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APPRAISAL OF THE LEGAL FRAMEWORK FOR GOVERNANCE OF PRIVATE UNIVERSITIES IN NIGERIA

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ABSTRACT

This paper appraised the legal framework for the governance of Private Universities in Nigeria. The paper examined the concept of University governance, the procedure for the establishment of Private Universities, the legal personality of Private Universities in Nigeria and the challenges confronting Private Universities in Nigeria. The paper also discussed the Code of Governance for Private Universities in Nigeria, as well as the governance structure of Private Universities as provided by the law. It also considered the roles of the top-notch of the University in their hierarchical order, with a view to assessing how the Universities have fared. In a similar vein, the paper also x-rayed issues surrounding the legal personality of Private Universities in Nigeria. It also discussed the challenges and proffered recommendations on how to resolve them. This paper employed the doctrinal research method for the purpose of driving home this research. On the whole, the paper made very salient recommendations that would help in revamping the governance structure of Private Universities and making Private Universities more effective and efficient in fulfilling the goal and objectives for which they were established.

1. INTRODUCTION

The birth of private Universities in Nigeria began in the year 1979.[1] During the period, about 26 Private Universities were established. No sooner had the Universities started than they were abolished by Decree 19 (1984) of the Military administration that overthrew the Shagari Government of the Second Republic.[2] It should, however, be noted that the idea of establishing Private Universities in Nigeria was first mooted as far back as 1960, but it was declined by the Government at that time because of the political exigencies of the democratic experience of the First Republic where both the federal and the regional government were competing to establish and operate their own universities. With the passage of time, the idea of Private Universities re-emerged again with the advent of democratic governance in 1999, when the country witnessed the establishment of Private Universities, numbering over 100. As of September 2024, there are over 147 Private Universities in Nigeria, which are all regulated by the National Universities Commission.[3]

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1 Omaji, P. O, "Challenges of Operating Private Universities in Nigeria" (Being a paper presented at the Retreat Organised for the Management, Governing Council & BOT of Bingham University, Karu 25 May 2018).

2 Oloyede, H. and Adekola, B. "Prospects and Challenges of Private Universities in Nigeria" in Okojie et al (eds) *50 Years of University Education in Nigeria: Evolution, Achievements and Future Directions* (University of Ilorin and National Universities Commission, 2010) 177.

3 Tolu-Kolawole D., "107 Private Universities to be Investigated by FG Panel" (2024) <https://www.punchng.com> accessed on the 3rd September, 2024.

Fundamentally, the point must be made that Universities in Nigeria, whether federal, state or private, are creatures of the law. A Federal University is created by an Act of the National Assembly, while a State University is created by a law enacted by the House of Assembly of a State. A Private University is created by a licence to operate approved by the Federal Government of Nigeria on the recommendation of the National Universities Commission, which is the highest regulatory body of all Universities in Nigeria. Thus, the National Universities Commission is the body saddled with the responsibility, amongst others, of the issuance of licenses and regulation of the activities of all universities in Nigeria, be they Public or Private Universities.

2. CONCEPT OF UNIVERSITY GOVERNANCE

The concept of University Governance is an amalgam of two words, to wit: "University" and "Governance". It is germane to look at the two words differently before considering them together. A University is a place where people study for an undergraduate (first) or postgraduate (higher level) degree.[4] It is an institution of higher learning providing facilities for teaching and research and authorised to grant academic degrees, especially one made up of an undergraduate division which confers bachelor's degrees and a graduate division which comprises a graduate school and professional schools, each of which may confer master's and doctorates degrees.[5] Governance refers to "the act of governing; exercising authority".[6] It is the system by which an organisation is controlled, operated, and managed, as well as the mechanism by which its people are held accountable.[7]

From the signification of the duo, it can be rightly posited that University Governance refers to the way in which universities are run or operated. This, in most cases, predominantly refers to the internal structure, organisation and management of the University. Typically, the internal governance of a university consists of a Governing Board or Governing Council, the Pro-Chancellor, the Chancellor, the Vice-Chancellor and Management, Faculty Deans, Heads of Department and Units, and usually some form of organisation for representation by the students.[8]

3. PROCEDURE FOR THE ESTABLISHMENT OF PRIVATE UNIVERSITIES IN NIGERIA

The first step in venturing into establishing a Private University in Nigeria is to make an application in writing to the National Universities Commission, stating the intent for the

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4 Cambridge Advanced Learner's Dictionary<https://dictionary.cambridge.org> accessed on the 29th March, 2024.

5 Merriam-Webster Dictionary <https://www.merriam-webster.com> accessed on the 29th March, 2024.

6 Vocabulary.com <https://www.vocabulary.com> accessed on the 29th March, 2024.

7 Fola T. "Rethinking University Governance in Nigeria: A Path to Academic Excellence and Global Competitiveness" (2024) <https://toyinfalolanetwork.org> accessed on the 3rd September, 2024.

8 Ibid.

establishment of the University.[9] Usually, the declaration of intent should include, in brief, the name of the proposed focal niche in the current Nigerian University system.[10] Promoters will be interviewed in order to ascertain their seriousness in setting the pace for the establishment of the University. After considering the application, the representative of the proposed University is required to visit the Commission with evidence of payment to collect a set of 10 application forms. Upon collection of the forms, copies of the guidelines and other requirements are also given for proper guidance.[11]In a similar vein, other clarifications are also sought and resolved appropriately.

After completing the said forms, they are forwarded with a non-refundable processing fee in Bank Draft addressed to the National Universities Commission, along with one or more of the following documents:

1. Draft Academic Brief;
2. Draft Physical Masterplan;
3. Draft University Law;
4. Counterpart Deed of Assignment;
5. Certificate of Incorporation/Registration of Proprietors (Accompanied with Articles and Memorandum of Association);
6. Deed of Assignment/Certificate of Occupancy;
7. Letter of Liquid Cash; and
8. Bank Guarantee of Funds to the tune of ₦200,000 (Two Hundred Million Naira) from a reputable bank.[12]

Thereafter, submission of all these documents is made to the Directorate for Establishment of Private Universities (DEPU). After submission, DEPU now invites members of the Planning and Implementation Committee (PIC) of the proposed University to NUC for an interactive meeting as a prelude to the first verification visit to its proposed campus site. During the meeting, the process of documentation and other matters bordering on University Governance are discussed, and many grey areas are also resolved. At this stage, other documents that were not submitted must be submitted.

Following submission of the completed application forms, the National Universities Commission Departments undertake a review of the documents, after which the verification visit is carried out by DEPU to review their documents with them on a one-on-one basis and to assess the level of preparedness in terms of documentation.[13] Thereafter, promoters of the University will review the documents based on the report of DEPU to the NUC. Having done that, DEPU will then carry out the second and final visit, after which security screening of promoters and members of the Board of Trustees of the proposed university is carried out to ensure that they are not persons of questionable character.[14] The final report is then given to DEPU by the Management of the NUC, and the NUC Board grants approval based on the recommendations of the University Development Committee. Thereafter, the Federal

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[9] Justice and Media Ltd, "Requirements for the Establishment of a Private University in Nigeria" (2024) <https://www.lawnigeria.com> accessed on the 4th September, 2024.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Lexis Praxis Solicitors, "How Do I Register a Private University in Nigeria" (2024) <https://www.lexpraxis.ng.com> accessed on the 4th September, 2024.
[14] Ibid.

Executive Council grants approval based on the recommendations of the NUC Board and the security report of the promoters and trustees of the University.[15] Where approval is given by the NUC, the proposed university is given a three-year provisional license, and upon satisfactory performance, a substantive licence is given.[16]

4. LEGAL FRAMEWORK FOR PRIVATE UNIVERSITIES IN NIGERIA

The Nigerian University System is a product of the legal framework established for its regulation. The first port of call is the Constitution, which is the fundamental and basic law from which all other laws and legislation derive their source and authority. In the case of *Ogheneovo v Gov. of Delta State*,[17] it was held by the Supreme Court that there is no controversy at all; the provisions of the 1999 Constitution are superior to any other law and inviolable. This means all the laws of the land must trace their validity back to the Constitution.

By section 4(a) of the Constitution,[18] education is under the Concurrent List, which spells out the extent of Federal and State legislative powers. This means both the Federal and State Governments have the authority through their legislative organs to concurrently make laws relating to education from the primary, secondary, up to the tertiary level (University Education). The legal position however, remains that in the event of a conflict between a legislation enacted by the National Assembly and a law made by the House of Assembly of a State, the Act of the National Assembly prevails over the law made by the House of Assembly of a State to the extent of its inconsistency.[19]

It is pertinent at this juncture to consider the relevant provisions of the Constitution with respect to the power to regulate education. Paragraphs 27 and 28 in the Concurrent List provide thus:

> 27. The National Assembly shall have power to make laws for the Federation or any part thereof with respect to university education, technological education or such professional education as may from time to time be designated by the National Assembly.
> 28. The power conferred on the National Assembly under Paragraph 27 of this item shall include power to establish an institution for the purposes of university, post-primary, technological or professional education.[20]

The intention of the legislature, which is clearly evinced by the above provisions, is that the National Assembly is arrogated the power to make laws for the federation or any part thereof with respect to university, technological or professional education. This power extends to the power to establish an institution for the purpose of university, post-primary, technological or professional education. Pursuant to the exercise of this power, the Federal Government has

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15 Ibid.
16 Ibid.
17 (2023) 2 NWLR (Pt 1868) 275
18 CFRN, 1999 (as amended)
19 AG Federation v AG Lagos State (2013) 16 NWLR (Pt. 1380) 249
20 Concurrent Legislative List, Second Schedule Part II. Pursuant to s4 CFRN, 1999

established various Federal Universities across the Federation[21] and post-primary institutions such as the Unity Schools in various parts of the Federation.

Meanwhile, the power of the House of Assembly of a State to make laws with respect to the establishment of an institution for the purposes of university, technological or professional education is made subject to the power of the National Assembly.[22] Also, the power of a House of Assembly to make laws for a State with respect to technical, vocational, post-primary or other forms of education is not encumbered by the provisions foregoing Paragraphs.[23]

It is, however, important to point out that the domain to prescribe minimum standards of education at all levels of education in Nigeria is exclusive to the National Assembly.[24] The legal import of this provision is that it is only the Federal Government, through the agencies established by the Federal Government, that can determine the minimum standards of education at all levels from the primary school level up to the University level.

Indeed, one of the key institutions created for the regulation of university education in Nigeria is the National Universities Commission. The functions of the National Universities Commission are spelt out clearly in the Act which established the Commission.[25] The legal framework for the governance of Private Universities in Nigeria seems to be fluid. This notwithstanding, it is germane to state that Private Universities are licensed by the Federal Government of Nigeria, through the National Universities Commission, to enable them to exist and to function properly.

The license to operate a Private University is usually issued to a private individual(s) or organisations to own and operate Private Universities, upon the satisfaction of necessary conditions laid down by the National Universities Commission, which is the highest regulatory body for all universities in Nigeria.[26] An important point to note is that there exists a Code of Governance for Private Universities developed by the National Universities Commission, and the provisions must be strictly adhered to by the Universities. This Code of Governance is issued pursuant to the provisions of a legislation, namely, the Education (National Minimum Standards and Establishments of Institutions) (Amendment) Act, 1993.[27] Generally, the Code of Governance is akin to the Law of Private Universities in Nigeria, having been issued by the National Universities Commission. All Private Universities in Nigeria are enjoined to comply with the provisions of the Code of Governance, and compliance is mandatory. Therefore, in examining the legal framework of Private Universities, it is apposite to consider and analyse the fundamental provisions of the Code of Governance.

Code of Governance for Private Universities in Nigeria[28]

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21 University of Abuja Act, CAP U2, LFN 2004, University of Jos Act, CAP U8 LFN 2004, university of Ibadan Act, CAP U6, LFN 2004 etc.

22 Paragraph 29

23 Parag. 30

24 Paragraph 60 (e) Part 1 Exclusive Legislative List, Pursuant to s4 CRFN, 1999

25 Section 4 National Universities Commission Act CAP N81, LFN 2004

26 Ibid

27 This Act provides that the administrative structure of the proposed institution shall not conflict with the conventional responsibilities in the academia or interfere with avowed traditional institutional autonomy.

28 The Code was revised in 2021.

For a meaningful discourse on the legal framework for Private Universities in Nigeria, recourse must he had to the Code of Governance for Private Universities in Nigeria. It is, without any scintilla of doubt or pessimism, the basic law that governs the operation of all Private Universities in Nigeria. The Code generally adopts the principles, standards and laws laid down in existing statutes in Nigeria, especially the provisions of the Education (National Minimum Standards and Establishment of Institutions) (Amendment) Act[29] and the Companies and Allied Matters Act.[30] Compliance with the provisions of the Code is mandatory for all Private Universities, and the Board of Trustees is saddled with the responsibilities of ensuring that all the internal administrative structures and their respective Committees function optimally. The Universities are obligated to furnish the NUC with certified records evidencing such documentation.

Establishment, Objects and Organs of a Private University

By the Code, the establishment of a Private University is subject to the approval of the Federal Executive Council on the recommendation of the National Universities Commission and in consonance with any guidelines set out from time to time by the Commission in furtherance of any law for the time being in operation.[31] It shall be a body corporate, capable of suing and being sued *eo nomine (in its own name)*, having perpetual succession and a common seal. The objects of a Private University include, offering opportunities of acquiring a higher and liberal education to all persons without distinction of any sort, promoting a culture of good governance, fairness, transparency, accountability, integrity, ethical conduct, independence, objectivity, excellence, national unity, sound moral principles and service to community and humanity, amongst others.

Organs of A Private University

A Private University, like other universities, be they federal or state, has governance structures for the smooth running of the university. Each of these organs has its functions for the purpose of the growth and development of the university.

i. Proprietor

The Code provides that every Private University in Nigeria must have a Proprietor. The Proprietor should either be a company incorporated in Nigeria, or an individual or association of individuals who are citizens of Nigeria. It is the Proprietor that provides finances for the university and appoints the Board of Trustees. Depending on the ownership structure of the University, it is expected that the Proprietor does not meddle in the internal governance of the university in such a way that will jeopardise the academic culture of the university system in Nigeria.

ii. Board of Trustees

The Board of Trustees, which is usually made up of fit and proper persons appointed by the Proprietor (s), is subject to the approval of the National Universities Commission and security clearance. It is the highest governing body of the University, and it is charged with the overall policy direction and financing of the University. It is this body that sets the tone

29 Cap. E3, Laws of the Federation of Nigeria, 2004
30 Cap. C20, Laws of the Federation of Nigeria, 2004.
31 Code 2.0 of the Code of Governance

and defines the fundamental and core values of the University. This body performs a myriad of functions, some of which include: provision of required financial resources to the University, determining the limits of the financial expenditure of the Governing Council, appointment of the Vice Chancellor on the recommendation of the Governing Council, appointment of the Chancellor, Pro-Chancellor and other external members of the Governing Council of the University and determine their terms and conditions of service, etc.[32]

iii. Governing Council

A Private University also has a Governing Council appointed by the Board of Trustees, which is responsible, with the BOT, for the governance of the university and the establishment of policies to promote the development and operation of the University. The Council is composed of: 1. Pro-Chancellor as Chairman, 2. Vice-Chancellor 3. Deputy Vice-Chancellor (if any) 4. One (1) appointee of the Senate from its members 5. One (1) representative of the Convocation, 6. 2 nominees of the Proprietor, which may include a representative of the host community, one of which should be a woman. 7. A representative of the NUC (as observer) 8. The Registrar as Secretary.

Members of the Council appointed by the BOT have a 3-year tenure, but this does not apply to members of the Council whose appointments are tenured. For example, the Registrar is appointed for a 5-year term. The Governing Council performs a myriad of functions, to wit: building and safeguarding the good name of the university; ensuring the university complies with the established guidelines of the NUC and with the provisions of the legal instruments by which the university was established; making recommendations to the BOT for approval of the annual budget without prejudice to individual universities law, etc.

iv. Council Committees

These are Committees established by the Council to assist it in the performance of its duties and responsibilities and to facilitate efficiency. Each of these Committees is given terms of reference, specifying the task with which they have been entrusted. The main Committee include: the Finance and General-Purpose Committee; Staff Appointment and Promotion Committee; and the Staff Disciplinary Committee. It is within the discretion of the Council to determine the tenure of members of the committees and the quorum for their meetings.[33]

v. The Senate

The Senate is the ultimate and highest decision-making body for all academic matters in the university. It is composed of the Vice-Chancellor, the Deputy Vice-Chancellor (s), the University Librarian, all Professors, Deans of Faculties, the Dean of Postgraduate School, Heads of Departments, the Director of Research Institute and other Academic Units, Director of Academic Planning and Director of Quality Assurance and the Registrar as secretary. In

[32] Code 4
[33] Code 5.6

the absence of the Vice-Chancellor, a Deputy Vice-Chancellor, and in the absence of both the latter and the former, a nominee shall act as Chairman.

The Senate performs several functions, including establishment, organisation and control of Faculty and other academic departments of the university, and the allocation to different departments of responsibility for different branches of learning; organisation and control of courses of study at the university and of the examinations held in conjunction with those courses; award of degrees, and such other qualifications as may be prescribed in connection with examinations aforesaid, amongst others.

The Senate, like the Governing Council, also has committees such as the Committee of Deans and Directors, the Development Committee, the Central Admissions Committee, the Ceremonies and Honours Committee, the Library and Publications Committee, the Information and Communication Technology Committee, the Students Welfare and Disciplinary Committee, etc.

vi. Other Structures

Other governing structures include: Faculties/Schools or Colleges; the Congregation and the Convocation, playing different roles assigned to them under the Code of Governance for Private Universities. There are also the Principal Officers of the University who constitute the management of the University and are involved in the day-to-day running of the University. They include the Vice-Chancellor, the Deputy Vice-Chancellor (s), the Registrar, the Bursar and the University Librarian. Their functions and tenures of office are as stated in the Code of Governance.

5. LEGAL PERSONALITY OF PRIVATE UNIVERSITIES IN NIGERIA

There have been a lot of issues regarding the legal personality of Private Universities in Nigeria. As earlier adumbrated, Private Universities are licensed by the National Universities Commission, which is the regulator of all the universities in Nigeria. It is imperative to note that Private Universities must still undergo the process of registration with the Corporate Affairs Commission before they will be clothed with legal personality to entitle them to sue and be sued. In this connection, section 26 of the Companies and Allied Matters Act, 2020 (CAMA 2020) is relevant. It provides as follows: -

> Where a company is to be formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity, or other similar objects, and the income and property of the company are to be applied solely towards the promotion of its objects, and no portion thereof is to be paid or transferred directly to the members of the company except as permitted by this Act, the company shall not be registered as a company limited by shares, but may be registered as a company limited by guarantee.

It is germane to state that a Private University may also be registered as a private limited company, if it is to be run for profit by the owners. Another form in which a Private

University can be incorporated is through incorporated trustees, otherwise known as non-governmental organisation. Once it is registered with the Corporate Affairs Commission, a Private University automatically becomes a person in law, capable of suing and being sued *eo nomine.* If a Private University is not sued by its statutory name or incorporated name, it becomes a very difficult issue that, more often than not, goes to the substance of the suit and robs the court of the requisite jurisdiction to entertain the matter.

Meanwhile, it is apposite to state that making incorporation mandatory for Private Universities in order to cover them with legal personalities in court creates a very big problem that requires an answer. First, it means that a Private University does not have a legal personality unless it has been registered with the Corporate Affairs Commission. In other words, registering a Private University with the National Universities Commission does not confer legal personality on a Private University.

Notably, the Court has held that despite its registration with the National Universities Commission and incorporation with the Corporate Affairs Commission, a Private University is not a creation of an Act of the National Assembly. The reverberating effect of this is that any employment with a Private University does not enjoy statutory flavour, as it is tantamount to a master-servant relationship which can be terminated at any time. In *Malam Usaini S. Gwani v Bingham University*[34], the National Industrial Court of Nigeria stated the position more succinctly as follows:

> Having determined that the defendants are not a creation of an Act of the National Assembly, it stands to reason that the claimant's appointment was not one with statutory flavour and as such relieve cannot be granted as it is only in statutory flavoured employment governed by statute, can a court on finding the nature of termination illegal, declare that the employment was not terminated and is still subsisting. In the same vein, it is only statutory employments that a termination can be declared null and void and of no effect. All other types of employment are bound by their conditions of service and contracts and are employee employer relationships more commonly described as Master Servant relationship.

In the above case, the Claimant approached the Court to challenge the wrongful termination of his appointment as the Acting Registrar of the University, and claimed that his appointment with the University was one that had a statutory flavour, since the Defendant was an institution created by law. The Court completely disagreed with the Claimant and, instead, held that the Defendant was a Private University and not an entity created by law, as erroneously argued by the Claimant.

6. CHALLENGES FACED BY PRIVATE UNIVERSITIES IN NIGERIA

All universities – federal, state or private are bedevilled by a lot of challenges. While some of these challenges are generic, others are specific to Private Universities in Nigeria. This segment of the paper proposes to discuss the challenges facing Private Universities in Nigeria, with a view to suggesting concrete and practical ways through which some of these challenges can be surmounted.

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[34] Suit No. NICN/Abj/379/2015.

i. *Underfunding:* It is germane that all universities, by the reason of their complex functions, are required to have huge and tangible resources in order to meet their general expectations and to fulfil the vision and mission of such universities. For Public Universities, their funding comes from the government in the form of grants or subventions. This is why it was said that during the golden age of Universities in Nigeria (the period between 1948 and the mid-1970s), the problem of Universities in Nigeria was not money, but how to spend the money – a period of plenty and abundance.[35] Around the 1980s, a shortfall set in, and underfunding became a humongous challenge. From that period onwards, universities had to start addressing the challenge with their own internally generated revenue, and, even then, it was still a herculean task.[36] By the time Private Universities began in 1999, the public universities were barely surviving financially. The proprietors of the Private Universities were expected to do more than what the public universities were doing at that time. However, the reality of the situation was that most of these proprietors were not as rich as the government – a situation that still persists today. Again, the Private Universities could not make money as readily available as the government could.[37]Despite this challenge, there are some Private Universities that are doing very well, more than public schools. Some of these Private Universities, whose names dominate national and international spaces, are the Covenant University, Afe Babalola University, American University of Nigeria, Bingham University, and Landmark University, among a host of others.

ii. *Inadequate staff quality and quantity:* This is one of the challenges with which all universities in Nigeria, including Private Universities, are confronted with. Till today, Nigerian Universities, including Private Universities, can hardly meet 60 per cent of their staffing needs, thereby undermining the policy objective set by the National Universities Commission with respect to the quantity and quality of staff for tertiary institutions in Nigeria.[38] It is worth noting that most of the Universities in Nigeria are still suffering from staffing, both in terms of quality and quantity of staff. It is commonplace to state that most of the lecturers in our Public Universities are still the ones who are hired to teach in the Private Universities. As a result of teaching in different universities under the guise of visiting lectureship, the best lecturers are not gotten in Private Universities. In other words, because of lack of time, the lecturers become ineffective in terms of delivery and performance. Little wonder, these days, there are graduates who are deficient and "half-baked" as a result of this major flaw.

iii. *The expensive nature of the Private Universities:* This is another challenge confronting Private Universities in Nigeria. It is not in doubt that the tuition fees of most Private Universities in Nigeria are very high. In a nutshell, most Private Universities in Nigeria

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35 Ibidapo-Obe O, "The Nigerian University System since Independence: Challenges, Uncertainties and Innovative Survival Strategies" in Okojie J *et al* eds *50 Years of University Education in Nigeria: Evolution, Achievements and Future Directions* (University of Ilorin and National Universities Commission 2010) 239 – 247.

36 Ibid.

37 Ibid.

38 Ibid.

have priced themselves to be out of the reach of many prospective students who would have loved to attend them. For example, the tuition fees of Covenant University ranges from ₦937, 500 to ₦1, 002, 500; Afe Babalola University tuition fees ranges from ₦583, 000 to ₦2,500, 000 and that of Babcock University ranges from ₦310, 860 to ₦1, 500, 000.[39] In fact, sometime in the past, the allegation of high tuition fees by the Private Universities became controversial that the government tried to legislate a reduction in the amount that universities could charge for their post-UTME screening exercises on the grounds that the charges were very high. In the wake of this, most Private Universities vehemently and successfully resisted the attempt by the National Assembly to legislate such a law. They advance the argument that some primary and secondary schools in Nigeria charge more than they do.[40] This argument is not only plausible but stands to reason when one compares their tuition fees with the school fees of some topmost primary and secondary schools in Nigeria such as International Community School, Abuja, whose school fees is ₦1, 900, 000 per annum and Chrisland School in Lagos, whose school fees is ₦2, 000, 000 per annum.[41] Recently, Charterhouse International School, Lagos, a newly commissioned primary school in Lekki, Lagos, charges ₦42,000,000 as its fee per annum.[42]

iv. *Intrusive proprietary engagement:* One of the challenges facing Private Universities in Nigeria is interference by the proprietors in the management of the Universities. The National Universities Commission frowns at proprietors of Private Universities interfering with the day-to-day administration of the Universities. The reason why the NUC frowns at this is that such interferences would compromise the time-honoured tradition of university autonomy worldwide. This is a concern that has, more often than not, featured in the reasons the NUC gave for suspending the licenses of some Private Universities. Again, there is always an impression that their proprietors, who do not fathom, nor are furnished with the fundamentals of managing an academic environment, are allowed to give directives to recruited administrators.[43] In some instances, these directives may be contrary to the rules, policies and guidelines of the regulator. Oftentimes, the situation poses a very grave challenge that serves as a cog in the wheel of progress of the university. In very grave circumstances, the regulator may end up suspending the licence of the university and or closing down the university.[44]

v. *Decreasing reputation and self-image of Universities in Nigeria:* It is germane to note that, apart from the challenges already identified, all of which negatively impact the triad of functions of the university's system of teaching, research and community service, the

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[39] Scholarship Region, "Top 20 Private Universities in Nigeria and their Tuition Fees" (2023) <https:www.scolarshipr> accessed on the 3rd September, 2024.
[40] Ibid.
[41] Ugbodage, SA, "Top 25 Most Expensive Secondary Schools in Nigeria" (2024) <https://www.legitng.com> accessed on the 3rd September, 2024.
[42] Adetutu Sobowale, "We are just any school, Charterhouse defends N42m fee," <http://www.punchngcom> accessed 3rd September, 2024.
[43] Covey S, *Principle-centred Leadership* (Free Press 2003).
[44] Ibid.

reputation and self-image of the university are a desideratum. In this connection, Briggs had this to say of the system:

> Universities that manifest these laudable attributes in all aspects of their operations – admission process and student mentorship, staff recruitment and promotion, financial transaction, environmental management, research and others – are perceived to be worthy to be associated with through the various interactions that bring success to them.[45]

Flowing from the above, therefore, it is fundamental to state that, when the attributes or intangible assets begin to decline, which can be made more manifest by student rejections, accreditation failures, low national and international rankings, etc.[46], the challenge of reversing the trend can be daunting. The difficulty further lies in the fact that these attributes evolve "slowly on an enduring record of diligence, transparency, trustworthiness, dependability and industry."[47]Since Private Universities depend on the above attributes to grow or sustain their patronage than the public universities, this challenge is heavier on them.

v*i.* *Shortage of modern facilities:* Some of the Private Universities are faced with the challenge of inadequate modern facilities. Many Private Universities across the country operate in facilities that are inadequate considering the academic programmes and students in their respective institutions. Thus, high cost of infrastructural facilities such as building of classrooms, offices, hostels and furniture items for staff and students, laboratory equipment, and well-resourced libraries in terms of relevant books and journals constitutes a very serious impediment to total quality assurance in some Private Universities in Nigeria. Thus, development and research opportunities become limited, thereby negatively impacting the quality of education in Private Universities in Nigeria.[48] Again, with specific reference to the sciences and science-related courses, some Private Universities may not afford the required chemicals and reagents in laboratories, as a result of which the students or products they produce may be deficient in practical knowledge of their respective disciplines.

vii. Insecurity: This is a problem facing many universities in Nigeria. This problem is not peculiar to Private Universities alone. It is a problem that affects all the universities in Nigeria. Insecurity implies that all the human resources within the universities are in a state of fear or threat and lack peace to carry out their respective functions. It is a situation where university administrators, teachers, non-teaching staff and students are in a state of fear. This is a major problem facing the Private Universities in Nigeria. Insecurity has prevented effective administration of the universities and has led to the killing of both staff and students of universities in Nigeria.[49] For example, Policy and Legal Advocacy[50] reports that in the space of only a few days, two Nigerian universities experienced terrorism at its worst. In an

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45 Briggs N, "Resources and Prospects of Development in Nigerian Universities" (being a Convocation Lecture delivered at the Federal University Lokoja on the 2nd November 2017).

46 Ibid.

47 Ibid.

48 Amposah E and Onuoha L, "The Performance and Challenges of Private Universities in Ghana and Nigeria" *International Journal of Business and Social Science* (2013) (4) (5) 256-263.

49 Ibid.

50 Ibid.

unprecedented event, terrorists invaded a Private University, Greenfield University in Kaduna, and demanded outrageous ransoms for their release.[51]

7. OTHER KEY ISSUES FOR CONSIDERATION

Having looked at the legal framework for governance of Private Universities, it is crucial at this moment to consider some key issues raised in the course of this discourse. These issues are as follows:

i. *The status of the law on Private Universities in Nigeria*

The first issue that begs for consideration is the issue of the status of the law establishing Private Universities in Nigeria. As has already been stated earlier, for Federal Universities, the law governing them is the Act of the National Assembly, while that of State Universities is the Law of the House of Assembly of the State. The status of this law is not in doubt. This is because they are enacted in accordance with the provisions of the Constitution of the Federal Republic of Nigeria. However, the question has always been asked regarding the body that enacted the Private Universities law.

Obviously, the name of the body that made the law is not stated therein, but one thing that is clear, from the wording of the law, is that the Private Universities law is a rehash of the provisions of the Code of Governance for Private Universities. Again, since the name of the body that made the law is not provided, the question of where it derives its powers becomes pertinent. With regard to the issue of how binding the law is, for obvious reasons, in the face of court litigation, there may be a problem.

It is germane to state that the National Universities Commission, which is the regulator of all universities in Nigeria, made the Code of Governance for Private Universities, pursuant to an Act of the National Assembly. This may qualify as a subsidiary legislation made by a Federal Government agency. The question is whether, by this instrument, the NUC has the power to further delegate its powers to Private Universities to make bylaws.[52] This may be a situation of *delegatus non potest delegare*.

ii. The issue of Supremacy of the Code over the University Law

From the above, it is germane to state that two laws govern Private Universities, to wit: The Code of Governance for Private Universities and the Bye-Laws of the Universities. This is apart from the provisions of other statutes on education in Nigeria, which all universities must obey. The provisions of the Code of Governance are supreme over those of the Bye-Law of the University. This is because the Code clearly states that its provisions are mandatory and shall be obeyed by all Private Universities.

8. CONCLUSION/RECOMMENDATIONS

It is germane to state that this paper has examined the legal framework for the Governance of Private Universities in Nigeria and identified the challenges with which they are confronted. It considered and analysed the relevant provisions of the Laws governing Private Universities in Nigeria. In light of the foregoing, the following recommendations become pertinent:

1. The National Universities Commission must fashion out ways towards ensuring a harmonised law for all the tertiary institutions in Nigeria. In a nutshell, Private

[51] Https://www.aljazeera.com/news/2021/4/26/Nigeria-kidnappers-execute-two-more-captives-students
[52] Code 2.7

Universities should have proper laws governing their existence, just like federal and state universities.

2. Once there is a law in place for the Private Universities, there would be no need for Private Universities to undergo a process of registration with the Corporate Affairs Commission in order to be clothed with juristic personality.
3. There is also a need for Private Universities to adhere strictly to the provisions of the Code of Governance for the purpose of ensuring optimal performance and maintenance of the required standards.
4. With respect to the challenges of Private Universities discussed in the paper, it is recommended as follows:
   a. To solve the problem of underfunding of Private Universities, it is recommended that the government should provide funding for the Private Universities, just like it has aided the federal and state universities in both academic and structural developments through TETfund interventions. This is necessary because Private Universities assist the government in providing education to the citizens of Nigeria, which is a primary responsibility of the government.
   b. To solve the problem of inadequate staff quality and quantity, Private Universities should properly scrutinise persons who apply for employment in their institutions in terms of capacity and capability to do the job and employ the required number of staff as provided by the relevant law.
   c. In addressing the problem of exorbitant school fees charged by Private Universities, it is suggested that the government should put in place a mechanism for monitoring and regulating the payment of fees and other charges to Private Universities.

   vi. With regard to the problem of intrusive proprietary engagement, the proprietors of Private Universities are advised to keep within the limits of their roles or functions as provided for in the Code of Governance for Private Universities. This is because allowing the Management and other principal officers of the University to function without any undue interference will help in achieving the very purpose for which Private Universities are established in Nigeria.

   vii. With regard to the problem of decreasing reputation and self-image of Universities in Nigeria, Private Universities should endeavour to live above board. The management and staff (academic and non-academic), as well as the students, should ensure that rules and regulations governing the university are strictly adhered to. Once this is done, there will be no issues of decreasing reputation and self-image.

   viii. In addressing the problem of a shortage of modern facilities, it is recommended that the government assist the Private Universities in this regard. This will help them to function optimally and produce the desired results that are lacking in public universities. Alternatively, the government should ensure that licenses for operations are only issued or given to individuals, corporations or organisations with the needed financial muscle to start or establish Private Universities.