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APPRAISAL OF THE LEGAL STATUS AND EFFICACY OF NIGERIA EDUCATION LOAN FUND [1]

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Abstract

Provision of free university education is one of the ways Government is directed to use to eradicate illiteracy under section 18(3)(c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. This is however qualified as this educational objective is to be attained "as and when practicable". Besides, the said educational objective is declared non-justiciable under section 6(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Hence, it has become a tall order to attain the constitutional target of free university education. Against this background, this paper interrogated the legal status and efficacy of the Nigeria Education Loan Fund set up by the federal Government of Nigeria. The paper found out that the Nigeria Education Loan Fund is standing on solid legal ground as it is established under the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 as a body corporate, that can sue and be sued. The paper also established that much as Nigeria Education Loan Fund is legally empowered to grant zero interest loans to students pursuing higher education, however, this is not a substitute for provision of free university education. It was therefore recommended among other things that the right to free university education should be made justiciable and operational without further delay so that Nigerian students can enjoy the desired and desirable constitutional threshold of provision of free university education.

Keywords- Access, Education, Eligibility, Loan, Repayment, Student

1.0 Introduction

This paper examines the legal status and efficacy of the groundbreaking Nigeria Education Loan Fund[2] established by the Federal Government to provide easy access to higher education for indigent Nigerian students through interest free loans. This is

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[2] Hereinafter referred to as "NELFUND".

against the failure of Government to meet the constitutional target of provision of "free university education" set in *section 18(3)(c)* of the Constitution of the Federal Republic of Nigeria, 1999 as amended.[3] The importance of education cannot be over emphasized. Education is an empowerment tool that serves as the primary vehicle by which economically marginalized adults and children can lift themselves out of poverty and obtain the means to participate freely in their communities. *Article 1* of the World Declaration on Education For All, 1990[4] identifies basic learning needs as comprising both essential learning tools, such as literacy, oral expression, numeracy, and problem solving and the basic learning content such as knowledge, skills, values and attitudes required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.

Furthermore, Mandela is reputed to have said that no country can really develop unless its citizens are educated. Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that the son of a mine worker can become the head of the mine, that a child of farm workers can become the president of a great nation. It is what we make out of what we have, not what we are given, that separates one person from another.[5] On the other hand, Azikiwe posited that the immediate aim of African education should be to develop character, initiative, and ability of the youth of the country, so that they may be reliable, useful, and intelligent in the rapidly changing life and circumstances of their own people. In other words, the aim of education is to develop the manhood and womanhood of the rising generation for the sake of their peoples. Anything narrower than this must lead to a stagnant and menacing flood of unemployed and unemployable youth.[6] Hence, it is indubitable that higher education is central for both individual empowerment and national development.

Against the foregoing backdrop, the paper will discuss the mileage achieved for higher education in Nigeria under the NELFUND established under the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 and what more is left to be

[3] Hereinafter abbreviated and referred to as "CFRN".

[4] World Declaration on Education for All (Adopted by the World Conference on Education for All, 5-9 March, 1990, Jomitien, Thailand.

[5] The Borgen Project, "Top Nine Nelson Mandela Quotes About Education", available at <https://borgenproject.org/nelson-mandela-quotes-about-education/>. Accessed 21/5/25.

[6] BlackPast, "(1955) Nnamdi Azikiwe, The University of Nigeria Speech", <https://www.blackpast.org/global-african-history/1955-nnamdi-azikiwe-university-nigeria-speech/>. Accessed 21/5/25

achieved in that regard given that the constitutional target is provision of "free university education". For ease of understanding, the paper is divided into the following parts namely- Right to education in Nigeria; Legal status and administrative structure of the Nigeria Education Loan Fund; Funding of the loan; Eligibility for the student loan; Application timelines, disbursement and repayment terms; Conclusion and recommendations.

2.0 Right to Education in Nigeria

It is important to preface the discussion in this paper by stating that the right to education is guaranteed in many international[7] and continental[8] human rights instruments. The full discussion of these instruments is outside the scope of this paper. However, specific to Nigeria, *section 18* of the CFRN, 1999 as amended provides for the educational objective as follows:

> (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
>
> (2) Government shall promote science and technology.
>
> (3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide-
>
> (a) free, compulsory and universal primary education;

[7] These include but are not limited to *article 26(1)* of the Universal Declaration of Human Rights, 1948; *articles 13 and 14* of the International Covenant on Economic, Social and Cultural Rights, 1966; *article 28(1)(a)* of the Convention on the Rights of the Child, 1989; *article 10* of the Convention on the Elimination of Discrimination Against Women, 1979; *article 5(e)(v)* of the International Convention on the Elimination of All Forms of Racial Discrimination, 1969. It should be noted that Goal 4 of the United Nations Sustainable Development Goals prescribes Quality Education. Target 4.3 of the Sustainable Development Goals aims, by 2030, to ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university. The African Union Agenda 2063 harps on well-educated citizens and skills revolution underpinned by science, technology and innovation.

[8] These include *Article 17* of the African Charter on human and People's Rights, 1981; *article 11* of the African Charter on the Rights and Welfare of the Child, 1999; *Article XII* of the Protocol to the African Charter on Human and People's Rights on the Rights of African Women (Maputo Protocol).

(b) free secondary education;

(c) free university education; and

(d) free adult literacy programme.

As can be seen from the provision of *section 18(3)(c) above,* one of the things Government is expected to do in order to eradicate illiteracy is to provide free university education. However, provision of free university education by Government is qualified as it is subject to "as and when practicable". In other words, it is tied to feasibility and resource availability. The educational objectives in *section 18* of the CFRN, 1999 as amended which contains the clause on provision of free university education is not a justiciable fundamental right. This is because the framers of the extant Constitution, in Chapter II *(sections 13 and 24),* provided for a genre of non-judicially binding economic, social and cultural rights that are labeled "Fundamental Objectives and Directive Principles of State Policy". The educational objectives listed in *section 18* of the CFRN, 1999 as amended forms part of these fundamental objectives and directive principles of state policy expressly declared non-justiciable under *section 6(6)(c)* of the same CFRN, 1999 as amended. Non-justiciability means that the Courts cannot adjudicate on or interpret any provisions of the said of Chapter II *(sections 13 and 24)* of the Constitution. Non-justiciability presupposes limitations on the organ of government entitled to interpret the Constitution, which is the judiciary.[9] In practical terms, this means that there is no free university education policy in Nigeria and aggrieved persons in that regard cannot approach the Courts to seek and successfully obtain reliefs. In *All Progressives Congress v Moses*,[10] the Supreme Court defined the meaning of and distinction between the terms "justiciable" and "non-justiciable" when it held that "justiciable" means a case or dispute properly brought before a Court of justice capable of being disposed of properly. When a matter is "non-justiciable", it means that a Court cannot hear it. The Court has no jurisdiction to look into it."

Having established from the foregoing that the right to "free university education" is not justiciable, it will be appropriate in the subsequent segments of this paper to appraise the legal status and significance of the NELFUND as a stopgap or temporary

[9] *A-G Borno State & Ors v Rev. Adamu & Ors* (1998) 1 NWLR (Pt. 427) 681-687. See also NO Obiaraeri, *Denatured Human Rights in Nigeria- A New Normal Is Possible*, (Owerri, Imo State University Press).

[10] (2021) 14 NWLR (Pt. 1796) 278. This principle was relied on by the Court of Appeal in *APC & Anor v Gyanunta & Ors* (2023) LPELR-59507(CA).

measure to the attainment of provision of free university education contemplated under the Nigerian Constitution.

3.0 Legal Status and Administrative Structure Of The Nigeria Education Loan Fund

The NELFUND is a creation of the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024. The objective of the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 is to provide both legal and institutional framework for grant of loan to all qualified Nigerian students pursuing higher education[11] programme in any approved tertiary institution in Nigeria for

purposes of payment of tuition, fees, charges and upkeep. Structurally, the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 is divided into 6 parts with 37 sections. Part I thereof makes provision for the establishment of the Nigerian Education Loan Fund. It also outlines the objectives, functions and powers of the NELFUND; Part II provides for the constitution of the Board of Directors, Management and Administration of the NELFUND. It further highlights the composition, appointment, tenure and responsibilities of the Board of Directors,

Management and Administrative staff; Part III provides for the financial provisions of the NELFUND, established the General Reserve Fund[12] and outlined modalities for financing, annual estimates, accounts and audits, annual reports and tax exemption; Part IV provides for the administration of student higher education loan scheme, providing guidelines on the eligibility of applicants, national spread and inclusion, disqualification, approval and disbursement of loans, repayment of loans etcetera; Part V deals with Protection against Adverse Claims and Indemnity; while Part VI highlights the Miscellaneous provisions.[13]

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[11] The United Nations Educational, Scientific and Cultural Organization defines higher education as "encompassing all types of education (academic, professional, technical, artistic, pedagogical, long distance learning, *etcetera*) provided by universities, technological institutes, teacher training colleges, *etcetera*, which are normally intended for students having completed a secondary education, and whose educational objective is the acquisition of a title, a grade, certificate, or diploma of higher education". See Right to Education, "Higher Education", available at https://www.right-to-education.org/issue-page/higher-education#:~:text=UNESCO%20defines%20higher%20education%20as,long%20distance%20learning%2C%20etc.. Accessed 25/5/25.

[12] Hereinafter abbreviated and referred to as "GSF".

[13] Yiaga Africa, "Students Loans (Access To Higher Education) (Repeal And Re-Enactment) Act 2024 Policy Brief", available at <https://yiaga.org/wp-content/uploads/2024/10/Students-Loan-Policy-

Under the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024, the NELFUND is created as a body corporate that can sue and be sued in its name. It has the power to acquire, hold, and dispose of movable and immovable property for the purpose of its functions. Thus, the NELFUND can legally enter into contracts, including loan agreements, and may also initiate action to ensure repayment by beneficiaries. The Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 empowers the NELFUND to provide loans to qualified Nigerians for tuition, fees, charges, and upkeep during their studies in approved tertiary academic institutions and vocational and skills acquisition institutions in Nigeria. NELFUND is also authorized to build, operate, and maintain a diversified pool of funds to provide loans to qualified applicants and ensure access to higher education, vocational training, and skills acquisition. These ensure that students can apply for and receive loans to cover tuition, institutional charges, and some upkeep. The loans will be administered by the NELFUND which is empowered by law to carry out the day-to-day activities of the Fund. NELFUND is headed by a Managing Director appointed by the President of Nigeria.

More explicitly on the administrative structure, under the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024, the NELFUND is headed by a non-Executive Chairman, with a Board of Directors and a Managing Director. The NELFUND has a management team led by a Managing Director, including executive directors responsible for the day-to-day management and operations of the Fund. This arrangement separates the governance functions from the management operations of NELFUND by establishing a board of directors with a Chairman and a Secretary. The NELFUND Board members are drawn from relevant ministries, regulatory bodies, and participating agencies like the Federal Ministries of Finance and Education, the Federal Inland Revenue Service, National Identity Management Commission, National Universities Commission, National Board for Technical Education, and National Commission for Colleges of Education in Nigeria, as well as representatives of universities, polytechnics, colleges of education, students of tertiary institutions, and the organized private sector. The NELFUND Board has powers to sue and be sued, to invest, remove provisions on interest repayment, the family threshold for eligibility, to exempt, extend loan period, grant grace periods, among other things. Generally, under

Brief.pdf>. Accessed 6/6/25. See also Policy and Legal Advocacy Centre, "STUDENTS LOANS (ACCESS TO HIGHER EDUCATION) (REPEAL AND RE-ENACTMENT) ACT, 2024", available at <https://placng.org/i/wp-content/uploads/2024/04/Students-Loans-Access-to-Higher-Education-Repeal-And-Re-Enactment-Act-2024.pdf>. Accessed 6/5/25.

the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024, the President of the Federal Republic of Nigeria appoints the Board and Management.[14]

4.0 Funding of The Loan

It is the exclusive responsibility of the NELFUND to administer the loans. For purpose of funding, the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 created a General Reserve Fund. Fund shall be received into the reserve from various sources which include but are not limited to -1% of all Federal taxes, levies and duties; appropriation from the National Assembly; repayments on loans and capital granted; funds from education bonds, approvals from Federal Government; charges and fees on loans; donations, gifts, endowments and grants to the Fund. It is from the General Reserve Fund that NELFUND shall pay amounts payable as loans to qualified applicants for tuition, fees, charges, and upkeep, as well as the NELFUND's operational expenses and such expenditures necessary to attaining the NELFUND's objectives and functions.

5.0 Eligibility For The Student Loan

To be eligible for the student loan, the applicant will among other things be a Nigerian citizen, with valid biometrics identity, admission letter complying with and meeting regulations as may be set by the NELFUND. There is no age limit for the loan. According to NELFUND, Students who have secured admission into all Public Nigerian universities, polytechnics, colleges of education, or vocational schools, with a proof of admission that includes Name, Date of Birth, Admission, JAMB number, Matriculation number, and BVN. All new and existing students within the institution above can apply for the loan online.[15]

Student applicants to the NELFUND may apply for loans to cover tuition and other fees payable to the school and maintenance allowance payable to the student. The loan will be applied for every academic session by the student. Under the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024, a student can access the loan on liberal terms. For example, the family income threshold is inapplicable. This means that Nigerian students can apply for these loans and accept responsibility for repayment according to the NELFUND's guidelines. There is no guarantor requirement meaning that students can apply for and receive loans subject to application and identity verification guidelines as provided by the NELFUND. No student applicant can be

[14] Law Pavilion, "The Student Loan (Access to Higher Education) Act, 2024", available at <https://lawpavilion.com/blog/the-student-loan-access-to-higher-education-act-2024/>. Accessed 5/5/25.
[15] NELFUND, "Welcome to the Student's Loan Portal", < https://portal.nelf.gov.ng/>. Accessed 5/5/25.

disqualified based on their parent's loan history. There is also a justice and fairness provision which mandates the Board to ensure a minimum national spread of loans approved and disbursed in each financial year.

6.0 Application Timelines, Disbursement and Repayment Terms

With respect to application timelines, the loan fund is expected to be disbursed within thirty days of proper application to cover all expenses and maintenance cost of the student applicant while available fund is to be disbursed on basis of national spread and inclusivity principles of equity, justice, fairness and inclusion of all. The amount of loan a student can apply for would be determined by the institutional charge of each Institution. The loan will cover the cost of institutional charges and upkeep if required by the student. The institutional charges will be remitted directly to the applicants' institutions and the upkeep will be paid to the applicant on a monthly instalment basis. To receive the monthly upkeep allowance, students must apply for both institutional loan (tuition fees) and the upkeep loan at the time of registration. If a student only applies for the institutional loan without the upkeep, they will not be eligible for the upkeep allowance.[16]

Regarding repayment terms, the loan is repayable at Zero interest on the loan. The Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 states a two-year grace period for repayment of loan after graduation. Hence, the NELFUND shall not initiate loan recovery efforts until two years after the completion of the National Youth Service Programme. There shall be enforcement of repayment from two years after completion of National Youth Service. Repayment shall be 10% of gross earnings. As this repayment condition may occasion hardship or prove to be impossible for the unemployed as there is no mandatory stipulation guaranteeing automatic employment upon graduation and or after completion of National Youth Service, there is room for extension or exemption to be granted for non-employment, death or hardship as the case maybe. A beneficiary may request an extension of enforcement action by the NELFUND by providing a sworn affidavit indicating that he/she is not employed in any capacity and is not receiving any income. A person who provides a false statement to the NELFUND under this section is guilty of a felony and is liable to imprisonment for three years. Where the applicant is employed, the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 stipulates that the Board shall inform employers of status of employed beneficiaries for follow up on repayments. Furthermore, it imposes statutory duty to hold employers responsible to inform the Board of the repayment status of borrowers. Any defaulter shall be liable on

[16] NELFUND, "Frequently asked questions", available at https://nelf.gov.ng/faq. Accessed 5/5/25.

conviction for a fine of not less than N2,000,000 (two Million Naira) or imprisonment for a term of not less than one year or both. The Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 makes provision for loan forgiveness in the event of death or acts of God causing inability to repay. However, an application may be denied if such an applicant is: proven to have defaulted in respect of any previous loan granted by any license financial institution; found guilty of submitting fake/fraudulent documents and dismissed for exam malpractices by any school authority; and convicted of fraud and forgery, drug offences, cultism, felony, or any offences involving dishonesty.

7.0 Conclusion and Recommendations

Doubtlessly, the NELFUND as established under the Student Loans (Access to Higher Education) (Repeal and Re-Enactment) Act, 2024 has increased access to higher education by ensuring that Nigerian students have access to loans to fund their higher education, acquire critical skills, and make meaningful contribution to national development. It is commendable that access to NELFUND is open to Nigerian students of tertiary institutions without discrimination. However, to improve the NELFUND ecosystem, it is firstly recommended that the projected funding subheads of the General Reserve Fund must be regular and adequate. NELFUND cannot run, operate or be sustainable with irregular and inadequate funding of the General Reserve Fund. Secondly, managers of the NELFUND should irrevocably uphold the justice and fairness provisions by applying the funds to eligible beneficiaries in a transparent manner reflective of national spread and inclusion. This will instill public confidence in the process. Thirdly, NELFUND beneficiaries must stick to the loan repayment terms in order to make the scheme both sustainable and revolving. Nevertheless, it must be accentuated that the establishment of a comprehensive legal and institutional mechanism for loans for tertiary education under the NELFUND is not a substitute for ushering in free university education as envisaged in *section 18(3)(c)* of the CFRN, 1999 as amended. Provision of free university education by Government should be the ultimate destination of higher education in Nigeria in the foreseeable future.