

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

Assignment Report

Analysis of Federal and Lagos State UBE legislation

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Acronyms and Abbreviations

AME	Agency for Mass Education/Literacy
CEDC	Community Development Education Development Committee
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
JSS	Junior Secondary School
LASEEDS	Lagos State Economic Empowerment and Development Strategy
LGEA	Local Government Education Authority
LPPT	Lagos State Post Primary Teaching Law
MDG	Millennium Development Goal
MOU	Memorandum of Understanding
MTSS	Medium Term Sector Strategy
SMOE	State Ministry of Education / State Ministry of Education, Science & Technology
SSS	Senior Secondary School
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 and Lagos State education legislation and seeks to address the following issues:
 - The consistency of existing federal and state legislation with the constitution, their consistency with one another and the extent to which there are overlaps or contradictions between federal and state legislation.
 - The extent to which existing legislation provides a clear framework for the establishment of roles, responsibilities and accountability of key actors at federal, state, local government and community Levels including the financing of education, the establishment of a national curriculum, the employment, deployment and professional development of teachers and the realisation of the MDGS for education and gender.
 - The extent to which the existing legislation provides an adequate framework to support the sustainable implementation of the State Education Strategy Plan/MTSS.

Executive Summary

2. This report analyses the Federal Law and the Lagos 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 education system in Lagos
 - to support the sustainable delivery of the ESPs and of the MDGs for education and gender.
3. The results of the analysis of the Lagos SUBEB Laws show that these Laws—
 - are consistent with the Constitution
 - Federal Law
 - provide a framework for the education system in Lagos
 - does not provide an adequate framework to support the sustainable implementation of the ESP the MTSS or the LASEEDS
 - provide support for the realisation of the MDG for education
 - provide inadequate support for the realisation of the MDG for gender
 - were identified as having contradictions, inconsistencies, and overlap
4. The results of the analysis of the LPPT Laws show that these Laws -
 - Provides a framework for the management of the education system in Lagos with a focus on
 - post primary education
 - contains inconsistencies and overlap in comparison with the Lagos SUBEB law

5. It is recommended that—
- To ensure alignment with the realisation of the MDG on gender, quotas may be set in Federal and State policy for the realisation of this goal.
 - It may be useful to review both the Lagos SUBEB Law and the LPPT with a view to creating one single piece of legislation that implements the directives of the UBE Act as well as addresses in a more robust manner the entire spectrum of the education sector as highlighted in the LASEEDS, ESP and MTSS.
 - There is a need to clarify the relationship between the education districts created by the LPPT Law and those created by the Lagos SUBEB Law to harmonise their management.

Purpose of the Consultancy

6. 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).
7. As part of ESSPIN, a study has been commissioned into the Federal and State laws that relate to education namely:
- The Constitution of the Federal Republic of Nigeria 1999 (the Constitution)
 - The Compulsory Free Universal Basic Education Law 2004 (the Federal Law)
 - The Lagos State Universal Basic Education Act (the Lagos SUBEB)
 - Lagos State Post Primary Teaching Service Law 2005
 - Lagos State Education Management Systems Law 2007
 - The Lagos State Education Sector Plan (the Plan)
 - The draft Medium Term Sector Strategy (the draft MTSS)
8. The study is tasked with analysing those laws and policies with particular reference to the policy objectives set out in the Plan and produce an assessment of the suitability of the existing legislation to support the sustainable delivery of the Plan.
9. This report contains the results of that study.

Achievement of the TORs

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

A. Interpretation of Legislation

The Interpretation Act

10. The Nigerian *Interpretation Act*¹ provides for “the construction and interpretation of Acts of the National Assembly and certain other instruments; and for purposes connected therewith”.² The *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”.

11. Broadly speaking, the *Interpretation Act* includes 3 types of provisions, namely provisions dealing with:

- definitions of words and phrases;
- statutory construction;
- duties and powers.

Case Law

12. The Nigerian courts have also established principles for the interpretation of statutes. In *Fasakin Foods Nigeria Ltd v Shosanya*³, Ogbuagu, JSC (in delivering the lead judgment) reaffirmed the principle of interpretation as follows, ‘in the principle of construction or interpretation of a statute or constitution, the ordinary meaning of words apply’. He also went on to state that, ‘it is the duty of the court to interpret words used in a Statute or Constitution’ and that, ‘ordinary meaning of the words used, should be given its effect’.

13. This approach has been taken to the interpretation of the legislation in this report.

B. Existing Law

14. This section reviews the existing legislation, including the constitution and sets out the position in relation to education in the Constitution, Federal Law and State Law.

The 1999 Constitution

15. The Constitution provides that ‘Government’ should direct its policies towards ensuring equal and adequate educational opportunities at all levels and, as practicable, should provide free compulsory and universal primary education; free universal education and free adult literacy programmes⁴. The provision is not particularly helpful in understanding the allocation of roles between the Federal, State and Local Levels of government since ‘government’ does not refer to the Federal Government alone. Section 318 of the Constitution in fact defines Government to include, ‘the Government of the federation or

¹ Chapter 192 of 1990

² See the Long Title of the Interpretation Act.

³ 2006 10 NWLR (Pt 987)

⁴ See section 18 (1) and (3), 1999 Constitution.

any state of a local government council or any person who exercise power or authority on its behalf’.

16. The Constitution goes on to stipulate the various levels of Government that have the competence to make laws on the management of education. The Federal Government is empowered by the Constitution and has exclusive jurisdiction, to establish and regulate authorities for the federation or any part of it for the purposes of prescribing minimum standards of education.⁵ At the same time the Constitution empowers both the Federal and State levels of government to make laws in relation to university, technological, post-primary or professional education.⁶ It does, however, note that the power of a State Government to make laws in relation to technical, vocational, post-primary, primary and other forms of education, including the establishment of institutions providing these forms of education.⁷

17. **From the foregoing the Nigerian Constitution has set the provision of education as one of the fundamental objectives and directive principles of state policy which have been held by the courts in Nigeria to be non justiciable and unenforceable.** While the fundamental objectives may not be justiciable, the Constitution does go on to provide for the establishment and regulation of authorities for the federation or any part thereof to promote and enforce the observance of the fundamental objectives and directive principles contained in this constitution.⁸ This provision has been used to justify the creation of organs or institutions which may carry out functions otherwise exclusively within the legislative competence of states.⁹ This is so because the fundamental objectives are widely stated aspirational values, which cut across areas reserved for the federal and state legislatures. Also the Federal Level of government can prescribe minimum standards of education at both the Federal and State levels of government to ensure that this fundamental objective is enforced¹⁰. Furthermore, both the Federal and State levels of government have power to make laws in relation to all levels of education except primary and ‘other forms education’ which appears to have been left solely to the State¹¹.

18. It is clear that from the outset that competence to make laws in respect of education in Nigeria by both the Federal and State Levels of government overlap. Another view could be that all levels of government have joint responsibility for all levels and types of education with the role of the Federal Level of government limited in the area of primary education except to the extent that it can prescribe the minimum standards in the prescription of education.

⁵ See Schedule II, Part I, item 60, 1999 Constitution.

⁶ See Schedule II, Part II, items 27, 28 and 29, 1999 Constitution.

⁷ See Schedule II, Part II, item 30, 1999 Constitution.

⁸ See Schedule II, Part I, item 60(a), 1999 Constitution.

⁹ See AG Ondo State v AG Federation (2002) 9 NWLR (Pt 722) 222 at 382.

¹⁰ See Schedule II, Part I, item 60(e), 1999 Constitution.

¹¹ See Schedule II, Part II, item 30, 1999 Constitution.

Federal Law

The Universal Basic Education Act, 2004

19. The UBE Act is a reflection of Nigeria's commitments to international agreements on Education and was introduced at the Federal and State Levels to legislate on compulsory, Basic Education.¹²
20. The UBE establishes a UBEC to support the implementation of the country's UBE programme and describes the intervention of the Federal Level of government as one of assistance to the State and Local Levels of government to provide uniform and qualitative basic education throughout the country.¹³ Basic education is defined as early childhood care and education and nine years of formal schooling.¹⁴ The UBE Act establishes the right of children to free, universal, basic education at the primary and secondary school levels and requires that every parent shall ensure that those in their care and of school age attend school¹⁵. The UBE Act also sets out offences related breaches of the Act including the failure to ensure that children who are of school age attend school.¹⁶
21. The UBE Act sets out the functions of the UBEC (which will be addressed elsewhere in this paper);¹⁷ the procedures and sources of financing for free UBE and requires that each state shall establish a SUBEB and each local government establish a LGEA.
22. **From the foregoing, the UBE Act identifies the role of the Federal Level of government as one of assistance in the provision of basic education in Nigeria, at the same time, this Federal Act goes on to stipulate the specific types of oversight organs which the State and Local Levels of government should establish to manage education in their various jurisdictions¹⁸ as well as establish state offences for breaches of the Act and identifies enforcement organs at the Local Level of government.**

Child Rights Act, 2003

23. The CRA stipulates the right of every child to free, compulsory and universal basic education and requires the government to provide such education.¹⁹

¹² These are: The Jomtien Declaration (1990), the Delhi Declaration (1993), The Durban Statement of Commitment (1998), The OAU Decade of Education in Africa (1997-2006).

¹³ See section 1, Part I, UBE Act 2004.

¹⁴ See section 15 (1) of the UBE Act 2004.

¹⁵ See section 2, Part I, UBE Act 2004.

¹⁶ See section 2 (2), Part I, UBE Act 2004.

¹⁷ See section 7, Part II, UBE Act 2004.

¹⁸ See sections 12 and 13, Part IV, UBE Act 2004.

¹⁹ See section 15 (1), CRA 2003.

State Legislation

The Lagos Compulsory Free Universal Basic Education Law, 2005

24. The Lagos SUBEB Law sets out a policy to provide free, compulsory, universal basic education for every child of primary and secondary school age²⁰ and requires parents and guardians to ensure that children of school age in their care attend school²¹. Basic education is defined as early childhood care and education and nine years of formal schooling.²² The Lagos SUBEB Law also establishes a Local Government Primary and Junior Secondary Education Authority in each local government area of the State and stipulates that this is subject to the control of the Lagos SUBEB.²³ The Lagos Law sets out the functions of the LGEA, the procedures for financing²⁴ and offences under the Law²⁵.

C. Consistency

25. As stated earlier, the Constitution provides that the Federal Level of government is required to provide free, compulsory, universal primary and post primary education.²⁶ The Constitution also requires that the Federal Level of government is competent to establish and regulate authorities to prescribe minimum standards of education at all levels²⁷ (which includes both primary and post primary education). The Constitution also gives the State Level of government competence to manage education at all levels of education including primary and post primary education. The Constitution makes no specific allocation of responsibility to the Federal Level of government in respect of primary and post primary education except to the extent that the Federal Level of government can 'prescribe minimum standards' for all levels of education. Provisions of the Constitution which stipulate that the Federal Level of government merely has a duty to prescribe the minimum standards for the provision of education and yet gives it the competence to establish and regulate institutions to monitor all levels of education are contradictory.

26. The establishment of UBECs by the UBE Act appears to be consistent with the Constitution. The UBE Act clarifies the extent of involvement of the Federal Level of government when it stipulates that the Federal level of government only plays an assisting role in the provision of uniform and qualitative basic education in Nigeria. This clause attempts to remove any perception that the Federal Level of Government may be acting in a manner which is inconsistent with the Constitution. However, the level of 'assistance' provided by the enactment of the UBE Act is questionable as the UBE Act goes on to require the State Level of government to establish specific organs for the management of education and the

²⁰ See section 8 (1), Compulsory Free Universal Basic Education Law 2005.

²¹ See section 8 (2), Compulsory Free Universal Basic Education Law 2005.

²² See section 24, Compulsory Free Universal Basic Education Law.

²³ See section 15, Compulsory Free Universal Basic Education Law.

²⁴ See section 11, Compulsory Free Universal Basic Education Law.

²⁵ See sections 8(4) and 9(2), Compulsory Free Universal Basic Education Law.

²⁶ See sections 18, 1999 Constitution and item 27, Part II, Second Schedule, 1999 Constitution.

²⁷ See item 60, Part I, Second Schedule, 1999 Constitution.

establishment of institutions at the State Level and establishes offences which are to be enforced by what are essentially entities at the State Level of government – Magistrates’ Courts and Local Government Education Authorities. It would appear that in this way, the UBE Act is inconsistent with the overriding principle of separation of powers that is entrenched in the Nigerian Constitution.²⁸ In any event magistrate courts only have jurisdiction in respect of offences created by a law of the House of Assembly of a State. The courts have also examined the competence of the Federal Government to make laws on matters that are essentially State matters, for instance in the case of the *AG Bendel State v AG Federation & Others*²⁹ the Supreme court was of the view that an Act of the Federal Government which set aside a fund for addressing ecological damage in oil producing states was unconstitutional and outside the powers of the Federal Government. **In the foregoing respects, it is fairly clear that the UBE Act is inconsistent with the Constitution.** However it is also arguable that the Constitution provides joint responsibility to all levels of government in respect of all levels of education with primary responsibility for primary or post primary education ascribed to the State and Local Levels of government.

27. The Lagos SUBEB Law is a direct result of the enactment of the UBE Act which requires the establishment of SUBEBs by states. The Lagos SUBEB reiterates the principles as set out in the UBE Act especially the commitment to free, compulsory, universal basic education and the establishment of offences under the Lagos SUBEB Law, its definition of universal basic education, the procedures for the financing of education and the establishment of LGEAs. **The Lagos SUBEB Law is consistent, in its entirety, with the UBE Act as well as the Constitution.**

D. Coverage/Roles and Responsibilities

Financing education

28. The UBE Act provides that the implementation of the UBE is to be financed from³⁰ :

- a. A block grant of not less than 2% of its Consolidated Revenue Funds
- b. Funds or contributions in the form of Federal guaranteed credits
- c. Local and international donor grants

29. In order to qualify for the block grant described above the State Level of government provides 50% of the total cost of education projects.³¹ The block grants are to be channelled via the UBEC which receives the grant from the Federal Government for allocation to State and Local Levels of government in accordance with an approved formula.³² The UBEC is also

²⁸ See section 7, Part II, 1999 Constitution.

²⁹ 1983 1 ANLR 208.

³⁰ See section 12, Part IV UBE Act 2004.

³¹ See section 12 (2), Part IV UBE Act 2004.

³² See section 9(b), Part II UBE Act 2004.

required to provide advice to the Federal Level of government on the funding and orderly development of education in Nigeria.³³

30. The Lagos SUBEB Law provides that the Lagos SUBEB will receive funding for education in Lagos State from Federal, State and Local government and shall include:

- funds allocated to the State by UBEC
- the appropriate share of contributions in the form of Federal Guaranteed credits
- local and international donor grants
- the provision for basic education in the annual budgets of the Local Government
- intervention funds accruing to the UBEC from the Federal government and a reasonable proportion of the budgetary allocation of the State allocated for basic education.
- Funds for salaries of staff of schools and the SUBEB headquarters are to be provided by the State government.³⁴

31. Both the UBE Act and the Lagos SUBEB Law stipulate that services provided in public primary and junior secondary schools are to be provided free of charge.³⁵ The Lagos SUBEB Law makes additional provisions for financing for education to be made by both the State and Local levels of government. LGEAs established by the Lagos SUBEB Law are required to establish and maintain a separate bank account to receive payments made to it.³⁶ All appropriate revenue to be paid to the school is to be collected by the school head and paid into an account of the LGEA.³⁷ In practice, LGEAs do render accounts to the SUBEB on books, material and equipment that they receive. Accounts are also rendered on the operational or running costs which are used for the maintenance and management of schools which are allocated from the SUBEB's own budget. Funds or grants for capital expenditure are expended and administered by the SUBEB. These accounts are rendered quarterly by auditors from both the Lagos SUBEB and the State Auditor-General's office. With regard to the revenue raised by schools, these are usually paid into a bank account and go directly to the State and cannot be accessed directly by neither the school nor the SUBEB contrary to legislation. Grants paid to schools and administered by headteachers are paid directly to headteachers. This sum is described as a 'nominal amount' and is often insufficient to address the needs of each school.³⁸ Funds for capital expenditure are administered directly by the SUBEB and not distributed directly to LGEAs or schools.

32. Grants are remitted from the UBEC to SUBEBs including the Lagos SUBEB in equal sums for each state without regard to the number of schools to be served by the SUBEB. In Lagos,

³³ See section 9 (d), Part II UBE Act 2004.

³⁴ See section 11 (a – i) Lagos Compulsory Free Universal Basic Education Law.

³⁵ See sections 3, UBE Act 2004 and section 9, Lagos Compulsory Free Universal Basic Education Law.

³⁶ See section 18 Lagos Compulsory Free Universal Basic Education Law.

³⁷ See section 19 Lagos Compulsory Free Universal Basic Education Law.

³⁸ Interview with the Education Secretary of a Local Government Education Authority. He noted that on average, the sum of N10,000 could be allocated to one school.

- this poses serious challenges for the distribution of funds as these are inadequate in a state like Lagos with approximately 985 public primary schools. Another challenge relating to the funding of UBE is the stipulations attached to expenditure issued by the UBEC to the SUBEB without consideration for the specific needs for the delivery of UBE in each state. Examples of these include issuing instructions to SUBEBs to build more schools which are not necessarily relevant to a state in Lagos which does not have the luxury of excess land on which to construct schools. Another cited example is the purchase of textbooks purchased by the UBEC and distributed to SUBEBs which had already been purchased by Lagos State.
33. While Local Governments do make budgetary provision for education, the expenditure is implemented directly by the local government and not remitted through the LGEA. Budgetary expenditure is usually directed at capital projects and building infrastructure. Interestingly, local government authorities do not usually share information on the figure allocated.³⁹
34. Aside from the Lagos SUBEB Law, the state has also enacted the Lagos State Post-primary Teaching Service Law of 2005 (LPPTS) which is to provide for the enhancement of teachers' careers in post primary schools.
35. The LPPTS Law establishes six educational districts encompassing several local government areas⁴⁰. The Governor of the State is empowered to appoint Tutors-General at the level of Permanent Secretary to head each of the Districts in the state who are autonomous but subject to the direction of the State Commissioner for Education⁴¹.
36. With regard to finance, the Tutor-General of a District, who is described as the Chief Executive and accounting officer in the district under his control⁴² is required to coordinate all professional, administrative and financial matters in the District⁴³.
37. The LPPTS law provides for a Funds Management Committee for every district which is charged with overseeing the disbursement of funds released by the State Level of government to the schools under the district.⁴⁴ The Tutor General chairs the District Funds Allocation and Management Committee and the committee's approval is required for all disbursement of funds of the district.

Establishment of National Curriculum

38. The UBE Act empowers the UBEC to collate and prepare (in consultation with the State and Local governments) periodic master plans which ensure that the Basic National Curricula

³⁹ 'They carry out projects and don't usually inform us [of their planning]'; 'There is no law stipulating that they have to tell us what the allocation is'; [There is] no participation in any form. *Ibid*

⁴⁰ See section 2 Lagos State Post Primary Teaching Service Law 2005.

⁴¹ See section 10 Lagos State Post Primary Teaching Service Law 2005.

⁴² See section 22 Lagos State Post Primary Teaching Service Law 2005.

⁴³ See section 18(1)(a) Lagos State Post Primary Teaching Service Law 2005.

⁴⁴ See section 23(b) and section 2(1), Schedule II Lagos State Post Primary Teaching Service Law 2005.

⁴⁵ See section 3(a) Schedule II Lagos State Post Primary Teaching Service Law 2005.

and Syllabi and other instructional material are in use in early childhood care and development centres, primary schools and junior secondary schools. The UBEC is also required to develop and disseminate curricula and instructional materials for basic education in Nigeria.⁴⁶ The Lagos SUBEB Law provides that the Lagos SUBEB ensure that the Basic National Curricula and Syllabi and other instructional materials are in use in early childhood development centres, primary and junior secondary schools in Lagos State. The Lagos SUBEB Law clearly identifies the Lagos SUBEB as a disseminator of National Curricula to schools within the state. LGEAs are not given any specific responsibilities in relation to the dissemination of National Curricula which appears to rest solely with the State Level of government. They do, however, have the power to acquire and distribute materials and equipment to all primary and junior secondary schools which might include the dissemination of National Curricula.⁴⁷ The CEDC on its part has the power to make recommendations to the LGEA on the adequacy of teaching and non teaching equipment and materials required for schools in the area.

Employment and Deployment of Teachers

39. The UBE Act provides that the UBEC has the responsibility to carry out, together with States and Local Governments, a personnel audit of teaching and non-teaching staff of all basic education institutions in Nigeria⁴⁸ support national capacity building for teachers and managers of basic education in the country.⁴⁹ The UBE Act clearly ascribes a support role to the UBEC in relation to the management of teachers and other personnel involved in the delivery of UBE by ensuring consultation and indicating the ‘support’ role for capacity building. The Lagos SUBEB Law provides that the Lagos SUBEB shall be responsible for the conduct of a personnel audit of teaching and non teaching staff, reflecting the provisions in the UBE Act and providing for cooperation between the State and Federal Levels of government. The Lagos SUBEB is also responsible for the coordination and supervision of teaching and learning in public primary schools and junior secondary schools. Other functions of the Lagos SUBEB are to recruit, appoint, promote and discipline teaching and non teaching staff at Grade Level 07 and above⁵⁰, retire and re-absorb primary school teachers in the State, provide approval for training and retraining of both teaching and non teaching staff and ensure that annual reports are rendered by heads of schools or teachers appointed to serve under them. Under the Lagos SUBEB Law, LGEAs have the authority to appoint, post, transfer, promote and for the discipline of teaching and non teaching staff at Grade Levels 01 – 06 to make recommendations to the SUBEB on the promotion and discipline of teaching and non teaching staff at Grade 07 level and above. The LGEA also has responsibility to compile a database of all teachers (And students) within the Local

⁴⁶ See section 9(e)(iii) and (k) of the UBE Act 2004.

⁴⁷ See section 17(g) UBE Act 2004.

⁴⁸ See section 9(f) UBE Act 2004.

⁴⁹ See section 9(m) UBE Act 2004.

⁵⁰ This is a civil service grading.

Government⁵¹ and ensure that all annual reports are rendered to the SUBEB on all activities of the authority during the preceding year, especially on teaching and non teaching staff⁵².

40. Both Federal and State legislation on the management of teaching staff appears to focus primary responsibility on the State level of government with the Lagos SUBEB providing specific provisions on the recruitment, appointment and management of teachers and non teaching staff. Lagos State law recognises its key role as a the manager of UBE staff as evidenced in the LPPTS Law which provides for the enhancement of teachers' careers in post primary schools⁵³.

41. The functions of the Tutor General include the following:⁵⁴

- Coordinate all Professional, Administrative and Financial matters in the District
- Ensure that staff welfare and training are shared responsibilities between the state Ministry (of Education) and the District;
- Ensure that only qualified professional teachers registered with the State Registrar of Teachers are engaged to teach in schools and colleges within the District;
- Assess the qualification and placement of Teaching and non-teaching staff;
- Deal with vacation, sick and maternity leave of teaching and non-teaching staff in the District;
- Constantly review and forward proposals to the Commissioner for modifications in operational methods and organisational structure of the State Teaching Service;
- Ensure that disciplinary powers of Secondary School principals and other heads of schools over students in the District comply with the uniform rules and guidelines;
- Replace teachers lost due to death or disciplinary action without increasing the wage bill;

42. The LPPT also contains elaborate provisions for the registration of qualified teachers with the state Teachers Registration Unit to register, assess and identify teachers for the purposes of professional development.⁵⁵

43. The LPPT Law is a focused piece of legislation which seeks to standardise the management of post primary education as whole and appears to strengthen the management and coordination of this level of public education in the State. The relationship between the LPPT and the Lagos SUBEB Law is unclear even though the Lagos SUBEB Law makes provision for representatives of all six Tutors-General to sit as members of the SUBEB .

⁵¹ See section 17(f) Lagos Compulsory Free Universal and Basic Education Law 2005.

⁵² See section 17(l) Lagos Compulsory Free Universal and Basic Education Law 2005.

⁵³ To include senior secondary schools.

⁵⁴ See section 18(b – g, j, l, o, r) Lagos State Post Primary Teaching Service Law 2005.

⁵⁵ See Fifth Schedule, Lagos State Post Primary Teaching Service Law 2005.

44. Aside from this, there is no clear relationship between the Education districts created by the LPPT Law and the Lagos SUBEB Law based on the legislation. It would be useful if amendments were made in Lagos State law clarifying the relationship between these two

Millennium Development Goals

45. The MDG on education is focused on ensuring that all children are able to complete a course of primary schooling. The MDG for gender is aimed at promoting gender equality and empowering women. This also includes ending gender disparity in primary and secondary education. Realisation of the MDGs are largely achieved through the individual action of member states enacting legislation and formulating policies and strategies to geared towards achieving the goals.

MDGs and UBE Act, 2004

46. With regard to realising the MDG relating to gender, the UBE Act provides free, compulsory basic education for all children.⁵⁶ The State's obligation to promote education for both boys and girls that education at that level is obligatory for both boys and girls is as good a strategy as any in addressing the achievement of the third MDG. In addition, to close gender disparity in public life, as well as to empower women, the UBE makes provision for the appointment of one female member to sit on the UBEC.⁵⁷ This attempt by the UBE Act is inadequate as this constitutes a mere 5% of the 17 member board.

47. The UBE Act requires every government in Nigeria to provide, free, compulsory basic education for every child of school age, similarly, the government of Nigeria is required to ensure that funding is provided for the delivery of UBE. Every parent is also required to ensure that children under their care are enrolled in school. Corresponding offences to ensure compliance with this rule are also established under the UBE Act. Enforcement procedures to secure compliance with these requirements are also stipulated in the UBE Act including provisions the identification of Magistrates' courts as the courts the courts with competent jurisdiction to hear cases on the breaches of the UBE Act and the listing of convictions including reprimands, fines and physical interment.

MDGs and CRA 2003

48. To support Nigeria's achievement of the MDG on education the CRA makes similar provisions to ensure the rights of every child to free, universal, basic education as in the UBE Act discussed above⁵⁸ to ensure the goal of providing all children with primary education. To support the achievement of the MDG on gender disparity, the CRA also provides that a female child who falls pregnant before completing her education shall be given an opportunity, after delivery to continue with her education.⁵⁹ This piece of legislation expressly supports the continuance of education female children despite

⁵⁶ See section 2(1), Part I UBE Act 2004.

⁵⁷ See section 7(iii), Part II UBE Act 2004.

⁵⁸ See section 15, Child Rights Act 2003.

⁵⁹ See section 15(5) Child Rights Act 2003.

interruptions such as pregnancy to address both MDGs of ensuring access to primary school education to both boys and girls and to ensure to promote gender disparity and empower women.

Lagos SUBEB Law

49. With regard to the MDG on the provision of primary education to all children, the Lagos SUBEB Law provides that the State Level of government shall provide free, compulsory, universal basic education for all children – boys and girls- of primary and junior secondary school age. The Lagos SUBEB Law also creates offences to ensure compliance with the requirement that parents enrol children of school age in school to achieve this MDG and organs of enforcement and penalties for breaches of the law.⁶⁰
50. In addition, the Lagos SUBEB Law empowers the LGEA and the CEDC to ensure the enrolment and attendance of children in all primary and junior secondary schools.⁶¹ Specifically, the CEDCs are required to ensure ‘good’ enrolment and full attendance whereas the LGEA is required to provide only ‘full’ enrolment and attendance. What is ‘good’ enrolment is unclear in Lagos SUBEB Law nor are the responsibilities of the LGEA and CEDC in relation to monitoring attendance properly delineated in the Lagos SUBEB Law.
51. On the achievement of the MDG on reducing gender disparity, the Lagos SUBEB Law stipulates that a representative of the Lagos State Chapter of the National Council for Womens’ Societies⁶² be appointed to the Lagos UBEB. It also provides for the appointment of six other members including not less than 2 women to the UBEB. This indicates that a total of three women are required to be appointed to the 25 member board, representing 12% of the Lagos SUBEB, which is a significantly higher mandatory proportion of female representation than is provided for in the National UBEC as discussed above. The Lagos SUBEB Law also provides that the LGEA and the Community Education Development Committee shall have one representative of the National Council of Women’s Societies, representing one out of 10 and 13 members respectively.⁶³ It is also worthy to note that the UBE Act does not make specific provisions for the proportion of female representation to the State SUBEBs and therefore the stipulations on female representation in the Lagos SUBEB Law are voluntary despite not being very strong in terms of supporting the increased representation of women in public life. Generally while the prescription of at least one female representation evidences an attempt at addressing gender disparity – such provisions almost always create a situation where the minimum becomes the maximum. The minimum levels are received as though it provides that only one female representative is allowed.

⁶⁰ See section 8(2), (3), (4) of the Lagos Compulsory Free Universal Basic Education Law 2005.

⁶¹ See sections 17(j) and 21(1)(c) of the Lagos Compulsory Free Universal Basic Education Law 2005.

⁶² See section 2(d)(iii) of the Lagos Compulsory Free Universal Basic Education Law 2005.

⁶³ See sections 16(1)(d) and sections 20(1)(c) of the Lagos Compulsory Free Universal Basic Education Law 2005.

E. Legislative Framework

Establishment of defining roles, responsibilities and accountability of key actors

UBE Act 2004

52. The UBE Act provides explicitly for the establishment of a UBEC and sets out its specific responsibilities, chief among which are to formulate policy for the successful operation of UBE in Nigeria. The UBE Act identifies the potential appointees to the UBEC who shall be appointed by the President on the advice of the Minister of Education and set out their respective tenure.
53. The UBEC goes on to expressly require states to establish SUBEBs and LGEAs in each state and leaves the structure and composition of both bodies to be decided by State legislation while providing expressly for the structure and composition of the UBEC at the Federal level as is within its competence, the detailed provisions for the establishment of SUBEBs and LGEAs within States has been left to the State Level of government to address as is within its competence.

Lagos SUBEB Law

54. The Lagos SUBEB law, as directed by the UBE Act establishes a SUBEB for Lagos State and also an LGEA⁶⁴. It goes on to establish a CEDC⁶⁵ below the level of the LGEA and sets out the structure and functions of each of the three entities. From a review of the Lagos SUBEB Law, there is an attempt to create reporting lines from the CEDC, LGEA all the way up to the SUBEB. The Lagos SUBEB law provides for a number of functions to be performed at the both CEDC and LGEA level. It also shares responsibilities between the SUBEB and the LGEA, for instance relating to the recruitment, appointment, promotion and discipline of teaching and non-teaching staff between grade levels 01 and 06 which is the responsibility of the LGEA and the recruitment, appointment, promotion and discipline of teaching and non-teaching staff at grade level 07 and above. The LGEA also has the competence to make recommendations to the SUBEB on the promotion and discipline of teaching and non-teaching staff from grade level 07 and above which demonstrates a distribution of responsibilities with regard to this function. There is an overlapping of functions, however, in relation to the responsibilities placed on both the LGEA and the CEDC to ensure the enrolment and attendance of pupils in school, it is arguable, however that CEDCs are to manage enrolment and attendance of pupils within their jurisdictions and then provide reports of these to the LGEAs, who in their turn, can monitor enrolment and attendance within their jurisdictions.
55. The LPPT is another piece of Lagos State legislation that ascribes responsibilities to another entity responsible for managing post primary education which refers to both junior and

⁶⁴ See section 15 of the Lagos Compulsory Free Universal Basic Education Law 2005.

⁶⁵ See section 20 of the Lagos Compulsory Free Universal Basic Education Law 2005.

- senior secondary school. This piece of legislation establishes six Education Districts in the state as discussed earlier and creates the position of Tutors-General to manage these districts which means that the new entities are also responsible for managing a portion of what is defined as basic education – the first nine years of schooling as defined by Federal and State legislation. Tutors-General, under the LPPT also have significant responsibilities for the management of teaching and non teaching staff within their jurisdiction which overlap with the roles of SUBEBs and LGEAs in relation to this function. The relationship between the Tutor-General and the SUBEB and LGEA is unclear except to the extent that representatives of all six Tutors-General are required to sit on the SUBEB. In practice, the SUBEB manages primary school education excluding the first three years of secondary schooling which is left under the authority of the Tutor-General in accordance with the LPPT. The effect of this is that Lagos State selectively implements the SUBEB Law to accommodate its enactment which occurred later than the LPPT.
56. Similarly, there is no clear delineation of the relationship between the UBEC, the Lagos SUBEB, the LGEAs and the CEDCs. While the UBEC is required to provide advice to the Federal Government and the SUBEB is required to advise the State Government, there is no express mention of the relationship between the FMOE and the SMOE and the channels for the delivery of education policy between both entities or between either the UBE and the Minister of Education at the Federal Level of government or the SUBEB and the Commissioner at the State Level of government.
57. With regard to the management of personnel, the UBE Act requires the UBEC to conduct personnel audits of teaching and non teaching staff in concert with the State and Local Levels of government. The Lagos SUBEB Law requires the SUBEB to conduct, the personnel audit under the supervision of the MOE. It remains unclear as to whether the SMOE is under the authority of the MOE in the conduct of the audit or is an equal partner in the conduct of personnel audits. The issue of the recruitment of teaching staff is clearly an issue within the competence of the State as set out in the Lagos SUBEB Law. In the same vein the LPPT which establishes the office of the Tutor-General in State Education Districts and is appointed by the State Governor, does not expressly state the nature of the relationship between the Tutor-General and the Commissioner for Education. It should be noted, however, that the Tutor-General appointment is at the rank of Permanent Secretary. In practice, the SMOE purports to have a backstopping role to support the Tutors-General in the districts. The five⁶⁶ departments under the authority of the Tutors-General are mirrored in the SMOE.

⁶⁶ These are listed in section 5 of the Lagos State Post-Primary Teaching Service Law.

State Education Sector Plans

Extent to which legislation supports implementation of the Lagos ESP

58. The Lagos SUBEB law was enacted in December 2005 and the ESP and the draft MTSS were completed after this time. The Lagos SUBEB Law was enacted as required by the Federal UBE Act and is drafted wholly on this basis without appearing to take into consideration any specific issues relating to Lagos State. The LASEEDS, ESP and MTSS are more detailed policy documents which present comprehensive policy strategies on education. While these documents do take into consideration existing Federal and State legislation in identifying challenges of the education sector in Lagos State, it would be useful for the education legislation the State to be reviewed in the light of these strategies which will in turn support the development of more robust legislation on education. While it is acknowledged that the broad spirit, intention and objectives of the Lagos SUBEB laws are adhered to in the development of state policy on education. It is important to note that the LASEEDS, the ESP and the draft MTSS are geared towards addressing the education sector comprehensively and also cover private educational institutions.

59. Specifically, LASEEDS enumerates six goals on the education sector covering:

- the expanded provision of early childhood care and education
- access to all children to free primary education
- ensuring the needs of young people and adults in the area of non formal education
- ensuring an improvement in all levels of adult literacy with a focus on women
- eliminating gender disparity in primary and secondary education and improving the quality of education.

60. The ESP maintains the commitment of Lagos State to free education at all levels, and welcomes community participation. The ESP also identifies issues and challenges and solutions in the education sector covering eight pillars as follows:

- The coordination of policy and organisational management of the sector
- Financing of education and revenue generation
- Strengthening the quality and improving the standard of education
- Improving school infrastructure and facilities
- Providing for adequately for children with special needs
- Improving the welfare of teachers

61. The draft MTSS also identifies goals to be achieved in Lagos State in six spheres of education.⁶⁷ The goals of the draft MTSS are similar to the goals set out in the LASEEDS and are as follows:

⁶⁷ The spheres are as follows: Early Childhood Care and Development, Basic School Education, Senior Secondary Education, Tertiary Education, Technical and Vocational Education, Adult and Non Formal Education.

- Expand and improve comprehensive early childhood care and management of challenges in children
- Make education, free and compulsory to all children of school age
- Make senior secondary school relevant and practical
- Produce entrepreneurs and professional that will sustain national economic growth
- Provide training and impart necessary skills to individuals who shall be self reliant economically

62. Overall it appears that the LASEEDS, ESP and draft MTSS are more robust policy documents than existing legislation in the state and as such the Lagos SUBEB Law provides a foundation for the implementation of these policies. is unable to provide a framework to sustain the implementation of those policies. The LPPT, on the other hand, provides a more detailed framework for the management of the education sector in Lagos State. To ensure that the Lagos SUBEB Law provides a sustainable framework for the implementation of these policies, it will be necessary for relevant stakeholders to review the Lagos SUBEB Law in light of the policies developed after its enactment to ensure that the spirit of the law is indeed carried into the implementation of these policies.

F. Recommendations

- To ensure complete alignment with the realisation of the MDG on gender, quotas may be set in Federal and State policy to support the realisation of this goal.
- It may be useful to review both the Lagos SUBEB Law and the LPPT with a view to creating one single piece of legislation that implements the directives of the UBE Act as well as addresses in a more robust manner the entire spectrum of the education sector as highlighted in the LASEEDS, ESP and MTSS. Convening a multi-stakeholder dialogue of education actors in the state would be a useful means to initiate discussion on harmonising state education legislation. Prior to convening a public meeting, it will be necessary to secure the support of relevant state education and legal actors (who will be key decision-makers) to ensure the implementation of any agreements entered into during the public dialogue which can be documented in writing.
- There is a need to clarify the relationship between the education districts created by the LPPT Law and those created by the Lagos SUBEB Law to harmonise their management. One way to do this would be to develop a single piece of legislation that addresses both UBE and post primary education or at the minimum review both the Lagos SUBEB and LPPT in a way which clarifies the role of Tutors-General as well as the SUBEB. This review could be undertaken as part of the dialogue of stakeholders proposed above