school. On this

¹⁸ David Lawal, infographics: Out of School children in Nigeria < thenationonlineng.net/out-of-school-children-in-nigeria > (accessed 19/11/2018)

¹⁹ Is’haq Modibbo Kawu, Nigeria’s out-of –school children, posted 20 June 2013 www.vanguardngr.com/2013/06/nigerias-out-of-school-children (accessed 19/11/2018)

²⁰ Apparently sourced from UNESCO (see fn 9)

²¹ www.unicef.org/nigeria/education.html (accessed 19/11/2018)

²² Despite any slight disparity

²³ <https://guardian.ng/opinions/the-implications-of-out-of-school-children> (accessed 3/12/2019),

www.nigeriapost24.com/the-implications-of-out-of-school-children (accessed 3/12/2019)

²⁴ “Recent Theories of the Relationship Between Education and Development” www.micsem.org (accessed 3/12/2018)

²⁵ Ibid

²⁶ Part 1.0 of this paper.

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ n 18

basis some holding this view contend that the supposed gain from education is illusory³¹. Despite this view, it is strongly argued that education has a strong impact on economic development as a source of development of the human capital which in turn is an input in the production function and determination of new technologies and ideas and research that generate new technologies and ideas³². To buttress this view, according to them, a research carried out by two scholars: Sianesi and Van Reenen on the effect of different education levels on the development of a country noticed that in the case of primary school, a 1% growth in the schooling rate determined an increase of 2% of GDP per inhabitant in the less developed countries from the developing countries³³. Also, an increase of 1% of the enrollment rate in the secondary school determined a raise of 2.5-3% GDP for the developing countries³⁴. They further referred to a World Bank Study made in 2003 which shows that an essential factor that has led to the growth of the “Asian tigers” is the good allocation and high quality of education³⁵. They therefore argued that countries with increased growth rates of the educational level are faster developing, on medium and long term, than those who do not invest in human capital and that between education and development, there is a strong correlation in both directions. Yet the determinant factor of the process seems to be the educational one³⁶.

3.0 SOME PROMINENT REASONS FOR INCREASE IN NUMBER OF OUT- OF-SCHOOL CHILDREN IN NIGERIA

There are several factors often associated with the phenomenal increase in the number of out of school children globally. However for Nigeria a number factors feature prominently and they include:

- i. Gender inequality:

³¹ Ibid

³² Cristian C. Popescu and Laura Diaconu “The Relationship Between the Level of Education and Development State of a Country” anale.feaa.uaic.ro/anale/resurse/37_E06_PopescuDiaconu.pdf (accessed 3/12/2018)

³³ Developed countries as said to countries which have infrastructure in place such as roads etc and the technical capacity to care for all their citizens along with such infrastructure. In short a developing country has three things: it has **stuff**, it has people to take care of the **stuff** (and other people) the existing and it has people who make money and provide us part of the money to pay for the **stuff**. developing countries are largely similar but the existing infrastructure is either old or poorly maintained and the people have less money to spend on the **stuff** and there are fewer experts and the quality of the products that they make or services they provide is lower than in a developed country. An underdeveloped country, on the other hand, has a lot of people but lack some (or all) basic infrastructure for some or all its citizens and so the people have no **stuff** and must make money which they are then expected to give to their government who will then give them **stuff**. This often doesn’t happen because governments in these kinds of countries are invariably so corrupt <http://www.quora.com/How-do-you-distinguish-developed-developing-and-under-developed-countries> (accessed 5/12/2018)

³⁴ n 26.

³⁵ Ibid

³⁶ Ibid

A UNICEF country report on Nigeria suggests that about 60% of out-of-school children in Nigeria are girls.³⁷ The reasons for the preponderance of girls among the number of children out of school globally are attributed to poverty, security and cultural factors.³⁸ UNICEF country report on Nigeria additionally identifies low perception of the value of education for girls and early marriages as being among the reasons for the preponderance of girls among the number of Nigerian children that are out of school.³⁹ More than half of the primary school aged girls in the North east and North west states of Nigeria are said to be out of school⁴⁰ while the region is responsible for 69% of Nigeria's out-of-school children.⁴¹

ii. Insurgency in North East, Nigeria:

The effect of wars and conflicts on the drop on the number of children that attend school in the long term is devastating. UNICEF estimates that 48.5 million children worldwide are missing school as a result of wars and conflicts.⁴² The Internal Monitoring Centre estimates that there about 2,152,000 internally displaced people (IDPs) in Nigeria. This IDP population is made up of 53% females and 47% males. More than 53% of the total IDP population are children which more than half are up to 5years old while 42% are adults. 92% of IDPs were displaced by the insurgency in the north east states of Nigeria.⁴³ The result of this about 69% of out-of- school children in Nigeria are northern states of Nigeria.⁴⁴

iii. Child Marriage:

This is still a huge problem. In Nigeria, 43% of the girls are married before their 18th birthday. 17% are married before they turn 15 years. The prevalence of child marriage varies from one region to another with figures as high as 76% in the North West and as low as 10% in the South East. Child marriage delays the education or out rightly terminates the ability of female children to continue with their education. There are currently different and varied positions on this issue

³⁷ n 15

³⁸ <<http://theirworld.org/news/10-reasons-why-children-don-8217-t-go-to-school>> (accessed 14/11/2018)

³⁹ n 15.

⁴⁰ According to UNICEF Deputy Representative in Nigeria , Ms Pernille Ironside at a Northern Nigeria Traditional Leaders Conference on Out-of-school Children held in Kaduna in October 2018 <<http://www.premiumtimesng.com/news/more-news/289641-69-per-cent-nigerians-ou>> (accessed 14/11/2018)

⁴¹ *ibid*

⁴² n 32

⁴³ data2.unhcr.org/en/news/12180 (accessed 12/12/2018)

⁴⁴ n 34. See also newsherald.com.ng/2018/10/10/northern-nigeri-contributes-more-to-out-of-school-children-in-nigeria-%e2%80%95-sultan (accessed 12/12/2018)

by Nigerian legislations.⁴⁵ The substratum of their difference is the absence of a unified position on what age bracket constitutes a child for the purpose of child marriage⁴⁶.

iv. Child Labour:

It is estimated that there are about 168 million child labourers⁴⁷ in the world. The implication is that about 11% of all children in the world are working instead of learning. More than half of them work in farming and almost a third in the service sector.⁴⁸ In Nigeria, child labour is a key factor in the growing number of out of school children. In 2006, UNICEF identified a staggering number of 15million children under the age of 14 years as working across Nigeria.⁴⁹ Major causes of child labour include poverty, rapid urbanization, break down in extended family affiliations, high school dropout rates among others.⁵⁰ Traditionally, children worked with their parents in Africa but today children are forced to work for their own and their family survival. The money earned by children has become a significant part of poor families' income.⁵¹ There is no legislation in Nigeria compelling children to school rather than work, which is at the heart of the problem. The Labour Act⁵², which is the principal legislation regulating issues of labour in Nigeria, merely regulates, or rather graduates, the type of work that may be engaged in by a child taking cognizance of the physical and mental development of the child.

Added to these are other socio-cultural factors like illiteracy and gender-biased ideas that the girl-child should not be bothered with schooling.

⁴⁵ This includes the various States legislation and the Federal legislation on this issue.

⁴⁶ C.N. Uwaezuoke, "Finding Harmony in the Discordant Legal Regimes in Nigeria on Minimum Age of Marriage for the Girl Child", Law, Social Justice and Development (Imo State University Press, 2013) 458-483.

⁴⁷ International Labour Organisation (ILO) defines child labour as "work that deprives children of their childhood, their potential and their dignity, and which is harmful to physical and mental development" <www.borgenmagazine.com/20million-nigerian-children-victims-child-labour> (accessed 10-1-2019)

⁴⁸ n 32

⁴⁹ <www.unicef.org/wcaro/WCARO-Nigeria-Factsheets-childlabour.pdf> (accessed 10-1-2019)

⁵⁰ n 66

⁵¹ Ibid.

⁵²

4.0 EXTANT LAWS AND SUGGESTIONS ON REINFORCING THEM TO TACKLE THE PROBLEM OUT-OF-SCHOOL CHILDREN IN NIGERIA

i. Compulsory, Free Universal Basic Education Act⁵³

This Act (UBE Act) came into force on 26th May 2004. It essentially mandates, at the threat of sanction for failing to do so, parents and guardians to send their children and wards to school up to junior secondary school.⁵⁴ This Act could have been helpful in compelling parents and guardians to send their wards to school if agents of the state had been more diligent in arresting and prosecuting offending parents and guardian as stipulated under the Act.⁵⁵ But the reality is that no erring parent and guardian has either been arrested or prosecuted.⁵⁶ Some reasons may account for this position. First, the numbers that will be arrested, in the unlikely event the state agents chose to apply the provisions of this Act, may make the task enormous and daunting. Moreover, some of the state agents might themselves be in breach of the provisions of this Act or empathetic towards their friends and colleagues who are in breach of the provisions of this Act. Coupled to these is the serious constitutional issue shackling the effectiveness of the Act. Education is the concurrent legislative list in the Nigerian Constitution⁵⁷ with the implication that both Federal and State legislators can legislate on issues bothering on education. Most states, understandably, may not be comfortable applying this Act⁵⁸ wholly in their jurisdiction as, baring issues relating to Covering the field⁵⁹, the state legislative houses have powers to make laws with similar potency. Apart from these, the economic realities make it difficult to enforce the implementation of the provisions of this Act in full. UBE Act is supposed to ensure a cost-free schooling for Nigerian children up to Junior Secondary school in public schools. However, the reality is that most Nigerian schools still impose fees on pupils and students which state governments reckon to be unauthorized and illegal⁶⁰ although the Act makes the collection of such levies illegal. In view of these fees and

⁵³ Cap. C52 Laws of the Federation of Nigeria 2010.

⁵⁴ Section 2 (2), (4) of the Compulsory, Free Universal Basic Education Act 2010.

⁵⁵ Section 2 (4) of the Compulsory, Free Universal Basic Education Act 2010.

⁵⁶ < www.centreforpublicimpact.org/case-study/universal-basic-education-nigeria. (accessed 19/06/2019)

⁵⁷ Section 4 (4) (a) and 4 (7) (b) of the Nigerian Constitution

⁵⁸ Made by the Federal legislative house

⁵⁹ In this instance it may be argued that the UBE Act has covered the field so that despite any misgivings they might have about the provisions of this Act, the State Houses of Assembly are bound not to make laws that will counter the provisions of this Act. Further, the Executive arm of every state bound to give effect to the provisions of this Act. A possible snag is the issue of primary which appears to be within the exclusive legislative competence of the Houses of Assembly but which is also included in the area of coverage of this Act. The case of

⁶⁰ See for instance, "Delta State Government Frowns at Unauthorised and Illegal Fees Collection in Public Schools" site.onlinenigeria.com/stories/410869-delta-govt-frowns-at-unauthorised-illegal-fees-collection-in-public-schools.html (accessed on 19/06/2019)

levies, most parents refrain from sending, and sometimes, altogether withdraw their children and wards from schools.

Rather than the approach of using the “stick” employed by Act, we advocate a departure. In lieu of the “stick” we suggest that the UBE Act be amended. The proposed amendment is to incorporate an incentive based approach to tackling the problem. Our suggested “incentive” in this regard is to “reward” parents and guardians who send their children and wards to public schools with cost-free access⁶¹ to other public services and facilities.⁶² States should be encouraged to initiate and pass into laws legislations that are “reward based”. The idea is to put in place a sort of “reward” system for families that send their children or wards to school particularly in the Northern part of Nigeria where a lot of children, mainly females, are denied access to education. This approach, in our view, will be more effective in tackling the factors already mentioned militating against sending children to school in Nigeria as well as challenging the underlying socio-cultural norms that support the practice of denying the girl child access to education instead of seeking to compel parents and wards to send their girl children to school contrary to these norms. These proposed amendments will also provide considerable help to stem the problem of child marriages.

ii. Child’s Rights Act 2003⁶³

This Act came into force on 31st July 2003. Although the Act is intended to apply to the whole of Nigeria as a uniform legislation regulating issues bothering on the right of children in Nigeria, issues bothering on constitutionality of the Act⁶⁴ as well as cultural and religious factors⁶⁵ have resulted in states in Nigeria replicating the Act in their states rather than being governed by the Act⁶⁶. Despite this, the provisions of the Act and state legislations on this issue are largely the same. The Act employs the same “stick” approach by mandating parents and guardians to send their children to school with threats of punishment.⁶⁷

⁶¹ Or access are relatively reduced cost.

⁶² Such as medical treatment and access to hospitals.

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⁶⁴ Chiefly on the issue of the legislative competence of the National Assembly to make law on items that are neither in the Exclusive legislative list or the Concurrent Legislative list.

⁶⁵ For an exploration of this factor see M.K. Imam et al “Child Rights in Nigeria: Exploring the Contentions between the Child’s Rights Act 2003, Cultural Practices and Islamic Rules” cited in www.researchgate.net/publications/330845442-Child-Rights-in-Nigeria-Exploring-the-Contentions-between-the-Child-Rights-Act-2003-Cultural-Practices-and-Islamic-Rules (accessed 19/6/2019)

⁶⁶ As at 2017, 24 out of Nigeria’s 36 states had enacted Child’s Rights Law in their domain see www.thisdaylive.com/index.php/2017/06/01/unicef-calls-for-adoption-of-child-rights-acts-in-all-states/?amp (accessed 19/6/2019)

⁶⁷ Section 15 of the Child’s Rights Act (Cap.

However we still advocate for an incentive based approach as we had proffered in the case of UBE Act. In this regard, the Child's Rights Act and the Child's Rights Laws of the various states in Nigeria should be amended to incorporate this approach.

iii. Labour Act⁶⁸

This Act, as it relates to children,⁶⁹ essentially regulates the type of work and conditions of work persons who are below 18 years should be subjected.⁷⁰ The Act prescribes punishment for violation of its provision.⁷¹ Interestingly the Child Rights Act has incorporated the provisions of the Act regulating children work into the Act⁷² Again we advocate that the relevant provisions be amended to reflect an incentive based approach or alternatively a provision with "carrot" a be incorporated into the Act admonishing parents and guardians to send their children to school and promising "reward"⁷³ for those who comply.

iii. Marriage Act⁷⁴

This Act regulates statutory marriages in Nigeria. The Act did not fix any minimum age of marriage However, before the Registrar of Marriages issues a certificate or license authorising a marriage under the Act, he must have been satisfied by affidavit that, among other things, each of the parties to the intended marriage (not being a widower or widow) is twenty one years old, or that if he or she is under that age, a written consent of the father, or if he be dead or of unsound mind or absent from Nigeria, of the mother, or if both be dead or of unsound mind or absent from Nigeria, of the guardian of such party, must be produced or annexed to such affidavit.⁷⁵ In line with our position so far we suggest the inclusion of a provision in the Act that a pre –qualification for marriage under the Act be the requirement that a party to the proposed marriage be education up to Junior Secondary School level⁷⁶ and a further provision that parents who send their children to school will be "rewarded" with access to government facilities and services.

⁶⁸ Cap. L1 Laws of the Federation of Nigeria 2010.

⁶⁹ Persons under 18 years

⁷⁰ The Act makes a distinction between "children" (persons under 12 years) and Young Persons (persons who are under 18 years)

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⁷² Sections 58, 59, 60, 61, 62 and 63 of this Act is devoted essentially to child labourers.

⁷³ In the form of accessing government services at very little or no cost once they are able to present evidence of having sent their children and wards to school.

⁷⁴ Cap. M6 Laws of the Federation of Nigeria 2010.

⁷⁵ Sections 11(1) (b) and 18 of the Marriage Act

⁷⁶ As mandated in section 2 (2) of the UBE Act.

5.0 CONCLUSION:

It is possible to reverse the trend of increasing numbers of Nigerian children being out –of- school by solely deploying amended relevant extant laws in this area. Amended to remove sanctions for breach of its provisions on issue of child education⁷⁷ and replacing them with provisions assuring “reward”⁷⁸ for sending children and wards to school or by incorporating an independent provision assuring “reward” for parents and guardians who send their children and wards to school.⁷⁹ Also a provision that one of the pre-qualifications for statutory marriages in Nigeria to be the attendance and completion of Junior Secondary School education.⁸⁰ Further, it must be noted that legislations need not necessarily be sanction based⁸¹ to qualify as valid. Indeed, although sanctions, of whatever variety, can assist in tackling any mischief by serving as deterrent, sanctions appear not have been of much assistance in this instance in terms of acting as deterrent relying on the figures on Nigerian child out of school. The legislations discussed in this paper have been in force for more than a decade⁸² thereby lending credence to their ineffectiveness in arresting the steady rise in the figure of out-of-school children in Nigeria. This suggested “reward” based approach has advantage over sanctions based approach in a number of ways. First the ”reward” based approach has potential to attract persons to the legislation rather than repel with the threat of sanction which is the traditional approach. Further, this approach has the capacity to hasten the achievement of the desired goal of enacting any legislation through its “friendly- mien”⁸³ which allows persons to feel that they are part of that legislation.

Although the suggestions in this paper propose an apparently uncharted course for Nigeria but we believe that in view of the crisis posed by this issue⁸⁴, it is a course worth exploring. This approach is not an attempt to “commit” the government toward fulfilling socio-economic rights through the “back door” as some may be tempted to argue but an attempt to pull Nigeria out of the brink of a future crisis⁸⁵.

⁷⁷ For UBE Act and Child’s Rights Act and counterpart Child’s Rights Law in the various states in Nigeria.

⁷⁸ In the form of costless or near costless access to government facilities and services.

⁷⁹ For Labour Act and Marriage Act

⁸⁰ For Marriage Act

⁸¹ Positivists like Austin claim that sanction is an indispensable feature of any law. However for some counter arguments to this see M.D.A. Freeman, *Lloyd’s Introduction to Jurisprudence* (8th edition, Sweet and Maxwell, 2008) 263-267.

⁸² Which witnessed a steady rise in the figure of out- of-school children in Nigeria.

⁸³ The reward system in place.

⁸⁴ Steadily rising figure of out-of-school children in Nigeria and future impact on Nigeria’s economy.

⁸⁵ Economic problems.