



## Discriminatory admission practices: A violation of the right to higher education

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### Abstract

The right to education is a fundamental socio-economic human right recognized by over 140 instruments such as national constitutions, covenants, conventions, and treaties across the world. In addition to the recognition of access to education at all levels as a fundamental right in its Constitution, Nigeria is also a signatory to some of the notable international conventions on human rights that rightly included the right to education. Education is basically classified as primary, secondary, and tertiary. Postgraduate studies as a vital component of tertiary education is often aimed at high level manpower development in skills, knowledge and research. As a matter of convention in most Universities, admission to higher degree program is often dependent on two basic factors: possession of requisite qualifications (by the prospective student) as stipulated by the relevant Institution and quota (number of spaces available) on the part of the Institution. This paper follows an analytical approach in discussing how admission to higher degree programs are conducted in public Universities in Nigeria having regard to the common regulatory framework provided by the National Universities Commission. Findings revealed the existence of myriad quasi-policies which are often discriminatory in the manner they are employed. The authors herein argued that such discriminatory conducts amount to an infringement to the rights of the citizenry and thereby calls on the appropriate regulatory authorities to wade into the situation to prevent a further erosion of the rights and privileges of persons who may have their future prospects thwarted by unscrupulous individuals who are habitually bent on frustrating public policies.

**Keywords:** discriminatory admissions, higher degrees, universities, right to education, Nigeria

### 1. Introduction

Like other fundamental human rights, the right to education is recognized and enshrined in several local and international conventions, treaties, and covenants. At international level the following are remarkable as it affects the right to education:

- 1) International Covenant on Economic, Social and Cultural Rights (ICESCR) <sup>[1]</sup>
- 2) The Universal Declaration of Human Rights (UDHR) <sup>[2]</sup>
- 3) Conventions on the Rights of the Child <sup>[3]</sup>
- 4) African Charter on Human and Peoples Rights <sup>[4]</sup>
- 5) European Social Charter <sup>[5]</sup>
- 6) International Convention on the Elimination of All Forms of Racial Discrimination <sup>[6]</sup>
- 7) Indigenous and Tribal Peoples Convention, 1989 (No. 169), International Labour Organization <sup>[7]</sup>
- 8) Charter of Fundamental Rights of the European Union <sup>[8]</sup>
- 9) American Convention on Human Rights <sup>[9]</sup>
- 10) American Declaration of the Rights of Man <sup>[10]</sup>
- 11) UNESCO Convention against Discrimination in Education (1960) <sup>[11]</sup>
- 12) The Convention on the Elimination of All Forms of Discrimination against Women (1979) <sup>[12]</sup>

Locally, Chapter 2, Section 18 of the Constitution of the Federal Republic of Nigeria <sup>[13]</sup> which captures the educational objectives of Government provides that:

- 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;
- b) Free secondary education;
- c) Free university education; and
- d) Free adult literacy programme.

Notwithstanding the longstanding argument as to the non-justiciability of the Chapter 2 of the said Constitution as affirmed in the case of Archbishop Anthony Olubunmi Okogie & others v. Attorney General of Lagos State <sup>[14]</sup>, vital issues have been raised in various quarters as to the true meaning of a Constitution. One of such remarkable issue is the Nigeria Supreme Court's case of Federal Republic of Nigeria (FRN) v. Osahon <sup>[15]</sup> wherein the apex court held that "the Constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme law, fountain of all their laws"; it is therefore submitted that a Constitution is not at any given situation expected to or presumed to contain ambiguity hence all of its provisions must be given meaning and interpretation even with the imperfection of the legal drafts man <sup>[16]</sup>.

Accordingly, relief may be had from Section 13 of same Constitution <sup>[13]</sup> which provides that: "It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution". Thus, under a government driven by social justice, equity, and good conscience, the provision of access to educational institutions irrespective of social class would be considered

an ultimate objective that should be pursued in such a way that there wouldn't be social and legal squabbles from any quarters of the society<sup>[17]</sup>.

In addition to the foregoing legislative provisions, the right to education encompasses obligations on the part of the government, its agencies, or any licensed educational service provider to avoid discrimination against persons at all levels in the educational system.

As noted by Nwankwo<sup>[17]</sup>, "Higher education is aimed at providing the needed manpower to accelerate the socio economic development of the nation, and University education is a specialized learning aimed at providing elite demonstrable qualifications that could create and promote social change and economic development hence across the globe Universities are recognized as centres of excellence, where knowledge is acquired and disseminated to those who require it. More so their outputs especially as the graduate levels are critical contributors to the growth, maintenance and adaptive structures of the society". The foregoing is in perfect agreement with the provisions of the Section 11 of the Education (National Minimum Standards Establishment) Act<sup>[18]</sup> which are carefully adumbrated thus:

"The purpose of higher education shall be- (a) the acquisition, development and inculcation of the proper value-orientation for the survival of individuals and society; (b) the development of the intellectual capacities of individuals to understand and appreciate their environment; (c) the acquisition of both physical and intellectual skills to enable individuals to develop into useful members of the community; (d) the acquisition of an objective view of local and external environment; (e) the making of optimum contributions to national development through the training of higher level manpower; (f) the promotion of national unity by ensuring that admission of students and recruitment of staff into universities and other institutions of higher learning shall, as far as possible, be on a broad national basis; (g) the promotion and encouragement of scholarship and research. Special and adult education.

From the foregoing, It may be rightly submitted that higher degrees which usually constitute prima facie evidence of a person's graduate or postgraduate (as is called in some quarters) training in Universities is vital to the wellbeing of any society and should be encouraged by the government and/or its proxies.

### 1.1 Objectives of the Study

#### The objectives of this paper are

- a) To critically examine the conditions precedent to the admission of persons to higher degree programs in Nigeria's Universities especially the public universities vis-à-vis the stipulated requirements.
- b) To examine the various instruments/policies governing the admissibility of prospective candidates into a University's higher degree programs especially the Doctorate degree programs.
- c) To ascertain whether or not such laid down policies are duly adhered to
- d) To ascertain the extent of legality as to the manifest discriminatory practices that may exist in the admission procedures vis-à-vis the provisions of regulatory agencies.

### 1.2 Research Questions

To realize the stated objectives, the following questions

have been formulated:

- 1) Other than the Universities themselves, are there other recognized agencies that play regulatory roles in the affairs of the Universities?
- 2) What are the procedures for and policies governing postgraduate admissions in Universities in Nigeria?
- 3) Are Universities at liberty to craft and decide who to admit and who not to admit by fiat?
- 4) Whether the admission practices are consistent with rules of regulatory framework, public policy and equity?
- 5) Whether or not an applicant who files in an application to a higher degree program duly advertised by a University has a right to demand to assert any fundamental right against the University on discriminatory grounds?
- 6) Having regard to the concept of University autonomy, whether or not an affirmative action by regulatory agencies is consistent with the Constitutional provisions as to equitable access to education at all levels?

## 2. Materials and Methods

An analytical approach was adopted following sociological enquiries and review of relevant legislations and policy documents.

### First, the following were critically reviewed

1. Tertiary education developments in Nigeria
2. International Conventions and Treaties
3. Constitution of the Federal Republic of Nigeria 1999
4. Local Statutes: Education (National Minimum Standards and Establishment of Institutions) Act<sup>[18]</sup>
5. Education Policy documents and Guidelines
6. Case Laws [where applicable]
7. Constitutional Mandate of Federal Ministry of Education and National Universities Commission respectively

Second, we conducted a sociological inquiry to obtain a first-hand data on requirements and guidelines as to admission procedures in selected public Universities

Thirdly, an analysis of documents containing the relevant local legislations and policies on education was made. The analysis was restricted to the following legislations and policy documents:

1. University Postgraduate admission guidelines/prospectuses of selected public Universities in the southwestern Nigeria. The Universities selected are: Federal University of Technology Akure, Obafemi Awolowo University Ile-Ife, University of Ibadan, and University of Lagos. The admission guidelines of interest were those of Masters(academic) and Doctorate degree programs
2. National Policy on Higher Education
3. Education (National Minimum Standards and Establishment of Institutions) Act
4. Constitution of the Federal Republic of Nigeria 1999

## 3. Results and Discussion

### 3.1 Regulatory agencies for Universities in Nigeria

The regulation of Universities are within the domain of two key Government agencies

Federal Ministry of Education (FME) and National Universities Commission (NUC), however, the NUC is recognized as a parastatal of the FME. Thus, it is the NUC performs a more active role in the regulation of Universities.

The functions of the FME are:

1. Formulating a national policy on education.
2. Collecting and collating data for purposes of educational planning and financing.
3. Maintaining uniform standards of education throughout the country.
4. Controlling the quality of education in the country through the supervisory role of the Inspectorate Services Department within the Ministry.
5. Harmonizing educational policies and procedures of all the states of the federation through the instrumentality of the National Council on Education.
6. Effecting co-operation in educational matters on an international scale.
7. Developing curricula and syllabuses at the national level in conjunction with other bodies.

Unlike the FME, the NUC is established by an Act of parliament <sup>[19]</sup> and derives its powers from same. In addition to the NUC Act, Section 10 of the Education (National Minimum Standards and Establishment of Institutions) Act provides that: “ (1) The power to lay down minimum standards for all universities and other institutions of higher learning in the Federation and the accreditation of their degrees and other academic awards is hereby vested in the

National Universities Commission in formal consultation with the universities for that purpose, after obtaining prior approval therefor through the Minister, from the President’’. It is trite that the NUC stipulates the minimum standards including admission requirements for higher degree programs in Universities as well as accreditation of programs and use of punitive measures on erring institutions.

**3.2 Policies governing admission into Postgraduate programs in Nigeria Universities**

In addition to the quota available in the Universities, admission into postgraduate studies is governed by two policies: the Benchmark Minimum Academic Standards (BMAS) for Postgraduate Studies formulated and made available by the NUC; and each University own postgraduate admission guidelines/prospectus approved by Senate of the University (which is often consistent with the BMAS). The BMAS provisions for requirements for admission into academic Masters (MSc) and Doctorate (PhD) degree programs are very consistent with the admission requirements stated in the admission requirements of the four public Universities studied. The requirements are presented in Table 1.

**Table 1:** Postgraduate admission requirements (BMAS and Universities)

NUC BMAS		University Admission Requirements	
Degree	Requirements	Degree	Requirements
Masters(MSc.)	Good first degree not lower than second class lower or PGD not lower than upper credit	Masters(MSc.)	Good first degree not lower than second class lower or equivalent from recognized Universities
Doctorate(PhD)	Good MSc with a CGPA not below 3.50	Doctorate(PhD)	MPhil or MSc with a CGPA of 3.50 - 4.00 or 60% from recognized Universities

**3.3 Extent of University autonomy in regard to who to admit**

Findings revealed that admission guidelines for postgraduate programs in the Universities are not whimsically created but are carefully created and approved by the Senate of each University in line with the benchmark minimum academic standards of the NUC. This clearly presupposes that one generic admission document exists and used as a guide during the admission process irrespective of any applicant’s status or academic background. It is clear that where admission quota is not exceeded every prospective applicant may be admitted into the advertised program provided the basic requirements are satisfied.

**3.4 Consistency of university admission procedures with rules of regulatory framework, public policy and equity**

To ascertain the consistency of admission practices with extant public policy, equity and regulatory requirements, reference is made to two elements:

1. Strict adherence to admission requirements as documented by the respective admission guidelines/prospectuses and the BMAS;
2. Non-discrimination against satisfactory qualifications obtained from other constitutionally recognized and accredited Universities regardless of ownership (federal, state, or private) and/or modes or approaches employed by such Universities which are not inconsistent with the regulatory requirements.

With regards to the first element above, findings showed that the Universities adhere to their respective guidelines which are consistent with the NUC BMAS provisions, however, there is quite some marked inconsistencies in the admission procedures in regard to the second item listed above. The Universities: Federal University of Technology Akure (FUTA) and Obafemi Awolowo University Ile-Ife (OAU) showed some inconsistencies. It was duly observed that FUTA showed marked discrimination against qualified graduates from private universities especially those who obtained their masters from duly licensed private Universities and intend to pursue Doctorate degrees. Though such discrimination against graduates of private universities are not in any way documented in the admission guidelines of FUTA, it was observed that such discrimination are put up by some of the Departments in the University. For instance, the Department of Computer Science at FUTA does not accept holders of Master’s Degree from University of Ibadan, State and Private Universities. The same blind discrimination is also true for some Departments in OAU against University of Ibadan. The list is endless. These observations are in no way consistent with the extant national regulatory framework (as put up by the NUC), public policy, and equity.

**3.5 Right of Applicant to demand for a redress on grounds of discrimination**

It may be argued that any practices that are against the

provisions of a University is inimical to the global image of the University as well as to public policy. One of such practices is discrimination against applicants which is clearly against equitable access to education as provided in the constitution as well as in other international covenants to which Nigeria is a Signatory. It is submitted that since the right to education is a fundamental human right, the breach of such a right by virtue of discrimination is a valid ground for a rights enforcement suit, however, the Constitution of the Federal Republic of Nigeria 1999 [as amended] sees the right to education as a privilege and not a justiciable right<sup>[20, 21]</sup>, consequently, it is unlikely that any enforcement of such a right can be sustained. Nevertheless, a petition to appropriate authorities may help remedy the situation.

### 3.6 Affirmative action on defaulting universities and its relationship with public policy and rule of law

An affirmative action is ripe for situations where a person or group of persons are unscrupulously discriminated against. Where such a case of discrimination is established, the regulatory authority such as the NUC (in this context) is in a position to issue an affirmative action against the defaulting Universities which are acting against the rules of equity and public policy. Consequent upon the foregoing, the victim of such a discriminatory practice may seek to pursue an affirmative action through appropriate quarters to ensure that the defaulting universities comply with laid down policies.

### 4. Conclusion

The right to education is a fundamental right and should be recognized as same owing to the boundless importance of education in socioeconomic development. Notwithstanding, the non-justiciability of the right to education in Nigeria's Constitution, there are fundamental provisions in the said Constitution as well as in other legislations and conventions to buttress the fact that equitable access to education at all levels is a fundamental principle of state policy. Consequent upon the foregoing, the discrimination against persons with requisite qualification and subsequent denial of admission to pursue higher degrees by some publicly funded institutions is a bad omen which need not be allowed to continue with its negative signals but should be appropriately and timely nipped in the bud considering its potential to frustrate the bright future of prospective scholars thereby undermining the national vision for rapid growth and development attainable through higher education.

### 5. References

1. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1978.
2. The Universal Declaration of Human Rights (UDHR), 1948.
3. Conventions on the Rights of the Child, 1989.
4. African Charter on Human and Peoples Rights, 1986.
5. European Social Charter, 1961.
6. International Convention on the Elimination of All Forms of Racial Discrimination, 1969.
7. Indigenous and Tribal Peoples Convention, (No. 169), International Labour Organization, 1989.
8. Charter of Fundamental Rights of the European Union, 2000.
9. American Convention on Human Rights, 1969.
10. American Declaration of the Rights and Duties of Man, 1948.
11. UNESCO Convention against Discrimination in Education, 1960.
12. The Convention on the Elimination of All Forms of Discrimination against Women, 1979.
13. Chapter 2, Section 18 of the Constitution of the Federal Republic of Nigeria, 1999. [as amended]
14. Okogie V. Attorney General of Lagos State 1 NCLR, 1981, 105.
15. Federal Republic of Nigeria v. Osahon 10 Nigeria Weekly Law Reports. 2006; 674:264.
16. Moja T. Nigeria Education Sector Analysis: An Analytical Synthesis of Performance and Main, 2000. [http://siteresources.worldbank.org/NIGERIAEXTN/Resources/ed\\_sec\\_analysis.pdf](http://siteresources.worldbank.org/NIGERIAEXTN/Resources/ed_sec_analysis.pdf) last accessed 2 March 2019
17. Nwankwo N. Assessment of Open Educational Resources in Tertiary Institutions: The Computerized Information Model, Communications. 2017; 5(6):58-72. doi: 10.11648/j.com.20170506.11.
18. Education (National Minimum Standards Establishment) Act Cap E2, Laws of the Federation of Nigeria.
19. National Universities Commission Act CAP. N81 Laws of the Federation of Nigeria, 2004.
20. Chinaedu BD. Towards ensuring fundamental education right in Nigeria, International Journal of Human Rights and Constitutional Studies. 2012; 2(1):27-36.
21. Ikpeze VCO. Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development, Developing Country Studies. 2015; 5:18.