

POLICIES TO PREVENT CORRUPTION IN NIGERIA: ENFORCEMENT OF THE RIGHT TO EDUCATION

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ABSTRACT

This paper investigates how well Nigeria conforms to international best practices on the right to education. The quality of education that is available to Nigerians is affected by inadequate budgetary allocation, which is compounded by mismanagement of scarce resources and generally by corrupt practices. Education at the level of the primary, secondary and tertiary levels suffers on account of corruption, despite government propaganda that the state provides adequate educational opportunities at the three tiers of education. Attempts to prosecute and punish acts of corruption have failed consistently. Nigeria is a signatory to international and regional instruments which have influenced it to enact national anti-corruption legislation. However, the political will of successive governments to fight corruption remains on the decrease, particularly when a government itself is a product of corrupt practices. Such a government appoints politicians to the councils of the universities as a reward for political patronage and with a view to recouping the huge sums expended on elections. Anti-corruption laws are sidelined, regulations are compromised and the anti-corruption crusade fails. This results in education being the responsibility of unqualified teaching staff working with poor quality teaching infrastructure. The enforcement of the right to education is undermined. In order to salvage the education sector, it is submitted that Nigeria's anti-corruption crusade should emphasise preventive measures. A university should be autonomous in respect of its objectives and finances. When funds allocated to education are safe from misappropriation, the right to education may be enforced properly.

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1 INTRODUCTION

Education is a basic human right¹ which every individual is entitled to enjoy at the primary, secondary and the tertiary levels.² The right to education is contained in international and regional instruments,³ such that it becomes obligatory for member states to replicate the same under national legal provisions. The Nigerian Constitution mandates the government to give adequate educational opportunities at the three tiers of education.⁴ Section 4 of the Education Reform Act (2007), in the interpretation clause, narrows down the concept of a “tertiary institution” to a university which provides courses leading to the awarding of first degrees. This paper focuses on the university, which facilitates the acquisition of physical and intellectual skills towards a nation’s development.⁵

Generally, the minimum standard of education is attained where the general environment is conducive to learning as prescribed under international instruments.⁶ In other words, international standards require that there be adequate funding of education, in circumstances which are not marked by resource misappropriation and the inefficient management of resources; and in which members of staff are well-trained, enjoy good conditions of service, and have access to quality teaching infrastructure.⁷

The term “corruption” derives from the Latin *corruptio*, which means “moral decay, wicked behaviour, putridity or rottenness”.⁸ Corruption is an act which deviates from the established standards of behaviour, transcends the immorality of such act and advances to illegality in respect of the abuse of public office for the benefit of private interests.⁹ The impact of corruption on the

1 See Article 26 of the Universal Declaration of Human Rights and Article 17(1) of the African Charter on Human and Peoples’ Rights.

2 Section 18(3) of the Constitution of the Federal Republic of Nigeria (CFRN).

3 See, for example, Articles 1 & 3 of the International Covenant on Civil and Political Rights (ICCPR); Article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC); and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (African Women’s Protocol). See also Isokpan AJ & Durojaye E (2016) “Impact of the Boko Haram Insurgency on the Child’s Right to Education in Nigeria” 19 *Potchefstroom Electronic Law Journal* 1-43 at 3.

4 Section 18(3) of the CFRN.

5 See Section 11 of the Education (National Minimum Standards and Establishment of Institutions) Act, Cap E3, LFN 2004.

6 See also Article 13(4) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

7 Article 13(2)(e) of the ICESCR.

8 Gebeye BA (2015) “The Legal Regime of Corruption in Ethiopia: An Assessment From International Law Perspective” 4(1) *Oromia Law Journal* 73-124 at 77.

9 Obura K (2014) “Unmasking the Phenomenon of Corruption: Perspectives from Legal Theory” 1 *Speculum Juris* 124-160 at 126.

attainment of a learning environment capable of affording and sustaining the right to education is a key concern of this paper. The impact of corruption may be seen either in an inadequate budgetary allocation to tertiary education or in the misappropriation of funds made available to a university. The paper argues that the promotion of management best practices within an autonomous university, encompassing the processes of appointment and promotion, is capable of reducing corruption to a minimum in tertiary education.¹⁰ The factors to be considered in this regard include the number and quality of staff and the availability of teaching infrastructure, such as classrooms, offices, libraries, laboratories, power supplies and internet facilities.¹¹

The government has the responsibility of eradicating corruption, which constitutes an obstacle to the enjoyment of the right to education and other civil and political rights.¹² However, the state's anti-corruption obligations and the citizens' right to education are objectives to guide the government in the formulation of its policies.¹³ The challenges facing the anti-corruption laws,¹⁴ the investigation of corruption, and the prosecution of corruption cases are considered from the perspective of efficacy.¹⁵ The efficacy factor brings to the fore the need for an assessment of the state's obligation to eradicate corruption and to give effect to the right of citizens to education.¹⁶

2 THE RIGHT TO EDUCATION

It is the right of everyone to have education, through the teaching and impartation of knowledge, which is directed to the full development of the human personality.¹⁷ The teaching and impartation of knowledge thus constitute an

10 See Article 7(1) of the United Nations Convention against Corruption (UNCAC). The Universities (Miscellaneous Provisions) (Amendment) Act 2003 (otherwise called the Universities Autonomy Act No 1 of 2007) was enacted by the National Assembly and signed into law on 10 July 2003 and gazetted on 12 January 2007. See Olayinka OF (2015) "Institutional Autonomy and the Realisation of Objects of Universities in Nigeria" (Unpublished LLD Thesis, University of Pretoria) at 85.

11 Oseni M (2012) "Adequacy of Budgetary Allocation to Educational Institutions in Nigeria" 3(1) *Pakistan Journal of Business and Economic Review* 142-157 at 152.

12 Article 2 of the AU Convention on Preventing and Combating Corruption.

13 See section 6(6)(c) of the CFRN. See also Isokpan & Durojaye (2016) at 6.

14 These include the Independent Corrupt Practices and Other Related Offences Act of 2000 and the Economic and Financial Crimes Commission (Establishment, etc) Act Cap E1, LFN, 2004.

15 Such legal challenges include section 308 of the CFRN which bars the investigation and trial of the chief executive on corruption and other criminal allegations. Another challenge is the undue delay noticeable in the investigation and prosecution of cases in Nigerian courts.

16 Article 5(3) of UNCAC.

17 Article 13 of the ICESCR.

element of the right to education. When this exercise is carried out in an appropriate and creditable manner, all other things being equal,¹⁸ the right to education is fulfilled.¹⁹ As noted above, the African Charter provides that every individual shall have the right to education.²⁰ Technical and professional education is expected to be made available,²¹ while education at the primary, secondary and tertiary levels ought not to be neglected.²² Education generally is made available where there are adequate educational opportunities at the various levels.²³ Section 11 of the Education Act gives the purpose of a tertiary institution as the acquisition of physical and intellectual skills towards a nation's development and identifies the scope of tertiary education as that available:

at the post-secondary section of the national education system and which is given at institutions such as universities, polytechnics, colleges of technology, colleges of education, advanced teachers colleges, professional institutions and such other institutions as may be allied to any of the foregoing.

The enforcement of the right to education requires adequate of funding of education and efficient management of resources, so that there are qualified teachers with good conditions of service and high quality teaching infrastructure.²⁴ Generally, the minimum standards of education are attained in an environment which is conducive to learning, as prescribed under international instruments.²⁵

3 A STATE'S OBLIGATION TO ENFORCE THE RIGHT TO EDUCATION

Every state is obliged to take steps, including the adoption of laws or other measures as may be necessary, to give effect to the right to education, which steps have to be "deliberate, concrete and targeted".²⁶ The ESCR Committee considers that "other measures" include, but are not limited to, "administrative, financial, educational and social measures".²⁷ The Committee considers that it has the duty

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- 18 Access to education, in terms of affordability and secured studentship, also counts when the enjoyment of the right to education is considered.
- 19 See Article 3 of the ICCPR, Article 11 of the ACRWC and Article 12 of the African Women's Protocol. See also Isokpan & Durojaye (2016) at 3.
- 20 Art 17(1) of the African Charter.
- 21 Article 26(1) of the UDHR.
- 22 Section 18(3) of the CFRN.
- 23 Section 18(3) of the CFRN.
- 24 Article 13(2)(e) of the ICESCR.
- 25 See Article 13(4) of the ICESCR.
- 26 Peters A (2015) "Corruption and Human Rights" *Working Paper Series 20, Basel Institute on Governance* at 18.
- 27 ESCR Committee (1990) *General Comment 3: The Nature of States Parties Obligations* para 7.

to make the ultimate determination as to whether all appropriate measures have been taken to uphold the right to education.²⁸ As already pointed out, the Nigerian Constitution enjoins the government to give adequate educational opportunities at the primary, secondary and tertiary levels.²⁹ In order to make such educational opportunities available, all the necessary infrastructure and learning facilities must be in place.³⁰

It is a major obligation of a state to attach priority to the allocation of resources for the enforcement of the right to education while discouraging misappropriation of public funds.³¹ This is premised on the fact that corruption and inefficient management of resources, coupled with an absence of a strategic vision, compound funding shortfalls for education.³² The government's resolve to maintain its posture as the major source of financial support for institutions of higher learning regrettably is eroded by a dwindling budgetary allocation to education.³³ This is attributed to the paucity of available resources³⁴ and the competing demands upon such resources.³⁵

It is expected that the quality of education should not be compromised if the right to education is to be enforced. A state may be focused in that direction when it works to remove an obstacle, such as corruption, which is identified as a factor militating against the realisation of the right to education.³⁶ In that wise, the state will be working towards putting in place a system capable of meeting a minimum standard at all levels of education.³⁷

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- 28 ESCR Committee (1990) *General Comment 3: The Nature of States Parties Obligations* para 4.
- 29 Section 18(3) of the CFRN.
- 30 ESCR Committee (1999) *General Comment 13: The Right to Education (Article 13)* para 6(a). See also Isokpan & Durojaye (2016) at 13.
- 31 Article 2 of the ICESCR.
- 32 Saint W *et al* (2003) "Higher Education in Nigeria: A Status Report" 16 *Higher Education Policy* 1-30 at 17-18.
- 33 Peters (2015) at 26; Oseni (2012) at 153.
- 34 See Article 2 of the ICESCR; *Government of the Republic of South Africa and Others v Grootboom* 2001 (1) SA 46 (CC). The legal authorities are of persuasive influence in Nigeria.
- 35 See Orago NW (2013) "Limitation of Socio-Economic Rights in the 2010 Kenyan Constitution: A Proposal for the Adoption of a Proportionality Approach in the Judicial Adjudication of Socio-Economic Rights Disputes" 16(5) *PER/PELJ* 170-221 at 185. See also Regassa T (2009) "Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia" 3(2) *Mizan Law Review* 228-330 at 313. Nigeria has never met the minimum 26 per cent budgetary allocation to education because of alternative demands upon state resources.
- 36 See Article 2(2) of the ICCPR and Article 2(1) the ICESCR.
- 37 Individuals and private bodies also enjoy the right to establish and operate educational institutions, provided that they conform to the minimum standards as may be laid down by the state. See Article 13(4) of the ICESCR.

Nigeria has enacted legislation which establishes bodies to implement the right to education.³⁸ The general function of the university is the advancement of learning throughout Nigeria. The teaching and impartation of knowledge is the main activity and a substantive object of a university. For Peters, when the object of teaching is carried out successfully, a university fulfils its mandate to build requisite human capital which, in turn, drives other factors of production, including people with the right skills and capabilities to manage available resources.³⁹ The tertiary institutions are creations of legislation and they undertake to make available quality teaching and impartation of knowledge to Nigerians.⁴⁰

Unfortunately, the geometric increase in school enrolment is paired with an arithmetic progression in the budgetary allocations to education. This results in funding shortfalls for many years.⁴¹ The below 10 per cent budgetary allocation to education in Nigeria is a far cry from the 26 per cent which is prescribed by UNESCO.⁴² Although the state's obligation to enforce human rights is constrained by the resources available to it, it is not certain that Nigeria has taken appropriate measures in that direction.⁴³ The enforcement of the right to education and other socio-economic rights has suffered a setback in Nigeria because of human and financial restrictions.⁴⁴

The minimum standards under the right to education⁴⁵ relate to quality teaching, the conditions of service of staff and the general teaching environment.⁴⁶ Good conditions of service for the teaching staff are a pre-requisite for the enjoyment of the right to education. Attractive welfare packages for university staff are essential to make them give their best in terms of teaching and research. The reality in most universities is not pleasant as salaries are sometimes owed to staff for upward of a year.⁴⁷ In other situations, deductions from salaries are not

38 For example, the Education (National Minimum Standards and Establishment of Institutions) Act, Cap E3, LFN 2004; the National Universities Commission Act, Cap N81, LFN, 2004,; and the Joint Admission and Matriculation Board Act, Cap J1, LFN, 2004.

39 Peters A (26 September 2013) "Building Human Capital for Sustainable Development: Role of the University", Paper delivered at the University of Ibadan Registry Discourse at 14.

40 Section 1(2) of the University of Ibadan Act, Cap U6, LFN, 2004.

41 See Saint W *et al* (2003) at 17.

42 Olorok F (2014) "Committee Seeks 26% Budgetary Allocation for Education" *The Punch* at 17.

43 See Article 2(1) of the ICESCR and Peters (2015) at 17.

44 ESCR Committee (1990) *General Comment No 3* paras 1 & 9; Orago (2013) at 187. See also Stein T (2013) "Constitutional Socio-Economic Rights and International Law: 'You Are Not Alone'" 16(1) *PER/PELJ* 13-30 at 17.

45 Article 13(2)(e) of the ICESCR.

46 Article 13(2)(e) of the ICESCR.

47 Alimi N (16 November 2016) "EMACOED Lecturers Beg Ajimobi to Pay 8 Months' Salary Arrears" *Nigerian Tribune* at 29.

repaid.⁴⁸ These deficiencies have been known to result in the children of members of staff being withdrawn from school and in other dependants going without financial support.⁴⁹

4 CORRUPTION AND THE RIGHT TO EDUCATION

Corruption connotes any behaviour which deviates from an established norm regarding public trust.⁵⁰ The use of publicly entrusted authority for private gain is an abuse, which qualifies as corruption.⁵¹ The gain accrues to an individual or a group or to those closely associated with such an individual or group.⁵² Osakede *et al* identify corruption and abuse of authority in the areas of appointment to office, award and inflation of contract costs, embezzlement and misappropriation of funds.⁵³

Some manifestations of abuse include grand corruption, petty corruption, political corruption and systematic corruption.⁵⁴ Grand corruption occurs when high level government officials commit acts which compromise the policies and the central functioning of a state, in order for the officials and/or their partners in crime to take personal or collective benefit at the expense of the public good.⁵⁵ In the grand corruption, the state's resources are dissipated under the guise of "white elephant projects" and infrastructural schemes that are of low quality.⁵⁶ The crime is broad-based, it distorts the functioning of the central government, and it erodes public confidence in good governance, the rule of law and economic stability.⁵⁷

The corruption in the public tertiary institutions of Nigeria has destructive consequences.⁵⁸ Kofi Annan argues that corruption has a wide range of corrosive effects on the quality of education, as it undermines a university's ability to realise its objectives.⁵⁹ Kumar submits that corruption aids the diversion of resources

48 Aliu A-O *et al* (21 March 2017) "Calabar Zone ASUU Links Alleged Death of 30 Lecturers to Salaries' Cut" *The Guardian* at 10.

49 Aliu *et al* (21 March 2017) at 10.

50 Osakede K *et al* (2015) "Corruption in the Nigeria Public Sector: An Impediment to Good Governance and Sustainable Development" 4(8) *Review of Public Administration and Management* 76-87 at 79.

51 Obura (2014) at 146.

52 Obura (2014) at 147 & 148.

53 Osakede *et al* (2015) at 82.

54 Gebeye (2015) at 80.

55 See Transparency International (2009) *The Anti-Corruption Plain Language Guide* at 23.

56 Osakede *et al* (2015) at 84.

57 See Gebeye (2015) at 80.

58 See Article 12 of UNCAC and Article 11 of the AU Convention on Preventing and Combating Corruption.

59 Annan KA (2003) "Foreword to UNCAC" at iii & iv.

meant for infrastructural development, especially as it affects education.⁶⁰ Osakede *et al* link misappropriation of funds in the universities to the lack of teaching infrastructure and the low standard of education in Nigeria.⁶¹

Corruption militates against efficient resource planning and allocation, and results in high institutional expenditures as a result of inflation of contract costs.⁶² The resultant poor state of infrastructure hinders the realisation of the right to quality education. A very important obligation of the state in relation to the enforcement of the right to education is for it to take appropriate measures, one of which is to commit available resources to the maximum.⁶³ A state thus is expected to complement funding by taking steps to block the drain pipes in the system. The state has to intensify efforts at eradicating corruption by employing the right tools and measures towards the realisation of socio-economic rights.⁶⁴ Accountability is required to formulate policies and programmes to attain accepted norms, so as to ensure the implementation of human rights.⁶⁵

The commitment of the state to university education remains in doubt because of the impact of corruption on the adequacy of resource commitment. The United Nations human rights instruments admit that corruption affects every recognised human right, including the right to education.⁶⁶ The effect of corruption thus is dissipation in the funding of education, which remains the bane of the education sector in Nigeria.⁶⁷

The scope for enforcing socio-economic rights, particularly the right to education, is limited. Every state has the power to determine the aspects of socio-economic rights which can be realised immediately and completely, given the resources available to it.⁶⁸ A state determines what budgetary allocation goes to

60 Cited in Gebeye BA (2012) "Corruption and Human Rights: Exploring the Relationships" at 9-10, available at <http://www.du.edu/korbel/hrhw/workingpapers/2012/70-gebeye-2012.pdf> (visited 1 September 2019).

61 Osakede *et al* (2015) at 8.

62 Alemika EEO (2012) "Corruption and Insecurity in Nigeria" Lead Presentation at the *International Conference National Security, Integration and Sustainable Development in Nigeria*, organised by Ahmadu Bello University (ABU), Zaria at 86. See also Osakede *et al* (2015) at 84.

63 See Article 2(1) of the ICESCR. See also Peters (2015) at 18.

64 See Article 1 of the African Charter; Stein (2013) at 17.

65 Ngang CC (2014) "Judicial Enforcement of Socio-Economic Rights in South Africa and the Separation of Powers Objection: The Obligation to Take 'Other Measures'" 14 *African Human Rights Law Journal* 655-680 at 668.

66 See Article 13 of the ICESCR.

67 See Onu G (7 April 2016) "How Lack of Funding Affects Standards in Tertiary Institutions" *The Guardian* at 42.

68 Article 22 of the UDHR.

education, but the ESCR Committee decides whether the maximum available resources that may be deployed qualify the state as having taken appropriate measures.⁶⁹ An adequately funded university system is essential for constructing an environment which is conducive to the realisation of the right to education.⁷⁰

This paper distinguishes between “spending on education” and “spending for education”, and relates them to the enforcement of the right to education. It contends that “spending on education” does not translate into having any practical financial commitment flowing from budgetary allocations, as said allocations may not be released or, if they are released, may be misappropriated. The procurement of educational infrastructure and the employment of quality teaching staff thus may suffer. “Spending for education”, by contrast, brings positive development to the sector, flowing from the budgetary allocations. Value thus is added to the funds allocated. The university acquires the funds needed to establish an environment that is conducive to learning and is able to maintain such environment.

Corrupt practices compromise academic standards and traditions and adversely affect the right to education.⁷¹ Employers of labour allege that most university graduates are trained poorly and are unproductive on the job.⁷² The right to education is not realised when the full development of human personality and the dignity to participate effectively in a free society are not attained.⁷³ Thus, a person cannot be said to have enjoyed a right to education when the available quality of education does not afford him the opportunity to develop.

4.1 Inadequate Staffing

Nepotism and cronyism in recruitment to public office breeds corruption and abuse of office.⁷⁴ The council of a university is the governing body which is charged with the general control and superintendence of the affairs of the institution. It exercises the power to appoint every member of staff, even the vice-chancellor.⁷⁵ Section 2(2) of the University Autonomy Act of 2001 provides for the qualifications

69 The ESCR Committee, under the Limburg Principles, has the power to determine how equitable and effective the resources committed to education are. See para 27 of the Limburg Principles on the Implementation of the ICESCR.

70 Olayinka (2015) at 27.

71 See Foreword to Okonkwo CO (1996) “Discipline, Nigerian Universities and the Law” Annual Lecture of the Nigerian Institute of Advanced Legal Studies, University of Lagos Campus at iv.

72 See Dabalén A & Adekola OA (2001) “Labour Market Prospects for University Graduates in Nigeria” 14(2) *Higher Education Policy* 141-159 at 141. See also Olayinka (2015) at 67.

73 Article 13(1) of the ICESCR.

74 Obura (2014) at 146.

75 Section 7 of the University of Lagos Act, Cap U9, LFN, 2004.

of council members to include proved integrity and an academic attainment which affords the appointee knowledge of and familiarity with the affairs and tradition of the university.⁷⁶ The criterion of knowledge of and familiarity with the affairs and tradition of the university incorporates the knowledge that is gathered by one having children and wards attending a university and/or having relatives who work at a university.⁷⁷

The near zero academic requirement makes it convenient for successive governments to fill university councils with politicians, most of whom would have lost out earlier in an election to one or other political office. With the aim of recouping the huge sums expended on lost elections, most of the politicians in university councils in turn appoint management and staff who fall short regarding the best practices of efficiency, transparency and merit, and equity and aptitude.⁷⁸ There is thus a positive link between the flawed composition of the university council and the prospect of having a corruption-free university that is accountable and transparent.⁷⁹ A possible solution is to have autonomous universities capable of appointing members of governing councils according to set criteria.

4.2 Abuse of Accreditation Processes

Academic accreditation is the exercise wherein a university is subjected to the scrutiny of distinguished academics appointed by the National Universities Commission (NUC).⁸⁰ The essence of the accreditation procedure is to ensure that the requisite standard is attained and maintained in the areas of infrastructure and staffing, in line with the enforcing the right to education.⁸¹ The standard which the accreditation team is to ascertain in terms of the size and quality of the workforce may not be realised because of corrupt practices. Some universities resort to “arranged employment”, which lasts only for the duration of the accreditation exercise.⁸²

76 See Oshio PE (2012) “Autonomy and Management of Federal Universities under the Universities Autonomy Act” at 85, available at <http://nigerianlawguru.com/articles/labour%20law/AUTONOMY%20AND%20MANAGEMENT%20OF%20FEDERAL%20UNIVERSITIES%20UNDER%20THE%20UNIVERSITIES%20AUTONOMY%20ACT.pdf> (visited 27 August 2019).

77 Oyekanmi RL (16 January 2014) “How National Open Varsity Can Create More Access” *The Guardian* at 36.

78 Article 7(1)(a) of UNCAC.

79 See Article 3(3) of the AU Convention on Preventing and Combating Corruption.

80 Okojie JA (14 October 2011) “University Autonomy: Repositioning the Nigerian Education System in the 21st Century” Paper presented by the Executive Secretary, National Universities Commission, Abuja at 11.

81 Olayinka (2015) at 64.

82 Njoku L (24 November 2015) “Enugu Varsity Sacks 153 Lecturers” *The Guardian* at 8.

The situation is no better as regards teaching equipment. Certain universities sometimes procure such equipment with a view to returning it after the accreditation exercise.⁸³ Other universities resort to giving bribes to accreditation teams to induce them to overlook the lack of teaching infrastructure which they omitted to procure.⁸⁴ Accreditation teams are alleged to receive warm receptions, tempting them to compromise on set standards.⁸⁵ The universities experience an inadequate supply of quality workforce and a dearth of teaching infrastructure, which ultimately do not make for an environment that is conducive to learning.⁸⁶ Having studied in an environment which is not conducive to learning, a university graduate who is educated partially cannot then boast of having enjoyed a right to education. Given the fact that budgetary allocations to education are low, universities should be autonomous enough to raise tuition fees and to apply the income so earned transparently in order to meet the demands of accreditation teams.

5 ANTI-CORRUPTION POLICIES

The anti-corruption legislation and policies aim at ensuring a wholesome deployment of human and financial resources to the education sector. Such efforts include adequate budgetary allocation to education, anti-corruption instruments and legislation, and investigative and judicial systems that are meant to ensure there is no diversion of resources meant for education to other sectors.

5.1 Legislation and International Instruments

The United Nation's Convention against Corruption (UNCAC) was adopted by the General Assembly of the United Nations in 2003.⁸⁷ UNCAC aims at promoting core values such as honesty, respect for the rule of law, accountability and transparency in promoting development and in making the world a better place for all.⁸⁸ UNCAC calls for preventive measures and the criminalisation of corruption and is a major breakthrough at the international level. It requires member states to return assets that are obtained through corruption to the country from which they were stolen.⁸⁹ Given the objectives of UNCAC and other international instruments, a state's

83 Ogar M (25 July 2013) "ICPC Set to Prosecute Perpetrators of Sexual Harassment, Corruption in Varsities" *The Guardian* at 50.
 84 See Obura (2014) at 146.
 85 Obaro H (24 March 2014) "A Look Beyond N200bn to Save Education System" *The Guardian* at 80.
 86 Article 13(4) of the ICESCR.
 87 UN Resolution 58/4 of 31 October 2003.
 88 Obura (2014) at 126.
 89 Articles 51-59 of UNCAC.

default to conceive and implement anti-corruption policies promotes corrupt acts by public officials and this militates against the enforcement of human rights.⁹⁰ The Limburg Principles require states to take all legislative, administrative, judicial, economic, social and educational measures to fulfil their obligations under the ICESCR.⁹¹

The African Union Convention on Preventing and Combating Corruption is a regional anti-corruption treaty which was enacted in 2003, as a mechanism within the AU framework, with the express goal of preventing and combating corruption. The internationally accepted ideas of the various obligations engendered by human rights indicate that all rights — both civil and political rights and socio-economic rights — generate at least four levels of duties, namely, to respect, protect, promote, and fulfil these rights.⁹²

A state is enjoined to ratify the international anti-corruption instruments and to complement them with a national anti-corruption campaign, just as it formulates preventive policies.⁹³ Weak anti-corruption policies are not capable of stopping the dissipation of state resources budgeted for promoting human rights. Every state has a mandate to establish and promote effective anti-corruption policies,⁹⁴ laws or other measures as may be necessary to give effect to the right to education.⁹⁵ This task is attained through the legal system, effective anti-corruption policies, and involvement of members of the public, as well as by promoting integrity, transparency and accountability in the management of public affairs and public property.

The Constitution of Nigeria is a legislative framework which aims at promoting economic, social and cultural rights, good government and the welfare of all persons.⁹⁶ This is to be attained in an environment that is free of corruption and abuse of power. The law plays a vital role in the elimination of corruption, since it is a means to an end.⁹⁷ The state ought to create a conducive atmosphere

90 Peters (2015) at 25.

91 See para 17 of the Limburg Principles on the Implementation of the ICESCR.

92 See *Social and Economic Rights Action Centre (SERAC) v Nigeria* 2001 AHRLR 60 (ACHPR 2001) (SERAC case) para 44. See also Orago (2013) at 178.

93 Boersma M (2012) *Corruption: A Violation of Human Rights and a Crime under International Law?* Cambridge: Intersentia at 233.

94 Article 5(2) of UNCAC.

95 See Article 2(1) of the ICESCR and Article 2(2) of the ICCPR.

96 Fombad CM (2010) "The Constitution as a Source of Accountability: The Role of Constitutionalism" 2 *Speculum Juris* 41-65 at 49. See also Ibe S (2010) "Implementing Economic, Social and Cultural Rights in Nigeria: Challenges and Opportunities" 10 *African Human Rights Law Journal* 197-211 at 201.

97 See Gebeye (2015) at 76.

for the realisation of the teaching project and for the protection of the right to education.⁹⁸ However, dwindling state resources hinder the realisation of socio-economic rights, and this position is compounded by misappropriation and corrupt dispositions by public officials.

Against this background, section 15(5) of the Constitution, which obligates the state to “abolish all corrupt practices and abuse of power”, is a crucial anti-corruption provision. Other laws have been enacted to deter citizens of Nigeria from indulging in corrupt practices. For example, the Economic and Financial Crimes Commission Act of 2004 (EFCC Act) empowers the Economic and Financial Crimes Commission to prevent and, as the occasion demands, investigate and prosecute offenders who engage in corrupt practices.⁹⁹ Similarly, the Independent Corrupt Practices Commission Act of 2000 (ICPC Act) aims at prohibiting and preventing corruption and, where the need arises, facilitating the punishment of offenders.¹⁰⁰ The ICPC thus receives reports, investigates and prosecutes offenders; examines the practices, systems and procedures of public bodies with a view to directing and supervising systems reviews; and mobilises the public against corruption.¹⁰¹

However, much more still needs to be done by the two anti-corruption agencies towards the eradication of corruption. This is so notwithstanding the effect of legal challenges in terms of immunity which hinder the investigation and prosecution of the chief executive,¹⁰² and the delays in prosecuting cases investigated by the Commissions.¹⁰³ Since the approach to the eradication of corruption has not been rewarding, Nigeria ought to revisit its anti-corruption drive in order to evaluate its adequacy.¹⁰⁴

98 In Article 1 of the African Charter, signatories undertake to deploy appropriate measures for the protection of rights.

99 Section 6 of the EFCC Act.

100 Preamble to the ICPC Act.

101 Preamble to the ICPC Act.

102 See *Tinubu v IMB Securities Plc* (2001) 16NWLR (Pt 740) at 640-670. See also Abegunde O & Akinluyi O (2017) “Invulnerability of the Chief Executive and Democratic Sustainability in Nigeria: Issues and Challenges” 17(1) *Global Journal of Human-Social Science* 16-25 at 22.

103 See Mann DG (24 July 2017) “Curbing Delays in the Administration of Justice: Case Management in the Magistrate Courts” Paper presented at the Orientation Course for Newly Appointed Magistrates, available at http://nji.gov.ng/images/Workshop_Papers/2017/Orientation_Newly_Appointed_Magistrates/s2.pdf (visited 27 August 2019).

104 Article 5(3) of UNCAC.

5.2 Treasury Single Account as a Corruption Preventive Policy

Prevention of corruption is an important issue for many developing countries, as corrupt public officials plunder national wealth needed to reconstruct and rehabilitate the state.¹⁰⁵ As a measure to prevent corrupt practices in the public sector, the Federal Government of Nigeria conceived the Treasury Single Account (TSA).¹⁰⁶ The TSA is a contribution towards the elimination of corruption and abuse of power under the Fundamental Objectives and Directive Principles in the Constitution.¹⁰⁷ With the TSA, revenue accruing to the Federal Government and its agencies is paid into a designated bank account at the Central Bank of Nigeria.¹⁰⁸

The TSA is a preventive policy targeted at eradicating corruption in the public sector, as unauthorised bank accounts serving as drain pipes for state funds are closed. The TSA no doubt is a milestone in the anti-corruption crusade.¹⁰⁹ It helps the government to prevent corruption by making it difficult for corrupt officials to conceal stolen loot. Given that some public institutions have as many as 25 accounts, some of which — prior to the TSA — were not disclosed, Piwuma considers that the TSA has checked a lot of excesses in the system and should be retained.¹¹⁰

There are complaints about the implementation of the TSA. It is alleged that research grants with timelines attached become trapped in centralised TSA accounts that are not accessible, which then ruptures the confidence of the granting institution and the recipients.¹¹¹ The scourge of corruption extends to the university campuses, as there are allegations of corruption against university administrators, and the debate goes on as to whether the TSA should continue to apply in public universities.

The Federal Government refuses to exclude the universities from the application of the TSA, because the measure is meant to ensure accountability in

105 Annan (2003) at iii.

106 All revenue accruing to government agencies and parastatals are paid into a single account and this step has limited misappropriation of public funds and resources greatly. See Adebite A (21 September 2016) "TSA: PTDF Transfers over N1 Billion to CBN" *Nigerian Tribune* at 12.

107 See section 15(5) and item 60 of the Exclusive Legislative List (Schedule II) of the CFRN.

108 Oham O (20 June 2017) "Reps Probe Obafemi Awolowo University Over Alleged N4.603b Unremitted Funds" *The Guardian* at 7.

109 Adebite (21 September 2016) at 12.

110 Piwuma C (21 November 2016) "TSA Policy Stalling Research in Universities" *Nigerian Tribune* at 34.

111 Piwuma (21 November 2016) at 34.

public accounting system.¹¹² Public universities in Nigeria generate revenue from tuition, medical payments, sports, student unionism and the like.¹¹³ Simultaneously, corrupt practices take place in most of the universities. The universities thus should not be exempted from the TSA. However, there should be flexibility and concessions to ensure a hitch-free university education.¹¹⁴ The government should retain the policy while measures should be put in place to fast-track the process of withdrawing funds from the TSA.

The TSA should be made operative in the universities owned by states of the Federation.¹¹⁵ The managers of state-owned universities should replicate the TSA in their institutions. All approved monies payable by the students in the various departments, faculties, unions and societies should be paid to a central account of the university. Requests to withdraw from such account then should be considered and approved by the institution before withdrawals can be made.

5.3 Due Process in the Awarding of Contracts

In 2007, the government of Nigeria enacted the Public Procurement Act (PPA) as a corruption prevention statute. Section 24 of the PPA provides the procurement methods for goods and services by all procuring entities and requires that the process of procurement be conducted by open competitive bidding.¹¹⁶ The winning bid would be the one made by a firm which is equipped adequately, in terms of facilities and staff, to execute a work specification to standard, and which bid is the “lowest evaluated responsive bid”.¹¹⁷ The legislation was enacted against the backdrop of Nigeria losing trillions of Naira as a result of corruption and abuse of process in public procurement.¹¹⁸ Thus, public procurement legislation in Nigeria seeks to address a number of developmental and governance challenges that face the nation.¹¹⁹

Corruption thrives in secrecy and so it was envisaged that the adoption of due process in the award of contracts in the public sector would stop the misappropriation of public resources. However, the PPA has failed substantially to

112 *Nigerian Tribune* (24 November 2016) “ASUU’s Demand for N284bn Earned Allowance Can’t be Met - FG; Excludes University Endowment Fund from TSA” at 10.

113 Oseni (2012) at 18.

114 Annan (2003) at iv.

115 The TSA applies already in the federal universities. State governors should apply it in their various universities.

116 See section 24(1)-(3) of the PPA.

117 Section 24(3) of the PPA.

118 Nicholas Al *et al* (2016) “The Impact of Due Process Policy on Construction Projects in South East Nigeria” 8(22) *European Journal of Business and Management* 85-91 at 85.

119 Nicholas *et al* (2016) at 86.

achieve this goal because of the tendency amongst contractors to deliver poor quality work at a high cost, leaving the country to count its losses.¹²⁰ The efficacy of the PPA also remains in doubt on account of section 15(2), which excludes the procurement of special goods, works and services involving national defence or national security. This provision has seen successive governments preferring to raise the budgetary allocation to security,¹²¹ which is safe from the prowling eyes of the law enforcement agencies, rather than funding education appropriately.

5.4 Promotion of Management Best Practices

Article 1(a) of UNCAC mandates every member state “to promote and strengthen measures to prevent and combat corruption more efficiently and effectively”. A member state thus should promote access to any information that is required to assist in the fight against corruption and related offences.¹²² UNCAC reaffirms the importance of core values such as honesty, respect for the rule of law, accountability and transparency in promoting development and making the world a better place for all.¹²³ There is, then, a need to promote integrity, transparency and accountability in the management of public affairs and public property.¹²⁴ Institutional causes of corruption include:

monopoly and wide discretionary powers for public officers, poor accountability, lack of effective and efficient enforcement of the law, absence of institutional mechanisms to deal with corruption, existence of a weak civil society, and the absence of press freedom.¹²⁵

As a contribution towards the prevention of corruption in the public sector, Article 7(1) of UNCAC envisages that appointments in the sector should be able to regulate

120 Typically, a consultant or contractor colludes with the project approving authority and the beneficiary, and the auditor is admitted into the deal as he confirms that the project has been completed. See Ifejika S (2018) “Corruption in the New Public Procurement Regime in Nigeria” 2(1) *Journal of Anti-Corruption Law* 90-108 at 96.

121 Tukur S (18 July 2015) “South Africa Returns Seized \$15 Million to Nigerian Government”, available at <https://www.premiumtimesng.com/news/top-news/186871-south-africa-returns-seized-15-million-to-nigerian-government.html> (visited 28 August 2019); Sahara Reporters (29 August 2017) “US Sells N181 Billion Warplanes, Weapons to Nigeria”, available at <http://saharareporters.com/2017/08/29/us-sells-n181-billion-warplanes-weapons-nigeria> (visited 28 August 2019).

122 See Article 12 of UNCAC and Articles 9 & 11 of the African Union Convention of Preventing and Combating Corruption.

123 See Article 12 of UNCAC.

124 See Article 5(1) of UNCAC. Some other strategies for attaining a corruption-free environment include the entrenchment of transparency, accountability and responsibility into governance. See also Gebeye (2015) at 76.

125 Gebeye (2015) at 79.

certain vices associated with corruption, if such appointments of public officials are made in terms of criteria:

- (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
- (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialised and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

Article 2(4) of the African Union Convention of Preventing and Combating Corruption provides for the promotion of socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights, as well as of civil and political rights.

Prevention of corruption in the education sector can be attained only if Nigerians with suitable qualifications are able to secure employment,¹²⁶ on the basis of internal and external advertisements for all vacancies. This implies that if suitably qualified Nigerians are appointed, it is a step towards the eradication of corruption in the education sector.¹²⁷ Ironically, Nigeria's federal character and quota system oftentimes debar the most qualified person from taking up an appointment or from being promoted.¹²⁸

Nigeria's federal character principles demand that there should be adequate representation of every ethnic group in the government and its agencies, so as to promote national unity and national loyalty, and to prevent the

126 "Suitable qualifications" refers to appointees having the desired academic credentials and moral uprightness. The North West University in South Africa affords an exemplar of an open and transparent platform for employment in its e-recruitment portal, which facilitates all employee and external applications for the University's vacancies. See <http://www.nwu.ac.za/vacancies> (visited 28 August 2019).

127 Educational institutions have to tackle the over-establishment of some units. See Tihamiyu RA (2012) "Questioning the Claim of Inadequate Funding of Tertiary Education in Oyo State, Nigeria" at 53, available at <https://www.icgfm.org/wp-content/uploads/2017/06/4-7.pdf> (visited 1 September 2019).

128 See Oyekanmi R (10 December 2012) "How 1999 Constitution Retards Growth of Varsityes" *The Guardian* at 8.

predominance of persons from a few ethnic groups.¹²⁹ The criteria of seniority and competence sometimes become secondary as promotions are made to fill ethnic quotas, particularly at the top levels of public service.¹³⁰ Where workers have been appointed in the most transparent way, a state has to ensure that every employee enjoys just and favourable conditions of service.¹³¹ There should be equal opportunity for everyone to be promoted to an appropriate higher level of employment, using the criteria of seniority and competence.¹³²

An effective anti-corruption policy is the payment of wages which reflect equal remuneration without reference to sex or ethnic affiliation.¹³³ Remuneration has to be fair, and a minimum wage should meet the needs of the average worker. Prof Nsing Ogar has noted that not less than 30 lecturers in the six universities in the Calabar Zone of the Academic Staff Union of Universities (ASUU) died within a year because of unfair working conditions.¹³⁴ He has condemned:

the incomplete payment of salaries, non-implementation of promotion, non-remittance of statutory deductions to unions, co-operative societies and creditor banks with which staff have commitments.¹³⁵

These defaults run foul of the state's responsibility to fight corruption through the promotion of integrity, honesty and responsibility among its public officials. They expose university members of staff to untold hardship in circumstances wherein the financial propriety of the university administration cannot be guaranteed.

The scourge of public sector corruption hinders the attainment of a conducive learning environment which, in turn, hampers the enforcement of the right to education. Anti-corruption measures seek to rectify damage already done and which remains devastating to the state. Corruption prevention policies are considered a more viable option, as they forestall the occurrence of corrupt practices, rather than seeking *ex post facto* remedies.

129 The federal character policy is carried out in a manner which recognises the diversity of ethnic groups with a view to promoting their sense of belonging within the Federation. See section 14(3)(4) of the CFRN and Section 7 of Schedule III to the CFRN.

130 The federal character policy retards competitiveness and excellent disposition in the public sector. In this regard, it does much more damage than good. Chukwuemeka Ezeife submits that for Nigeria to recover its good shape, it must return to the regions. See Nwosu I (28 October 2018) "The Military Ruled and Ruined Nigeria with 36 States, 774 Local Governments" *The Sun Nigeria*, available at <https://www.sunnewsonline.com/military-rule-ruined-nigeria-ezeife/> (visited 28 August 2019).

131 See Article 23(1) of the UDHR. See also Orago (2013) at 178.

132 Article 7(c) of the ICESCR.

133 Article 7(a) of the ICESCR.

134 See Aliu *et al* (21 March 2017) at 10.

135 See Aliu *et al* (21 March 2017) at 10.

6 CONCLUSION

The right to education is attainable only where there is a conducive atmosphere as expressed in the quality of staff and teaching infrastructure.¹³⁶ Funding of education is inadequate,¹³⁷ and misappropriation of the meagre funds allocated occurs regularly. Nigeria simply has failed to take appropriate measures to make education available.¹³⁸ The government has failed to take appropriate measures as its anti-corruption programmes are conceived and tailored towards failure. A state agency such as the National Universities Commission (NUC) compromises on academic matters by failing to sanction erring staff and representatives who violate set academic standards.¹³⁹ Generally, there is misplaced hope in the state being able to eradicate corruption,¹⁴⁰ when it itself is accused of grand corruption. The government should not be given the role of being judge in its own cases. Civil society, the court of public opinion and an independent judiciary should be in a position to call the government to account for its anti-corruption crusade.

The key anti-corruption laws remain ineffective, stolen funds are not recovered, and the violation of the right to education is not redressed. The weakness of the anti-corruption crusade thus far highlights the importance of preventive measures. The TSA, as a preventive policy, blocks public funds from being deposited into personal bank accounts.¹⁴¹ Nonetheless, corruption fights back, as stakeholders in the universities allege that the TSA is counter-productive and should no longer apply to the tertiary education sector. This paper supports the application of the TSA to universities, subject to flexibility and concessions to encourage an unobstructed university education.¹⁴²

The Public Procurement Act has failed to reduce corruption as parties interested in the award of contracts connive to scupper quality work performed at the cheapest rates.¹⁴³ Culprits should be brought to book and societal values should be intolerant of corrupt practices. Transparency in the mode of appointment in the public sector goes a long way to preventing corruption in the sector,¹⁴⁴ and this should replace the Nigeria's federal character principles. The councils of the universities ought to be constituted in a manner that promotes

136 Oseni (2012) at 152.

137 Olokor (2014) at 17.

138 See Article 2(1) of the ICESCR; Peters (2015) at 17.

139 Okojie (2011) at 11.

140 ESCR Committee *General Comment 3* para 7.

141 Adegbite (2016) at 12.

142 Annan (2003) at iv.

143 See Ifejika (2018) at 96.

144 Article 7(1) of UNCAC.

university autonomy. The legal provision on the immunity of the chief executive hinders the investigation and prosecution of office holders and should be repealed,¹⁴⁵ as it undermines the requirement of accountability. With the elimination of corruption there would be adequate funding to enforce the right to education easily.

145 *Tinubu v IMB. Securities Plc* (2001)16 NWLR (Pt.740) at 640-670. See also Abegunde & Akinluyi (2017) at 22.