ACCESS TO TERTIARY EDUCATION FUNDING IN NIGERIA: A CASE FOR INCLUSIVITY*

Abstract
This article canvasses the legal, constitutional, administrative and policy matrix that governs access to public tertiary education funding in Nigeria, with a particular focus on the Tertiary Education Trust Fund (TETFund) and the continuing exclusion of private tertiary institutions from direct access to its resources. Deploying doctrinal legal analysis, comparative study and policy evaluation, the article argues for a calibrated model of inclusion that preserves TETFund's remedial mission while permitting targeted public-interest investments in accredited private providers and expanding institution-neutral student-support mechanisms. The paper concludes with a model legislative amendment, operational modalities, a litigation strategy memo, and a roadmap for phased implementation. The piece includes National-Rule style footnotes and a comprehensive footnote section.

Keywords: TETFund, NELFUND, Private Universities, Inclusivity, Nigeria, Section 18, National-Rule Footnotes.

1. Introduction

Access to tertiary education is a cornerstone of human capital formation and socio-economic development. In Nigeria, the Tertiary Education Trust Fund (TETFund) represents the cornerstone of statutory instruments channeling an education tax into interventions that rehabilitate, restore and consolidate tertiary education. Since its establishment, however, the TETFund's statutory and administrative architecture has primarily benefitted public tertiary institutions, leaving private universities, polytechnics and colleges of education largely excluded from institutional-support funding. This exclusion raises complex questions touching on statutory interpretation, constitutional objectives, administrative legitimacy, distributive justice and public finance.

The article argues that while TETFund's exclusive orientation is legally defensible in light of current statutory wording, there are persuasive constitutional, policy and fiscal reasons for pursuing calibrated inclusivity. The policy objective is not to divert remedial resources away from underfunded public institutions but to harness private institutional capacity where it serves demonstrable public-interest aims, while expanding institutionneutral support mechanisms for students.

Education remains a fundamental catalyst for personal development, societal progress, and national transformation. It is widely acknowledged as both a human right and an indispensable tool for the realization of other rights. The United Nations Educational, Scientific and Cultural Organization (UNESCO) emphasizes that education is the bedrock of sustainable development and social inclusion[1]Within the Nigerian context, the right to education is guaranteed under Chapter II of the 1999 Constitution of the Federal Republic of Nigeria (as amended), particularly Section 18, which enjoins the State to provide equal and adequate educational opportunities at all levels.[2] Additionally, Nigeria is a signatory to numerous international and regional instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR),[3] and the African Charter on Human and Peoples' Rights (ACHPR),[4] which reinforce the recognition of education as a basic human right.

In order to finance tertiary education and address the chronic underfunding of public institutions, the Nigerian legislature enacted the Tertiary Education Trust Fund (Establishment, etc.) Act 2011 (TETFund Act). The Fund, financed primarily from a 2% education tax imposed on the assessable profit of all registered companies in Nigeria, is mandated to disburse resources for the rehabilitation, restoration, and consolidation of public tertiary institutions.[4] However, by the express provisions of Section 7(1) of the Act, the beneficiaries of TETFund interventions are restricted exclusively to federal and state-owned universities, polytechnics, and colleges of education.[6] Private tertiary institutions are thereby excluded, notwithstanding that the companies from which the tax is collected include corporate entities that may have no direct affiliation with public institutions.

2. Research Questions

The research method adopted for this research is the doctrinal method. This is because this study is purely theoretical research and does not necessarily require the distribution of questionnaire or conducting an interview as in some other field work but instead collecting information from existing sources. Both primary source and secondary sources were used to enhance the credibility of the study. The primary sources include, Constitution of the Federal republic of

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[1] UNESCO, *Education for Sustainable Development Goals: Learning Objectives* (UNESCO 2017) 7.
[2] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 18.
[3] International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, art 13. [4] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004, art 17.
[4] Tertiary Education Trust Fund (Establishment, etc.) Act 2011, s 1. [6] ibid, s 7(1).

Nigeria, African Charter on Human and Peoples' rights and the Tertiary Education Trust Fund Act. The secondary sources are Journal articles as well as material sourced from the internet. All of these materials subjected to content analysis.

Research Questions. This study is guided by the following research questions:

1. What is the legal foundation of TETFund's beneficiary architecture and does it preclude inclusion of accredited private institutions?
2. What do constitutional provisions, international commitments and principles of administrative law imply about equitable access to tertiary funding?
3. What legislative and administrative models can reasonably and lawfully expand access without undermining remedial priorities?
4. What litigation strategies exist for stakeholders seeking to challenge the status quo, and what are their realistic prospects?

3. Methodology

The article employs doctrinal legal analysis of statutes and case law, policy analysis of administrative guidelines and secondary literature, and comparative review of select foreign models (United Kingdom, South Africa, Kenya and Malaysia). It also constructs a model amendment and operational guidance intended for policymakers and potential litigators.

4. Historical and Policy Background

There exists numerous research on the importance of private tertiary institutions on the development of higher education in Nigeria, most especially on the Education Tax. However, it is instructive to state that there are only a few research works on the implications of the exclusion of private tertiary institutions from TETFUND, how it is discriminatory and how it directly infringes on the citizen's right to education. Thus, this work is of vital importance to research on how exclusion of private tertiary institution from TETfund is an infringement to the right of education of the citizens. This gap is to be catered for in this present work. Some of the existing literature are reviewed and it is discovered that the present work is essential at this time. Shehu [5] argues that though the private tertiary institutions though private in nature, they are not for profit making, notwithstanding the fact that they charge high fees. The high fees do not cover the running cost talk less of infrastructure. Most private institutions found it extremely difficult to pay staff salaries. Yet, private institutions have come to complement government effort in ensuring higher education for the citizenry, even also reducing the unemployment rate of the country. This study agrees with the position of this author and acknowledged the fact that though education in private institutions are expensive, they are still doing the most in complimenting government's efforts in providing education for those that have not been admitted into public institutions. Olukoju[6] in highlighting the importance of private tertiary institutions in complementing the efforts of the government in providing education said private tertiary institutions are not as many as the public ones, they have really 'contributed to developing human capacity in many areas of national need' and therefore they deserve government intervention scheme to enable them increase their carrying capacity, improve in standard and create more jobs. However, he forgets to mention that there is governmental intervention in place that they have been excluded from benefitting from TETfund. Ndubuisi, in his speech at the first matriculation ceremony of the university said 'if the government feels justified in excluding private tertiary institutions from the Tertiary Education

Trust fund, it has to provide an alternative funding exclusive to private institutions'.[7] The private Universities needs to survive and provide infrastructures for these students whose parents pay the taxes that fund TETFUND. Ndubuisi does not properly emphasize that education as a human right, and human rights is not supposed to be discriminatory, the Nigerian Supreme court in the case of *Ukaegbu v Attorney General, Imo state*[8] held that 'Every member of the community has a right to adequate, unalloyed and balanced education: a right to receive healthy education….' Kalu,[9]says denying private institutions from tetfund support to finance their academic programs, including research and infrastructure development amounted to great injustice. Obasi, Akuchie and Obasi [10] in the recommendation of their paper 'Public Policy and Enhancement of Access in private Universities in Nigeria' made the following submission; 'Use of Public Funds to Support Private Universities (Public Policy Enabler No. 1): This support can

[5] A.T Shehu, 'Exclusion of Private Tertiary Institutions from Education Trust Fund (TetFund)' Vol. 1, No. 1, June, 2019, *Al-Hikmah Journal of Arts and Social Science Education, pages 20-31*

[6] O. Ayodeji, 'Private Universities and National development'. The Guardian October 5 2016 www.guardian.ng accessed on 13th July 2019

[7] F. Ndubuisi Vice Chancellor Christopher University Welcome address on the first matriculation ceremony of Christopher University, Mowe

[8] (1983), SCNLR,212

[9] the Vice chancellor of Evangel University, Okpoto Ebonyi

[10] N. I. Obasi, R. C. Akuchie and S. N. Obasi, 'Public Policy and Enhancement of Access in Private Universities in Nigeria' (2014) Vol. 4 (2) *Public Policy and Administration Research Journal*. 22-30

appear in a mixture of public policy interventions such as (a) direct allocation of fixed percentage of the budgets of the Private HEIs by the government; (b) Through the Tertiary Education Trust Fund (TETFund) by providing physical infrastructure and facilities such as libraries, hostels, classrooms, laboratories and equipment etc, (c) Occasional Grants and Loans for execution of specific projects, (d) Sponsoring of research activities, and (e) purchase and donation of books to the library.

One good illustrative case in this regard is Japan. Three decades ago, the Japanese National Parliament passed a law authorizing the use of public funds to support private institutions. For example, private universities were receiving about 10% of their funds from the government. Secondly, they were getting the lion share of their research funds from the government. Thirdly, students in private universities receive government assistance in the form of scholarship or getting other assistance from their local governments. In varying degrees, countries that provide support to private universities among others, are USA, Brazil, New Zealand, Ghana, Uganda, and Botswana. The case of some African countries such as Uganda, Ghana and Botswana is inspiring. The Ugandan State Minister for Higher Education Gabriel Opio announced in 2007 that the Government would 'fund private universities' given the important role they play in promotion of higher education. The Ghanaian Government in 2009 took the decision to link private universities to the national education fund through the TETFund programme. In Botswana, private higher education institutions are 'prospering' simply because the government sponsors almost all the students admitted into them. In this paper they were able to proffer an alternative solution for the exclusion of private tertiary education from TETFUND though it doesn't really emphasize on the subject matter but it forms part of the recommendations of this work.

Furthermore, in a different opinion the Academic Staff Union of Universities and Tertiary Education Trust Fund opposed the inclusion of private tertiary institutions from TETfund.[11] On his own, Baffa[12] while stating his position said: 'If private universities will resort to government for funding, it then means their license should be withdrawn because they can't stand on their own; he further stated that inclusion of private institutions into TETFUND will result into agitations by other monotechnics excluded from the fund.' However, Baffa has forgotten that yearly, only 5.2% and 15.3% of those seeking admission to public institutions eventually get admitted, leaving about 85%-94% of those seeking admissions to the mercy of private institutions. Therefore, it can be concluded that though private instit6utions may charge high fees they complement the government efforts. According to Suleiman Bogoro [1314] during an interview with vanguard newspaper on the extension of TETfund to private institutions said:

> in his own opinion private tertiary institutions should be excluded from tetfund due to the fact that they cater for less than the population of those in public schools and also, he believes that only the children of the rich and affluent attend private institutions due to the high fees being paid by them.[16]

In this interview the Executive secretary emphasized on population as a major reason for this exclusion as population, stating that population of those in public school are more than those in the private university, this is an outright discrimination on the rights of those in private universities. In the case of *University of Delhi v Ram Nath*[17] it was observed that education is an enlightenment which leads dignity to men. Education is so important in the life of any nation such that without it the entire human race is in turmoil. However, it is therefore immaterial whether the number or people in public schools is more than the number of people in private schools as the law is not supposed to be discriminatory. The literature review has clearly described the concept of private participation in university education in Nigeria and also the justification for the exclusion. However, most of them have failed to proffer a solution on how this discriminatory law can be amended to accommodate private universities. This work intends to look at the private sector participation in Tertiary Education in Nigeria and reasons for the exclusion of private universities from TETFund and the rationale for such exclusion through content analysis of the TETFund Act.

Origin and Purpose of the Education Tax and TETFund

The TETFund regime emerged from a perceived need to mobilise additional, stable resources to address the chronic capital and research gaps afflicting Nigeria's tertiary institutions. Statutorily established, the Fund pools a specified education tax to support rehabilitation and development projects across universities, polytechnics and colleges of education.

Rise of Private Tertiary Provision in Nigeria

Private tertiary institutions have expanded rapidly in Nigeria's higher-education landscape. This expansion has alleviated pressure on public institutions and increased aggregate tertiary enrollment. Many private institutions educate students in fields of national imperatives (medicine, engineering, teacher education), and their graduates contribute to the national workforce.

Policy Tensions

Policy-makers face a balancing problem: remedial public investment remains necessary to address historical neglect in public institutions, while an outright exclusion of private institutions may impede broader national capacity-building and

[11] *Thisday newspaper*, 28th May 2018 (Edited by James Emejo)
[12] Executive secretary Tertiary Education Trust Fund
[13] Executive Secretary, Tertiary Education Trust Fund 2015
[14] www.vanguradng.com/January 8th 2015.accesed on 15th July 2019 [17] (1964), AIR, SC,1873

equity aims. The mismatch between who contributes to the tax base and who may benefit from pooled education resources amplifies perceptions of unfairness.

The TETFund Legal and Institutional Framework

The Statutory Text and Legislative Design: The TETFund Act creates a statutory mechanism to raise and disburse an education tax for tertiary education[158]. The Act and subsequent implementing guidelines have consistently identified public tertiary institutions as the Fund's primary beneficiaries. The legislative history and administrative practice have generally reinforced this public-institution focus.

TETFund Governance and Disbursement Categories: TETFund's disbursement framework includes intervention categories such as academic staff development, research, libraries, infrastructure and basic equipment. The allocation formulas and oversight mechanisms operate within the Board's powers, subject to ministerial and legislative oversight.

***Interaction with Regulatory Bodies*:** The National Universities Commission (NUC), the National Board for Technical Education (NBTE) and other regulatory agencies enforce accreditation and quality assurance. These agencies generate regulatory infrastructure that can be leveraged to ensure that any inclusion of private institutions is tied to demonstrated quality and compliance.

Constitutional and Human-Rights Analysis

Section 18: Directive Principles of State Policy: Section 18 of the Nigerian Constitution directs the State to secure equal and adequate educational opportunities at all levels and to strive to eradicate illiteracy. Although Section 18 is a directive principle and typically non-justiciable, it acts as an interpretive and normative compass for policy formulation and judicial reasoning.

Justiciability and Socio-Economic Rights: The Nigerian constitutional framework does not expressly confer a justiciable right to tertiary education. Accordingly, litigants seeking to enforce access to tertiary finance face an uphill task. Nevertheless, courts have in limited contexts invoked directive principles to inform the interpretation of justiciable rights and to evaluate administrative action against constitutional objectives.

International Law and Extra-Domestic Obligations: Nigeria's ratification of international instruments such as the International Covenant on Economic, Social and Cultural Rights and commitments under the African human-rights instruments articulate a right-to-education standard and the obligation to take progressive measures toward its fulfilment. Though not directly enforceable without implementing legislation, these instruments are persuasive in policy advocacy and judicial interpretation.

5. Administrative Law, Accountability and Governance

***Limits of Administrative Discretion*:** Administrative agencies must operate within statutory bounds. TETFund's Board cannot lawfully award funds beyond its statutory mandate. Any administrative attempt to extend disbursements to private institutions without statutory authority risks ultra vires challenge.

Procedural Fairness and Transparency: Where public funds are concerned, principles of procedural fairness, transparency and reasoned decision-making apply. Any inclusive policy must be accompanied by published criteria, open application processes and independent review mechanisms to satisfy public accountability norms.

***Anti-Corruption and Audit Oversight*:** Disbursements should be subject to the Auditor-General's oversight and anti-corruption frameworks. For private beneficiaries, enhanced audit protocols and legally enforceable performance metrics are necessary to safeguard public funds.

6. Comparative Perspectives and Lessons Learnt

The UK model combines direct public funding for public universities and competitive grants that can, in certain contexts, be accessed by private higher-education providers when they meet specific eligibility criteria. Research councils and competitive funding bodies allocate grants based on merit and public-interest considerations. South Africa channels block grants and subsidy funding primarily to public institutions but also deploys competitive funding mechanisms and partnerships that can include private actors in specific research or public-interest projects under contractual arrangements. Kenya has adopted student-support mechanisms and competitive research grants; while public institutions are primary recipients of recurrent funding, donor and competitive funding streams can include private providers subject to accreditation and regulatory oversight. Comparative lessons underscore that calibrated, conditional inclusion is feasible where regulatory capacity and accountability mechanisms are robust. Competitive, project-based grants and student-centered loans present replicable models for Nigeria. Opening avenues for private institutional inclusion creates potential demand pressures on limited funds. Policymakers must therefore model demand scenarios and cap allocations available to non-public bene.

[15]Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011, Laws of the Federation of Nigeria.