

THE LAW OF 'NEGLIGENCE LIABILITY' AND UNIVERSITY FUNDING IN NIGERIA

Mark B. Leigha (Ph.D) and Nanighe B. Major (Ph.D)

Associate Professor, Department of Educational Foundations, Niger Delta University,
Wilberforce Island, Bayelsa State, Nigeria,

ABSTRACT: *Recently, the federal government prescribed “at least 26% minimum of the federal, state, and local Government budget” as ‘adequate level’ for Education financing in Nigeria (FRN, 2013, p. 70). This benchmark is reasonably intended to avert the dire consequences education programmes implementation would suffer if budgetary allocations fall below this policy prescription. But percentage budgetary allocations have continuously become **inadequate** (7%, 9%, 10%, 10%, 11%, 11%, 8%, 7%, and 7%) in recent years, (2010 – 2018), paralyzing education infrastructure and hence programme implementation in the universities which are ‘foreseeable’ consequences. Therefore, this paper believes that such public University financing behaviour impinge on ‘negligence-liability per se’, a culpable offense under the law of tort. And, immediate redress is necessary as well as create awareness among scholars, reset managerial action and focus political discourse on ‘policy-compliant’ university funding acts in the decades ahead.*

KEYWORDS: Negligence Liability, Official Carelessness, Education Funding, Policy-Compliance.

INTRODUCTION

When a government vouches that “at least 26% (UNESCO minimum standard recommendation) of the federal, state, and local governments budget should be dedicated to funding education at all levels” (FGN, 2013, p. 70), and ends up allocating a paltry 11% (Niger Business.com – retrieved online, 5/3/18); it should also beware of the foreseeable consequences: Nigerian “universities are NOT among the world’s best. In the Times Higher Education, London, world universities ranking for 2015/2016, the university of Ibadan (Nigeria’s premier university) was ranked 601st position in the world best 800 universities” (Daily Sun, 2017, p.21).

Financing the development of education and training has been an enigma confronting parents, communities and even nations alike, particularly among developing countries of the world. This issue is compounded by the quantitative and qualitative changes of educational facilities in response to the surging education demand and the swift need for modernization. Worse still, the general public has become increasingly aware that education is a fundamental human right which provision is the responsibility of government (Federal, state and local).

Consentaneously, the Nigerian government accepts this verdict and decrees its ultimate goal: “to make education free at all levels” through the auspices of “a joint responsibility (federal, state and local government and the private sector)” funding practice (FRN, 2013, p.70). It further widened this platform to include the participation of local communities, individuals and other organizations in procurement and supply of books, supportive staff, academic staff, school buildings, equipment and supplies, chairs, benches or tables, school uniform, transport,

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 midday meals and hospital bills, etc, (Adesina, 1990; Afe, 2001; Odelola & Anyoma, 2006; Ibadin, 2004). Their support is also encouraged in the construction of school buildings and classrooms, libraries, laboratories, hostels and large halls to leverage government financial burden; commercial ventures i.e. income yielding projects like consultancy services, transportation, printing, bookshops, shopping centers and hospitality services (Nwadiani, 2000; Ebong, 2004). All these steps are taken to ensure adequate policy demand that has gone unaccounted for far-too-long and requires uncommon courage and will-power to redress, including exploring and exploiting unfamiliar windows.

The purpose of this study is to bridge the gap between the impunity and the needed accountability that characterize modern systems, including education. Days of answerability and responsibility for actions and inactions of public life replace the years business-as-usual with a view to forge a new perspective to the issues policy framework and political debates in contemporary times.

The implication is that this paper is unique as research into legal issues and possible litigations, especially, between federal government and stakeholders is rather unpopular in this country. More so, it would reshape research and proffer policy alternatives in educational management and administration as well as provide discourse on the possibility of adopting legal alternative to demand policy compliance. This would revamp the ageing measures and improve university education financing and/or funding in Nigeria.

METHOD

Education and Legal framework in Nigeria

Reasonably, government owned and controlled educational institutions derive their existence, power and functions from the constitution of the Federal Republic of Nigeria (Houghtelling, 1963; Sadman, 1971; Okunanuri, 2009; Anukan, Okunanuri & Ogbonna, 2010). The provisions in section 18 of the 1979 constitution, titled “Fundamental Objectives and Directive principles of state policy”, stipulates power of the federating states concerning the establishment and operation of educational institutions:

- i. Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels;
- ii. Government shall promote science and technology;
- iii. Government shall strive to eradicate illiteracy, and to this end, government shall as and when practicable provide –
 - free and compulsory primary education,
 - free secondary education
 - free university education
 - free adult education programme.

But section 10, sub-section 153 – 155(a-f) of the national policy document (FRN: 2013: 50) copiously (and aptly too) appreciates education value and payment plan:

education is a capital-intensive social service which requires adequate financial provisions from all tiers of government for successful implementation of its programmes. Government's ultimate goal is to make education free at all levels in addition to assistance from International and local Development Partners, grants for research and other donor agencies.

Thus, education financing became a joint responsibility of the federal, states/FCT and local governments and the private sector. In this connection, government welcomes and encourages the participation of local communities, individuals and organizations.

Efforts towards the improvement in the funding of education at all levels shall include:

- a. Increased government investment in education in order to eliminate the deficiency in public investment between Nigeria and other Sub-Saharan and developing countries. At least, 26% (UNESCO minimum standard recommendation) of the federal, state, and local Governments budget should be dedicated to funding of education at all levels.*
- b. Strengthen governance frameworks and the skills of administrators at all levels, in order to entrench and promote a culture of accountability, effectiveness and efficiency in the management of public investment in education;*
- c. Establishment of a framework for government intervention funds from sectorial bodies like UBEC fund, TETFund, Industrial fund, Universal Service Provision Fund (USPF) and the Petroleum Technology Development Fund (PTDF) that would promote initiatives such as Read to be Educated, Advanced and Developed (READ Campaign) etc;*
- d. Strengthening and harnessing policy and capacity to draw in and effectively utilize resources from international and local Development Partners such as World Bank, USAID, UNIDO, UNICEF, UNDP, DFID, JICA, KOICA, Nigeria/Sao Tome and Principe Joint Development Authority, NGOs, etc;*
- e. In demonstration of social responsibility, contractors, consultants and other service providers are to contribute minimum of 1.5% of contract sum/fees to a Special Education Corporate Social Responsibility Fund (SECSOF) to be established; and*
- f. Encouragement of formal participation of ALUMINI bodies in the funding of Secondary and Tertiary Education in Nigeria (FRN, 2013, p. 70 -71).*

More so, part III of the compulsory, free Universal Basic Education Act, 2004, titled "Financing of the Universal Basic Education" states that:

1 – Implementation of the Universal Basic education shall be financed from –

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

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- 2 – for any state to qualify for the federal government block grant pursuant to sub-section 1(1) of this section, such state shall contribute not less than 50% of the total cost of projects as its commitment in the execution of the project,
- 3 The administration and disbursement of funds shall be through the state Universal Basic Education Board (Federal Republic of Nigeria, 2004, A119).

Of particular interest is government's resolve to allocate "*at least, 26% minimum of the federal, state, and local Governments budget ... to funding of education at all levels*" (FRN 2013, p. 70) obviously, well-intended to eliminate the foreseeable consequences in the system. It is a clear indication of government (federal, state, and local) unequivocal acceptance of the responsibility and intention to protect the sanctity of the funding code, unwaveringly and without fail, and hence occasion national development.

This intention is also in compliance with the United Nations Scientific and Cultural Organization (UNESCO) 26% minimum of the GDP financing prescription seen as critical for achieving sustainable development in any country. Tacitly but reasonably, these prescriptions anticipates 'consistent and regular practice' for success thereby prevent foreseeable consequences such as the general infrastructural decadence discussed earlier which serves recipe for weak education programme implementation.

It re-echoes the point widely maintained (Eze, 1983; Igwe, 1990; Ocho, 2001; Aghenta, 2001; Ebong, 2006; Leigha, 2010) that the character of financial allocation remains the single most potent factor that determines the strength of a nation's education around the world. In fact, no educational programme – whether at the primary, secondary or tertiary level, can be more successful than the extent of financial provisions. Providing funds for education to adequate level is the *key* in this sustainable development era as it is such education financing that will form the bedrock for the country to meet current educational needs without sacrificing needs in the future.

Leigha (2010) had classified education financing into three main areas of interest in the school system. These are recurrent, capital and miscellaneous expenditures. Recurrent financing is characterized by overhead expenses on staff salaries in the system. Capital expenditure has reference points in school growth and development concerning buildings, equipment and related capital payments. He perceives miscellaneous expenditure as sundry payments not within the purview of recurrent and capital expenditure framework. This bulk expenditure is exogenous in character for which the administrator can only request rather than control.

RESULT

With this understanding, a pattern of Nigeria's recent federal government budgetary allocations to the education subsector was examined:

Table 1: 9-years Education funding experience in Nigeria

Year	Cap. Exp. (N)	Rec. exp. (N)	UBE (N)	Total Educ. (N)	Total Budget (N)	Ed. % of Total Budget
2010	53,667,933.533	195,418,320.506	44,341,401.504	293,427,655.563	4,079,654,724.257	7.19
2011	35,088,896.911	304,392,631.774	54,328,643.090	393,810,171.775	4,226,191,559.259	9.32
2012	55,056,589.805	345,091,448.178	68,273,000.000	468,385,037.983	4,749,101,000.000	9.86
2013	60,140,591.038	367,375,115.850	72,246,000.000	499,761,707.888	4,924,604,000.000	10.15
2014	50,781,035.231	373,532,095.037	70,470,000.000	494,263,784.654	4,695,190,000.000	10.54
2015	23,520,000.000	392,363,784.654	68,380,000.000	484,263,784.654	4,493,363,957.158	10.78
2016	35,433,487.466	367,734,727.223	71,110,000.000	480,278,214.689	6,060,677,358.227	7.92
2017	56,720,969.147	398,686,819.418	95,189,395.583	550,597,184.140	7,441,175,486,758	7.40
2018	61,730,000.000	435,010,000.000	109,060,000.000	605,800,000.000	8,600,000,000.000	7.04

Source: Niger Business.com – retrieved online, 5/3/18

It is to be noted that “every administrative action of the school head” such as managing and accounting for financial, material and human resources entrusted to their care “has legal implications” (Obi, 2004 in Manga & Bello, 2015: 516-517). Logically then, much legal implications are involve with every managerial action or inaction of government - federal, state, and local – especially in school (university) funding entrusted to their care and hence negligent (careless and mindless) behavior and attitude require objective scrutiny for possible redress under an appropriate law, such as the law of tort.

Negligence in Legal terms

In tort, the concept ‘negligence’ is “roughly equivalent to carelessness, it is no doubt something more than a careless conduct; it is a form of legal accountability and is defined as failure or breach of legal duty to exercise care when there is a foreseeable risk of harm or damage to others” and may be an act of commission or omission (Peretomode, 1992, Igwe, 2003).

Foresee ability is a primary test to determine committal of negligence. When a reasonably prudent person/s (with normal intelligence, normal perception and memory, and such superior skills and knowledge as the actor has held himself out) could have foreseen the harmful consequences of his act, the actor disregarding the foreseeable consequences, is liable for negligent conduct (Remmlin & Ware, 1972). By extrapolation, a reasonably prudent government and education manager could have foreseen that the school operations would paralyze by their financial actions, the government and education manager is liable if they disregard that foreseeable consequence.

Elements of NEGLIGENCE

In order for negligence action to succeed, the plaintiff is required to prove the existence of four elements, viz:

1. The defendant owed a legal duty to protect the plaintiff against harm (i.e. the duty of case);
2. The defendant failed to exercise an appropriate duty of care (i.e. a breach of that duty);
3. The plaintiff suffered actual loss or injury – physical or mental or both (consequential damage), and

4. The defendant's negligence (act of omission or commission) was the proximate or legal cause of the plaintiff's injury.

A critical aspect of the tort of negligence is the concept of "your neighbor" in law. According to Rogers (1979), this law requires an individual to take reasonable care to prevent acts or omission which he can reasonably foresee as likely to injure his neighbor. "Neighbor" here refers to "persons who are so closely and directly affected by your act that you ought reasonably to have them in contemplation as being so affected when you are directing your mind to the acts or omissions which are called in question" (Rogers, 1979, p.68). The university system could be seen as a 'neighbour' to the government that undertake its financing.

Proof of NEGLIGENCE

For negligence to be actionable or for a plaintiff to recover damages in a law suit, the plaintiff must prove, or have the burden of proving, the four elements of negligence. Two major aids for meeting this burden are:

- (i) The doctrine of "negligence *per se*" and
- (ii) The doctrine of "*res ipsa loquitur*".

The doctrine of "negligence *per se*" permits the plaintiff to employ the defendant's unexpected violation of a criminal statute as a proof that the defendant committed negligence. A statute establishes standard for behavior in society; a breach means failure to measure up to the standard of an ordinary reasonable person (or institution) and constitutes negligence (Hoerber, et. al. in Peretomode, 1992). To corroborate this point is the accident case of Wolf v. Moughon, (1978), where the plaintiffs filed a suit against the defendant (Carol Moughon) for damages for negligence *per se* in failure to maintain her vehicle on the right side of the road in breach of a state statute. The plaintiffs won the case (Peretomode, 1992, p. 108).

The second aid proof, *res ipsa loquitur*, (the facts speaks for themselves), is applied occasionally where there is no clear or direct evidence of the plaintiff's failure to exercise due care. However, negligence can be presumed on the grounds that the defendant had sole control of the cause of the damage. Assuming student X was eating in a boarding dining hall and sustains injury from a dining table collapsing on his foot. In the absence of any other evidence, the court could admit that the injury is a consequence of the school's negligence by allowing broken dining table to remain in use. Notwithstanding, the school could introduce evidence to contradict the case of negligence (Smith and Others, 1984). Thus, *res ipsa loquitur* doctrine is merely a rule of evidence in law and may not guarantee a favour verdict for the plaintiff (Peretomode, 1992, p. 108).

DISCUSSION

From the foregoing, this paper seeks to establish that government attitude towards university education financing which has consistently become 'left-overs' is culpable under the law of negligence-liability *per se* corroborated by the following case:

A case of Negligence-liability of school district and personnel for death of student on school play ground-duty is owed by the school officials to students on school playgrounds brought against the Los Angeles Unified school district by Dailey in the

supreme court of California, 1970 with reference number 2 cal. 3d 741, 87 Cal. Rept. 376, 470 P. 2d 360.

*The case held that during the noon recess on May 12, 1965, Michael Dailey, a 16-year-old high school student, was killed on the playground of Gardena High school. His parents brought this wrongful death action against the Los Angeles Unified school district which operated Gardena high school and against two teachers employed by the district. The case was tried by the jury. Plaintiffs sought to establish that the defendants' negligence in failing to provide **adequate** supervision was the proximate cause of Michael's death.*

In sum, a jury ... reasonably conclude that those employees of the defendant school district who were charged with the responsibility of providing supervision failed to exercise due care in the performance of this duty and their negligence was the proximate cause of the tragedy which took Michael's life" (Peretomode, 1992, p. 115 – 117).

The FRN (2013, p.70) legally accepted to provide **adequate** (minimum 26% UNESCO prescription) funding from all tiers of government for successful education programme implementation. But, the consistent miserable funding shortfalls do not demonstrate maintenance of this vouch:

Table 2: Total and percentage Education budget vis-à-vis UNESCO 26% prescription.

Year	Total National budget (N)	Total Education Budget (N)	% Education Budget (TEB)	Total UNESCO mark.	Less 26%
2010	4.08 trillion	293.43 billion	7.0	-19.0	
2011	4.23 trillion	393.81 billion	9.0	-17.0	
2012	4.75 trillion	468.39 billion	10.0	-16.0	
2013	4.90 trillion	499.76 billion	10.0	-16.0	
2014	4.70 trillion	494.78 billion	11.0	-15.0	
2015	4.50 trillion	484.26 billion	11.0	-15.0	
2016	6.06 trillion	480.28 billion	8.0	-18.0	
2017	7.44 trillion	550.60 billion	7.0	-19.0	
2018	8.60 trillion	605.80 billion	7.0	-19.0	

Sources: Niger Business.com, retrieved – 5/3/2018.

Table 2 above indicates consistent, severe and progressive negative funding (-19, -17, -16, -16, -15, -15, -18, -19, and -19 respectively) over the period under review. These appalling figures suggest that the Nigerian education may, indeed, be heading towards “NIAGARA”. And only an **irreversibly sustained 26% minimum budgetary allocation** can “call her away from the FALLS!” (Okorosaye-Orubite, 2017, p. 30 - 31). In fact, the inconsistency in conduct indicates not only carelessness but deliberate disregard to policy and global (UNESCO 26% prescriptions) best practices – an attitude capable of stunting national development which education is designed to serve. So, does this behavior and attitude contravene any law?

University Education financing and Negligence liability: Case No. leighamajor/01march/2019/001

The case is a Negligence-liability of government (federal, state and local) and authorities for education infrastructural (library, laboratory, workshop, and buildings, sundry equipment, teachers' welfare, instructional materials, and indeed, general teaching and learning) shortage in programme implementation; a duty owed by the governments to universities on programme implementation which could be brought against the governments (federal, state, and local) respectively, by the stakeholders (parents, guardians, and even the student-body) in the supreme court of Nigeria, forthwith.

The case is that the over 70 years (since 1948 till date) practice of university education operations in Nigeria is severely crippled on programme implementation. The stakeholders could bring this wrongful damage action against the government (federal, state, and local) which operates university education and against any other financier co-opted by the government. The case could be tried in a competent and objective court. The paper sought to establish that the government (federal, state, and local)s' negligence in failing to provide **adequate** (26% minimum of total budget) funding was (and still is) the proximate cause of universities' poor implementation of programmes.

An unbiased justice would reasonably conclude that these financiers (government and its partners) who are charged with the responsibility of providing funding failed to exercise **due care** in the performance of this duty and their negligence was (and still is) the proximate cause of the tragedy befalling the universities in the area of programme implementation.

We are all aware that university programmes successfully implement on the expenditure of financial resources. This fact, however, is often undermined. A critical examination of the various activities which the university engages in under the auspices of funding will make this point more obvious. Except governments (federal, state, and local) realize this fact in their release of financial resources to the universities, "the high duty of care" (Peretomode, 1992, p.104; FRN, 2013) required of them would (continuously) be taken for granted with all the attendant legal (and even academic) implications.

This is even more so considering the fact that educational services and opportunities have become tremendously expanded, sophisticated, complex and highly politicized, as Fafunwa (2004) aptly observed, yet the funding task has become consistently negative, deteriorating and unstable.

This is why it has become imperative for the major stakeholders (teachers, administrators, parents, government agents and even students alike) to be well informed of the legality in education funding (Okunanuri, 2009) because 'ignorance of the law is no excuse'. A discourse in this area is necessary considering it is expedient for all genuinely concerned education stakeholders to become more aware of the legal option for redress, whether such laws emanate from federal, state or local government; implied in the constitution or local education authorities, court acts or ordinances, gazette or non-gazette policies or regulations (Anuna, 2004).

CONCLUSION

The fact is that education funding has drastically nose-dived to unacceptable levels: negative and dwindling. This trend would on produce PAPER-TIGERS, if allowed to continue. No nation can develop above its educational attainment, just as no educational system can be stronger than its funding level.

Unleashing the law may summon and goad the Nigerian government and supportive financiers' into courage and political will to relive their financial obligation in order to make the necessary difference between total collapse and progress in educational system development. This must be done within inbuilt frameworks of prudence, accountability and probity to strengthen funding practices.

Meanwhile, education administrators must equally reposition (rethink and redirect) their attitude and mentality towards understanding and appreciating the true meaning of the phrase: 'INTERNALLY GENERATED REVENUE aka IGR' as a feasible alternative. Therefore, administrators, parents, politicians, stakeholders as well as philanthropists could, and should, demand for and engage the government on the provisions of this law in the decades ahead.

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