

**Education Sector Support Programme in Nigeria
(ESSPIN)**

Assignment Report

**Analysis of Federal, Jigawa, Kaduna and Kano UBE
legislation**

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Acronyms and Abbreviations

AME	Agency for Mass Education/Literacy
ANE	Agency for Nomadic Education
DEC	District Education Committee
DFID	Department for International Development of Great Britain
ESP	Education Sector/Strategic Plan
ESSPIN	Education Sector Support Programme in Nigeria
FMOE	Federal Ministry of Education
IEB	Islamic Education Bureau
JSS	Junior Secondary School
LGAC	Local Government Advisory Committee
LGC	Local Government Council
LGEA	Local Government Education Authority
MDA	Ministry/Department/Agency
MDG	Millennium Development Goal
MOU	Memorandum of Understanding
NUT	Nigerian Union of Teachers
PTA	Parents and Teachers Association
SBMC	School-Based Management Committee
SMOE	State Ministry of Education / State Ministry of Education, Science & Technology
STSB	Science and Technical Schools Board
SUBEB	State Universal Basic Education Board
TOR	Terms of Reference
UBE	Universal Basic Education
UBEB	Universal Basic Education Board
UBEC	Universal Basic Education Commission
UN	United Nations

Abstract

1. This report analyses the Federal Law and the Jigawa, Kaduna and Kano State Laws to identify any contradictions, inconsistencies or omissions in the Laws, in order to assess the suitability of the Laws—
 - to provide a suitable and clear framework for the basic education system in Jigawa, Kaduna and Kano; and
 - to support the sustainable delivery of the ESPs and of the MDGs for education and gender.

Executive Summary

2. This report analyses the Federal Law and the Jigawa, Kaduna and Kano State Laws to identify any contradictions, inconsistencies or omissions in the Laws, in order to assess the suitability of the Laws—
 - to provide a suitable and clear framework for the basic education system in Jigawa, Kaduna and Kano; and
 - to support the sustainable delivery of the ESPs and of the MDGs for education and gender.
3. The results of the analysis of the Jigawa, Kaduna and Kano SUBEB Laws show that these Laws—
 - are consistent with the Constitution; and
 - appear not to be consistent with the Federal Law; and
 - do not provide a suitable and clear framework for the basic education system in Jigawa and Kaduna; and
 - do not provide an adequate framework to support the sustainable implementation of the ESPs; and
 - provide support for the realisation of the MDG for education; and
 - provide some, though not optimal, support for the realisation of the MDG for gender; and
 - were identified as having contradictions, inconsistencies, and overlaps.
4. It is recommended that—
 - in the short term—a taskforce be established, which is made up of representatives of all of the UBE actors, and which will negotiate—
 - a demarcation of responsibilities for the overlapping functions; and
 - reporting mechanisms to improve the flow of information and the collection of data; and
 - in the longer term—a new Law be drafted for each State, which provides for everything to do with UBE in the State, and which clearly states—

- the relationships between all of the entities that are responsible for delivering UBE, including the Federal, State and Local Governments, and their respective MDAs; and
- the functions of these entities, and
- the lines of accountability, collaboration and reporting.

Purpose of the Consultancy

5. The ESSPIN is a 6 year education development assistance programme funded by DFID. The aim of ESSPIN is to make a sustainable impact on the way that the Nigerian Government delivers UBE services. This is to be achieved by leveraging Nigerian resources in support of the ESPs and building capacity for sustainability. ESSPIN is operating at the Federal level, and at the State level in five States (Jigawa, Kaduna, Kano, Kwara and Lagos).
6. As part of ESSPIN, a study has been commissioned into the Federal Law and the Jigawa, Kaduna and Kano State Laws that relate to UBE, namely—
 - the Constitution of the Federal Republic of Nigeria 1999 (the Constitution); and
 - the Compulsory, Free Universal Basic Education Law 2004 (the Federal Law); and
 - the Jigawa State Universal Basic Education Board Law (the Jigawa SUBEB Law); and
 - the Kaduna State Universal Basic Education Board Law (the Kaduna SUBEB Law); and
 - the Kano State Universal Basic Education Board Law 2005 (the Kano SUBEB Law); and
 - the Jigawa, Kaduna and Kano ESPs.
7. The study is tasked with analysing those Laws and policies to identify any contradictions, inconsistencies or omissions, in order to assess the suitability of the Laws—
 - to provide a suitable and clear framework for the basic education system in Jigawa, Kaduna and Kano (including the structures, finances, and statutory roles, responsibilities and accountabilities of relevant actors, for example); and
 - to support the sustainable delivery of the ESPs and the MDGs for education and gender.
8. This report contains the results of that study.

Achievement of the Terms of Reference

TOR Tasks	Progress made and agreements reached (with whom)	Proposed/agreed follow up (by whom and when)
Review the existing legislation	Consultant has reviewed the Laws provided	
<p>Produce a draft report answering the following questions—</p> <ol style="list-style-type: none"> 1. Consistency: Is the legislation consistent with the Constitution? How consistent are existing education acts with each other? To what extent is there overlap between one act and another? Are there any cases where provision in one act contradicts that in another? Are there inconsistencies between Federal and State level legislation? 2. Coverage: To what extent does the existing legislation provide a clear framework for the establishment of defining roles, responsibilities and accountabilities of key actors at Federal, State, Local Government and Community levels; the financing of education; the establishment of a national curriculum, the employment, deployment and professional development of teachers; the realisation of the MDGs for education and gender? 3. Appropriateness: To what extent does the existing legislation provide an adequate framework to support the sustainable implementation of the State Education Strategic Plan/MTSS? 	Consultant has produced draft report on the Laws provided and the ESPs, and submitted draft report to ESSPIN	Stakeholders to consider and comment on the draft report, to enable Consultant to finalise report
<p>Visit Nigeria to—</p> <ol style="list-style-type: none"> 1. present the key findings of the study to the Commissioners of Education in Kaduna, Kano and Jigawa States 	Consultant has visited Nigeria in August and September 2009 to discuss the state of the legislation with the actors in UBE, and to	

<ol style="list-style-type: none"> 2. if requested, facilitate a workshop with key stakeholders to discuss the findings of the study 3. produce reports incorporating the outcomes of the workshop for each state 4. if appropriate, propose a process and schedule for undertaking the drafting on any new legislation 	<p>make recommendations for short-term and long-term solutions</p>	
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Approach taken in this report to legislation

9. When interpreting legislation, the Courts act within a cage of constraints that is made up of—
 - the rules of judicial interpretation of legislation; and
 - the Interpretation Law; and
 - the Constitutional limits to legislation.
10. Those constraints have been followed in this report, in the interpretation of legislation. This Chapter examines the features of each of those constraints.

Rules of judicial interpretation of legislation

11. Over the years, Courts around the world have developed a number of approaches to take when interpreting legislation. The Nigerian Courts have settled on the approach that is to be taken in Nigeria when interpreting legislation, including the Constitution.
12. Lord Obaseki JSC in the 1981 case of *A-G of Bendel State v. A-G of the Federation and Ors*,¹ laid down the following 12 principles of interpreting the Nigerian Constitution—
 - (1) Effect should be given to every word.
 - (2) A construction nullifying a specific clause will not be given to the Constitution unless absolutely required by the context.
 - (3) A constitutional power cannot be used by way of condition to attain unconstitutional result.
 - (4) The language of the Constitution where clear and unambiguous must be given its plain evident meaning.
 - (5) The Constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety; a particular provision cannot be severed from the rest of the Constitution.
 - (6) While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller import to its meaning.
 - (7) A Constitutional provision should not be construed so as to defeat its evident purpose.
 - (8) Under the Constitution conferring specific powers, a particular power must be granted or it cannot be exercised.
 - (9) Delegation by the National Assembly of its essential legislative function is precluded by the Constitution.
 - (10) Words are the common signs that mankind makes use of to decide their intention one to another and when the words of a man express his meaning plainly and

¹ (1981) 10 S.C 1 at 77-79

distinctly and perfectly, there is no occasion to have recourse to any other means of interpretation.

- (11) The principle upon which the Constitution was established rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions.
- (12) Words of the Constitution are therefore not to be read with stultifying narrowness.

13. The continued application of these principles to the Constitution and other legislation was affirmed in the 2007 case of *A-G of the Federation & Ors v Alhaji Atiku Abubakar & Ors*.² Lord Akintan JSC, in the lead judgment for that case, said that the generally accepted rule of statutory interpretation in Nigeria is the “literal” construction approach, namely—

“that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be construed according to the rules of grammar. If there is nothing to modify, alter or qualify the language, which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. See *Maxwell on the Interpretation of Statutes* 12th edition, page 28”.³

14. Lord Akintan JSC confirmed that the approach of Nigerian Courts in interpreting the Constitution and other legislation could be summarized as follows—

- “that in interpreting the Constitution, a liberal approach should be adopted: see *Nafiu Rabi v Kano State* (1980) 8-11 SC 130 at 148;
- that the Court must employ care and always bear in mind that the circumstances of our people must be taken into consideration: see *Ukaegbu v. Attorney General of Imo State* (1983) 1 SC NLR 212;
- that the historical facts which are necessary for comprehension of the subject-matter may be called as aid: see *Uwaifo v Attorney General of Bendel State* (1982) 7 SC 124; and *Bronik Motors v Wema Bank* (1983) 1 SCNLR 296;
- that regard should be taken to ensure that the mischief which is intended to deter is arrested: see *Mobil v FBIR* (1977) 3 SC 53”.

The Interpretation Act

15. In many countries, the Legislature enacts specific legislation that is used in the interpretation of legislation, for the purposes of standardizing the way in which legislation is constructed and interpreted. In Nigeria, that legislation is the *Interpretation Act*.⁴ The *Interpretation Act* provides for “the construction and interpretation of Acts of the

² (2007) 4 NILR 202, per Lord Onnoghen JSC

³ Also see the comments of the Court of Appeal in subsequent case of *A-G of the Federation & Ors v Alhaji Atiku Abubakar* CA/A/21/07.

⁴ Chapter 192 of 1990

National Assembly and certain other instruments; and for purposes connected therewith”.⁵ The *Interpretation Act* applies to “the provisions of any enactment except in so far as the contrary intention appears in th[at] Act or the enactment in question”.

16. Broadly speaking, the *Interpretation Act* includes 3 types of provisions, namely provisions dealing with—
 - definitions of words and phrases; and
 - statutory construction; and
 - duties and powers.
17. The Courts use these provisions when interpreting a law.

Constitutional limits to legislation

18. The Constitution is the supreme law of Nigeria. That is to say that the Constitution is the law that forms the foundation of the Federal Republic of Nigeria, and from which all organs of Government derive their powers.⁶ The Constitution sets out the principles that define the nature and extent of the Nigerian Government, and regulates the relationship between, and also within, the Executive, Legislative and the Judicial branches of the Government.
19. In relation to education, the Constitution imposes a duty on all organs of Nigerian Government—
 - to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels; and
 - to promote science and technology; and
 - to eradicate illiteracy; and
 - to provide, as and when practicable—
 - free, compulsory and universal primary education; and
 - free secondary education; and
 - free university education; and
 - free adult literacy programmes.⁷
20. Legislation is the framework that supports the policies of these organs of Government. However, Constitutions invariably impose limits on the content of legislation that the Legislature may enact. This is the case with the Nigerian Constitution.
21. The Nigerian Constitution gives the Federal and State Legislatures certain law-making powers. Namely, power is given to—

⁵ See the Long Title of the Interpretation Act.

⁶ See section 1 of the Constitution.

⁷ See sections 13 and 18 of the Constitution.

- the Federal Legislature to make laws for the “peace, order and good government” of the Federation, or any part of the Federation, in relation to any matter on the Exclusive Legislative List in the Constitution; and
 - each State Legislature to make laws for the “peace, order and good government” of that State, or any part of that State, in relation to any matter with respect to which the State may make laws in accordance with the provisions of the Constitution.⁸
22. The phrase “peace, order and good government” is used in many Commonwealth jurisdictions to express the limits of the law-making powers of the Legislatures.⁹ In Nigeria, the phrase was used as early as 1917 in the *Deposed Chiefs Removal Ordinance*, as well as in the Constitutions of 1960 and 1979. The British Privy Council, in *Ibrelebbe v. The Queen*,¹⁰ held that the phrase “peace, order and good government” connotes “in British constitutional language, the widest law-making powers appropriate to a sovereign”.
23. The Federal and State Legislatures both have this wide power to make laws for the matters on the Concurrent Legislative List in the Constitution. However, the Constitution states that if a law made by a State Legislature is inconsistent with a law made by the Federal Legislature, the Federal law prevails over the State law, and the State law is void to the extent of the inconsistency.¹¹
24. The Federal Legislature also has this wide power to make laws for the matters on the Exclusive Legislative List in the Constitution. The State Legislatures, on the other hand, do not have power to make similar laws, because powers in the Exclusive Legislative List are exclusive to the Federal Legislature.
25. The law-making powers that relate to education appear in both the Exclusive Legislative List and the Concurrent Legislative List.
26. The Constitution gives the State Legislatures power to make laws for the State in relation to—
- *primary, post-primary*, technical, vocational and other forms of education; and
 - establishing institutions for the purposes of *primary, post-primary*, technical, vocational, technological, professional, university and other forms of education.¹²
[emphasis added]

⁸ See section 4(2) and (7) of the Constitution.

⁹ These laws include the *New Zealand Constitution Act 1852*, the *Colonial Laws Validity Act 1865*, the *British North America Act 1867*, the *British Settlements Act 1887*, and the *Commonwealth of Australia Constitution Act 1900* made by the British Parliament.

¹⁰ [1964] AC 900 at 923

¹¹ See section 4(5) of the Constitution.

¹² See items 29 and 30 of the Concurrent Legislative List in Part II of the second schedule to the Constitution.

27. The Constitution gives the Federal Legislature power to make laws for the Federation, or any part of the Federation, in relation to—
- university, technological or such professional education as may from time to time be designated by the Federal Legislature; and
 - establishing institutions for the purposes of post-primary, technological, professional or university education.¹³
28. The Constitution also gives the Federal Legislature power to make laws for the establishment and regulation of authorities for the Federation or any part thereof ... to prescribe minimum standards of education at all levels.¹⁴
29. The Constitution sets out the procedures that the Federal Legislature, or a State Legislature, must follow to validly enact legislation.¹⁵ These requirements include requirements as to the quorum of the Legislature, the language to be used in the Legislature, and the time limit for assent to a Bill, for example. An investigation into whether these requirements have been followed in relation to the legislation that is being analyzed is outside the scope of this report. So, this report is based on the presumption that the legislation that is being analyzed in the report has been enacted in accordance with all these requirements.

Findings and Issues Arising

Consistency with the Constitution

30. This Chapter examines whether the Federal and State Laws are consistent with the law-making powers of the Constitution that are discussed above.

A. Constitutional consistency—Federal Law

31. This Part examines whether the Federal Law is consistent with the Constitution.
32. In broad terms, the Federal Law provides for—
- a. a duty on Nigerian Governments to provide children in Nigeria with free primary school and JSS education; and¹⁶
 - b. a duty on parents, and stakeholders in education in a Local Government’s area of jurisdiction, to ensure children in Nigeria attend and complete primary school and JSS education; and¹⁷

¹³ See items 27 and 28 of the Concurrent Legislative List in Part II of the second schedule to the Constitution.

¹⁴ See item 60 of the Exclusive Legislative List in Part I of the second schedule to the Constitution.

¹⁵ See Chapter V of the Constitution, and in particular sections 58 (Mode of exercising Federal legislative power: general) and 100 (Mode of exercising legislative power of a State).

¹⁶ See section 2(1) of the Federal Law.

¹⁷ See sections 2(2) and 4 of the Federal Law.

- c. the jurisdiction of the Magistrates Court to hear and determine offences for breaches of those duties; and¹⁸
 - d. the establishment, membership and staffing of the UBEC; and¹⁹
 - e. the functions of the UBEC as they relate to UBE; and²⁰
 - f. how UBE is to be financed; and²¹
 - g. the establishment, by the States, of State Education Boards and LGEAs.²²
33. The Constitution requires the Federal Government to provide free, compulsory and universal primary education and also free secondary education.²³ The duties mentioned in clause 32(a) and (b) above are consistent with those requirements.
34. The Constitution provides for Courts, which are authorized by law, to exercise jurisdiction on matters with respect to which the Federal Legislature may make laws.²⁴ The provision mentioned in clause 32(c) above gives jurisdiction to the Magistrates Court in relation to breaches of the duties mentioned in clause 32(a) and (b). As those duties are matters with respect to which the Federal Legislature may make laws, the vesting of jurisdiction under clause 32(c) is consistent with the Constitution.
35. The Constitution gives the Federal Legislature power to make laws for the establishment and regulation of authorities, for the Federation or any part thereof, to prescribe minimum standards of education at all levels.²⁵ Clause 32(d) to (g) above relates to the establishment and regulation of education authorities, for the Federation and parts of the Federation. The functions of those education authorities relate to prescribing the minimum standards of UBE and other related matters. Therefore, these provisions are consistent with to the Constitution.
36. So, in summary, the Federal Law is consistent with the Constitution.

B. Constitutional consistency—Jigawa SUBEB Law

37. This Part examines whether the Jigawa SUBEB Law is consistent with the Constitution.
38. In broad terms, the Jigawa SUBEB Law provides for—
- a. the establishment, membership and staffing of the Jigawa SUBEB; and
 - b. the functions of the Jigawa SUBEB, which relate to—
 - managing primary schools and JSS in Jigawa; and

¹⁸ See section 6 of the Federal Law.

¹⁹ See sections 8, 10, 11 and 14 of the Federal Law.

²⁰ See section 9 of the Federal Law.

²¹ See section 11 of the Federal Law.

²² See section 12 and 13 of the Federal Law.

²³ See sections 13 and 18 of the Constitution.

²⁴ See section 6 of the Constitution.

²⁵ See item 60 of the Exclusive Legislative List in Part I of the second schedule to the Constitution.

- registering, coordinating and supervising the teaching and learning in private schools that provide basic education in Jigawa; and
- c. the establishment of the LGEAs and DECs, which are to work together with Jigawa’s SUBEB to deliver UBE.

39. The Constitution requires the Jigawa State Government to provide free, compulsory and universal primary education and also free secondary education.²⁶ The duties mentioned in clause 38 above are consistent with those requirements.

40. The Constitution gives the Jigawa Legislature the power to make laws for Jigawa in relation to primary school and post-primary school education. As the Jigawa SUBEB Law relates to managing primary schools and JSS (i.e. post-primary schools), the Jigawa SUBEB Law is consistent with the Constitution.

41. So, in summary, the Jigawa SUBEB Law is consistent with the Constitution.

C. Constitutional consistency—Kaduna SUBEB Law

42. This Part examines whether the Kaduna SUBEB Law is consistent with the Constitution.

43. In broad terms, the Kaduna SUBEB Law provides for—

- a. the establishment, membership and staffing of the Kaduna SUBEB; and
- b. the functions of the Kaduna SUBEB, which relate to managing primary and nomadic schools in Kaduna; and
- d. the establishment of the LGEAs and DECs, which are to work together with Kaduna’s SUBEB to deliver UBE.

44. The Constitution requires the Kaduna State Government to provide free, compulsory and universal primary education and also free secondary education.²⁷ The duties mentioned in clause 43 above are consistent with those requirements.

45. The Constitution gives the Kaduna Legislature the power to make laws for Kaduna in relation to primary school and post-primary school education. As the Kaduna SUBEB Law relates to managing primary, JSS (i.e. post-primary schools), and nomadic schools, the Kaduna SUBEB Law is consistent with the Constitution.

46. So, in summary, the Kaduna SUBEB Law is consistent with the Constitution.

D. Constitutional consistency—Kano SUBEB Law

47. This Part examines whether the Kano SUBEB Law is consistent with the Constitution.

48. In broad terms, the Kano SUBEB Law provides for—

²⁶ See sections 13 and 18 of the Constitution.

²⁷ See sections 13 and 18 of the Constitution.

- a. the establishment, membership and staffing of the Kano SUBEB; and
 - b. the functions of the Kano SUBEB, which relate to managing primary schools, JSS and nomadic schools in Kano (including private schools); and
 - c. the establishment of the LGEAs and DECs, which are to work together with Kano’s SUBEB to deliver UBE.
49. The Constitution requires the Kano State Government to provide free, compulsory and universal primary education and also free secondary education.²⁸ The duties mentioned in clause 48 above are consistent with those requirements.
50. The Constitution gives the Kano Legislature the power to make laws for Kano in relation to primary school and post-primary school education.²⁹ As the Kano SUBEB Law relates to managing primary and nomadic schools, the Kano SUBEB Law is consistent with the Constitution.
51. So, in summary, the Kano SUBEB Law is consistent with the Constitution.

How consistent are the State Laws with the Federal Law?

52. This Chapter examines how consistent each State SUBEB Law is with the Federal Law. In particular, it examines whether a State Law contradicts the Federal Law, including by overlapping with the Federal Law.

A. Jigawa SUBEB Law and Federal Law

53. This Part examines how consistent the Jigawa SUBEB Law is with the Federal Law.
54. In essence, the Federal Law and the Jigawa SUBEB Law relate to “basic education”, as that term is defined in each of those Laws.
55. The Federal Law defines “basic education” as—
- early care and education; and
 - 9 years of *formal* schooling. [emphasis added]
56. The Jigawa SUBEB Law, on the other hand, defines “basic education” as primary school and JSS education. The definition is not limited to “formal” education, and makes no mention of early childhood care and education.³⁰ Unfortunately, the Jigawa SUBEB Law does not define primary school or JSS education. However, the practice in Jigawa indicates that “basic education” relates to early childcare education and 9 years of schooling. Nevertheless, this ambiguity could be rectified by ***an amendment of the Jigawa SUBEB Law.***

²⁸ See sections 13 and 18 of the Constitution.

²⁹ See sections 3(1) and 6(1)(a) of the Kano SUBEB Law

³⁰ See section 2 of the Kaduna SUBEB Law.

57. So, in summary, the Jigawa SUBEB Law appears to be inconsistent with the Federal Law.

B. Kaduna SUBEB Law and Federal Law

58. This Part examines how consistent the Kaduna SUBEB Law is with the Federal Law.

59. In essence, the Federal Law and the Kaduna SUBEB Law relate to “basic education”, as that term is defined in each of those Laws.

60. The Federal Law defines “basic education” as—

- early care and education; and
- 9 years of formal schooling.

61. The Kaduna SUBEB Law defines “basic education”, in roughly equivalent terms, as—

- early childhood care and education; and [emphasis added]
- 9 years of formal schooling.³¹

62. So, in summary, the Kaduna SUBEB Law appears to be consistent with the Federal Law.

C. Kano SUBEB Law and Federal Law

63. This Part examines how consistent the Kano SUBEB Law is with the Federal Law.

64. In essence, the Federal Law and the Kano SUBEB Law relate to “basic education”.

65. The Federal Law defines “basic education” as—

- early care and education; and
- 9 years of formal schooling.

66. The Kano SUBEB Law does not define “basic education”, even though the term is used in the Kano SUBEB Law.³² This oversight could be rectified by ***an amendment of the Kano SUBEB Law.***

67. So, in summary, the Kano SUBEB Law appears to be inconsistent with the Federal Law.

Financing education

68. This Chapter examines how the Federal and State Laws provide for the financing of education.

A. Financing education—Federal Law

69. This Part examines how the Federal Law provides for the financing of education.

70. The implementation of UBE is to be financed from—

³¹ See section 3 of the Jigawa SUBEB Law.

³² See section 6(1)(r) of the Kano SUBEB Law.

- Federal Government block grant of not less than 2% of Federal Consolidated Revenue Funds; and³³
- funds or contributions in the form of Federal guaranteed credits; and
- local and international donor grants.³⁴

71. However, a Federal Government block grant is contingent on the particular State contributing at least 50% of the total cost of projects.³⁵
72. UBEC receives the block grants from the Federal Government and is responsible for allocating the block grants to the States.³⁶
73. UBEC is responsible for enquiring into, and advising the Federal Government on, the funding of basic education in Nigeria.³⁷
74. The relevant SUBEB is to administer and disburse the funds that are received from the Federal Government for the implementation of UBE.³⁸
75. The services that are provided in public primary schools and JSS are to be free of charge to children in Nigeria and their parents.³⁹ Indeed, anyone who is found to have received or obtained any fee for these services is liable to a fine of up to N10,000, or to imprisonment for 3 months, or to both a fine and imprisonment.⁴⁰
76. So, in summary, the Federal Law provides for UBE to be financed by the Federal and State Governments and donor agencies, and not by parents and their children.

B. Financing education—Jigawa SUBEB Law

77. This Part examines how the Jigawa SUBEB Law provides for the financing of education.
78. The Jigawa SUBEB Law provides that all expenses relating to UBE are to be financed from—
- grants from UBEC; and
 - contributions from the State Government; and⁴¹
 - contributions from Local Governments; and
 - donations from donor agencies and other international development partners.⁴²

³³ This use of the plural word “Funds” is technically inconsistent with the Constitution. However, by virtue of section 14(b) of the Interpretation Law, the word “Funds” can be read as “Fund”, which is consistent with the Constitution.

³⁴ See section 11(1) of the Federal Law.

³⁵ See section 11(2) of the Federal Law.

³⁶ See section 9(b) of the Federal Law.

³⁷ See section 9(d) of the Federal Law.

³⁸ See section 11(3) of the Federal Law.

³⁹ See section 3(1) of the Federal Law. These services includes are books, instructional materials, classrooms furniture and lunch: see the definition of “services” in section 15(1) of the Federal Law.

⁴⁰ See section 3(2) of the Federal Law.

⁴¹ For this purpose, the Jigawa SUBEB must give the Governor an estimate of income and expenditure: see section 24(1) of the Jigawa SUBEB Law.

⁴² See section 23(1) and (2) of the Jigawa SUBEB Law.

79. The Jigawa SUBEB Law fails to mention that contributions in the form of Federal guaranteed credits are part of the fund, as is provided by the Federal Law.⁴³ This oversight could be rectified by ***an amendment of the Jigawa SUBEB Law***, to ensure that Jigawa has full access to the funds that are available from the Federal Government.
80. These funds are to be disbursed by the Jigawa SUBEB and the LGEAs from their respective accounts.⁴⁴
81. The Jigawa SUBEB also has power to borrow money by way of overdraft or loan, with the approval of the Governor.⁴⁵ Although the Jigawa SUBEB Law is silent as to the purpose for which the money may be borrowed, the Courts would look at the purpose for which the Jigawa SUBEB Law was enacted and would likely find that the money could only be used by the Jigawa SUBEB in relation to a payment that was authorised by the Jigawa SUBEB Law. However, this uncertainty could be rectified by ***an amendment of the Jigawa SUBEB Law***. This would provide further clarity and protection for the members of Jigawa’s SUBEB which may borrow money for a purpose that the Courts subsequently decide is not authorised by the Jigawa SUBEB Law. In those circumstances the members would not be protected under section 10 of the Jigawa SUBEB Law and would be personally liable for repaying the loan.
82. So, in summary, the Jigawa SUBEB Law provides that all expenses relating to UBE are to be financed by the Federal, State and Local Governments, and donor agencies, although it fails to provide access to all available Federal funds.

C. Financing education—Kaduna SUBEB Law

83. This Part examines how the Kaduna SUBEB Law provides for the financing of education.
84. The Kaduna SUBEB Law provides that UBE is to be financed from funds approved by law, including—
- block grants from UBEC; and
 - Federal-guaranteed credits and intervention funds from the Federal Government; and
 - contributions from the State Government; and
 - contributions from Local Governments; and
 - grants from local and international donors.⁴⁶
85. These funds are to be applied by the Kaduna SUBEB and the LGEAs.⁴⁷ The Kaduna SUBEB Law provides for the establishment of the SUBEB’s account for these funds, together with

⁴³ See section 11(1)(b) of the Federal Law.

⁴⁴ See sections 23(2) and (3) and 18(1) of the Jigawa SUBEB Law.

⁴⁵ See section 25 of the Jigawa SUBEB Law.

⁴⁶ See section 12 of the Kaduna SUBEB Law.

⁴⁷ See section 13 of the Kaduna SUBEB Law.

the auditing of and reporting on this account.⁴⁸ However, unlike the Jigawa and Kano SUBEB Laws, the Kaduna SUBEB Law does not provide for LGEA accounts for these funds. This could be rectified by ***an amendment of the Kaduna SUBEB Law***, to ensure transparent and accountable dealings with these funds.

86. So, in summary, the Kaduna SUBEB Law provides that UBE is to be financed by the Federal, State and Local Governments, and donor agencies.

D. Financing education—Kano SUBEB Law

87. This Part examines how the Kano SUBEB Law provides for the financing of education.

88. The Kano SUBEB Law provides that UBE is to be financed from these funds—

- grant[s] from UBEC; and
- contributions from the State Government; and
- contributions from the Local Governments; and
- [contributions from?] National Commission for Nomadic Education
- donations from voluntary organizations; and
- contributions from the Education Tax, World Bank, UNICEF and other international Development partners; and
- any locally generated revenue.⁴⁹

89. The Kano SUBEB Law fails to mention that contributions in the form of Federal guaranteed credits are part of the fund, as is provided by the Federal Law.⁵⁰ This oversight could be rectified by ***an amendment of the Kano SUBEB Law***, to ensure that Kano has full access to the funds that are available from the Federal Government.

90. These funds are to be disbursed by the Kano SUBEB and the LGEAs from their respective accounts.⁵¹

91. So, in summary, the Kano SUBEB Law provides that all expenses relating to UBE are to be financed by the Federal, State and Local Governments, and donor agencies, although it fails to provide access to all available Federal funds.

⁴⁸ See section 11, 14 and 15 of the Kaduna SUBEB Law.

⁴⁹ See section 13(1) of the Kano SUBEB Law.

⁵⁰ See section 11(1)(b) of the Federal Law.

⁵¹ See sections 13(2) and 8(5) of the Kano SUBEB Law.

National curriculum

92. This Chapter examines how the Federal and State Laws provide for a National curriculum.

A. National curriculum—Federal Law

93. This Part examines how the Federal Law provides for a National curriculum.

94. The Federal Law gives UBEC the functions of—

- developing the curriculum and instructional materials for basic education (the National curriculum); and
- disseminating the National curriculum; and
- ensuring the National curriculum is used in the institutions that provide basic education, namely—
 - early childhood care and development centers; and
 - primary schools and JSS.⁵²

95. So, in summary, the Federal Law provides for the establishment and use of a National curriculum in all institutions that provide basic education.

B. National curriculum—Jigawa SUBEB Law

96. This Part examines how the Jigawa SUBEB Law provides for a National curriculum.

97. The Jigawa SUBEB Law is in fact silent about any curriculum, including the National curriculum. Indeed, it could be argued that the Jigawa SUBEB Law does not even support the use of the National curriculum in Jigawa, and certainly does not explicitly support the use of the National curriculum.

98. The Jigawa SUBEB Law gives Jigawa’s SUBEB the function of—

- in the case of non-private schools that provide basic education in Jigawa (i.e. primary schools and JSS)—the management of the schools; and
- in the case of private schools that provide basic education in Jigawa—supervising the teaching and learning in the schools.⁵³

99. In the case of non-private schools, the plain⁵⁴ meaning of the word “management” would indicate that managing a school includes the concepts of controlling, directing and governing the school. It could be argued that these concepts may or may not include ensuring the use of the National curriculum in the schools. The outcome of this argument is uncertain. This uncertainty could be rectified by ***an amendment of the Jigawa SUBEB Law.***

⁵² See section 9(e)(iii) and (k) of the Federal Law. Contrast the use of “early childcare and development” in this paragraph as opposed to “early care and education” used in the definition of “basic education” in section 15(1). Unless this difference is intentional, the difference should be rectified by ***an amendment of the Federal Law.***

⁵³ See section 11(a) and (b) of the Jigawa SUBEB Law.

⁵⁴ Refer to Principle 4 for the interpretation of the Constitution which requires the “plain” meaning of words to be used.

100. In the case of private schools, the plain meaning of the word “supervising” would indicate that supervising the teaching in a school includes the concepts of overseeing and directing the teaching in the school. It could be argued that these concepts may or may not include ensuring the use of the National curriculum in the schools. The outcome of this argument is uncertain. This uncertainty could be rectified by ***an amendment of the Jigawa SUBEB Law.***

101. The Jigawa SUBEB Law gives each LGEA responsibility for the day-to-day administration of schools that provide basic education in the Local Government’s area of jurisdiction.⁵⁵ Again, the plain meaning of the word “administration” would indicate that the administration of schools includes the concepts of managing and directing the schools. Again, it could be argued that these concepts may or may not include ensuring the use of the National curriculum in the schools. Again, the outcome of this argument is uncertain. Again, this uncertainty could be rectified by ***an amendment of the Jigawa SUBEB Law.***

102. Also, the Jigawa SUBEB Law gives each LGEA responsibility for acquiring and distributing materials to schools that provide basic education in the Local Government’s area of jurisdiction.⁵⁶ It is unclear whether the reference to “materials” includes a reference to the National curriculum. This uncertainty could be rectified by ***an amendment of the Jigawa SUBEB Law.***

103. The Jigawa SUBEB Law gives each DEC the function of making recommendations to the LGEA about the supply of materials.⁵⁷ Again, it is unclear whether the reference to “materials” includes a reference to the National curriculum. Again, this uncertainty could be rectified by ***an amendment of the Jigawa SUBEB Law.***

104. The Jigawa SUBEB Law does enable additional functions to be given—

- by the Governor to Jigawa’s SUBEB; and
- by Jigawa’s SUBEB to an LGEA; and
- by an LGEA to a DEC.⁵⁸

105. These additional functions could relate to the National curriculum. So, despite the absence of any reference to the National curriculum in the Jigawa SUBEB Law, there may be power in the Jigawa SUBEB Law to ensure that the National curriculum is disseminated and used in schools in Jigawa.

106. However, in as much as any Law of Parliament should clearly convey information to the people who are affected by the Law (including individual teachers and parents, for

⁵⁵ See section 18(1)(a) of the Jigawa SUBEB Law.

⁵⁶ See section 18(1) (f) of the Jigawa SUBEB Law.

⁵⁷ See section 21(c) of the Jigawa SUBEB Law.

⁵⁸ See sections 11(q), 12(3)(b) and 21(f) of the Jigawa SUBEB Law.

example), it would be preferable for the Jigawa SUBEB Law to specifically mention the National curriculum.

107. So, in summary, the Jigawa SUBEB Law does not specifically provide for a National curriculum.

C. National curriculum—Kaduna SUBEB Law

108. This Part examines how the Kaduna SUBEB Law provides for a National curriculum.

109. The Kaduna SUBEB Law is in fact silent about any curriculum, including the National curriculum. Indeed, it could be argued that the Kaduna SUBEB Law does not even support the use of the National curriculum in Kaduna, and certainly does not explicitly support the use of the National curriculum.

110. The Kaduna SUBEB Law gives Kaduna’s SUBEB the function of the management of primary schools, but not JSS. The management of JSS remains with the SMOE.⁵⁹

111. The plain meaning of the word “management” would indicate that managing a school includes the concepts of controlling, directing and governing the school. It could be argued that these concepts may or may not include ensuring the use of the National curriculum in the schools. The outcome of this argument is uncertain. This uncertainty could be rectified by ***an amendment of the Kaduna SUBEB Law***.

112. The Kaduna SUBEB Law gives each LGEA the function of supervising the administration of primary schools.⁶⁰ The plain meaning of the word “supervising” would indicate that supervising the administration of primary schools includes the concepts of overseeing and directing the administration of the primary schools. While, the plain meaning of the word “administration” would indicate that the administration of primary schools includes the concepts of managing and directing the primary schools. Again, it could be argued that these concepts may or may not include ensuring the use of the National curriculum in the primary schools. Again, the outcome of this argument is uncertain. Again, this uncertainty could be rectified by ***an amendment of the Kaduna SUBEB Law***.

113. Also, the Kaduna SUBEB Law gives each LGEA the function of acquiring and distributing materials to primary schools in the Local Government’s area of jurisdiction.⁶¹ It is unclear whether the reference to “materials” includes a reference to the National curriculum. This uncertainty could be rectified by ***an amendment of the Kaduna SUBEB Law***.

114. The Kaduna SUBEB Law gives each DEC the function of making recommendations to the LGEA about the supply of materials in primary schools.⁶² Again, it is unclear whether the

⁵⁹ See section 4(1)(a) and (2) of the Kaduna SUBEB Law.

⁶⁰ See section of the Kaduna SUBEB Law.

⁶¹ See section 7(2)(f) of the Kaduna SUBEB Law.

⁶² See section 9(a)(iii) of the Kaduna SUBEB Law.

reference to “materials” includes a reference to the National curriculum. Again, this uncertainty could be rectified by ***an amendment of the Kaduna SUBEB Law***.

115. The Kaduna SUBEB Law does enable additional functions to be given—

- by the State Government to Kaduna’s SUBEB; and
- by Kaduna’s SUBEB to an LGEA; and
- by an LGEA to a DEC.⁶³

116. These additional functions could relate to JSS in Kaduna. However, it could be argued that the specific statement that JSS are to be managed by the SMOE negates any power to confer functions relating to JSS on other entities. If this is so, it is uncertain whether the Kaduna SUBEB Law compels the National curriculum to be disseminated to and used in JSS in Kaduna. This uncertainty could be rectified by ***an amendment of the Kaduna SUBEB Law***.

117. However, these additional functions could relate to the National curriculum in primary schools. So, despite the absence of any reference to the National curriculum in the Kaduna SUBEB Law, there may be power in the Kaduna SUBEB Law to ensure that the National curriculum is disseminated and used in primary schools in Kaduna.

118. However, in as much as any Law of Parliament should clearly convey information to the people who are affected by the Law (including individual teachers and parents, for example), it would be preferable for the Kaduna SUBEB Law to specifically mention the National curriculum.

119. So, in summary, the Kaduna SUBEB Law does not specifically provide for a National curriculum.

D. National curriculum—Kano SUBEB Law

120. This Part examines how the Kano SUBEB Law provides for a National curriculum.

121. The Kano SUBEB Law is in fact silent about any curriculum, including the National curriculum. Indeed, it could be argued that the Kano SUBEB Law does not even support the use of the National curriculum in Kano, and certainly does not explicitly support the use of the National curriculum.

122. The Kano SUBEB Law gives Kano’s SUBEB the function of the management of the primary schools, JSS and nomadic schools.⁶⁴ The plain⁶⁵ meaning of the word “management” would indicate that managing a school includes the concepts of controlling, directing and governing the school. It could be argued that these concepts may or may not include

⁶³ See sections 4(2)(t), 7(2)(m) and 9(e) of the Kaduna SUBEB Law.

⁶⁴ See section 6(1)(a) of the Kano SUBEB Law.

⁶⁵ Refer to Principle 4 for the interpretation of the Constitution which requires the “plain” meaning of words to be used.

ensuring the use of the National curriculum in the schools. The outcome of this argument is uncertain. This uncertainty could be rectified by ***an amendment of the Kano SUBEB Law.***

123. The Kano SUBEB Law gives each LGEA responsibility for the day-to-day administration of schools that provide basic education in the Local Government’s area of jurisdiction.⁶⁶ Again, the plain meaning of the word “administration” would indicate that the administration of schools includes the concepts of managing and directing the schools. Again, it could be argued that these concepts may or may not include ensuring the use of the National curriculum in the schools. Again, the outcome of this argument is uncertain. Again, this uncertainty could be rectified by ***an amendment of the Kano SUBEB Law.***
124. Also, the Kano SUBEB Law gives each LGEA responsibility for acquiring and distributing materials to schools that provide basic education in the Local Government’s area of jurisdiction.⁶⁷ It is unclear whether the reference to “materials” includes a reference to the National curriculum. This uncertainty could be rectified by ***an amendment of the Kano SUBEB Law.***
125. The Kano SUBEB Law gives each DEC the function of making recommendations to the LGEA about the supply of materials.⁶⁸ Again, it is unclear whether the reference to “materials” includes a reference to the National curriculum. Again, this uncertainty could be rectified by ***an amendment of the Kano SUBEB Law.***
126. The Kano SUBEB Law does enable additional functions to be given—
- to Kano’s SUBEB by the Governor; and
 - to an LGEA by an unnamed person; and
 - to a DEC by an unnamed person.⁶⁹
127. These additional functions could relate to the National curriculum. So, despite the absence of any reference to the National curriculum in the Kano SUBEB Law, there may be power in the Kano SUBEB Law to ensure that the National curriculum is disseminated and used in schools in Kano.
128. However, in as much as any Law of Parliament should clearly convey information to the people who are affected by the Law (including individual teachers and parents, for example), it would be preferable for the Kano SUBEB Law to specifically mention the National curriculum. Also, the Law should specify who is to give additional functions to the LGEAs and DECs. This oversight could be rectified by ***an amendment of the Kano SUBEB Law.***

⁶⁶ See section 8(3) of the Kano SUBEB Law.

⁶⁷ See section 8(3)(f) of the Kano SUBEB Law.

⁶⁸ See section 11(c) of the Kano SUBEB Law.

⁶⁹ See sections 6(1)(t), 11(f) and 11(f) of the Kano SUBEB Law.

129. So, in summary, the Kano SUBEB Law does not specifically provide for a National curriculum.

Teachers

130. This Chapter examines how the Federal and State Laws provide for the employment, deployment and professional development of teachers.

A. Teachers—Federal Law

131. This Part examines how the Federal Law provides for the employment, deployment and professional development of teachers.

132. The Federal Law gives UBEC the functions of—

- regularly carrying out (in concert with the States and Local Governments) a personal audit of teaching staff in basic education institutions in Nigeria; and⁷⁰
- supporting national capacity building (i.e. professional development) for teachers of basic education in Nigeria; and⁷¹
- carrying out such other activities that are relevant and conducive to the discharge of UBEC’s functions.

133. These functions empower UBEC to review pre-service teacher training to identify and rectify any deficiencies in the professional development of trainee teachers, as well as in-service teacher training to identify any deficiencies in the professional development of teachers.

134. Also, the Federal Law empowers UBEC to carry out any other functions that the Minister determines.⁷² However, it is unclear whether the reference to “other functions” is meant to refer to—

- any other functions, including functions relating to the employment or deployment of teachers; or
- other functions that are related to the specified functions, which in this context means other functions that are related to the professional development of teachers.

135. It may be that the Federal Law is deliberately silent about the employment and deployment of teachers, seeing this as a matter that should be left to the State Legislatures to individually provide for in their individual context. However, if this ambiguity was not intentional it could be rectified by ***an amendment of the Federal Law.***

136. UBEC’s ability to perform its functions in relation to teachers is strengthened by the presence on its Board of—

⁷⁰ See section 9(f) of the Federal Law.

⁷¹ See section 9(l) of the Federal Law.

⁷² See section 9(o) of the Federal Law.

- a member of the NUT; and
- a member of the National PTA; and
- a representative of the National Teachers Institute; and
- a representative of the National Commission for Colleges of Education.⁷³

137. So, in summary, the Federal Law provides for the professional development of teachers, but is (perhaps intentionally) silent about the employment and deployment of teachers.

B. Teachers—Jigawa SUBEB Law

138. This Part examines how the Jigawa SUBEB Law provides for the employment, deployment and professional development of teachers.

139. The Jigawa SUBEB Law gives Jigawa’s SUBEB the functions of—

- recruiting and appointing teaching staff of the Board; and
- posting (i.e. deploying) staff (including teaching staff); and
- assessing and funding salaries and allowances of teaching staff; and
- developing staff (including teaching staff); and
- training and re-training teaching staff; and
- annual reports on teachers by heads of schools; and
- disciplining teaching staff; and
- promoting teaching staff; and
- retiring teachers; and
- re-absorbing teachers; and
- preparing testimonials and certificate of service for teaching staff.⁷⁴

140. The reference in the functions to recruiting and appointing teaching staff “of the Board” is unclear as to whether it is meant to refer to teaching staff who are recruited etc.—

- by the Board; or
- to be members of the Board.

141. It is unlikely that the later was intended, given the extent to which the membership of the SUBEB is detailed in the Jigawa SUBEB Law. It is more likely that the former was intended, to enable the SUBEB to recruit and appoint teaching staff for Government schools. However, this ambiguity could be rectified by ***an amendment of the Jigawa SUBEB Law***.

142. The references in the functions to the different terms “teaching staff”, “staff” and “teachers” raises the question of whether or not these terms are intended to have the same or different meanings. This is based on the rule of statutory interpretation that if Parliament uses the same words, the same meaning is intended; and conversely if Parliament uses different words, different meanings are intended. It seems likely that the

⁷³ See section 7(d)(i) and (f)(i) and (ii) of the Federal Law.

⁷⁴ See section 11(c), (d), (e), (g), (i), (j), (k) and (o) of the Jigawa SUBEB Law.

terms are intended to have the same meaning. However, this ambiguity could be rectified by ***an amendment of the Jigawa SUBEB Law.***

143. The reference in the functions to annual reports “on teachers” is unclear as to the intended contents of the report. Is the report to be about—

- statistics on teachers e.g. the number, salary level and qualifications of teachers, for use in the employment and deployment of teachers; or
- the abilities of the teachers, for use in their professional development; or
- something else about teachers.

144. This ambiguity could be rectified by ***an amendment of the Jigawa SUBEB Law.***

145. The Jigawa SUBEB Law also gives each LGEA, acting under the control of Jigawa’s SUBEB, responsibility in the Local Government’s area of jurisdiction for—

- appointing, posting, transferring, promoting and disciplining teaching staff on grade levels 01 to 06; and
- making recommendations to the SUBEB about promoting and disciplining teaching staff on grade levels 07 and above; and
- paying salaries, allowances and other benefits to teaching staff.⁷⁵

146. So, the functions of each LGEA overlap with the functions of Jigawa’s SUBEB in so far as the functions relate to appointing, posting and transferring teaching staff on grade levels 01 to 06. It is unclear whether Parliament intended—

- both Jigawa’s SUBEB and the LGEA to concurrently perform these overlapping functions; or
- the LGEA to exclusively perform these overlapping functions, subject to an amount of control by Jigawa’s SUBEB.

147. The first alternative is not likely to be what was intended, given that it would result in an enormous duplication (and waste) of limited resources. However, this ambiguity could be rectified by ***an amendment of the Jigawa SUBEB Law.***

148. Each LGEA is to be assisted by a DEC which is to make recommendations to the LGEA about—

- disciplining teaching staff; and
- supplying teaching staff.⁷⁶

149. However, the carrying out of all of the functions of each LGEA is to be done by an LGAC.⁷⁷

⁷⁵ See section 18(1)(b) to (d) of the Jigawa SUBEB Law.

⁷⁶ See section 21(b) and (c) of the Jigawa SUBEB Law.

⁷⁷ See section 19(1) of the Jigawa SUBEB Law.

150. The Jigawa SUBEB Law also gives its SUBEB, in relation to private schools that provide basic education in Jigawa, the functions of—

- registering teaching in private schools; and
- coordinating teaching; and
- supervising teaching.⁷⁸

151. The reference to registering “teaching” in private schools is unclear as to whether it is meant to refer to the registering of—

- the teachers who are “teaching” in the private schools; or
- the private schools in which “teaching” is delivered; or
- both the above.

152. This ambiguity could be rectified by ***an amendment of the Jigawa SUBEB Law***.

153. So, the Jigawa SUBEB Law empowers—

- the SUBEB to provide for all aspects of the employment, deployment and professional development of teachers; and
- the LGEAs to provide for certain aspects of the employment, deployment and professional development of teachers.

154. Also, the Jigawa SUBEB Law empowers Jigawa’s SUBEB to perform other functions that the Governor may assign.⁷⁹ So, to the extent that there is any deficiency in the SUBEB’s functions in relation to the employment, deployment and professional development of teachers, that could be overcome by an assignment of the necessary functions by the Governor.

155. The ability of Jigawa’s SUBEB to perform its functions in relation to teachers is strengthened by the presence on the SUBEB of a representative of the Nigeria Union of Teachers.⁸⁰ The ability of each LGEA, and LGAC, to perform the LGEA’s functions is strengthened by the presence on the LGEA, and the LGAC, of a representative from the PTA in the Local Government.⁸¹ Similarly, the ability of each DEC to perform its functions is strengthened by the presence on the Committee of—

- a representative of the NUT in the Local Government Branch; and
- 2 representatives of the PTA in the District.⁸²

156. So, in summary, the Jigawa SUBEB Law provides for all aspects of the employment, deployment and professional development of teachers with input at the State, Local Government and District levels, although there are perhaps some undesirable ambiguities and overlaps in the functions.

⁷⁸ See section 11(d) of the Jigawa SUBEB Law.

⁷⁹ See section 11(q) of the Jigawa SUBEB Law.

⁸⁰ See section 4(1)(x) of the Jigawa SUBEB Law.

⁸¹ See section 19(2)(c)(i) of the Jigawa SUBEB Law.

⁸² See section 20(2)(d) and (e) of the Jigawa SUBEB Law.

B. Teachers—Kaduna SUBEB Law

157. This Part examines how the Kaduna SUBEB Law provides for the employment, deployment and professional development of teachers.

158. The Kaduna SUBEB Law gives Kaduna’s SUBEB the functions of—

- approving teaching staff; and
- recruiting and appointing teaching staff on salary grade 07 and above; and
- posting and deploying staff (including teaching staff, and inter-State transfers); and
- assessing and funding salaries and allowances of teaching staff; and
- training and re-training teaching staff; and
- annual reports by teachers; and
- disciplining teaching staff on salary grade 07 and above; and
- promoting teaching staff on salary grade 07 and above; and
- retiring teaching staff; and
- re-absorbing teaching staff; and
- preparing testimonials and certificate of service for teaching staff; and
- coordinating and supervising teaching.⁸³

159. The reference in the functions to “approving teaching staff” is possibly a reference to the registration of teaching staff as being both qualified to teach (i.e. having sufficient and appropriate teaching qualifications) and suitable to teach (i.e. being a suitable person to be involved with the day-to-day care of children). However, the term is not defined and so Parliament’s meaning is unclear. This ambiguity could be rectified by ***an amendment of the Kaduna SUBEB Law.***

160. The references in the functions to the different terms “teaching staff” and “staff” raises the question of whether or not these terms are intended to have the same or different meanings. This is based on the rule of statutory interpretation that if Parliament uses the same words, the same meaning is intended; and conversely if Parliament uses different words, different meanings are intended. It seems likely that the terms are intended to have the same meaning. However, this ambiguity could be rectified by ***an amendment of the Kaduna SUBEB Law.***

161. The Kaduna SUBEB Law also gives LGEAs, acting under the control of Kaduna’s SUBEB, responsibility in the Local Government areas of jurisdiction for—

- appointing, posting, transferring, promoting and disciplining teaching staff on grade levels 01 to 06; and
- making recommendations to the SUBEB about promoting and disciplining teaching staff on grade levels 07 and above; and
- paying salaries, allowances and other benefits to teaching staff.⁸⁴

⁸³ See section 4(1)(b), (c), (f), (g), (i), (j), (k) and (s) of the Kaduna SUBEB Law.

⁸⁴ See section 7(2)(b), (c) and (e) of the Kaduna SUBEB Law.

162. Each LGEA is to be assisted by a DEC which is—

- to make recommendations to the LGEA about the adequacy of teaching staff; and
- perform other functions that the LGEA assigns to the Committee.⁸⁵

163. So, the Kaduna SUBEB Law empowers—

- the SUBEB to provide for certain aspects of the employment, deployment and professional development of teachers; and
- the LGEAs to provide for certain aspects of the employment, deployment and professional development of teachers.

164. Also, the Kaduna SUBEB Law empowers Kaduna’s SUBEB to perform other functions that the State Government may assign.⁸⁶ So, to the extent that there is any deficiency in the SUBEB’s functions in relation to the employment, deployment and professional development of teachers, that could be overcome by an assignment of the necessary functions by the State Government. However, the Kaduna SUBEB Law does not specify who is to act on behalf of the State Government in this regard, whether it is the Governor or the Commissioner who is to act for the State. This ambiguity in the Kaduna SUBEB Law could be rectified by ***an amendment of the Kaduna SUBEB Law***.

165. The ability of Kaduna’s SUBEB to perform its functions in relation to teachers is strengthened by the presence on the SUBEB of a representative from—

- the State Wing of the NUT; and
- the State PTA.⁸⁷

166. The ability of each LGEA to perform its functions is strengthened by the presence on the LGEA of a representative from the NUT in the Local Government’s area of jurisdiction.⁸⁸ Similarly, the ability of each DEC to perform its functions is strengthened by the presence on the Committee of—

- a representative of the NUT; and
- 2 representatives of the PTA in the area.⁸⁹

167. So, in summary, the Kaduna SUBEB Law provides for all aspects of the employment, deployment and professional development of teachers with input at the State, Local Government and District levels, although there are perhaps some undesirable ambiguities in the functions.

⁸⁵ See section 9(a)(ii) and (e) of the Kaduna SUBEB Law. Contrast the Jigawa SUBEB Law which provides for *all* of the functions to be performed by the LGEA.

⁸⁶ See section 4(2)(t) of the Kaduna SUBEB Law.

⁸⁷ See section 4(5)(e)(i) and (ii) of the Kaduna SUBEB Law.

⁸⁸ See section 6(2)(c) of the Kaduna SUBEB Law.

⁸⁹ See section 8(2)(b) and (d) of the Kaduna SUBEB Law. Contrast the Jigawa SUBEB Law which provides for representation by the National Union of Teachers in the *Local Government Branch* and the PTA in the *District*.

D. Teachers—Kano SUBEB Law

168. This Part examines how the Kano SUBEB Law provides for the employment, deployment and professional development of teachers.

169. The Kano SUBEB Law gives Kano’s SUBEB the following functions—

- to appoint, post to LGEAs, confirm appointments, promote, transfer, dismiss and discipline all teaching staff on grade level 07 and above;
- to draw up a scheme of service, pension scheme and other conditions of service including provisions for vehicles as well as housing loans for teaching staff;
- to assess and fund salaries and allowances of teaching staff;
- to ensure annual reports are tendered by Heads of Schools on teachers serving under them;
- to train and retrain teaching staff;
- to retire and re-absorb teachers;
- to prepare testimonials and certificates of service for teaching staff.⁹⁰

170. The Kano SUBEB Law also gives LGEAs, acting under the control of Kano’s SUBEB, responsibility in the Local Government areas of jurisdiction for—

- the appointment, posting, transfer, promotion and discipline of teaching staff on grade level 01–06;
- making recommendations to the SUBEB on promotion and discipline of teaching staff on grade level 07 and above;
- the payment of salaries and allowances and other benefits to all teaching staff.⁹¹

171. Also, the Kano SUBEB Law empowers Kano’s SUBEB to perform any other functions that the Governor or UBEC may assign.⁹² So, to the extent that there is any deficiency in the SUBEB’s functions in relation to the employment, deployment and professional development of teachers, that could be overcome by an assignment of the necessary functions by the Governor or UBEC.

172. The ability of Kano’s SUBEB to perform its functions in relation to teachers is strengthened by the presence on the SUBEB of a representative from—

- the State Wing of the NUT; and
- the State PTA.⁹³

173. The ability of each LGEA to perform its functions is strengthened by the presence on the LGEA of a representative from—

- the branch of the NUT in the Local Government area of jurisdiction; and

⁹⁰ See section 6(1) of the Kano SUBEB Law.

⁹¹ See section 8(3) of the Kano SUBEB Law.

⁹² See section 6(1)(t) of the Kano SUBEB Law.

⁹³ See section 4(c) of the Kano SUBEB Law.

- the PTA in the Local Government area of jurisdiction.⁹⁴

174. Similarly, the ability of each DEC to perform its functions is strengthened by the presence on the Committee of—

- a representative of the local branch of the NUT; and
- 2 representatives of the local branch of the PTA.⁹⁵

175. So, in summary, the Kano SUBEB Law provides for all aspects of the employment, deployment and professional development of teachers with input at the State, Local Government and District levels.

Millennium Development Goals

176. This Chapter examines how the Federal and State Laws provide for the realisation of the MDGs for education and gender.

177. The MDG for education aims to ensure that children everywhere, boys and girls alike, will be able to complete a full course of primary schooling. This means not just ensuring that children are enrolled in schools, but also ensuring the children actually attend school.

178. The MDG for gender aims to promote gender equality and empowering women in order to eliminate gender disparity. This involves women participating in Government and in the development and implementation of Government policies.

179. The MDGs are part of a framework for development which is to be achieved through Government leadership and policies. Some of these policies are incorporated into legislation. The legislation being examined in this report contains some, though not all, of the policies of the Federal and State Legislatures.

A.MDG—Federal Law

180. This Part examines how the Federal Law provides for the realisation of the MDGs for education and gender.

181. In relation to education, the Federal Law requires every Government in Nigeria to provide free, compulsory education for every child of primary school and JSS age. This includes the provision, free of charge, of books, instructional material, classroom furniture and lunch.⁹⁶

182. This duty on Governments in Nigeria to provide UBE is supported by a corresponding duty that the Federal Law imposes on the Federal Government to finance the implementation of UBE.⁹⁷

⁹⁴ See section 9(2) of the Kano SUBEB Law.

⁹⁵ See section 10(2)(d) and (e) of the Kaduna SUBEB Law.

⁹⁶ See the definition of “services” in section 15(1) of the Federal Law.

183. The Federal Law also requires—

- every parent or guardian of children to ensure that their children attend and complete UBE; and
- every stakeholder in education, in a Local Government area of jurisdiction, to ensure that every parent or guardian of children ensures their children attend and complete UBE.⁹⁸

184. The duty on a parent to ensure their children attend and complete UBE is reinforced by making it an offence for a parent to contravene this duty.⁹⁹ The penalty for this contravention ranges from a reprimand on the first contravention to imprisonment for subsequent contraventions. The fact that imprisonment is a possible penalty indicates just how seriously the Nigerian Parliament takes this breach of duty.

185. In relation to gender, the Federal Law clearly states that UBE relates to girls and women.¹⁰⁰

186. The Federal Law also requires representation from a women’s group on the UBEC.¹⁰¹ However, that specific representation is limited to 1 of the 17 UBEC members, and there is no requirement that a quota of the other members be women. The use of a gender quota system is a mechanism that the UN suggests be used to promote gender equality.¹⁰² A requirement for a gender quota system could be added by ***an amendment of the Federal Law.***

187. Also, the Federal Law does not require that a quota of the members of the SUBEBs or LGEAs be women. A requirement for a gender quota system could be added by ***an amendment of the Federal Law.***

188. So, in summary, the Federal Law provides support for the realisation of the MDGs for education and provides some, though not optimal, support for the realisation of the MDG for gender.

B. MDG—Jigawa SUBEB Law

189. This Part examines how the Jigawa SUBEB Law provides for the realisation of the MDGs for education and gender.

190. In relation to education, the Jigawa SUBEB Law gives the LGEAs responsibility for taking all reasonable steps to ensure full enrolment and attendance in all primary schools and JSS

⁹⁷ See section 11 of the Federal Law.

⁹⁸ See section 2 and 3 of the Federal Law. Also see the definition of “parent” which defines a reference to a parent to include a reference to a guardian or other carer of children (including a grandparent caring for their orphaned grandchild, for example).

⁹⁹ See section 4 of the Federal Law.

¹⁰⁰ See the definition of UBE in section 15(1) of the Federal Law.

¹⁰¹ See section 7(1)(d)(ii) of the Federal Law.

¹⁰² See the Millennium Development Goals Report 2007 of the United Nations.

within the Local Government’s area of jurisdiction.¹⁰³ The Jigawa SUBEB Law also requires the DECs to ensure enrolment and full attendance in all primary schools and JSS in each District.¹⁰⁴ While there is room for both LGEAs and DECs to be involved in performing aspects of this function, the Jigawa SUBEB Law does not make the desired interaction clear. This overlap is likely to result in the duplication (and waste) of limited resources, as well as blur the lines of accountability which may result in the function not being performed by either LGEAs or DECs. This overlap could be rectified by ***an amendment of the Jigawa SUBEB Law.***

191. The Jigawa SUBEB Law gives DECs the function of promoting and encouraging community interest and participation in the running of primary school and JSS education in each District.¹⁰⁵ While this is a very broad function which could relate to many aspects of education that are assisted by community participation (including fund raising and school maintenance, for example), this function could also empower DECs—

- to educate the community about the short- and long-term benefits of school attendance for their children; and
- to implement mechanisms to remove impediments that prevent parents from releasing their children from home duties to attend school.

192. In relation to gender, the Jigawa SUBEB Law requires representation from a women’s group on Jigawa’s SUBEB, LGACs and DECs. However, that specific representation is limited to—

- 2 of the 13 SUBEB members; and
- 1 of the 13 LGAC members; and
- 2 of the 13 DEC members.¹⁰⁶

193. The use of a gender quota system is a mechanism that the UN suggests be used to promote gender equality.¹⁰⁷ The Jigawa SUBEB Law does not require that a quota of the other members of the SUBEB, LGEA or DEC be women. A requirement for a gender quota system could be added by ***an amendment of the Jigawa SUBEB Law.***

194. So, in summary, the Jigawa SUBEB Law provides support for the realisation of the MDGs for education and provides some, though not optimal, support for the realisation of the MDG for gender.

C. MDG—Kaduna SUBEB Law

195. This Part examines how the Kaduna SUBEB Law provides for the realisation of the MDGs for education and gender.

¹⁰³ See section 18(1)(h) of the Jigawa SUBEB Law.

¹⁰⁴ See section 21(a) of the Jigawa SUBEB Law.

¹⁰⁵ See section 21(d) of the Jigawa SUBEB Law.

¹⁰⁶ See sections 4(1), 19(2) and 20(2) of the Jigawa SUBEB Law.

¹⁰⁷ See the Millennium Development Goals Report 2007 of the United Nations.

196. It should be stressed at the beginning that the Kaduna SUBEB Law provides only in relation to primary school and not in relation to JSS. This is in keeping with the allocation, under the Kaduna SUBEB Law, of responsibility for JSS to the MOE.

197. In relation to primary school education, the Kaduna SUBEB Law gives the LGEAs responsibility for taking all reasonable steps to ensure full enrolment and attendance in all primary schools within the Local Government’s area of jurisdiction.¹⁰⁸ The Kaduna SUBEB Law also requires the DEC’s to ensure good enrolment and full attendance in all primary schools in each District.¹⁰⁹ While there is room for both LGEAs and DEC’s to be involved in performing aspects of these functions, the Kaduna SUBEB Law does not make the desired interaction clear. This overlap is likely to result in the duplication (and waste) of limited resources, as well as blur the lines of accountability which may result in functions not being performed by either LGEAs or DEC’s. This overlap could be rectified by ***an amendment of the Kaduna SUBEB Law.***

198. The LGEAs also have the function of stimulating promotion and encouraging communal participation in the running of primary schools in the Local Government’s area of jurisdiction.¹¹⁰ While this is a very broad function which could relate to many aspects of education that are assisted by community participation (including fund raising and school maintenance, for example), this function also empowers DEC’s—

- to educate the community about the short- and long-term benefits of school attendance for their children; and
- to implement mechanisms to remove impediments that prevent parents from releasing their children from home duties to attend school.

199. The DEC’s also have the function of promoting and encouraging communal interest and participation in the running of primary education in each District.¹¹¹ This very broad function could also be used in the ways suggested for the LGEAs. While there is room for both LGEAs and DEC’s to be involved in performing aspects of these functions, the Kaduna SUBEB Law does not make the desired interaction clear. This overlap is likely to result in the duplication (and waste) of limited resources, as well as blur the lines of accountability which may result in functions not being performed by either LGEAs or DEC’s. This could be rectified by ***an amendment of the Kaduna SUBEB Law.***

200. In relation to gender, the Kaduna SUBEB Law requires representation from a women’s group on Kaduna’s SUBEB, LGEAs and DEC’s. However, that specific representation is limited to—

- 1 of the 13 SUBEB members; and

¹⁰⁸ See section 7(2)(i) of the Kaduna SUBEB Law.

¹⁰⁹ See section 9(c) of the Kaduna SUBEB Law.

¹¹⁰ See section 7(2)(h) of the Kaduna SUBEB Law.

¹¹¹ See section 9(b) of the Kaduna SUBEB Law.

- 1 of the 12 LGEA members; and
- 1 of the 11 DEC members¹¹²

201. There is no requirement that a quota of the other members of the SUBEB, LGEA or DEC be women. The use of a gender quota system is a mechanism that the UN suggests be used to promote gender equality.¹¹³ A requirement for a gender quota system could be added by ***an amendment of the Kaduna SUBEB Law.***

202. So, in summary, the Kaduna SUBEB Law provides support for the realisation of the MDGs for education and provides some, though not optimal, support for the realisation of the MDG for gender.

D. MDG—Kano SUBEB Law

203. This Part examines how the Kano SUBEB Law provides for the realisation of the MDGs for education and gender.

204. In relation to education, the Kano SUBEB Law gives the LGEAs responsibility for taking all reasonable steps to ensure full enrolment and attendance in all primary schools, JSS and nomadic schools within the Local Government’s area of jurisdiction.¹¹⁴ The Kano SUBEB Law also requires the DECs to ensure enrolment and full attendance in all primary schools, JSS and nomadic schools in each District.¹¹⁵ While there is room for both LGEAs and DECs to be involved in performing aspects of this function, the Kano SUBEB Law does not make the desired interaction clear. This overlap is likely to result in the duplication (and waste) of limited resources, as well as blur the lines of accountability which may result in the function not being performed by either LGEAs or DECs. This overlap could be rectified by ***an amendment of the Kano SUBEB Law.***

205. The Kano SUBEB Law gives DECs the function of promoting and encouraging community interest and participation in the running of primary school, JSS and nomadic schools education in each District.¹¹⁶ While this is a very broad function which could relate to many aspects of education that are assisted by community participation (including fund raising and school maintenance, for example), this function could also empower DECs—

- to educate the community about the short- and long-term benefits of school attendance for their children; and
- to implement mechanisms to remove impediments that prevent parents from releasing their children from home duties to attend school.

¹¹² See sections 4(5), 6(2) and 8(2) of the Kaduna SUBEB Law.

¹¹³ See the Millennium Development Goals Report 2007 of the United Nations.

¹¹⁴ See section 8(3)(h) of the Kano SUBEB Law.

¹¹⁵ See section 11(a) of the Kano SUBEB Law.

¹¹⁶ See section 11(d) of the Kano SUBEB Law.

206. In relation to gender, the Kano SUBEB Law requires representation from a women’s group on Kano’s SUBEB and LGECs. However, that specific representation is limited to—

- 1 of the 13 SUBEB members; and
- 1 of the 10 LGEC members.¹¹⁷

207. The use of a gender quota system is a mechanism that the UN suggests be used to promote gender equality.¹¹⁸ The Kano SUBEB Law does not require that a quota of the other members of the SUBEB, LGEA or DEC be women. A requirement for a gender quota system could be added by ***an amendment of the Kano SUBEB Law***.

208. So, in summary, the Kano SUBEB Law provides support for the realisation of the MDGs for education and provides some, though not optimal, support for the realisation of the MDG for gender.

Framework for roles, responsibilities and accountabilities of key actors

209. This Chapter examines the extent to which the Federal and State Laws provide a suitable and clear framework for the establishment of—

- the defining roles and responsibilities, i.e. the functions, of key actors at the Federal, State, Local Government and Community levels; and
- the accountabilities of key actors at the Federal, State, Local Government and Community levels.

A. Framework—Federal Law

210. This Part examines the extent to which the Federal Law provides a suitable and clear framework for the establishment of the functions and accountabilities of key actors at each level.

211. The Federal Law establishes UBEC, and identifies the SUBEBs and the LGEAs, as the Federal, State and Local Government actors in relation to UBE.¹¹⁹ The Federal Law defines the functions of UBEC, and makes each member of UBEC’s Board accountable to the President for their performance on the Board.¹²⁰ However, in relation to the SUBEBs and LGEAs, the Federal Law has deliberately deferred the definition of their respective functions and accountabilities to the State Legislatures.¹²¹ This was likely done to ensure that each State would be able to tailor-make the functions and accountabilities to suit the State’s individual context, in order to maximise the effectiveness of the State entities.

¹¹⁷ See sections 4 and 9(2) of the Kano SUBEB Law.

¹¹⁸ See the Millennium Development Goals Report 2007 of the United Nations.

¹¹⁹ See sections 7(1), 12(1) and 13(1) of the Federal Law.

¹²⁰ See sections 9 and 8(2) of the Federal Law.

¹²¹ See sections 12(2) and 13(2) of the Federal Law.

212. So, in summary, the Federal Law provides a suitable and clear framework for the establishment of the key actors at each level and, as far as is reasonably appropriate, their functions and accountabilities.

B. Framework—Jigawa SUBEB Law

213. This Part examines the extent to which the Jigawa SUBEB Law provides a suitable and clear framework for the establishment of the functions and accountabilities of key actors at each level.

214. As discussed in clauses 145 and 147 above, there is an overlap of the functions of Jigawa’s SUBEB and the LGEAs in relation to the employment, deployment and professional development of teachers. As suggested in clause 147, this overlap could be rectified by an amendment of the Jigawa SUBEB Law.

215. Also, as discussed in clause 190 above, the Jigawa SUBEB Law gives the LGEAs and DECs similar functions in relation to ensuring enrolment and attendance in primary schools. As suggested in clause 190, this overlap could be rectified by an amendment of the Jigawa SUBEB Law.

216. Another overlapping function that has been widely reported is the inspection function. The State Government, Jigawa’s SUBEB and each LGEA has an inspections unit. However, the Jigawa SUBEB Law is silent about how the inspection function is to be shared between these entities. This could be rectified by ***an amendment of the Jigawa SUBEB Law.***

217. Of equal importance to functions that are overlapping, are the functions that are not mentioned in the Jigawa SUBEB Act. Most significantly, no mention is made of the relationship between Jigawa’s SUBEB and the other entities that are involved in the delivery of UBE in Jigawa. These entities include—

- the FMOE, which is responsible for education policy, including education policy that relates to UBE; and
- the relevant State Ministries, including the SMOE and the Ministry responsible for Local Government; and
- the ANE, which is responsible for managing—
 - primary schools for nomadic children; and
 - literacy classes for nomadic adults; and¹²²
- the IEB, which is responsible for integrating Qur’anic and Islamic schools education with the formal education system; and¹²³
- the SBMCs, which represent the views of the local community in relation to the delivery of UBE; and
- the STSB, which is responsible for managing the science and technology orientated JSS.

¹²² See section 6(2) of Jigawa’s *Agency for Nomadic Education Law 2008*.

¹²³ See section 4(9) of Jigawa’s *Islamic Education Bureau Edict 1998*.

218. Also, no mention is made in the Jigawa SUBEB Law of the AME, which is responsible for carrying out literacy programmes for young persons and adults.¹²⁴ Even though the AME, as a provider of informal education, is not involved in the delivery of UBE,¹²⁵ there are obvious synergies that could be expanded on.

219. To maximise the synergies between the entities that are involved in delivering UBE, and promote mutual understanding of functions and duties, the Jigawa SUBEB Act should clearly state the relationships between all these entities. The relationships between these entities, whether the relationship involves funding, reporting or cooperation, could be clarified by **an amendment of the Jigawa SUBEB Law**. For an example of how this could be done, see *Jigawa’s Agency for Nomadic Education Law 2008*, which requires Jigawa’s ANE—

- to collaborate with the AME; and
- to liaise with the National Commission for Nomadic Education for the co-ordination of all activities and programmes related to nomadic education; and
- to co-operate with other participating Ministries and Agencies, including the SMOE and the Department for Local Government Affairs and Community Development; and¹²⁶
- to obtain information from the Local Government; and
- to ensure effective monitoring and evaluation programmes of nomadic education through—
 - the Federal and State Ministries of Education; and
 - the Primary Education Board; and
 - the Local Government Councils.¹²⁷

220. Although Jigawa’s SUBEB has been created as a State Government entity that is independent of the SMOE, a balance needs to be struck between establishing that independence and at the same time still enabling the SMOE to govern the education system efficiently. In a presidential system of government like Nigeria, the Commissioner for Education, as the head of the SMOE, is answerable to the Governor of the State for the performance of the SMOE. To perform this role, the Commissioner must have some general power over the SUBEB. For example, the Commissioner should have the power to request information from the SUBEB and should receive regular briefings from Ministry officials about the SUBEB. The Jigawa SUBEB Law should clearly state the interaction between the SUBEB and the Commissioner for Education and SMOE. It does not currently do so. This could be rectified by **an amendment of the Jigawa SUBEB Law**.

¹²⁴ See section 3(3) of *Jigawa’s Establishment of the Agency for Mass Education Law 2008*.

¹²⁵ See the definition of “basic education” in the Federal Law which relates only to *formal* education.

¹²⁶ See section 6(2) of *Jigawa’s Agency for Nomadic Education Law 2008*.

¹²⁷ See section 6(2) of *Jigawa’s Agency for Nomadic Education Law 2008*.

221. Another area that could benefit from some clarification relates to the employment of the staff of the SUBEB and of teachers. It is unclear from the Jigawa SUBEB Law whether the staff and teachers are public servants. The Law states that the SUBEB may appoint and exercise disciplinary control over its staff and teachers.¹²⁸ This is not consistent with disciplinary control being exercised by the MDA responsible for public servants, and would refute any implication that the staff and teachers are public servants. The Law goes on to provide that service under the Board is “deemed” to be public service for certain purposes, as if without this statement the staff are not entitled to the benefits and protections available to public servants.¹²⁹ If the staff and teachers are indeed intended to be public servants, this should be clarified by ***an amendment of the Jigawa SUBEB Law***.

222. So, in summary, there are undesirable overlaps and omissions in the functions of the actors in the Jigawa SUBEB Law.

C. Framework—Kaduna SUBEB Law

223. This Part examines the extent to which the Kaduna SUBEB Law provides a suitable and clear framework for the establishment of the functions and accountabilities of key actors at each level.

224. The Kaduna SUBEB Law states that the Education Secretary of each LGEA is to be appointed, and therefore may be removed, by the Chairman of the Local Government.¹³⁰ However, each LGEA, and therefore each Education Secretary, is to carry out the LGEA’s functions subject to the control of Kaduna’s SUBEB.¹³¹ This may result in an Education Secretary receiving 2 sets of instructions, which may possibly conflict. This is undesirable for the smooth functioning of the LGEA. This could be rectified by ***an amendment of the Kaduna SUBEB Law***.

225. The Kaduna SUBEB Law gives Kaduna’s SUBEB the function of maintaining and rehabilitating school infrastructure.¹³² The Kaduna SUBEB Law also gives the LGEAs the function of undertaking general maintenance of primary school infrastructure.¹³³ This appears to be an overlap of functions. While there is room for both the SUBEB and LGEAs to be involved in performing aspects of these functions, the Kaduna SUBEB Law does not make the desired interaction clear. This overlap is likely to result in the duplication (and waste) of limited resources, as well as blur the lines of accountability which may result in functions not being performed by either the SUBEB or LGEAs. This could be rectified by ***an amendment of the Kaduna SUBEB Law***.

¹²⁸ See sections 11(c) and (d) and 13(1) of the Jigawa SUBEB Law.

¹²⁹ See section 14(2) of the Jigawa SUBEB Law.

¹³⁰ See section 6(2)(j) of the Kaduna SUBEB Law. Contrast the Jigawa SUBEB Law which requires the Education Secretary to be appointed by the Governor on the recommendation of the Commissioner.

¹³¹ See section 7(1) of the Kaduna SUBEB Law.

¹³² See section 4(2)(n) of the Kaduna SUBEB Law.

¹³³ See section 7(2)(g) of the Kaduna SUBEB Law.

226. The Kaduna SUBEB Law gives Kaduna’s SUBEB the function of purchasing and distributing instructional materials.¹³⁴ The Kaduna SUBEB Law also gives the LGEAs the function of acquiring and distributing materials and equipment to primary schools.¹³⁵ This appears to be an overlap of functions. While there is room for both the SUBEB and LGEAs to be involved in performing aspects of these functions, the Kaduna SUBEB Law does not make the desired interaction clear. This overlap is likely to result in the duplication (and waste) of limited resources, as well as blur the lines of accountability which may result in functions not being performed by either the SUBEB or LGEAs. This could be rectified by **an amendment of the Kaduna SUBEB Law**.

227. Another overlapping function that has been widely reported is the inspection function. The State Government, Kaduna’s SUBEB and each LGEA has an inspections unit. However, the Kaduna SUBEB Law is silent about how the inspection function is to be shared between these entities. This could be rectified by **an amendment of the Kaduna SUBEB Law**.

228. Also, as discussed in clauses 197 to 199 above, the Kaduna SUBEB Law gives the LGEAs and DECs similar functions in relation to—

- ensuring enrolment and attendance in primary schools; and
- stimulating promotion and encouraging communal participation in the running of primary schools.

229. As suggested in clauses 197 and 199, these overlaps could be rectified by an amendment of the Kaduna SUBEB Law.

230. Of equal importance to functions that are overlapping, are the functions that are not mentioned in the Kaduna SUBEB Act. Most significantly, no mention is made of the relationship between Kaduna’s SUBEB and the other entities that are involved in the delivery of UBE in Kaduna. These entities include—

- the FMOE, which is responsible for education policy, including education policy that relates to UBE; and
- the relevant State Ministries, including the SMOE and the Ministries that are responsible for—
 - Science and Technology; and
 - Local Government; and
- the SBMCs, which represent the views of the local community in relation to the delivery of UBE; and

231. Also, no mention is made in the Kaduna SUBEB Law of the AME, which is responsible for carrying out literacy programmes for young persons and adults. Even though the AME, as

¹³⁴ See section 4(2)(q) of the Kaduna SUBEB Law.

¹³⁵ See section 7(2)(f) of the Kaduna SUBEB Law.

a provider of informal education, is not involved in the delivery of UBE,¹³⁶ there are obvious synergies that could be expanded on.

232. To maximise the synergies between the entities that are involved in delivering UBE, and promote mutual understanding of functions and duties, the Kaduna SUBEB Act should clearly state the relationships between all these entities. The relationships between these entities, whether the relationship involves funding, reporting or cooperation, could be clarified by ***an amendment of the Kaduna SUBEB Law.***

233. Although Kaduna's SUBEB has been created as a State Government entity that is independent of the SMOE, a balance needs to be struck between establishing that independence and at the same time still enabling the SMOE to govern the education system efficiently. In a presidential system of government like Nigeria, the Commissioner for Education, as the head of the SMOE, is answerable to the Governor of the State for the performance of the SMOE. To perform this role, the Commissioner must have some general power over the SUBEB. For example, the Commissioner should have the power to request information from the SUBEB and should receive regular briefings from Ministry officials about the SUBEB. The Kaduna SUBEB Law should clearly state the interaction between the SUBEB and the Commissioner for Education and SMOE. It does not currently do so. This could be rectified by ***an amendment of the Kaduna SUBEB Law.***

234. Another area that could benefit from some clarification relates to the employment of the staff of the SUBEB and of teachers. It is unclear from the Kaduna SUBEB Law whether the staff and teachers are public servants. The Law states that the SUBEB may appoint and exercise disciplinary control over its staff and teachers, on salary grade 07 and above.¹³⁷ This is not consistent with disciplinary control being exercised by the MDA responsible for public servants, and would refute any implication that the staff and teachers are public servants. The Law goes on to provide that service under the Board is "approved service" for the pensions Law, as if without this statement the staff are not entitled to the benefits and protections available to public servants.¹³⁸ If the staff and teachers are indeed intended to be public servants, this should be clarified by ***an amendment of the Kaduna SUBEB Law.***

235. So, in summary, there are undesirable overlaps and omissions in the functions of the actors in the Kaduna SUBEB Law.

¹³⁶ See the definition of "basic education" in the Federal Law which relates only to *formal* education.

¹³⁷ See section 4(2)(b) of the Kaduna SUBEB Law.

¹³⁸ See section 10 of the Kaduna SUBEB Law.

D. Framework—Kano SUBEB Law

236. This Part examines the extent to which the Kano SUBEB Law provides a suitable and clear framework for the establishment of defining roles, responsibilities and accountabilities of key actors at each level.

237. The Kano SUBEB Law states that the Education Secretary of each LGEA is to be appointed, and therefore may be removed, under the Local Government Law.¹³⁹ However, each LGEA, and therefore each Education Secretary, is to carry out the LGEA's functions subject to the control of Kano's SUBEB.¹⁴⁰ This may result in an Education Secretary receiving 2 sets of instructions, which may possibly conflict. This is undesirable for the smooth functioning of the LGEA. This could be rectified by **an amendment of the Kano SUBEB Law**.

238. As discussed in clause 204 above, the Kano SUBEB Law gives the LGEAs and DEC's similar functions in relation to ensuring enrolment and attendance in primary schools. As suggested in clause 204, this overlap could be rectified by an amendment of the Kano SUBEB Law.

239. Another overlapping function that has been widely reported is the inspection function. The State Government, Kano's SUBEB and each LGEA has an inspections unit. However, the Kano SUBEB Law is silent about how the inspection function is to be shared between these entities. This could be rectified by **an amendment of the Kano SUBEB Law**.

240. Of equal importance to functions that are overlapping, are the functions that are not mentioned in the Kano SUBEB Act. Most significantly, no mention is made of the relationship between Kano's SUBEB and the other entities that are involved in the delivery of UBE in Kano. These entities include—

- the FMOE, which is responsible for education policy, including education policy that relates to UBE; and
- the relevant State Ministries, including the SMOE and the Ministry for Local Government; and
- the State Department of Arabic and Islamic Education, which is responsible for integrating Islamic, Qur'anic and Tsangaya schools education with the formal education system; and
- the SBMCs, which represent the views of the local community in relation to the delivery of UBE; and
- the STSB, which is responsible for managing the science and technology orientated JSS.

¹³⁹ See section 8(2) of the Kano SUBEB Law. Contrast the Jigawa SUBEB Law which requires the Education Secretary to be appointed by the Governor on the recommendation of the Commissioner.

¹⁴⁰ See section 8(1) of the Kano SUBEB Law.

241. Also, no mention is made in the Kano SUBEB Law of the AME, which is responsible for carrying out literacy programmes for young persons and adults.¹⁴¹ Even though the AME, as a provider of informal education, is not involved in the delivery of UBE,¹⁴² there are obvious synergies that could be expanded on.
242. To maximise the synergies between the entities that are involved in delivering UBE, and promote mutual understanding of functions and duties, the Kano SUBEB Act should clearly state the relationships between all these entities. The relationships between these entities, whether the relationship involves funding, reporting or cooperation, could be clarified by ***an amendment of the Kano SUBEB Law.***
243. Although Kano's SUBEB has been created as a State Government entity that is independent of the SMOE, a balance needs to be struck between establishing that independence and at the same time still enabling the SMOE to govern the education system efficiently. In a presidential system of government like Nigeria, the Commissioner for Education, as the head of the SMOE, is answerable to the Governor of the State for the performance of the SMOE. To perform this role, the Commissioner must have some general power over the SUBEB. For example, the Commissioner should have the power to request information from the SUBEB and should receive regular briefings from Ministry officials about the SUBEB. The Kano SUBEB Law should clearly state the interaction between the SUBEB and the Commissioner for Education and SMOE. It does not currently do so. This could be rectified by ***an amendment of the Kano SUBEB Law.***
244. Another area that could benefit from some clarification relates to the employment of the staff of the SUBEB and of teachers. It is unclear from the Kano SUBEB Law whether the staff and teachers are public servants. The Law states that the SUBEB may appoint and exercise disciplinary control over its staff and teachers, on salary grade 07 and above.¹⁴³ This is not consistent with disciplinary control being exercised by the MDA responsible for public servants, and would refute any implication that the staff and teachers are public servants. If the staff and teachers are indeed intended to be public servants, this should be clarified by ***an amendment of the Kano SUBEB Law.***
245. So, in summary, there are undesirable overlaps and omissions in the functions of the actors in the Kano SUBEB Law.

¹⁴¹ See section 3(3) of Jigawa's *Establishment of the Agency for Mass Education Law 2008*.

¹⁴² See the definition of "basic education" in the Federal Law which relates only to *formal* education.

¹⁴³ See section 6(1)(c) of the Kano SUBEB Law.

State Education Sector Plans

246. This Chapter examines the extent to which the State Laws provide an adequate framework to support the sustainable implementation of the respective State Education Sector/Strategic Plans.¹⁴⁴

A. ESP—Jigawa SUBEB Law

247. This Part examines the extent to which the Jigawa SUBEB Law provides an adequate framework to support the sustainable implementation of the Jigawa ESP.

248. The Jigawa SUBEB Law commenced in 2008. The activities that culminated in the Jigawa ESP commenced later that same year, after the Jigawa SUBEB Law commenced. So, any support that the earlier Jigawa SUBEB Law gives to the sustainable implementation of the later Jigawa ESP could be said to be merely coincidental.

249. The Jigawa ESP states the policy goals for education in Jigawa, together with a variety of strategies that are to be used to achieve these goals.¹⁴⁵ Many of these strategies are supported by the Jigawa SUBEB Law, including strategies relating to—

- financing of UBE; and
- the delivery of instructional materials; and
- the employment and professional development of teachers; and
- the enrolment and attendance of children at school; and
- gender equality; and
- community participation; and
- school infrastructure.

250. Although, as mentioned above, the Jigawa SUBEB Law could be improved in these respects by amendments suggested above.

251. However, not all of the strategies are supported by the Jigawa SUBEB Law. For example, PME3 of the Jigawa ESP anticipates that legislative amendment will be necessary for the devolution of authority for educational management.

252. So, in summary, the Jigawa SUBEB Law does not provide an adequate framework to support the sustainable implementation of the Jigawa ESP.

B. ESP—Kaduna SUBEB Law

253. This Part examines the extent to which the Kaduna SUBEB Law provides an adequate framework to support the sustainable implementation of the Kaduna ESP.

¹⁴⁴ Unlike the Jigawa and Kaduna plans, the Kano plan is stated to be a strategic plan rather than a sector plan.

¹⁴⁵ See section 4 of the Jigawa ESP.

254. The Kaduna SUBEB Law commenced in 2005. The activities that culminated in the Kaduna ESP commenced in 2007, after the Kaduna SUBEB Law commenced. So, any support that the earlier Kaduna SUBEB Law gives to the sustainable implementation of the later Kaduna ESP could be said to be merely coincidental. However, the Kaduna ESP was written with the Kaduna SUBEB Law specifically in mind, and the Kaduna ESP itself identifies deficiencies in the Kaduna SUBEB Law.¹⁴⁶

255. The Kaduna ESP states that the policy goals for education in Kaduna are to establish a solid foundation of educational development, by providing full access to, and improving the quality of, UBE.¹⁴⁷ The Kaduna ESP also provides a variety of strategies that are to be used to achieve these goals. Many of these strategies are supported by the Kaduna SUBEB Law, including strategies relating to—

- financing of UBE; and
- the delivery of instructional materials; and
- the employment and professional development of teachers; and
- the enrolment and attendance of children at school; and
- gender equality; and
- community participation; and
- school infrastructure.

256. Although, as mentioned above, the Kaduna SUBEB Law could be improved in these respects by amendments suggested above.

257. However, not all of the strategies are supported by the Kaduna SUBEB Law. For example, the Kaduna SUBEB Law does not support strategy 5.5.2 which relates to the regulation of the private sector for quality and value for money. Indeed, the Kaduna SUBEB Law makes no mention of private schools at all. While the regulation of private (i.e. non-government) schools is permissible, this type of intervention, which touches on personal rights and freedoms, requires unequivocal legislation to do so. This legislative power could be provided by ***an amendment of the Kaduna SUBEB Law***.

258. So, in summary, the Kaduna SUBEB Law does not provide an adequate framework to support the sustainable implementation of the Kaduna ESP.

C. ESP—Kano SUBEB Law

259. This Part examines the extent to which the Kano SUBEB Law provides an adequate framework to support the sustainable implementation of the Kano ESP.

260. The Kano SUBEB Law commenced in 2005. The activities that culminated in the Kano ESP commenced in 2007, after the Kano SUBEB Law commenced. So, any support that the

¹⁴⁶ See clause 2.3.1 of the Kaduna ESP, for example.

¹⁴⁷ See clause 3.1 of the Kaduna ESP.

earlier Kano SUBEB Law gives to the sustainable implementation of the later Kano ESP could be said to be merely coincidental. However, the Kano ESP was written with the Kano SUBEB Law specifically in mind, and the Kano ESP itself identifies deficiencies in the Kano SUBEB Law.¹⁴⁸

261. The overriding priority of the Kano ESP is to ensure that citizens receive 9 years of good quality UBE.¹⁴⁹ The Kano ESP provides a variety of strategies that are to be used to achieve this goal. Many of these strategies are supported by the Kano SUBEB Law, including strategies relating to—

- financing of UBE; and
- the delivery of instructional materials; and
- the employment and professional development of teachers; and
- the enrolment and attendance of children at school; and
- gender equality; and
- community participation; and
- school infrastructure.

262. However, not all strategies are supported by the Kano SUBEB Law. For example, clause 3.2 of the Kano ESP anticipates that legislative amendment will be necessary to prescribe and enforce new minimum qualifications for teachers.¹⁵⁰

263. So, in summary, the Kano SUBEB Law does not provide an adequate framework to support the sustainable implementation of the Kano ESP.

¹⁴⁸ See clause 2.5 of the Kano ESP, for example.

¹⁴⁹ See clause 3 of the Kano ESP.

¹⁵⁰ See the final sentence of the paragraph at the end of page 6 of the Kano ESP.

Options and next steps

264. This Chapter examines options that are available to improve the legislation for the delivery of UBE, both in the short-term and the long-term.

Options—Short-term

265. This Part examines viable short-term options.

266. The legislative process to change a Law generally takes at least 1 year (unless the Law deals with something that the Government sees as urgent). This process involves—

- the development of the new policy that will be implemented by the new Law; and
- extensive consultation with all stakeholders, both public and private, on the proposed new policy; and
- the drafting of the new Law; and
- extensive consultation with all stakeholders, both public and private, on the proposed new Law; and
- the refining of the proposed new Law to incorporate agreed changes to the policy after that consultation; and
- the debate and passage of the new Law in the Legislature; and
- the assent to the new Law.

267. While waiting for the Law to be changed, it is possible to achieve some progress through administrative rather than legislative means. These administrative means can, for example, take the form of—

- the creation of a joint taskforce, which is made up of members¹⁵¹ of the various entities that are involved in the delivery of UBE, that will develop policy alternatives, identify preferred solutions, and make decisions, about how to improve the system for the delivery of UBE; and
- the signing of a Memorandum of Understanding (MOU), to formally recognise the agreed outcomes of the joint taskforce.

268. The joint taskforce could, for example, negotiate an agreement between the entities that—

- demarcates responsibility for overlapping functions; and
- provides for lines of reporting, liaison and collaboration.

269. The agreement negotiated by the taskforce would then be formally recognised in an MOU signed by the entities. It must be stressed that an MOU cannot bestow new functions on

¹⁵¹ The members of the taskforce should be of sufficient seniority that they can speak on behalf of the entity, and have direct access to the decision-making body of the entity, to ensure the activities of the taskforce are not delayed.

an entity, but must relate to the existing functions that the entity already has under its empowering Law.

270. The joint taskforce could also be given the task of going through the existing Law, line by line, to identify where the Law does not reflect the desired future organisational structures, or even the existing structures that have evolved in practice since the existing Law was enacted. For example, the Kano SUBEB Law specifies that there are to be 5 departments within SUBEB, but in fact the SUBEB has created 7 departments. This inconsistency could be rectified by ***an amendment to the Kano SUBEB Law***.

271. These activities would not be a wasted stop-gap measure, but rather would be an investment in the development of the new policy that is to be implemented by any new Law.

Options—Long-term

272. This Part examines the viable options that are available to make the amendments of the Laws that are suggested in this report.

273. Given that each State Law contains some inconsistent, overlapping or missing provisions, it is not a viable option to take no action.

274. The viable options are—

1. to amend the existing Law in relation to the inconsistent, overlapping or missing provisions; or
2. to replace the existing Law with a Law that does not have inconsistent, overlapping or missing provisions.

Option 1 —Amend the existing Law

275. This Part examines the reasons for and against amending a Law rather than replacing the Law.

276. If the proposed amendments to a Law will not be extensive, amending the Law is likely to be quicker than replacing the Law in terms of the time taken by—

- the drafting team—
 - in drafting the amendments; and
 - in dealing with issues that do not relate to the amendments but are raised if the other provisions of the Law are re-enacted; and
- the Legislature—
 - in passing the amendments; and
 - in dealing with issues that do not relate to the amendments but are raised if the other provisions of the Law are re-enacted.

277. If a Law is amended rather than replaced, the people who administer the Law do not need to learn how to implement a new Law but simply how to implement the amendments to the Law. This saves limited human resources being deflected from other competing priorities.
278. If proposed amendments to a Law will not be extensive, an amending Law (rather than a replacement Law) allows the Legislature and education stakeholders to more easily identify the changes that are being made, and the policies behind those changes.
279. However, if proposed amendments to a Law will be extensive, amending the Law (rather than replacing the Law) will result in lengthy and scattered amendments that must be read in conjunction with the Law, making it difficult for the Legislature to understand what they are enacting, and for the people who administer the Law. This is especially true in the case where there is not a system of consolidating amended Law.
280. Also, when amending a Law, there is always the danger that the amendments will inadvertently not mesh perfectly with the existing provisions.

Option 2—Replace the existing Law

281. This Part examines the reasons for and against replacing a Law rather than amending the Law.
282. If a Law is replaced rather than amended, everyone who is involved in administering the new Law must receive training on how the whole of the new Law. Provided there are sufficient resources for adequate training in this regard, the training will improve the capacity of those persons, and especially the capacity of the persons who had not received sufficient training in the past.
283. If proposed amendments to a Law will be extensive, the rewrite of a Law is often quicker than writing amendments because the legislative drafter starts with a “blank canvas”, rather than having to first establish what the legislative drafter of the existing Law intended when they wrote it. This is especially true in the case where there are conflicting interpretations of the existing Law, and no explanatory notes to assist in the interpretation of the Law.
284. In jurisdictions where the relevant Law was written before the advent of computers, it is often difficult to access a true copy of the Law. The soft copy of the Law may have been produced by retyping a hard copy of what may or may not be the authorised version of the Law. The rewrite of a Law ensures the integrity of the Law. It would then be possible to place the new Law on the SMOE website with confidence that it is in fact the authorised version of the Law. Once on the website, of course, more people are able to access the Law.

285. Also, a new Law may be branded as a symbol of a new strategic direction of the stakeholders, which provides a psychological break with the existing Law. This is especially important when the Law that is being replaced is more than 10 years old.

286. However, when a Law is replaced rather than amended, all of the provisions of the Law are replaced. Even if a particular provision is not changed, the re-enactment of that provision can awaken the interest of certain stakeholders in matters that the Government considers have been sufficiently discussed in the past and so should not be revisited. This is especially the case when the existing Law was contentious.

Next steps

287. An assessment of which option (i.e. whether to amend or to replace a Law) is the preferable option requires a considered analysis of the matters raised in the last Chapter by persons who have a full understanding of the local context of the Law. The local stakeholders are best placed to understand this context, including for example whether—

- there will be sufficient resources for retraining staff in the administration of a new Law; and
- the stakeholders would benefit from the symbolism and psychological break brought about by a new Law; and
- there are matters that have been sufficiently discussed in the past and so should not be revisited.

288. So, ideally the next steps should involve the stakeholders considering and commenting on this report, and deciding whether the necessary amendments should be enacted by an amendment Law or a replacement Law. This could be included in any workshop presentation of the report that the client requests.

289. Whichever option is eventually decided upon, the resulting Act should be expanded so that the focus is shifted away from a Law about the SUBEB, which is but one actor in the basic education system, to a Law about UBE. The new Law should explain the goals to be achieved by UBE, and possibly the reason for the Federal intervention, to give the reader of the new Law a holistic understanding of the purpose for the new Law. Most importantly, the new Law should explain and regulate the relationships (funding, reporting or collaboration) between—

- the Federal Government and MDAs; and
- the State Government and MDAs; and
- the Local Government and MDAs; and
- the community; and
- any other entity that is involved in the delivery of UBE in each State.