

THE RIGHT TO EDUCATION, SOCIAL JUSTICE AND THE NIGERIAN STUDENTS LOAN ACT

Sunday Kenekwukwu Agwu* and Nasiru Mukhtar**

Abstract

The right to education is recognised all over the world as human right. In fact, unfavourable conditions tied to the fact of not being educated serve as an impetus to people to want to indeed be educated. Nonetheless, the right to education in Nigeria might not be a right, but a pseudo-right. Access to education, most especially higher education, is impeded by the unavailability of funding. Social justice includes right to education for all. Then it is necessary for the government of countries to provide right conditions for funding. One of the funding mechanisms which replaces personal out-of-pocket payments is the student loan. The fact that resources are limited and the fact of equal access (with requirements) show that social justice cannot be attained in society. Due to this fact, it is necessary to have a system of allocation that is near-justice. One where assertions as to the existence of discriminations are limited or non-existent. All the past laws on students' loan funding did not really reveal social justice and neither did they show near-justice. With the aid of doctrinal methodology, enactment of the Students Loans (Access to Higher Education) Act 2023 was examined and the paper finds that a lot of persons were denied access to funding. An amendment subsequently

* LL.B, LL.M, PGDE, ACI Arb., MNIM, Lecturer, Department of Public & International Law, Faculty of Law, Baze University Abuja and currently the Senior Programs Manager, Access to Justice at the Public and Private Development Centre (PPDC), Sunday.agwu@bazeuniversity.edu.ng, kenagwusjr@yahoo.com

** PhD, Senior Lecturer, Department of Public Law, Faculty of Law, University of Abuja, Mukhtar.nasiru@uniabuja.edu.ng,

proceeded to rectify the problems inherent in the former Act, but it provided for what was done away with in the old Act and what should have been done away with in securing proximity to social justice in education. On that premise, the paper recommends that interests on loans be removed.

Keywords: Education, higher education, justice, Nigeria, social justice, students' loans.

1.0 Introduction

The 'right' to education is one which is internationally acknowledged. Many pursue it with the hope that the future is promising, although unforeseen. However, there are problems which bedevil the accessibility to education in Nigeria and other parts of the world. One of these problems happens to be securing funding to institutions of higher education. In bringing about the welfare of the citizens, the government of a state has to ensure that the best conditions are put in place for proper access even though resources are indeed limited. These best conditions are hinged on magnanimity, for the agency of the state is seen as a paternalistic entity. As we proceed, we shall find out the dimensions of the right to education and students' loans as they all apply to conceptions of social justice in the Nigerian scheme of things and a mini review of the recently assented Students' Loan (Access to Higher Education) Act 2023.

2.0 The Right to Education

Education is generally seen to be a purposeful activity which instills knowledge, virtues, values and sensibilities in individuals.¹ It could be either formal or informal. In the former, formal institutions like schools and universities are established to see to the educational advancement of

¹ Barry Chazan, *Principles and Pedagogies in Jewish Education* (Palgrave Macmillan, 2022) 15-16 <<https://doi.org/10.1007/978-3-030-83925-3>>

individuals.² In the latter, education takes place in informal or less formal establishments and institutions like shops, kitchens, workshops, etc.³

Article 26 of the Universal Declaration of Human Rights, 1948 provides for the rights to compulsory and free basic education for all. The ‘right. to education in Nigeria derives foundational origins in the *Grundnorm*. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that the government shall direct its objectives in ensuring that there is equal and adequate access to educational opportunities at all educational levels.⁴ Furthermore, the government shall strive to eliminate illiteracy and accordingly, it shall, when practicable, provide free primary education, free secondary education, free university education and free adult literacy programmes.⁵ It is apt to note that the keywords in section 18(3) of the Constitution are, ‘when practicable.’ On this note, it is not a breach of the provisions of the Constitution if and when citizens of Nigeria are made to pay for education, as is customary now at all levels. More frustrating is the fact that there is not truly a right to education provided for in the Constitution. Even if refusing free education were a breach (of which there is no means of proving that it is practicable to provide free education), the provisions of section 6(6)(c) of the Constitution are to the effect that, unless otherwise provided for in the Constitution, the provisions contained in Chapter II are not justiciable. Neither of the provisions of the Compulsory, Free and Universal Basic Education Act, 2004 nor the Child’s Rights Act, 2003 can, in my own opinion, do away with the non-justiciability clause. My opinion is hinged on two grounds. Firstly, every Act must derive validity from the *Grundnorm* and if that same *Grundnorm* has provided that the ‘rights’ shall not be justiciable, then no subsequent

² Philip H Coombs and Manzoor Ahmed, *Attacking Rural Poverty: How Nonformal Education Can Help*. A Research Report for the World Bank (The Johns Hopkins University Press, 1974) 8.

³ Ibid.

⁴ The Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 18(1).

⁵ CFRN 1999 (as amended), section 18(3)(a)-(d).

legislation can make them justiciable. Secondly, the Constitution provides that education should be free, where practicable. Now, who can decide whether it is practicable to have free education?

There are arguments to show that the provisions in Chapter II are justiciable. Nwauzi and George-Ibikiri have provided that the items in the Exclusive Legislative List should be construed to not make the provisions of Chapter II of the Constitution mere and impotent declarations.⁶ The authors rely on the case of *Federal Republic of Nigeria v Anache & Ors: in Re Olafisoye*⁷ where the court had focused on the words, 'except as otherwise provided by this Constitution.' It is believed that no act of the National Assembly can oust the jurisdiction of the court.⁸ Even though this is unacceptable, one must and should be guided by the express provisions of the Constitution. There is always a purpose behind every section of the Constitution. It is then necessary to amend provisions of the Constitution that oust the jurisdiction of the courts.

3.0 An Overview of the Concept of Social Justice

The idea of social justice finds roots in the atavistic idiosyncrasies of society, as a whole, to get what is actually deserved and in certain cases to have equality of rights. From a jurisprudential perspective, the idea of justice is a concept that is rather unwieldy and herculean to rein in. it is

⁶ Linus Onyekaozurule Nwauzi and Soibi George-Ibikiri, 'The Right to Education in Nigeria: An Appraisal' *African Journal of Law and Criminology* [2018] 8(1) [12-22] retrieved from

<https://www.researchgate.net/publication/333237829_AN_APPRAISAL_OF_THE_RIGHT_TO_EDUCATION_IN_NIGERIA>; Attorney General of Ondo State v. Attorney General of the Federation & Ors

⁷ (2004) ALL FWLR (Pt. 186) 1106 at 1153.

⁸ Linus Onyekaozurule Nwauzi and Soibi George-Ibikiri, 'The Right to Education in Nigeria: An Appraisal' *African Journal of Law and Criminology* [2018] 8(1) [12-22] retrieved from

<https://www.researchgate.net/publication/333237829_AN_APPRAISAL_OF_THE_RIGHT_TO_EDUCATION_IN_NIGERIA>

widely agreed that justice means different things to different persons.⁹ It is this multiplicity of interpretations and ontologies of the concept that put it, perhaps at par, with a definitional enquiry as to the definitional framework of law.

Plato conceives of justice as a state situation where everyone remains in a position, they are naturally suited and adapted for.¹⁰ For him, the different classes of persons that make up the state must not mix in areas where they are not naturally suited.¹¹ For example, one with the ability to rule should rule and one with the ability to fight should fight.

Aristotle conceives of justice from two angles—distributive justice and correctional justice. In distributive justice, Aristotle provides us the argument that persons in the same classes should get goods and bads based on a system of merits and according to their abilities.¹² Invariably, if a person deserves X, he must not get X-1 or X+1. Based on his ideas, corrective justice works in such a way that the injustice is corrected or resolved. Thus, where a person has ‘unjustly’ derived an economic advantage, the system works in such a way that he is ‘deprived’ of what he does not justly own and the sufferer is accordingly compensated based on what he had lost.¹³

John Rawls presents us his own conception of justice and sees it as the first virtue of social institutions.¹⁴ The author sees justice as fairness and

⁹ Oluwabusayo Temitope Wuraola, ‘The Variations of the Concept of Justice: An Analysis’ *Kampala International University Journal of Humanities* [2018] 3(2) [297–304] retrieved from <<http://www.ijhumas.com/ojs/index.php/kiuhums/article/download/320/301/>>

¹⁰ Francis Macdonald Cornford, *The Republic of Plato* (Oxford University Press, 1918) 126.

¹¹ Ibid.

¹² David Ross (Translator), *Aristotle: The Nicomachean Ethics* (Oxford University Press, 2009) 84.

¹³ Ibid, 86.

¹⁴ John Rawls, *A Theory of Justice* (Harvard University Press, 1999) 3.

accordingly, he provides us with two ambits of the conception of justice. The first ambit of his idea of justice is that everyone is entitled to the same fundamental rights which cannot, in any way, be the subject of alienation.¹⁵ The second ambit provides that inequalities in the system would only be permitted if and only if such inequalities would, firstly, make the least-disadvantaged person be in a better position and, secondly, such special positions and inequalities do not, in any way, bar any class of persons.¹⁶ A critical look at the ideas of justice reveals that the concept is encapsulated in distributism, both in the technical and generic senses of the word. When it is said that there is justice, there is an automatic reference to the distribution or sharing of benefits and disadvantages.

Social justice relates to the fairness with which the benefits and disadvantages arising from a communal life are distributed amongst the members of society. Miller writes that when people talk about social justice, they crudely mean how the good and bad things in society are distributed amongst the members of human society.¹⁷ He notes that a general conception of social justice births three solid problems viz, the meaning of goods and bads, the meaning of distribution and the meaning of human society. He fashions a theory with three principles viz, need, equality and just deserts.¹⁸ He writes that social justice has to do with the means by which welfare is obtained and not with welfare itself.¹⁹ Although this proposition appears rather paradoxical, it holds true due to the fact that the end result of every distribution or allocation in society is the welfare of the recipients.

¹⁵ Ibid, 53.

¹⁶ Ibid. In page 65, the author explicates on the 'difference principle.'

¹⁷ David Miller, *Principles of Social Justice* (Harvard University Press, 1999) 1.

¹⁸ Ibid, chapters 7 to 11.

¹⁹ Ibid, 7

It is said that the notion of social justice is of relative recency.²⁰ It is said that none of the great philosophers of historical prowess (like Plato, Aristotle, Confucius, Rousseau and Kant) was able to see the need in considering the idea of justice from a social perspective.²¹ This is a rather uncanny proposition. It may appear as though the word ‘social’ has a significantly different denotation. The word ‘social’ is taken to mean ‘of or relating to the society, the interaction of the individual and the group, or the welfare of human beings as members of society.’²² There is reason to believe, from this definition of the word ‘social,’ that Aristotle should have been prudent enough to consider conceptions of distributive and corrective justice while considering societal factors. Since distributive justice according to Aristotle involves the sharing of goods, there is the inevitable temptation to conclude that he must have been making reference to at least two persons that make up society. In corrective justice, reference must be had to at least two persons, indubitably informing one of his recourse to social factors. It must therefore mean that the idea that history’s great philosophers did not consider justice from a social standpoint is either actually untenable and erroneous or premised on a technically ascribed meaning. In fact, Sabbagh and Schmitt opine that Aristotle’s works became pillars of the later social sciences and philosophy, inspiring a host of other writers. It is uncanny that the opinion would be that Aristotle’s opinions on justice would have been dismissed on the ground that they did not consider the social ramifications of the subject.

Social justice, from the definitions, reveals societal fairness. In the context of education, it entails a certain form of utilitarianism. Alexander writes from a capability perspective and holds that social justice is purposed for

²⁰ Department for Economic and Social Affairs, *Social Justice in an Open World: The Role of the United Nations* (United Nations, 2006) 11.

²¹ Ibid.

²² Merriam-Webster, ‘Social’ <<https://www.merriam-webster.com/dictionary/social>> accessed 8th April 2024.

the creation of the greatest possible conditions for the realisation of basic capabilities for all.²³ The author further opines thus:

At the same time, it is of supreme importance to be aware that social justice is not a canonical profession in a single principle, but an aspiration to realise certain human and institutional conditions embodying a plurality of principles and balancing their demands in a coherent way.²⁴

It is necessary to positively ostracise two ambits of Alexander's approach. The first is premised on capabilities---which encapsulate the economic and perhaps religious aspects of one's life. The second ambit, perhaps the most important in this disquisition, revolves around the provision of the greatest conditions for the attainment of the capabilities in the first ambit. Alexander notes that depending on the type of social capability at stake, some principles and patterns in distribution become more relevant than others for the attainment of social justice.²⁵ The author notes that as regards being sufficiently educated, what matters more was the social responsibility rather than merely individual merit and achievement.²⁶ Accordingly, there is the need for a social safety net which would come in the attires of minimum wage legislation, unemployment benefits, students loans (although not listed in the original work, but necessarily part of the chain), etc.

4.0 Social Justice Component of the Nigerian Educational System

It is, at this point, acknowledged that every individual in Nigeria has a right to education in Nigeria. This right may not be a Hohfeldian right *stricto sensu*, but something akin to a pseudo-right. This is because the topic brings no correspondingly enforceable duty on the part of the government. Social justice in education is concerned with education equality for all and

²³ John M Alexander, *Capabilities and Social Justice: The Political Philosophy of Amartya Sen and Martha Nussbaum* (Routledge, 2016) 1.

²⁴ Ibid, 2.

²⁵ Ibid.

²⁶ Ibid.

the desire to improve the student's development. Recalling Miller, social justice sees to the obtaining of welfare, which in his opinion is abstract. If welfare is what is pursued, then in respect of education, the conditions themselves and the end results are all welfare packages. Observe, the favourable conditions for education make it possible for persons to have a first-stage satisfaction, with the hope that from that satisfaction would later emanate more satisfaction and welfare in the attires of employments, benefits, honours, etc.

The idea that social justice in education is equality, does perhaps defeat, to a certain extent, the idea of justice. Equality does away with what is merited and places before all, sameness of claims. In Nigerian universities, there are the tendencies to apply merits, while considering what is called catchment. In this catchment system, an overall merit system is not employed, but rather a system that takes the best from different geographical locations or classifications. In this system, one from a particular group with a score of 90 out of 100 may be denied admission into a university, whereas one from another group, with a score of just 60 out of 100, may be granted admission into that same university. Accordingly, while access to higher education is ordinarily premised on the equity principle, which is simply a system of meritocracy, there is still recourse to the policy of affirmative action, which considers the disadvantaged groups and those discriminated against.²⁷

The world today revolves around, to a great degree, what one has acquired in terms of education. There is a nexus between one's educational qualifications and one's economic position in relation to jobs. Premised on this, people strive to acquire all educational qualifications like Masters and Doctorate Degrees. As Resh and Sabbagh opine:

The just distribution by and within institutions of scarce resources, including money, influence jobs, status and in-

²⁷ Nura Resh and Clara Sabbagh, 'Justice and Education' in Clara Sabbagh and Manfred Schmitt (Editors), *Handbook of Social Justice Theory and Research* (Springer, 2016) 349 <doi:10.1007/978-1-4939-3216-0>

kind benefits has been the large subject of a large body of literature across the social sciences.²⁸

Education is one part of the strategies employed by the government of virtually every nation to increase and improve the opportunities for all, especially those with disadvantageous backgrounds.²⁹ Lee writes that the social dynamic of education in society suggests that the more education one has, the better off he becomes.³⁰ But access to education has been an issue for Nigeria and every other country in the world.³¹ From an economic standpoint, educational resources are indeed limited and thus there are contentions as to how to effect an allocation. Even though one has access to education, or even free education, the available resources may not cater for them all.

But social justice in education is perhaps even broader than the base word itself, which is justice. There is a multiplicity of contending issues, but it is apropos to consider one very crucial aspect which has origins in access. Recall that the Constitution provides that it is only when it is practicable that education can be free in Nigeria.³² Since education in Nigeria is not free, then it follows necessarily that one of the biggest issues in the access hypothesis is financing. Personal payments from education are clearly subsidised. Undergraduate school fees for a year in the United Kingdom for

²⁸ Ibid, 352.

²⁹ Site: a global look at students loans.

³⁰ Sharon E Lee, 'Education as a Human Right in the 21st Century' *Democracy and Education* [2013] 21(1) [1-9] retrieved from <<https://democracyeducationjournal.org/cgi/viewcontent.cgi?article=1074&context=home>>

³¹ Jonathan E Oghenekohwo and Young D Torunarigha, 'Education and Development: Dynamics of Access, Equity and Social Justice in Nigeria' *International Journal of Education and Literacy Studies* [2018] 6(2) [10-14] <<http://dx.doi.org/10.7575/aiac.ijels.v.6n.2p.10>>

³² CFRN 1999, section 18(3).

example goes as high as 9250 pounds³³ which is currently equivalent to 14,500,000 naira. Education funding in Nigeria comes from a pool of budgetary allocations from revenue (taxes and commerce), grants, etc.³⁴ Again, personal payments from individuals are one of the myriad means of ensuring access to education in Nigeria. Socio-economic conditions make it impossible for the persons to make out-of-pocket payments for education in Nigeria. The minimum wage in the country happens to be a paltry sum of 30,000 naira³⁵ and with the rise in the costs of living, it becomes practically impossible for one to actually make personal payments for education. Recalling Alexander, there is an indubitable need for a social safety net to bring about one's capabilities. Although minimum wages are a social security net, there is always a limit to which government can provide substantial minimum wages. There is then the introduction of a system of student loans to assist citizens in their out-of-pocket payments.

The use of students' loans in education started far back as in the 11th century with Bologna being the first official university to provide loans to some students.³⁶ In 1240, the first students' loans system was made formal by the Robert Grosseteste, Bishop of Lincoln at the University of Oxford and he named it St. Frideswide's Chest.³⁷ There are basically two approaches to students' loans adopted by different countries. The first is the time-based repayment loans and the second is the income-contingent loans. In the

³³ Jane Playdon, 'How much Does It Cost to Study in the UK?' <<https://www.topuniversities.com/student-info/student-finance/how-much-does-it-cost-study-uk>> accessed 9th April 2024.

³⁴ Trust Arthur, 'Ways Of Financing Education In Nigeria – Debt, Grants And Subsidy' <<https://trustarthurgroup.com/ways-of-financing-education-in-nigeria-debt-grants-and-subsidy/#:~:text=The%20government's%20goal%20is%20to,Governments%2C%20and%20the%20private%20sector>> accessed 9th April 2024.

³⁵ National Minimum Wage Act 2019, section 3(1).

³⁶ Jenny Adams, 'The History of Student Loans Goes back to the Middle Ages' *The Conversation* (23rd March 2016) 9th April 2024.

³⁷ Ibid.

former, repayments of the loan spans a given period of time. In the latter, repayments of the loan are dependent on the graduate's future income.

5.0 The Nigerian Students' Loan Regimes in Nigeria

Over the years, different loan programme legislations have been enacted by the government to see to the granting of loans for the pursuance of higher education in Nigeria. These Acts are as follows.

5.1 The Students' Loan Board Act of 1972

The Students' Loan Board Act of 1972 established a body which was known as the Students Loans Board.³⁸ This board was to be a body corporate with a perpetual succession and a common seal, and could sue and be sued in its own name.³⁹ Section 6 of this Act provided that the Board shall maintain and administer a fund which was to be known as the Nigerian Universities Revolving Loan Scheme. Section 7(1) provided that the Board may give loans to any person in accordance with the provisions of the same section. Subsection 2 of the same section provided that no person shall be entitled to loans in excess of the aggregate of the expenses approved by the university or institution for the period of his course of studies. Also, under the Act, no person was to be entitled to a loan under the Act unless he was a student or had been accepted as a student by a university or other institutions.⁴⁰

The granting of a loan is preceded by a loan application. Before considering any application, the Secretary, under direction from the Board, would ordinarily make investigations, as was deemed appropriate, on same and the Secretary would report back to the Board on the full particulars of the investigation.⁴¹ Section 8(2) provided that a written agreement with terms would be entered into by the Board and the loan applicant.

³⁸ Students Loans Board Act 1972, section 1(1).

³⁹ Ibid. s 1(2).

⁴⁰ Ibid. s 7(3).

⁴¹ S. 8(1) Students Loans Board Act 1972

Section 9(1) provided, firstly, that granted loans would be paid with interests at 2 percent per annum. Secondly, these loans would be repaid by monthly instalments calculated in such a way as to cover both principal and interest. In the case of one immediately taking up appointment after leaving the university or institution, repayment of the loan was to start after 6 months.⁴² In the case of an unemployed borrower, he was to pay within any period that was approved by the Board.

Section 9(2) of the Act provided that monthly payments would not be lower than a particular sum or would be 10 percent of the borrower's income, whichever was higher. The students' loan scheme may have been a hybrid of both the time-based repayment and the income-contingent loan approaches, but it certainly tilted more towards the latter.

5.2 The Nigerian Education Bank Act⁴³

The Nigerian Education Bank Act established a bank which was to be known as the Nigerian Education Bank.⁴⁴ This bank was a body corporate, with perpetual succession and a corporate seal, and could sue and be sued in its own name.⁴⁵ The Act provided that the functions of the bank would, *inter alia*, be to approve and disburse loans for educational purposes,⁴⁶ promote the development of viable research within institutions of higher education⁴⁷ and grant financial assistance to authors for the purposes of printing and publishing educational books.⁴⁸ Section 13(1) of the Act established a Students' Loan Revolving Fund with an initial sum of 200 million naira contributed by the Federal Government. Subsection 2 of section 13 provided that the Fund would be employed in granting loans to

⁴² Ibid. S 9b(1)(a)

⁴³ Cap N104 LFN 2004

⁴⁴ The Nigerian Education Bank Act, section 1(1).

⁴⁵ Ibid. S. 1(2)(a)

⁴⁶ Ibid. S 7(a)

⁴⁷ Ibid. S 7(i)

⁴⁸ Ibid. S. 7(j)

students for pursuing higher education. In the Act, the loans granted to students were not, in any way, interest-free. Section 16(1) of the Act provided that the loans made by the bank would be at the prevailing commercial rates in Nigeria. Subsection 2 of the same section provided that the rate of interest on students' loans would be at such rate that may, from time to time, be agreed by the Minister and the Board, and subsidised by the Federal or State Government.

5.3 The Students' Loan (Access to Higher Education) Act, 2023

The Students Loan (Access to Higher Education) Act, 2023 was signed into law on the 12th day of June 2023 by President Bola Ahmed Tinubu. The purpose of this Act was to provide interest-free loans to persons from poor backgrounds in pursuing their education in a tertiary institution (the interest-free loans which were not existent in preceding Acts). There was a delay in the operation of this Act which then brought about its postponement. This delay was premised on the government wanting to provide loans to persons in vocational programmes. It was said that skill acquisition in Nigeria was also as important as obtaining graduate qualifications. Indeed, one cannot gainsay the benefits of vocational education. Persons in this line of education are indeed an invaluable part of society. Recalling Plato, justice is said to exist where a person is put in positions that befit them. The argument is justified by the fact that as a society, everyone has a role to play and such roles need not have arisen from a formal education. Although not expressly under the educational objectives in the Constitution, the welfare state has the responsibility to provide access to vocational education for its citizens if they so desire same. The professor of law surely needs a haircut and the doctor, from time to time, may need the services of a fashion designer.

The Act commenced with the purpose of same. It provided, in section 1, that it would apply to all matters pertaining to the application and grant of students loans to Nigerians seeking higher education into institutions of higher learning. 'Institutions' of higher learning, in section 22 of the Act,

meant public universities, polytechnics, colleges of education and vocational schools established by the government. The singular fact that vocational centres were included indeed makes the Act laudable.

Section 2 provided what is indeed of interest in disquisitions on social justice in education around the world. The section provided that all students seeking higher education in any public institution of higher learning in Nigeria would have equal right of access to the loans without any discrimination based on gender, religion, tribe, position or disability of any kind. From the build-up so far, this access must be seen as being limited in the sense that only those who must have met with the requirements would be eligible to receive loans. A better way to describe this access would be ‘opportunity.’ The government gives the opportunity to all to prove themselves and it is only when this is done, via meeting the requirements, can it be said that people would have equal access to the loan under the Act. Section 4 made it lucid that the granting of the loan would be subject to the applicant having met with the requirements under the Act.

A Fund, by the name Nigerian Education Loan Fund, was established by virtue of section 5 of the Act. One of the functions of the fund was to see to the reception of applications for students loans through the institutions on behalf of the applicant and screen the applicants to ensure the requirements were met with.⁴⁹ The Fund also had the function of approving and disbursing loans to ‘qualified’ persons.⁵⁰

When we then move to a consideration of section 14 of the Act do we find things becoming rather interesting and antithetical to conceptions of justice and, perhaps, the equality principle in conceptions of social justice. The section provided for the eligibility of persons who can apply for student loans. Paragraph (a) provided that the applicant must have secured

⁴⁹ The Students Loan (Access to Higher Education) Act 2023, section 6(c).

⁵⁰ The Students Loan (Access to Higher Education) Act 2023, section 6(d).

admission into the university, an institution or any other vocational establishment established by Federal Government or the State Government. However, the argument of classification as opposed to discrimination would indeed have been justified if the provision had stopped there. By classification, I mean the arguments used by legal thinkers to counter arguments that there exists discrimination. By creating a class of persons to which a certain Act applies, it would not be tantamount to discrimination.⁵¹ Again, as has been hitherto mentioned, there would have been a proper justification had the Act stopped at that point. By continuing on to subsequent paragraphs, we find the possibility of the annihilation of the equal access to all and the social justice which the Act spoke of. Proceeding, paragraph (b) provided that the loan would be accessible to those whose personal income or family income was less than 500,000 naira per annum. Doing the math, it means that the monthly income for the applicant or the family of the applicant must be equal to or less than about 41,700 naira, only a little above the minimum wage in the country. Let us suppose that both the father and mother of the family earn about 40,000 naira a month. This puts the family's total income at 80,000 naira. This amount multiplied by 12 calendar months gives us well over 500,000 naira. It is not surprising to assert that a family of 3 or 4 can barely live by 80,000 naira in a month. The costs of food, utilities, transportation and others make it virtually impossible to live by that amount. If 80,000 naira a month is barely enough to live by, then it is indeed wondered how one would hope to pay the tuition fees of a child in a higher institution of learning. The second requirement

⁵¹ In a recent Indian case where the petitioner sought an order of court to declare a law that allowed only married and divorced persons to use surrogacy, the petitioner argued that the law in question was discriminatory. The Supreme Court held that it was not one of discrimination, but of classification. See: Kanu Sarda (edited by Aditi Sharma), "Need to Protect Institution of Marriage': Court Rejects Woman's Plea for Surrogacy' *India Today* (6th February 2024) <<https://www.google.com/amp/s/www.indiatoday.in/amp/law/story/supreme-court-rejects-woman-plea-surrogacy-protect-institution-marriage-2498314-2024-02-06>> accessed 9th April 2024.

would disqualify a lot of persons and defeat the intended purposes of the Act.

The third requirement afforded us another problem. Paragraph (c) provided that the applicant must provide at least two guarantors and each of the guarantors must be a civil servant of at least level 12 in the service, lawyer with at least 10 years post-call experience, judicial officer or justice of peace. There were two obstacles in this requirement. The first obstacle was the idea of a guarantee. Generally, a guarantor is one who is made to answer for the debts or liabilities of another in case that other should default.⁵² The very fact that one was to answer for the debt of another made it unfavourable for anyone to want to step forward to stand as a guarantor for a students' loan. The second obstacle in the provision was as to the nature of the qualification of the guarantors. For a poor family, getting access to guarantors with any of these qualifications is, perhaps, herculean a task. The inability to get guarantors with those qualifications portends an unfavourable situation for the most disadvantaged persons in society which social justice would have ordinarily favoured.

The Act made it express that disbursement would be contingent on the availability of funds.⁵³ It is perhaps because of this reason that the government sought to look beyond mere short-term social justice and sought also to protect its own interests and in the long run, social justice. In my own opinion, it was on these grounds that the Act provided for the disqualification of certain classes of persons. The first class of persons to be disqualified was the class of persons who had defaulted in the repayment of any loan granted by any institution or organisation.⁵⁴ The second class was the class of persons who had been found guilty of examination

⁵² *Wema Bank Plc and Anor v Alaran Frozen Foods Agency Nigeria Limited and Anor* [2015] LPELR-25980(CA).

⁵³ The Students Loan (Access to Higher Education) Act 2023, section 16(4).

⁵⁴ S 15(a)

malpractice by any school authority.⁵⁵ The third class of persons was the class of those who had been convicted of a felony or any offence involving dishonesty or fraud.⁵⁶ The fourth class of persons was the class of those who had been convicted of drug offences.⁵⁷ The last class of persons was one of those where any of the applicant's parents had defaulted in respect of students loans or any loan granted to any person. This last class brings us to the question as to who would repay the students loans? Section 18 of the Act provided that it would be the beneficiary of the loan. If it was the beneficiary, and not the parents, who repaid the loan, then it is uncanny that a student would be prevented from being a beneficiary or applicant on the ground that his parents had defaulted on past loans.

5.4 The Student Loan (Access to Higher Education) Act, 2024

In April 2024, the Student Loans (Access to Higher Education) (Repeal and Re-enactment) Act, 2024 was signed into law⁵⁸, less than 1 year after the enactment of the 2023 Act. The Act sought to guarantee sustainable higher education and functional skill development for all Nigerian students and youths. The Act attempted to resolve the challenges encountered under the 2023 repealed Act. The new Act in form is substantially similar to the 2023 Act, as such, we would not bore you with the structure of the Act. The Act is however, structured into six parts – Parts I to VI and divided into 37 sections.

The new Act among other things: makes the Nigerian Education Loan Fund a body corporate that can sue and be sued; sets up an administrative structure comprising of a Board of Directors to be headed by a non-executive chairman and a management team led by a Managing Director; tasks the fund with investing monies and maintaining a diversified pool of

⁵⁵ S. 15(b)

⁵⁶ S. 15(c)

⁵⁷ S. 15(d)

⁵⁸ As at the time of writing of this paper, the signed Act was not available, however, the analysis done is from the final bill that was passed and sent for assent.

funds to support student loans; extends loan coverage to student maintenance allowance or upkeep; removes the provision stating that loans are interest free; removes the five hundred thousand naira (500,000) individual/family annual income threshold to access a loan; mandates national spread and inclusion in disbursement of loans; allows for exemptions in loan repayment in cases of death, hardship or for reasons of equity; dispenses with the application procedure in the 2023 law including requirement of two loan guarantors; removes the disqualification of any applicant whose parent had previously defaulted on a loan; restricts beneficiaries of previous government loans or schemes from accessing the student loans; imposes a statutory duty on employers to find out the student loan status of their employees under the threat of a fine and/or a jail term.

From the foregoing, one can decipher some differences in the new Act from the 2023 Act. The 2024 Act clearly streamlines the Education Loan Fund and allows for financial investments as part of building, operating and maintaining a diversified pool of funds to support student loans. For instance the power to engage in banking business, monitor academic records and provide financial advice to academic institutions, parents and educational investors were not contained in the 2023 Act. The purposes for the loan also now covers tuition and upkeep, which is a welcomed development. The 2024 Act seems to be a bit more open to indigent students only and removes the cap of annual income. This will go a long way in opening up the access to education of the indigent. While the 2023 Act outlines sources for the loan, the 2024 Act establishes the General Reserve Fund and includes National Assembly appropriation as a funding source. The 2024 Act also removes the requirement for the loan to receive 1% of taxes, levies and dues accruing to both the Immigration and Customs Services. The 2024 Act shrinks the vocational schools covered to only those licensed by the Federal Government while the 2023 Act includes the state government. On administration of the loan, the 2023 Act domiciled the fund in the Central Bank of Nigeria to be managed and administered through a special committee headed by the CBN Governor and the money deposit

banks while the 2024 Act creates a Board of Directors headed by a non-executive chairman and a management team headed by a managing Director to be assisted by three Executive Directors.

While some analysts⁵⁹ have argued that the potential positive impacts of the new Act include Increased access to Higher Education; Reduced financial barriers; improved Economic Mobility; and Mitigation of Student Debt, we posit that the new Act is not without its own challenges. Some of the challenges include Interest on loans, the status of self-employed persons and the method of application amongst others. It would seem that the new Act created more confusion when it comes to interest on the loans. The 2024 Act lists payment of interest on loans granted as a funding source, and mentions repayment of loans and “all charges” in Section 28(3) dealing with the repayment. This implies that the loans will not be interest free. The 2023 Act on the other hand says that the loans are interest free.⁶⁰ The 2024 Act is also rather silent on the status of self-employed persons. While the 2024 provides for the exact mode of application, the 2024 Act states that the application shall be made in the form and manner prescribed by the guidelines to be issued the Board from time to time. This, we opine allows for flexibility but also gives room for abuse in the instance where a board is reluctant.

6.0 Recommendations

With the Amendment Act, the recommendations in this work will no longer be as bounteous as they would have been had there been no amendment. The amendment took into cognizance some of the recommendations. However, the recommendations are as follows.

6.1 Removal of Interests in the Loans

⁵⁹ Policy and Legal Advocacy Centre (PLAC), Bill Analysis, Issue 1- April 2024

⁶⁰ Section 13 (a)

The interest in the loans makes it discouraging for the citizens to want to grab the opportunity of student loans. Although there is generally hope for a better and brighter future, the presence of interests compounds the liabilities of the applicants. It is understood that resources are limited and that is where the second recommendation comes in.

6.2 Proliferating Investments

There should, as a matter of fact, be the use of the Fund's resources in other serious business ventures. The profits from these business ventures would then provide more funds to give applicants loans that they have applied for.

6.3 Clearer Method of Application

There should be a direct and clearly stated mode of application. This will prevent discretion and build trust in the public for the system. Leaving it to the board is great when we have great members on the board and would can be a clog when the board is reluctant to implement.

6.4 Status of Self-Employed Persons

In the interest of equity, we would recommend the retention of the 2023 provision on the status of self-employed persons. This will not only encourage entrepreneurship but will also ensure that the loans are repaid timeously.

In addition to the aforementioned, we would also recommend that more measures to keep defaulters in check should be put in place, and there should be an increase in the waiting period for graduates to repay the loan.

7.0 Conclusion

Education in Nigeria, from this work, happens to be a pseudo-right.⁶¹ The attainment of social justice is perhaps an impossible task if we choose to

⁶¹ Again, this is premised on the reason that it is not one that is ordinarily justiciable. Matters taken to the courts would ordinarily be hinged on a multiplicity of right, perhaps

consider every principle in the concept. When justice is seen as equality, it might be seen as unfairness to those who have worked hard in a bid to derive an advantage over another. When we opt to consider the merit-based approach, regional and geographical biases give impetus to the argument of threats to social existence, but obviously, there must be some sort of agency that distributes and allocates the goods and bads in the system.

It is not uncanny to come to the conclusion that the past Acts on students' loans did not truly reflect the true idea behind social justice. By placing stringent requirements for the granting of loans, the government had made it clear that education was not for everyone. The amended Students Loans Act of 2024 corrected, to a great extent, the social injustice in accessing funding to and for higher education in the country.

It is indeed doubted whether justice or its offspring—social justice—can ever be attained in a system. Compounding the attainment is the fact that resources are limited and thus not everyone who is equal or 'merits' something can and will actually have access to the distributed goods in the human society. Since true justice is an impossibility, what we all thus seek is a manageable form of fairness which would obliterate notions of injustice on the part of the citizens. It is therefore necessary, among other things, to increase resources pursued perhaps by a large crowd. As a welfare state having citizens that already pay taxes, it is reprehensible to include the payment of interests in the loans granted to students.

the chief one being the right to freedom from discrimination based on the grounds provided for by the Constitution.