INCOME SHARE AGREEMENTS: AN EDUCATIONAL MORTGAGE

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DECLARATION

I, SUSAN KABURA MAINA **AD101729**, declare that this research paper is my own personal effort and original work both in style and substance and as such it has never been presented, to the best of my knowledge, belief and information before any panel or any other learning institution.

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DEDICATION

This research paper is dedicated Ngai who has seen me through the years to the culmination of this degree program. It is also dedicated to the bank of dad which supported me financially throughout the four years. It is also dedicated to Mr. and Mrs. Maina Kabetu who have taught me to continuously finish what I started. To my dear friends Leah Njoki, George Oiye, Kanyoni Karanja, Matthew Njuguna and Farah Abdirashid who made the last four years' worthwhile.

LIST OF ABBREVIATIONS

ISA-Income Share Agreements.

USA- United States of America.

ALU- African Leadership University.

HELB- Higher Education Loans Board.

UNESCO-United Nations Educational, Scientific and Cultural Organization.

STEM- Science, Technology, engineering and Mathematics.

GPA-Grade Point Average.

Tvet-Technical and Vocational Education Training.

TABLE OF LEGAL INSTRUMENTS

The Constitution of KENYA, 2010.

Higher Education Loans Board Act, 1955.

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ABSTRACT

The Constitution of Kenya 2010 introduced a very important aspect in the bill of rights that is the economic and social rights under article 43. Kenya also ratified treaties such as the convention on economic, social and cultural rights which the constitution also regards as part of Kenyan law as per article 2(6) of the constitution of Kenya 2010.

One of the rights under article 43 is the right to education. This right has been protected by more than 140 constitutions of countries in the world and a large number of international covenants. Education and by education I mean formal education has been emphasized greatly and policies around education have been formulated more so to do with basic education. Do we only want to go as far as basic education only, what plans are set in place for tertiary education? As a developing state that has moved from having one institution of higher education to more than five what measures are we talking to ensure that there is one hundred percent inception of students to higher education?

How affordable is higher education for a common citizen are the loans being provided by the government reliable to educate enough Kenyans? This paper will look into these matters and give an option that can be implemented not only by the government but also by Non-Governmental organizations, international and Multinational organizations.

CHAPTER ONE
INTRODUCTION

1.1 INTRODUCTION

This research is going to look into Income Share Agreements and how it would be an alternative to funding of higher education in furthering the accessibility of higher education and the realization of the economic and social right of education in Kenya as stipulated in article 20(5) of the constitution of Kenya 2010.The current loan framework managed by the higher education loans board(HELB) is currently working with major shortfalls which include for example funding for undergraduate direct entry loans, a student is given a maximum of sixty thousand for two semester.[1] Funding by HELB is regardless of whether you are studying in a private or public institution and the course you are studying as well. This should be a huge consideration because private institutions are more expensive per semester than public and also the course of study may vary the amount of school fees to be paid it is definitely not an all size fits all situation as HELB may seem assume.

Income share agreement is a financial structure where an individual or organization provides something of value which is often a fixed amount of money to a recipient who in exchange agrees to pay back a percentage of his or her income for a certain number of years. Payment Cap is the maximum amount paid by a student over the Payment Term pursuant to an Income Share Agreement (ISA). Payment term is the term, measured in months or years, during which a fixed percentage of Earned Income is paid. In certain situations, such as underemployment or unemployment, the Payment Term may be extended and the monthly payment will be $0.Earned Income a person's total wage and self-employment income. Monthly payment is the agreed upon income share multiplied by the amount of the student's monthly Gross Earned Income.

Given that Income share Agreements can be offered by individual and also organizations some institution in the USA are offering it as an alternative to the high-interest student loans. It also helps reduce and solve the student debt challenge. A problem also common in Kenya especially

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[1] Higher education loans board, 'undergraduate loan(direct entry student)'https://www.helb.co.ke/product/undergraduate-loans/accessed 25 September 2019

currently where there is a high rate of unpaid student loans due to unemployment. Universities, are starting to offer ISAs through their financial-aid offices, with outside investors providing some of the capital. A university in Africa and has a branch in Kenya is the African leadership university in its Launchpad Program referred to as ALX.[2] Universities shy a way to lower their students' debt burden and spare them from having to take out private loans. Investors regard this as a sign that an institution is confident in its graduates' earning power, which reassures them about the extra risk in an equity arrangement, compared with conventional student debt[3] this will ensure universities will also up their game in terms of the standards of education they provide.

The major issue with Income Share Agreements is how interest for each individual is calculated to make sure that this organization, institutions and individuals do not defraud students, also what is the minimum amount of income one has to earn in order to start paying from their income. This can be regulated through creation of a law to govern the amount of interest this agreement accrues over time and the standard income or job group one has to attain in order to start paying for their debt.[4] Some of the major controversies that have to do with Income share arguments that have been documented mostly in the USA are that income share agreements are just like taxes, income share agreements are just like income based repayments and income share agreements are just like indentured servitude[5].

1.2 BACKGROUND

Milton Friedman proposed the concept in a 1955 essay where he argued students should be funded through "equity investment[s]" such that: " [Investors] could 'buy' a share in an individual's earning prospects to advance the funds needed to finance his training on condition he agree to pay the lender a specified fraction of his future earnings."[6]

[2] ALX, 'financing options 'https://www.alx.app/launchpad/financing/accessed 25 September 2019

[3]"Income-share agreements are a novel way to pay tuition fees"(The Economist, July 19 2018)< https://www.economist.com/finance-and-economics/2018/07/19/income-share-agreements-are-a-novel-way-to-pay-tuition-fees> last accessed 4/3/2019.

[4] Preston Cooper" Three myths about income share agreements that won't die"(Forbes January 10, 2019)< https://www.forbes.com/sites/prestoncooper2/2019/01/10/three-myths-about-income-share-agreements-that-wont-die/#1c889bad4005> last accessed 3/3/2019.

[5]Ibid ,5

[6]Friedman, M. (1955). Marshall and Friedman on Union Strength: Comment. The Review of Economics and Statistics, [online] 37(4), p.401. Available at: https://tedsf.org/wp-content/uploads/2019/01/The-Role-of-Government-in-Education.pdf [Accessed 6 May 2019].

In the 1970s, Yale University attempted a modified form of Friedman's proposal with undergraduate students. In the Yale experiment, instead of making individual contracts for a fixed number of years, all participants agreed to pay back a percentage of earnings until the entire groups balance was repaid. The result left students frustrated they were paying more than their fair share by being forced to make payments on behalf of other students unwilling or unable to repay[7].

The first to enter the ISA space was Lumni, beginning operations in the United States in 2009. Lumni launched in Chile in 2002 and since then has expanded to Colombia, Peru, Mexico, and the United States. Thus, unlike the other market participants, Lumni originated overseas and has been in operation for a number of years. Lumni also works with corporations that fund the education of children of employees and distributors, though it is unclear whether any of these ventures have launched in the United States to date. Lumni is the brainchild of Professor Miguel Palacios.[8] Building on Milton Friedman's work,[9]Palacios has argued that human capital contracts are a superior way of funding higher education because they reduce risk for students, improve information and decision making regarding the value of education, and increase competition in the higher education market. Lumni reflects Palacios's underlying vision.

Shortly thereafter, it was joined by 13th Avenue (in 2009). Cumulus Funding (2011), Upstart (2012), and Pave (2012) enter the ISA space. During this same period, Social Finance, Inc. (SoFi; 2011) and Common Bond (2012) began offering student-loan products that reflected, in part, a "personal relationship" between investors and beneficiaries. Purdue University launched an ISA program in AY 2016-2017 which will fund over 175 students at almost $2MM.[10]
As college costs rise student need also escalates. A recent study of new students by the National Center for Education Statistics, show that among the 3.7 million students who started college

[7] 'Income Share Agreements (Isas) To Fund Education' (Income Share Agreements (ISAs) To Fund Education, 2019) <https://incomeshareagreements.org/> accessed 6 May 2019.
[8] Edward P. St. John, 'Investing In Human Capital: A Capital Markets Approach To Student Funding by Miguel Palacios Lleras, With A Foreword By, Nicholas Barr. Cambridge: Cambridge University Press, 2004. 248 Pp. $50.00 (Cloth).' (2005) 111 American Journal of Education.
[9] Milton Friedman, 'Capitalism And Freedom. Milton Friedman' (1963) 74 Ethics. "if individuals sold 'stock' in themselves, i.e., obligated themselves to pay a fixed proportion of future earnings, investors could 'diversify' their holdings and balance capital appreciations against capital losses"
[10] 'Income Share Agreements (Isas) To Fund Education' (Income Share Agreements (ISAs) To Fund Education, 2019) <https://incomeshareagreements.org/> accessed 6 May 2019.

nearly half, around 1.7 million, received a Pell grant at some point during their college career, a rough proxy for being lower income. An even greater number, about 2 million, relied on federal loans to finance some portion of their education. Given the depth of students' financial need, it is easy to imagine that ISAs might grow over time to help a sizable share of the 18 million students enrolled in all levels of undergraduate study today.

The most recent ISA activity coincides with the 2008 collapse of the bank based private student loan market. The first to enter the ISA space was Lumni, founded in Chile in 2002 and beginning operations in the United States in 2009. Shortly thereafter, it was joined by 13th Avenue (in 2009), Cumulus Funding (2011), Upstart (2012), and Pave (2012). During this same period, Social Finance, Inc. (SoFi; 2011) and CommonBond (2012) began offering student-loan products that reflected, in part, a "personal relationship" between investors and beneficiaries[11].

1.3 PROBLEM STATEMENT

It is important that we introduce income share agreements as an option to individual student loans as it will help in improvement of access to the education in the tertiary level. Making laws that will regulate how income share agreements are managed and handled will also go a long way in ensuring access to education for more Kenyans who cannot afford higher education.

Access to higher education mostly affects students just from secondary school whose parents or guardians cannot afford the expensive higher education. Incorporating Income share agreements would mean realization of article 43 (f) the right to education and thus growth and development as we will have highly trained graduates who will play a major role in pushing the economy and development of this country forward.

Access of organizations, institutions and individuals willing to offer income share agreements in all forty seven counties in Kenya will allow equal education to all Kenyans without discrimination or inadequate resources in specific counties far from the capital. It is important that we look into the issue of financing higher education. Income Share Agreements provide a

[11] Goal structured solutions "About Income Share Agreements"(incomeshareagreements.org ,2017)< https://incomeshareagreements.org/income-share-agreements-isas/> last accessed 4/3/2019.

new and effective method to this which if well researched and implemented will increase chances of more students pursuing higher education.

1.4 JUSTIFICATION OF YOUR STUDY

The cost of University education increasingly rising especially for a privately sponsored student. I sought to find out a way that any other students who seek to pursue university education can do the same without having to worry so much about whether a government loan will sustain them and still pay fees or whether his/her guardian will be able to afford the fees and maintenance fee. Research on income share agreements will provide a new outlook on a method that can be used to fund higher education. Legally recognizing this form of contracts and how they can be regulated will ensure that future generations and investors are safe. The growing number of bright students living high school and yet cannot afford higher education necessitates my research and thus provides an opportunity for organizations and potential individual investors to adopt the idea.

This study is unique in that in Kenya there has not been any writing or research on the matter and thus intends to fill the gap on other methods of funding university education. This paper intends to enlighten the reader on what income share agreements are, how they work, how they are regulated and possible ways of regulating them to allow them be used in Kenya. This paper intends to provide knowledge to practitioners and even policymakers who may adopt this and make it law or a policy frame work that may guide funding of university education in the years to come.

1.5 HYPOTHESIS

1. That no companies, organizations or individuals in Kenya offer income share agreements.
2. That the number of students living high school will buy into the idea of income share agreements.
3. That Income Share Agreements provide the best alternative to funding of higher education.

1.6 LIMITATIONS

In Kenya, there has been no research, books or journal written on income share agreements. They are a completely new concept which has however been put to the test in other countries such as the United States of America. A lot of material in this paper is borrowed internationally and may seem not to make sense locally but as the research continues, it endeavours to come up with a customized way of implementing Income share Agreements as an alternative method to funding higher education.

This research is based on secondary sources of acquiring information. These sources include books, journals newspapers and any others secondary sources available. This then may cause a limitation as the research will not include public participation to get any thoughts on the topic from the people that are most affect by this form of alternative to funding higher education here in Kenya.

1.7 RESEARCH QUESTIONS

1. How do Income Share Agreements work
2. Why should Income Share Agreements be freely permitted
3. How do Income share Agreements cross the line into ownership or equity
4. How do these arrangements involve excessive relinquishment of personal freedom and autonomy
5. How should these transactions be regulated under

1.8 RESEARCH OBJECTIVES

1. To explain exactly what Income Share Agreements are
2. To compare different types of income share agreements and how they are offered
3. To determine which transactions Income Share Agreements should be regulated under
4. To assess whether income share Agreements are viable options to fund higher education.
5. To determine which agency or legal actor should be responsible for the regulation of Income Share Agreements.

1.9 LITERATURE REVIEW

Income Share Agreements (ISA) is a financial instrument that stipulates the reception of a certain amount required for education financing by the student from the investor (individual or organization), in exchange for a guarantee to pay back a pre-determined percentage of his or her post-graduation earnings for the term set forth in the agreement. A heightened interest in implementing ISA’s is determined by the urgency of attracting private capital to the sphere of higher education financing. ISA is considered an alternative to traditional educational loans. The most essential aspect about ISA’s is that unlike bank loan or in our country HELB (Higher Education Loans Board) loan is that it lacks an obligation on repayment of funds if the student’s post-graduation income is below threshold set forth in the agreement. ISA’s are a treasure to students especially for low income families because in most situations they tend to select a lower price higher education institution and course of study, thus the students do not realize their full intellectual potential and the society is short changed on professionals in various fields. The ISA system allows the student to stop worrying and continually calculating his or her debt to the creditor. If His/her grades are high enough for a top university this opportunity will not be missed[12].

ISAs raise two distinct but related issues: (1) how they should be regarded as a normative, public policy matter, and (2) how we should design their legal treatment and regulation. At the outset, both issues present a fundamental choice: Can we make broad normative statements about the desirability of ISAs and enact overarching legal and regulatory schemes by which to govern them? Or, alternatively, should their normative evaluation and legal treatment be considered and articulated on a case-by-case basis? Fueled by a desire for regulatory certainty, there has emerged a nascent trend in favour of an overarching, unified regulatory approach. This approach has largely been advocated by legislators and policymakers who seek to provide regulatory certainty and a favorable regulatory environment for the ISA sector to develop. A unified approach may appear a natural solution given the seemingly distinctive economics of ISAs, as

[12] A. PUTILOV, I. BARANOVA and E.A. MYAKOTA, 'Financial Simulation Model Of The Income Share Agreement' (2018) 39 Revista Espacious <http://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 13 May 2019.

compared with more traditional methods of individual financing[13]. This Article argues, however, that we should resist such a unified approach at this stage because, in its effort to secure certainty, the unified approach ignores potential risks posed by ISAs and creates unnecessary substantive law discontinuities. With respect to both normative evaluation and regulatory design, a case-by case approach offers a better opportunity for thoughtful regulation with meaningful certainty. A case-by-case analysis that is performed by each regulatory field is preferable because (1) ISAs are heterogeneous transactions with different underlying economics, and (2) ISAs may resemble a number of preexisting transactions, many of which already have established legal and regulatory treatments. Furthermore, it is possible to provide sufficient regulatory certainty while choosing a case by-case approach.

Advocates of ISAs, including U.S. Senator Marco Rubio and former U.S. Representative Tom Petri, believe that ISAs offer a more realistic means for financing higher education than traditional loans, which may leave students over indebted[14]. The ISA model removes the student's fixed obligation to repay the principal, although at the "price" of surrendering a portion of the upside. Some argue that ISAs incentivize students to make better educational decisions. Others claim that the ISA sector taps into new sources of credit and makes it easier for entrepreneurs to obtain funding for a project or venture. Yet others suggest that these transactions enable funders to invest in communities. Still others characterize certain ISAs as a method of insuring against earnings shocks. These commentaries suggest that ISAs may have a number of advantages over traditional methods of individual financing. On the other hand, several concerns and critiques have been raised concerning the emerging ISA sector. Detractors argue that ISAs create unacceptable ownership stakes in the young at the outset of their careers, akin to indentured servitude some suggest that ISAs allow corporations to own people. Such ownership may, in their view, approximate slavery. Detractors voice particular concern about consumer protection issues surrounding young people or those desperate for funding, who may

[13] Shu-Yi Oei and Diane M. Ring, 'Human Equity? Conceptualizing And Regulating The New Income Share Agreements' (2014) 3 SSRN Electronic Journal.

[14] Drew Sandholm, For Rubio, Student Loan Bill Is Personal, CNBC (Apr. 9, 2014,12:17 PM), http://www.cnbc.com/id/101568230, archived at http://perma.cc/4VYV-NCTX; INVESTING IN STUDENT SUCCESS ACT OF 2014 FACT SHEET, available at https://web.archive.org/web/20141219075210/https://petri.house.gov/sites/petri.house.gov/files/document s/ InvestingInStudentSuccess-FACTSHEET.pdf, archived at http://perma.cc/XVZ8-LWNU (last visited Feb. 7, 2019). Professor Miguel Palacios is a proponent of this view.

make poor decisions. Even if these transactions do not rise to the level of slavery or servitude, they may raise important questions regarding personal autonomy, free choice, and self-determination. Commentators have also pointed out the likely inequities in who gets funded (e.g., based on race, gender, or profession), as well as potential design flaws (moral hazard and adverse selection in the pool of funding seekers).This increased risk to funding providers may result in ISAs being more costly for funding recipients than currently envisioned. As a result, some have emphasized the importance of consumer protection of funding recipients. This Article does not purport to undertake a comprehensive survey of the types of policy issues raised by ISAs[15]. The discussion in the article is simply a brief overview of the types of issues ISAs may present. What is clear at the outset is that ISAs are contested and complicated transactions. They are also heterogeneous, so not all ISAs will raise the exact same policy concerns. Ultimately, whether a given agreement is desirable or problematic will depend in part on the economic terms of that particular contract, the circumstances surrounding its creation, and the relationship between the contracting parties.

While ISA boosters say they offer advantages over loans at no cost to the government and at more favorable terms for many students they remain a minuscule portion of the American college-financing system. That is in part because they do not have enough of a track record to attract significant capital—or enough capital to create a significant track record. It’s what investment professionals in the field call the “chicken or the egg” problem [16].This is essentially true as most parents especially want to see results of students who have uses ISA’s and have gone through higher education.

Some advocates say that ISAs represent capitalism with a higher purpose, offering a chance to invest not in tech stocks or commodities futures, but in people’s lives. At the very least, those funded by investors seeking a return could bring market forces to bear, steering students toward the institutions and majors that promise the highest prospective pay instead of those with the nicest dormitories and fitness centers or best football teams. Because ISAs depend on projecting future income, they could push universities and colleges to disclose postgraduate earnings,

[15] Shu-Yi Oei and Diane M. Ring, 'Human Equity? Conceptualizing And Regulating The New Income Share Agreements' (2014) 3 SSRN Electronic Journal.
[16] Jon Marcus, STUDENTS' FUTURES AS INVESTMENTS (2016).

accelerating a trend already underway but which higher education has largely and fiercely resisted. All these things could create more competitive pressure on schools to increase productivity and lower costs, something the easy availability of government-backed loans gives them little incentive to do now[17].

While some enterprises and governments have embraced ISAs, many others fret about the nature of the agreements. The notion of "human equity investing" discomforts some who see it as a type of ownership of personhood. Friedman himself commented that investing in the economic output of individuals may approach the boundaries of "partial slavery." The purchase of future interests in an individual can be seen as buying stock, much like one may buy stock in a corporate entity. Shareholders of a corporate entity are seen as owners of part of the corporation in which they hold stock, so those who hold stock in individuals can be construed as owners of people, thus creating unsavory analogies to slavery. Perhaps failing to understand the nuances of ISAs and focusing merely on the facial impressions elicited by comparisons to slavery and indentured servitude, some oppose the concept of ISAs. Detractors of ISAs suggest that the funding mechanisms may violate both the Thirteenth Amendment prohibition of slavery and public policy[18].

Under the current student loan system, there are dual victims of defaulted repayment. The "self-inflicted wound" imparted by the federal government afflicts taxpayers, who must compensate for the government's failed investment in its rising generation of human capital, and distresses the students who borrow the funds and are unable to make payments. 101 Many of these student borrowers face the devastating impact of both practical setbacks and psychological trauma as they are straddled with the notions of failure and despair while also being burdened with a slate of heavy debt. Moreover, the dysfunction of the current student loan system, despite efforts to provide educational accessibility to all, falls heavily upon the poor. While students from more privileged backgrounds and socioeconomic circumstances may have family and community connections to fall back on for financial assistance and employment opportunities, those in lower

[17] Jon Marcus, STUDENTS' FUTURES AS INVESTMENTS (2016).
[18] Timothy Machat, 'CATALYZING INNOVATION WITH REGULATION: INCOME SHARE AGREEMENTS AND THE STUDENT DEBT CRISIS' [2018] Rutgers University Law Review <http://www.rutgerslawreview.com/wp-content/uploads/2018/09/Catalyzing-Innovation-with-Regulation-Income-Share-Agreements-and-the-Student-Debt-Crisis.pdf> accessed 5 May 2019.

tax brackets are ill afforded those luxuries, and loan default can become inevitable. Hence, the notion of educational institutions having "skin in the game" by sharing in the profits and losses of students facing loan repayment offers an equitable opportunity for students to reduce the incidence of default. From the student perspective, ISAs offer freedom that is seldom enjoyed by those who are burdened with traditional loans for years after graduation. In the case of a typical student loan, graduates receive a grace period of six months after graduation before they are required to start paying back[19].

1.9.1THEORETICAL FRAMEWORK

Income share agreements are based on in opinion of the utilitarian theory as proposed by Bentham. "The greatest happiness of the greatest number' was accepted as the true goal of society". In this theory there is the aspect of utility and in this case utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good or happiness (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community; if a particular individual, then the happiness of that individual.' The principle allows man to approve or disapprove of an action according to its tendency to promote or oppose his happiness[20].

Income share agreements if implemented tend to promote happiness as everyone will give an opportunity to pursue an education. Education means freedom of the individual and for the society as well an educated society means a developing society. This income share agreements tend promote a culture of giving as well thus giving pleasure to the giver as well as to the receiver of the money to study.

1.9.2 METHODOLOGY

This research makes use of two research methodologies, desktop research methodology where it looks at primary and secondary sources dealing with education loans into funding of higher education in Kenya. It also relies on comparative research methodology where it examines

[19] Timothy Machat, 'CATALYZING INNOVATION WITH REGULATION: INCOME SHARE AGREEMENTS AND THE STUDENT DEBT CRISIS' [2018] Rutgers University Law Review <http://www.rutgerslawreview.com/wp-content/uploads/2018/09/Catalyzing-Innovation-with-Regulation-Income-Share-Agreements-and-the-Student-Debt-Crisis.pdf> accessed 5 May 2019

[20] L.B CURZON, Jurisprudence (2nd edn, Cavendish Publishing Limited 1995).

regulations in other jurisdictions where they have incorporated Income Share Agreements into the funding of higher education. Increasing accessibility of education and reducing student loans. Similarities and differences across societies taken into account, quite a lot can be learnt from comparison whatever the method used, research that crosses national boundaries increasingly takes account. Comparative research methods have long been used in cross-cultural studies to identify and analyze and explain social-cultural settings.

Challenges in the comparative study include gaining access to comparable data and in achieving agreement over conceptual and functional equivalence and research parameters. Attempts to find solutions to these problems involve a sound Knowledge of different national contexts and access to analysis report on these various jurisdictions. The jurisdictions that have been covered in this study is the United States of America Jurisdiction. This jurisdiction has been used to give a clear view of how Income Share agreements have been viewed and to understand what goes into their regulation. The comparative study has helped create a better understanding of other cultures and of their research process. Methods of research will include analysis of legislation both local and international, journals and books.

1.9.3 CHAPTER BREAKDOWN

This research will be divided into four chapters organized as follows:

1. Chapter one titled Introduction gives a brief background to the study, literature review, the problem statement, research questions, the hypothesis, research methodology and theoretical framework.
2. Chapter two titled income share agreements and how they work discusses the nature and characteristics in which income share agreements work and has been used in various institutions in various schools in USA.
3. Chapter three titled the comparison between existing education financing systems in Kenya and income share agreements it examines the differences and similarities of both methods financing education and the challenges they each face.
4. Chapter four titled conclusions and recommendations covers the key findings, conclusions and recommendations on the way forward in matters relating to the incorporation of Income Share Agreements into the higher education funding system.

CHAPTER TWO

INCOME SHARE AGREEMENTS AND HOW THEY WORK IN THE UNITED STATES OF AMERICA

2.1 INTRODUCTION

Income share agreements are financial instruments that stipulate the reception of a certain amount of money required for education financing of a student from an investor[21]. The investor, in this case, can either be an individual or an organization. This thus becomes a transaction of exchange, one party guarantees to pay back post-graduation and the other to pay for the course of study. The student guarantees to pay back a predetermined percentage of his/her earnings for the term set forth in the agreement. This chapter will discuss the nature of income share agreements and how they have been working. This will provide insight into how various companies have been able to use ISAs. It will include companies that adopted ISAs from a while back before this mode of funding higher education was popular and therefore provide more of historical background. This will enable us to understand how ISAs worked and how they continue to work with the advancement of time.

According to the paper on financial simulation model of income share agreement, the implementation of Income share agreements (ISAS) is determined by the urgency of attracting private capital to the sphere of higher education financing[22]This study may discuss that due to the monopoly on federal government offering student loans private persons are exploring on a new business venture that could earn them a future income as well. This would be confirmed by UNESCO's 2012 education for global monitoring report, which estimated that every dollar spent on a person's education yields ten to fifteen dollars in economic growth over that persons working lifetime. The original proposers of ISAs argued that the counterpart for education would be to "buy" a share in an individual's earning prospects: to advance him the funds needed to finance his training on condition that he agrees to pay the lender a specified fraction of his future earnings. However good this might look it is a very risky investment. This is because the greatest

[21] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019.

[22] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 2

risks are borne by the investor. He needs to select an “object” of investment, assist them through their education process, and actively facilitate their employment and, career advancement so as to enable him to make a good return from his investment. As they say the higher the risk the higher the potential to return. The success of the student on the part of the investor would mean very high return as he will earn one hundred percent of what he had invested or more.

2.2 DISTINCTION BETWEEN LOANS AND INCOME SHARE AGREEMENTS

The main distinguishing factor of Income share agreements as compared to bank loan is that there is no obligation to repay the funds if the students’ post-graduation income is below the threshold set forth in the agreement[23]. This fact is particularly important for students from low-income families. Loan risk assessment often leads prospective students to select a lower-priced higher education institution. Thus, the students do not realize their full intellectual potential, and society is short-changed on professionals in various fields. The Income share agreement system allows the student to stop worrying and continually calculating his or her debt to the creditor. If his or her school grades are high enough for a top-level university, this opportunity won’t be missed.[24]Another key distinguishing factor is they do not have a principal balance and no particular interest accrues.

2.3 WHY INCOME SHARE AGREEMENTS

The non-repayment of education loans is also a serious federal-level problem. Notably, the default level on Federal Student Loans in the United States constitutes an average of 11.5%, reaching 40% for certain educational institutions. The total amount of education loan debt is continuously growing, and now amounts to over USD 1 trillion. This is also true for our country Kenya as a headline in the business daily read “State cash top-up to Helb (higher education loans board) triples as loans default rises sharply” the article goes further to explain on how the gap for

[23] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 2

[24] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg

non-repayment of loans by previous beneficiaries of the loan has drastically reduced[25].This may be caused by the high level of unemployment in the country.[26] The three major concerns in an income share agreement for both parties' remains; volume of financing, the percentage to be paid back, terms of repayment and the regulations or legislation.

2.4 EXAMPLES OF PROJECTS IN UNIVERSITIES THAT HAVE USED INCOME SHARE AGREEMENTS

Tuition Postponement Program: In the 1970s Yale University implemented the ISA model in its "Tuition Postponement Program". In accordance with the program, students agreed to repay 0.4% of their future income over the course of 35 years. This project's distinctive feature was that it split its participants into several groups, and the loan was disbursed to the group as a whole. Therefore, debt repayment was possible under the following case scenarios: one could buy out one's own debt at 150% of its face value, or the group could buy out the whole group's debt at 150% of its face value. This project had an experimental nature. The loan was unlikely a burdensome one for most of the students. In 10-15 years following graduation the professionals' salaries increased almost two-fold as a result of inflation, and half a percent of income is not a psychologically significant amount. Nonetheless, the project was partly shut down, since many students had expressed dissatisfaction with the fact that their payments were greater than they would be under bank loan terms, while a number of students were not paying at all. The principal conclusion made as a result of this project was that a low interest rate and a long repayment term are initially appealing to both students and investors. But an overly long investment return term bears risks linked to the changes in the economic and socio-political environment.[27]

The Lumni project implemented in Columbia became a classic example of Income Share Agreements utilization in the education sphere. Major companies are the principal investors of

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[25] Keziah Kinuthia, 'State Cash Top-Up To Helb Triples As Loans Default Rises Sharply' Business daily (2019) <https://www.businessdailyafrica.com/datahub/State-cash-top-up-to-Helb-triples/3815418-4999142-f1sp0e/index.html> accessed 7 August 2019.

[26]Mark Kamau, 'Youths Grapple with Unemployment despite Education and Experience' capital News (2018) <https://www.capitalfm.co.ke/news/2018/05/youths-grapple-with-unemployment-despite-education-and-experience/> accessed 8 August 2019. " According to survey by the Kenya National Bureau of Statistics (KNBS) in 2018, 7million Kenyans were unemployed with 1.4 million out of this figure desperately looking for jobs".

[27] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 2

the fund. As he answered the question regarding the reasons for large companies' preference for financing individual students rather than investing in education, the fund's executive director stated: "If you ask a big corporation to make a donation for college scholarships, they may give you money to help 10 students. But if you offer them a profitable investment in students' education, they will pay for 100 or 200 students" Acting in this manner, the fund has achieved significant results in a short period of time. Lumni is currently financing the education of 7000 students in Chile, Columbia, Peru, Mexico, and the United States of America. The project wants to achieve funding for a maximum of 30,000 students. The main risk of the investment model of education financing is the non-return of investments. However, Lumni reviews each contract individually. Depending on a number of parameters, mainly on the major selected by the student, it determines the repayment percentage and term of the contract. Simulation modelling is one of the phases of the Income Share agreements approval process, wherein the agreement parameters are finalized. As a rule, it is concluded for a term that does not exceed 6 years.[28]

In 2011 Nathan Popkins established Cumulus Funding, a company that specializes in disbursing Income Share Agreement loans. N. Popkins claimed that the window of opportunity opens up for the Income Share Agreement precisely during financial crises. During this time banks refuse loans to problem clients, preferring to extend credits to those who are not in any particular need of money, to begin with. The company's name is currently Align Income Share Funding. The company has concluded over 500 ISA in the amount of up to $12500 for a term of 2 to 5 years on the condition of a 10% deduction from income.[29]

The 13th Avenue funding project was initiated by Allan Hancock College in Santa Maria, California. It resembles the Lumni project in many ways, its main distinction being that it only covers the members of the local community. This is one of the remarkable distinctions of the Income Share Agreement system. In small remote towns where the local residents don't have high incomes, the community assists young adults in obtaining a decent education. Perhaps,

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[28] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 3

[29] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 3

some of them will return to their hometowns after graduation, and contribute to the development of local business, education and management system. But even if they don't, the repaid funds will allow the next generation of young people to receive higher education. Per the rules of the fund, the deductions from future income amount to 5% if the total annual income is $18 000 or higher. The 13th Avenue system aims to provide assistance to first-generation immigrants and low-income students' .The term of repayment is discussed in advance and may vary depending on an individual's contract.[30] Unlike many of this funding avenue of income share agreement it contains a clear cap, in terms of the percentage of payment and particular amount of the income for the percentage to be repaid.

In 2011 Professor Benjamin M. Left and Professor Heather Hughes from the American University Washington College of Law suggested student loan derivatives to enhance Income-Based Approaches. They introduced a new model of law-school financing which received the name of an income-based repayment swap ("IBR Swap"). In accordance with the IBR Swap, the student receives a bank loan for higher education. Concurrently, he concludes an agreement with an investment institution, wherein the financial institution begins to repay the student's debt to the bank. In turn, the student takes on an obligation to pay the financial institution 15% of his or her post-graduation income over the course of 10 years. If the student refuses to pay a part of his income to the financial institution, he will face the need to repay the loan to the bank, as well as repay the costs associated with maintaining his contract, as per the agreement with the financial institution. As reflected in the IBR Swap description, this education financing scheme lowers the investor's risks considerably. First of all, the bank, rather than the investor pays for the entire cost of education. Secondly, the investor essentially repays to the bank the difference between the loan payments set by the bank and the amount of funds received from the student.[31] This being more like a hybrid of Income share agreements because instead of the investor bearing most of the risk in normal income share agreements a huge bulk of it is shifted to the bank and

[30]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 4

[31]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 3

even then measures have been taken to ensure that the student or the beneficiaries pay up what they owe regardless of the circumstances.

In 2016 Oregon Higher Education Coordinating Commission ("HECC") had established a pilot Income Share Agreements project. House Bill 2662 would have launched a program that allowed students to enjoy free college tuition in case they agreed to repay a share of their postgraduate income to the state. Project Pay It Forward (PIF) is a pioneering, sustainable strategy of education financing that enables students to attend college or university in Oregon tuition-free in return for a small, pre-set percentage of the student's future income, for a pre-determined amount of time. In accordance with the PIF program, 1000 students will receive financing for state college and university education. This project requires USD 4 to 6 million in annual investments. Following graduation, the students will payback between 0.75% and 1% of their income over the course of 10 years. Many of the parameters and conditions of the investment have not been finalized yet, for example, it is proposed that some of the students may be selected for the PIF program via a lottery. Supposedly, the maximum amount of investment in the amount of USD 20 million will be required in four years. The full repayment of investments will be attained in approximately twenty years. Subsequently, the project will continue to yield an annual income of USD 3 to 8 million to the investor.[32] Various Income share agreement projects increasingly have become clear with what they aim to achieve and the amount of money they seek to gain to make it clear for investors to invest and the amount of returns as well as knowledge for the participants in terms of the percentage of money they need to repay from their post-graduation income.

Mentor Works (MW) an ISA program. The concept is much more than just financing. It stands for sharing good and bad times; and it is designed to help students to do really well in their career, through Financial support. Students take certain amount of their college financing need in the form of ISAs. These are NOT loans, but agreements to share a percentage of your future income for a certain period, usually 3–9 years. Also, the payments are capped at a maximum level. The big benefits of this: No co-signers required, and, If your income falls below a certain

[32] A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 3

level payments are set to zero as long as the student shows reasonable effort to get her career back on track (and Mentor Works will help with networks to get jobs!)

Since ISA investors do well if the students do well, they have a vested interest in seeing the students do well. Mentor Works provides a structured mentorship program and professional networks to individuals. There is evidence showing that students getting mentorship and having connections have better career outcomes. According to a study in the Journal of Applied Psychology a greater extent of networking is associated with higher salary. According to another study, career related mentoring is associated with greater compensation, salary growth, and promotions. MentorWorks takes the mentorship program seriously. In fact, students attending more networking and mentorship sessions will get discounts on their repayment rates.

Things get even better over the long-term. If a student of the Mentor Works program agrees to mentor those coming after her, she gets additional repayment discounts, making the financing even cheaper for her. Students graduating from this program and in good standing will have lifetime access to the network of contacts that students have access to. This can help one in terms of career development, career switching, and even potential references for graduate school. Mentor Works' goal is to build a community, one that will provide support to each member throughout their professional lifetime.[33]This goes a long way in ensuring success for the investor as well as for the student, further motivating students to pay up and other students to use ISA as mode of financing their education.

The Back a Boiler project set off at Purdue University in 2016. This project is another instance of a classic Income Share Agreement model: students receive financing in return for the agreement to share a portion of his or her post-graduate income. In the first year of the project's existence, approximately one hundred and sixty students have received financing. The total amount of investments in the project constituted just over two million dollars. "Our goal for the first year was to offer Back a Boiler to students who planned to borrow through private and Parent Plus loans in addition to any public-subsidized loans," said Brian Edelman, chief operating officer of

[33] Karthik Krishnan, 'Student Voices' (Medium, 2019) <https://mystudentvoices.com/a-new-solution-to-the-student-loan-crisis-income-share-agreements-augmented-with-career-mentorship-6e334842c03a> accessed 12 August 2019.

the Purdue Research Foundation, who worked closely with Purdue's Division of Financial Aid to create the program. The Back a Boiler project found support in the US Congress. In particular, Rep. Luke Messer's who prepared a draft of the Investing in Student Achievement (ISA) Act of 2017, which was inspired by Purdue University's 'Back a Boiler' program, the first major national income share agreement program. This law will allow to alleviate a certain ambiguity in taxation issues in regard to ISA contracts, and to protect consumers, setting maximum repayment amounts. One of the distinctive features of the Back a Boiler project is its close interaction with the university's philanthropic programs. For example, there is additional financing provided to the Back a Boiler participants through the Pave the Way project. This project's fund is replenished by voluntary contributions from Back a Boiler participants. The Pave the Way program plays a significant ethical role in shaping a feeling of responsibility and gratitude in the project participants for the vested confidence and financial assistance. In their papers the authors of the IBR Swap project place special emphasis on the problem of monitoring the student's post-graduate income. If this issue does exist, the Pave the Way project may be one of the solutions. Numerous experts name Pave, Upstarts and SoFi among the startups that began working with Income Share Agreements. It is noteworthy that all of the companies have included a clause that's essential to the project's success, which they inherited from ISA: the payments are temporarily suspended if the student loses his or her job, meanwhile, the company will exert every effort to assist in finding employment for the borrower.[34]

The projects discussed above clearly depict how income share agreements work both for the participant and the investor. The variables still remaining constant in all these scenarios of income share agreement projects still remain constant: Cost and term of education, percentage of deduction from post-graduation income, term of repayment, predicted income and its annual growth.

2.5 WHO IS ELIGIBLE FOR AN INCOME SHARE AGREEMENT? (ISA)

Purdue University being the most recent university to implement the Income Share Agreement proposal in the United States and one that has conducted research on the area I shall use research from the particular institution to analyze who is an eligible candidate to be granted an income

[34]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 3

share agreement proposal. As discussed above Purdue's Income share agreement is known as the Back a Boiler Program.

The program serves domestic students on the main campus who have completed at least one year of college. The main determining factors are the student's major and the year of school.[35]According to the research carried out by the writer of the paper student selection into income share Agreements student ability within a major did not adversely select Income share agreements however the opposite happened more often than not. Students with lower ability or those planning to go into lower paying occupations even with the same major were more likely to select the Income share Agreement.[36]He, however, found what mattered more than ability was parent Characteristics that is salary difference across majors and Location preferences in terms of student who wanted to move to the big cities after graduation meant that they would require a lot of money to leave on due to rise in affordability of the level of life. Thus most of them opted out of an ISA.[37]

Any interested person who would like to be awarded with an ISA, submits an application which includes permission to do a credit check. A major disqualifying factor to be awarded an ISA is bankruptcy or during the time of application undergoing a debt collection. The student must also have remaining financial need after exhausting, merit based scholarship, grants and, opportunities for direct subsidized federal loans.[38]The writer also noted that Income share

[35] Kevin J Mumford, Student Selection into Income Share Agreements (1st edn, 2018) <https://krannert.purdue.edu/faculty/kjmumfor/> accessed 11 August 2019. "Importantly, the terms Of the ISA depend on the student's major and year in school. While these restrictions reduce the adverse selection across majors, they do not reduce the potential adverse selection of Student ability within a major."

[36]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 4

[37]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 5

[38]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 8

agreements were picked by most students as framing financial contracts as debt or as loans affects the students reported willingness to enter into a contract.[39]

2.6 HOW INCOME SHARE AGREEMENT MONEY IS DISBURSED

Once a credit check is done the qualified students receive a disclosure that describe the terms of ISA program. The first disclaimer that disclosure contains is that “this is not a loan” conspicuously placed at the top of the disclosure statement. The disclosure also provides payment illustrations which indicate the insurance aspect of the ISA.[40] This is very clear from how ISA are meant to function because of the provider of the money assuming a huge portion of the risk that comes with investing in student higher education. In the Purdue university program the income share is between 2.5and 5.4 percent per ten thousand dollars of funding. The term of payment is between eighty to one hundred and sixteen months. The income share percentage offered to students is dependent on the major and the year of study. For example, seniors get the most favourable terms of the contract, while the sophomores get the least favourable terms but with reason this is because of the longer grace period they have before graduation and the probability of an individual switching to a lower paying major.[41]

Upon acceptance to participate the eligible students get money credited in their university account at the beginning of the semester and a check for the portion remaining above the university tuition fee.[42]

[39]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 8

[40]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 9

[41]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg10

[42]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 10

2.6 CONCLUSION

2.6.1 ADDITIONAL STAKE HOLDERS

The projects by different universities examined show various trials and errors on the use of Income Share Agreements. For example, in the beginning, ISAs were only between the universities and students but with time private investors have started coming on board.

2.6.2 REGULATION

The main outstanding factor about Income share Agreement is that they share many attributes of different kinds of Laws that is for example contract law and insurance law. In terms of the agreement as a contract and the aspect where the agreement indicates the insurance aspect of the agreement which is clear as one of the parties bears the larger risk as the investor. This aspect however makes it difficult for ISAs to be regulated and this might scare off potential investors as they have no legal backing if anything goes wrong for example if a student fails to pay back. The government cannot interfere as they are not clearly defined in the law.

2.6.3 ACCESSIBILITY

Given the nature of income share agreements eligibility criteria it has been observed that students choice to use ISAs as a means of financing their own education is rarely based solely on their academic abilities or high GPA therefore including all students from different backgrounds. This is essentially helpful because unlike our system of financing higher education getting funding for a certain career requires you to attain a certain grade in High school. However, over the years they have only been seen to offer the agreements to students with STEM (science, technology, engineering and mathematics) related courses leaving out the arts.

The Back and Boiler Project in Purdue University offered the ISAs to only sophomores, juniors and seniors.[43] This well advised as it would be easier to predict future income for example in the course they are studying as compared to a first year student. This is because even in terms of the clarity of what career path they want to pursue. Income share agreements being fully voluntary it

[43]A. Putilov, I. Baranova and E.A. Myakota, 'Modelo De Simulación Financiera Del Acuerdo De Rentaparticipación' (2018) 39 Revista Espacious <https://www.revistaespacios.com/a18v39n20/a18v39n20p30.pdf> accessed 7 August 2019. Pg 20

is easier for someone who has gone through the higher education system even just for a year to be able to understand what it would mean for a third party who is not a parent or a guardian to invest in your education.

In Purdue University the percentage of the income share percentage varies depending on the year of study. In Kenya however the income share agreement would vary depending also on the circumstances of every individual, personalizing the agreement to an individual circumstances including financial background of an individual. A one shoe fits all even based on the major would barely work as even as you predict the kind of income that person will earn .You will have to consider also what responsibilities this person bears for example are they the first born in their family with other children depending on him/her. Such considerations need to be made to ensure even after graduation the individual is able to keep up with his /her monthly payments.

CHAPTER THREE

COMPARISON BETWEEN EXISTING EDUCATION FINANCING SYSTEMS AND INCOME SHARE AGREEMENTS

3.1 INTRODUCTION

Unlike Higher Education Loans and County Education Funding, income share agreements are currently under regulated if at all they are unregulated and devoid of legislations.[44] Despite this failure, they are similar in some ways to higher education loans offered by the Kenyan government. This similarity is almost too similar that ISA's have been termed as face lifted student loans.[45] Nonetheless, there are differences in how student's loans such as HELB and income share operate. An example is where HELB loans repayment begins after the completion of a student's education,[46] while in ISA's the repayment begins after one finds a job.[47] That is not the only difference there is also the difference in the administration of student's loans done by the government, while ISA's are done by private investors.[48]

This chapter analyses the differences and similarities of ISA's and students' loans. It then proceeds to look at the challenges of each system of higher education funding. The chapter focuses on students' loans offered in Kenya, i.e. higher education loans and constituency education funding.

3 .2 DIFFERENCES OF ISA'S AND STUDENT LOANS

Among the first words one meets upon accessing the Higher Education Loans Board (HELB) web page, is the word 'loaness'.[49] This thus means that students' loans are monies given to be repaid. Better yet, student loans have been referred to as debts.[50] Monthly instalments required to

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[44] Timothy Machat, **'***Catalysing Innovation with Regulation: Income Share Agreements and The Student Debt Crisis',* (2018) Vol. 70:257, *Rutgers University Law Review*, Pg. 261.

[45] Alexis Goldstein, *Income Share Agreements are just Student Debt with a fancy Name,* (2019), Americans For Financial Reforms. Available at: https://ourfinancilsecurity.org/2019/07/statement-income-share-agreements-just-fancy-name/ Accessed on: 28th August, 2019

[46] https://www.helb.co.ke/students/ Accessed on: 28th August, 2019

[47] Timothy Machat, 'Catalysing Innovation with Regulation: Income Share Agreements and The Student Debt Crisis', (2018) Vol. 70:257, Rutgers University Law Review, Pg.258-259

[48] Timothy Machat, 'Catalysing Innovation with Regulation: Income Share Agreements and The Student Debt Crisis', (2018) Vol. 70:257, Rutgers University Law Review, Pg.261-263

[49] https://www.helb.co.ke/ Accessed on: 28th August, 2019

[50] An Economic Perspective of Income Share Agreements, (2015), The Congressional Research Service, Pg.1.

repay the loan should not exceed 25% of the loanees' basic pay.[51] The current interest rate on HELB undergraduate and technical and vocational education and training loans stands at 4% per annum and postgraduate loans stand at 12% per annum.[52] The interest rate compared to receiving commercial loans is lower being that the government has taken the step to subsidise the actual costs of the student loans.[53] This is favourable for students who have taken up loans as it reduces the financial obligations of repaying the loans.

HELB loans become debt upon non-payment of the loan amount. Failure of non-payment incurs a fine of 5000 shillings in addition to the interest rate.[54] At this point, it becomes burdensome onto the party repaying the loan as it incurs additional financial obligations. It fails to factor in the causes that may play a part in one's failure to repay loans. As a requirement one year after completion of studies, one is required to begin the repayment of their loans.[55] This becomes hefty for a student because completion of studies does not necessarily imply gaining employment. This then means that failure to begin repayment at the required time incurs fines. This means that the loanee incurs debt, which must be repaid at a later date.

The difference between student loans and ISA's on this issue is that ISA's are more like equity investments than loans.[56] Generally, equity investment is where a firm invest money in a business by buying of shares but they do not recoup their investment in the ordinary course of business.[57] Such monies are often recouped at the close of business. ISA's are similar to Equity investments because a private entity or investor will provide money to the student to pursue their tertiary education. At the time of contracting the parties will have agreed and put it into a contract that the student will repay a certain percentage of their income once they gain

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[51] Section 19, Higher Education Loans Board Act, 1995, Available at: https://kenyalaw.org:8181/exist/kenyalex/actiview.xql?actid=No.%203%20of%201995 Accessed on 28th August, 2019

[52] Higher Education Loans Board, Handbook; 2018 edition, Pg.3

[53] Higher Education Loans Board, Handbook; 2018 edition, Pg.1

[54] Section 15 (2), Higher Education Loans Board Act, 1995, Available at: https://kenyalaw.org:8181/exist/kenyalex/actiview.xql?actid=No.%203%20of%201995 Accessed on 28th August, 2019.

[55] Section 15(1), Higher Education Loans Board Act, 1995.

[56] An Economic Perspective of Income Share Agreements, (2015), The Congressional Research Service, Pg.1-2

[57] Business Dictionary, Available at: https://www.businessdictionary.com/definition/equity-investment.html Accessed on: 28th August, 2019.

employment for a certain duration of time. This shows that the investor will recoup their money at a future date.
Income share agreements are beneficial to the student because they give students an opportunity to focus solely on education without having the stress of looking for employment during the course of study so as to service the debt brought on by student loans.[58]

Another difference between ISA's and student loans, in this case HELB loans, is to whom funding is allocated. in terms of allocation this part means which courses funding is invested in. HELB loans and constituency education funds are allocated to students who take up whichever career. This is evident because the loans are also given to students taking up certificate and diploma courses at technical and vocational education and training institutions. This shoes that students' loans are given to all types of courses applied to. Ideally while investing in education, the course that a student takes up is assumed to be the career that they shall practice.

Student loans being that they apply to any course/career applied to means that it has enabled students from low income families to access education which has played a role in the development of the individuals. Student loans differ with ISA's on this because often ISA's have been criticized as investing in students undertaking high income generating courses/careers.[59] Because ISA's are often done by private investors, there is a need for the investors to recoup their investments. This has been termed the return mindedness of investors.[60] Investors will often opt to invest in students who take up courses with the potential to generate high income in the future.[61] This is so because investors are more interested in recouping their investments.

This need is a result of market forces, where they dictate how education funding is undertaken and where the investor is more invested in funding students with a likelihood of higher incomes

[58] The Potential Market for Income Share Agreements Among Low-Income Undergraduates: An Issue Brief for Policymakers and Advocates, (2015), American Institute for Research, Pg. 1.
[59] Alexis Goldstein, Income Share Agreements are just Student Debt with a fancy Name, (2019), Americans For Financial Reforms. Available at: https://ourfinancilsecurity.org/2019/07/statement-income-share-agreements-just-fancy-name/ Accessed on: 28th August, 2019
[60] The Potential Market for Income Share Agreements Among Low-Income Undergraduates: An Issue Brief for Policymakers and Advocates, (2015), American Institute for Research, Pg. 1.
[61] The Potential Market for Income Share Agreements Among Low-Income Undergraduates: An Issue Brief for Policymakers and Advocates, (2015), American Institute for Research, Pg. 1.

because in-turn the investor will recoup more money[62]. This focus then becomes problematic as it creates discrimination among students. Such discrimination then harbours access to education for students taking courses that are less lucrative professions.

However, some policy makers in the US have stated that though ISA's will focus on more lucrative courses, it would also be beneficial for investors to invest in students who select lower paying courses because in the long run they may be more economically viable.[63] This might be so because currently in Kenya there is a demand for labour in the craft industry who often train at TVET institutions. If ISA investors were to fund such students, it would mean that they will recoup investment better as students in those areas would receive employment faster so as to fill the skills gap in the job market.

The difference in legal systems between the two is also of paramount nature. On one hand ISA's and student loans are both contracts, hence falling within the purview of contract law. On the other hand, student loans have their own policies and rules whereas ISA's have little to no laws custom made for them. HELB loans are substantially regulated by the higher education loans board Act. The Act is comprehensive on matters related to student loans. It provides for the manner in which the loans are to be applied for, who is eligible to receive such a loan, how the loans are to be repaid and when the period of payment begins and the duties and rights of the loanee and those of the board.[64]

This has been beneficial because it has provided consistency in how education funding has been undertaken. Around the world, student loans are adequately regulated either by policy or legislation. In the US federal and private student loans are highly regulated by a number of legislations.[65] Examples of the legislations in place are the Higher Education Opportunity Act of

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[62] The Potential Market for Income Share Agreements Among Low-Income Undergraduates: An Issue Brief for Policymakers and Advocates, (2015), American Institute for Research, Pg. 1.

[63] The Potential Market for Income Share Agreements Among Low-Income Undergraduates: An Issue Brief for Policymakers and Advocates, (2015), American Institute for Research, Pg. 1.

[64] Sections 11-21, Higher Education Loans Board Act, 1995, Available at: https://kenyalaw.org:8181/exist/kenyalex/actiview.xql?actid=No.%203%20of%201995 Accessed on 29th August, 2019.

[65] Ibid 15, Pg.4. See Further: Anna serio, *4 Changes we might see to Federal Student Loan Legislation in 2019,* (2019). Available at: https://www.finder.com/federal-student-loan-legislation Accessed on: 30th August, 2019.

2008 and the Student Aid and Fiscal Responsibility Act of 2010.[66] The constituency education fund is under the Constituency Development Fund (CDF). CDF is regulated under the National Government Constituencies Development Fund Act, 2015. Despite the legislation, constituencies and county education funding are regulated by policies that they come up with. Recently, counties and constituencies partnered up with the higher education loans board to help them in the administration and collection of education loans and bursaries.[67]

ISA's face the challenge of regulation, i.e. there is no state regulation. ISA's in the US are regulated under private contracts and there is no state or federal policies on the issue.[68] Because of this lack of policies, implementation of ISA's becomes difficult to enforce the obligations and duties of the parties. Furthermore, the lack thereof of policies and laws also become a problem because there is lack of security and constituency in the administration of funding.[69] The student is often oppressed by the terms of the ISA because of the lack of bargaining power; hence the interest rates and duration of pay may often be exploited by the financiers. The lack of regulations has caused a situation where ISA's have become more like indentured servitude.[70] There is need to have legislation and regulations of ISA's, separate from contractual regulations, so as to safeguard the parties.

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[66] Anna serio, *4 Changes we might see to Federal Student Loan Legislation in 2019,* (2019). Available at: https://www.finder.com/federal-student-loan-legislation Accessed on: 30th August, 2019.

[67] Charles Wanyoro, *HELB in new partnership with County Governments to manage Education Funds*, Daily Nation, Wednesday 13th January 2016, Available at: https://www.nation.co.ke/counties/embu/Helb-in-new-partnership-with-counties/3370188-3031806-view-asAMP-3m9t3v/index.html Accessed On: 30th August, 2019.

[68] Patrick A. Zancolli, *Unintended Consequences in Higher Education Finance Policy: Implications for Current Income-Share Agreement Legislative Efforts and Beyond*, University of Pennsylvania, College Undergraduate Research Electronic Journal, Pg. 24. Available at: https://repository.upenn.edu/curej?utm_source=repository.upenn.edu%2Fcurej%2F217&utm_medium=PDF&utm_campaign=PDFCoverPages Accessed on: 28th August, 2019

[69] Patrick A. Zancolli, Unintended Consequences in Higher Education Finance Policy: Implications for Current Income-Share Agreement Legislative Efforts and Beyond, University of Pennsylvania, College Undergraduate Research Electronic Journal, Pg. 24. Available at: https://repository.upenn.edu/curej?utm_source=repository.upenn.edu%2Fcurej%2F217&utm_medium=PDF&utm_campaign=PDFCoverPages Accessed on: 28th August, 2019

[70] Patrick A. Zancolli, Unintended Consequences in Higher Education Finance Policy: Implications for Current Income-Share Agreement Legislative Efforts and Beyond, University of Pennsylvania, College Undergraduate Research Electronic Journal, Pg. 24. Available at: https://repository.upenn.edu/curej?utm_source=repository.upenn.edu%2Fcurej%2F217&utm_medium=PDF&utm_campaign=PDFCoverPages Accessed on: 28th August, 2019

3.3 SIMILARITIES BETWEEN ISA'S AND STUDENT LOANS

The major similarity between the two is that they are both contracts and as a result they are guided by contract laws. As examined earlier, ISA's have no regulatory policies or legislation guiding its application.[71] As a matter of regulation contract law is the primary law that is used to regulate ISA's. this is because ISA's are contracts between the student receiving funds and the investor who provides the funds.

There are certain terms and conditions that must be fulfilled by the parties. An example is the duration of re-payment of the investment made and the interest to be received by the investor, and many other terms and conditions. Failure to adhere to these terms and conditions incur some form of consequences which are stipulated in the agreement.

As for student loans they are also contracts. Despite student loans being regulated by statute law and policies, there also is inclusion of particular terms and conditions to the loan agreement depending on the body one receives the education loan from. HELB, for instance, provides that a student, who receives a loan despite being subjected to the regulations under the HELB Act, shall be required to sign a declaration which is also a contract.[72] The declaration basically states that the loanee agrees to the terms and conditions to the loan.

ISA's and student loans enable access to education by offering funding at a subsidised interest rate. For student loans the body offering the loan gives a lower interest than that which would be given by ordinary financing bodies, those us banks and financial societies.[73] The actual costs of interests incurred on HELB loans, for example, are subsidised by the government.[74] This in turn means that students pay back loan at a lower interest rate. The current interest rate payable on an

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[71] Patrick A. Zancolli, Unintended Consequences in Higher Education Finance Policy: Implications for Current Income-Share Agreement Legislative Efforts and Beyond, University of Pennsylvania, College Undergraduate Research Electronic Journal, Pg. 24. Available at: https://repository.upenn.edu/curej?utm_source=repository.upenn.edu%2Fcurej%2F217&utm_medium=PDF&utm_campaign=PDFCoverPages Accessed on: 28th August, 2019

[72] https://www.helb.co.ke/loanees/ Accessed on: 30th August, 2019.

[73] Ibid 9, Pg.4.

[74] Ibid.

undergraduate loan from HELB is 4%.[75] One bank in Kenya offers an interest of 13% on education loans.[76]

Similarly, ISA's attract a lower interest rate than that of financial institutions. Investors will often offer lower interest rates to students so as to reduce the burden of student debt. Despite the interest rates being subsidised, it has been argued because of the market forces and lack of regulation, investors may be tempted to offer higher interests so as to recoup more from their investment.[77] Nonetheless, the rates offered are lower than those offered by financial institutions because of the subsidies given.

Another similarity between the two is that both assume that a student will get a stable income-generating job. According to the HELB Act, a student is required to begin re-payment of the loan one year after the completion of education.[78] This is based on the assumption that immediately after completion of education, the student gains employment which enables them to service the loan. The loan agreement fails to take into consideration that not in all circumstances does a fresh graduate gain employment. This lack of consideration creates the issue of insecurity caused by fears of getting into debt where one is unable to begin re-payment of the loan if they have not gotten employment in the course of that one year.

The same goes for ISA's, whereby they assume that one will get high income-generating jobs that will allow them to service the investments made. This is particularly faced by ISA's because investors are keener to invest in students with a probability of getting high incomes upon employment.[79] Such assumption or prediction becomes problematic because it fails to consider not only the job market but also the students' interests.

[75] Ibid.
[76] https://ke.kcbgroup.com/home/loans/unsecured/masomo Accessed on: 30th August, 2019.
[77] Ibid 15.
[78] Ibid 12.
[79] Ibid 2.

3.4 CHALLENGES OF BOTH ISA'S AND STUDENT LOANS

3.4.1 STUDENT LOANS

The challenge that is faced by student loans is inadequate funding.[80] This is because of the growing number of students, which leads to a great demand of education funding.[81] Currently HELB gives a maximum bursary loan of 50,000-60,000 Kenya Shillings to a student annually.[82] This funding given is to cover the costs of tuition fees, costs of books and stationery and accommodation and subsistence.[83] Given the cost of tuition, which an average cost is 50,000 annually in public universities; the money alone allocated is not enough to cover all the students' costs. The funds allocated are insufficient given the high standards of living. This problem causes student without alternative sources of finances at a great disadvantage which leads them into debt or to look for alternative sources of funding. This takes away students' concentration from education to finding methods to make ends meet.

The other challenge faced is the increased number of students.[84] As a result of free primary education, it has seen more students' progress to secondary education. The ability to access secondary education has been greater facilitated by the government of Kenya subsidising the fees paid. The result has been that more students are able to progress on to tertiary education. This increased number of students has seen greater demand for HELB loans. This demand has yet to be matched with an increase in sources of finances. Finally, the greatest challenge for student loans is the recovery of the loans provided. HELB lacks proper strategies to recover loans from alumni students who have previously benefitted from the loans advanced to them. Section 15 of the higher education loans Act provides that loans are to be repaid back one year after completion of education and that one is to inform the board of any changes as to employment so as to make the necessary deductions.

[80] Mary Nyawira Wachira, *Challenges of Financing Higher Education in Developing Countries- A Case study of the Higher Education Loans Board,* University of Nairobi, (2009), Dissertation Submitted in Partial Fulfillment of the Degree of Masters in Business Administration, Pg. 42.
[81] Ibid.
[82] https://www.helb.co.ke/faqs/ Accessed on: 10th September 2019.
[83] Ibid 3.
[84] Ibid 37.

It is quite easier for persons who go into public employment and are beneficiaries of university funding to have their repayment of the loans as their employment records are public records hence, it is easier to make deductions from their salaries so as to repay the loans. For people who go into private employment or self-employment it becomes harder to recover the loans. The Act provides that employers have an obligation to the board to send information of a loanee's employment and for the employers to make the necessary deductions from the loanee's wages and remuneration so as to repay the loan.[85] Despite this obligation on employers, some employers will default in giving such information to the board. This in turn makes the recovery of loans become difficult. It also affects the amounts the loans board is able to raise which in turn affects the amounts advanced to students in the future.

3.4.2 INCOME SHARE AGREEMENT

The main problem facing ISA's id the lack of any laws guiding the structure and implementation of income share agreements. ISA's are guided by the law of contracts. The name itself, 'agreements' suggest that they are contracts between two or more persons. The lack of laws and policies guiding the provision of ISA's leaves student who prefer this approach at a great disadvantage of being exploited by the dominating party which is often the investor of one's education.[86] The student is often oppressed by the terms of the ISA because of the lack of bargaining power; hence the interest rates and duration of pay may often be exploited by the financiers. The investment into one's education is often seen as a purchase of shares into one's productivity and education, which is similar to one buying shares into a corporate.[87] This is where the issue of indentured servitude arises.

Some have argued that as long as investors are not permitted to influence or pressure a student in any way once funds are provided, then students are free to make their own choices with regards to the performance of their contract.[88] However, these may not always be the case as their obligations under a contract with investors that need to be fulfilled which bind their actions to the repayment of the investment made, which take the form of indentured servitude.

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[85] Section 16, The Higher Education Loans Act of 1995.
[86] Ibid 1, Pg.269.
[87] Ibid.
[88] Ibid 7, Pg.2.

As a result, ISA's have been criticised as indentured servitude.[89] Indentured servitude is where the student's future earnings are bound to the investor as a form of repayment of the investment made.[90] This then means that the student is not able to fully benefit from the remuneration they receive as it is attached to others. This binding of ones' remuneration goes against the article 30 which prevents one from servitude and forced labour of a person.[91] There is great need to regulate income share agreements so as to prevent a situation of violating ones dirigible right from servitude and slavery. The second challenge faced by ISA's is the lack of funding for students who undertake lower income generating studies and courses. Because of the view that ISA's are more of share investments, investors will invest in students who undertake courses and studies that have a greater opportunity to generate higher incomes which in turn means greater returns for the investors.

The shift to undertake to fund for students in higher income-generating courses is a result of market forces. Market forces currently dictate how education funding is undertaken and how it affects the learner. An investor, as dictated by market forces, would be more interested in investing in students with a likelihood of higher incomes because in-turn the investor will recoup more money.[92]However, this creates an issue of discrimination which is not only against article 27 of the constitution of Kenya but also article 43 which provides that every person in Kenya should have access to education.[93] It also then makes education seem like more of an investment and hence leads to the comparison of education with other investments made.

3. 5 CONCLUSION

Income share agreements have great potential in funding education for students around the globe. They seem to be more beneficial to the student by offering greater flexibility in education. Despite its promising nature, its major flaw is the lack of regulations. This lack thereof leaves the student open to exploitation and discriminatory practices. This sees a great need to have regulations enacted, other than contract laws, to guide the administration of income share

[89] Ibid, Pg.268-270.
[90] Ibid.
[91] The Constitution of Kenya, 2010.
[92] Ibid 15.
[93] Ibid 47.

agreements. Student loans, on the other hand, have done a lot of good in ensuring that many incapable students have accessed education. However, its greatest challenges are its inadequate finances and its probability of pushing the students into debt.

There is need for the government to revaluate the best education funding options so as to ensure that the right to education is adequately fulfilled. This would play a major role in actualizing article 43(2) on the right to education in the constitution of Kenya.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 CONCLUSION

In the words of Henry Ward Beecher a law is valuable not because it is a law, but because there is a right in it. The study began by introducing the concept of Income Share Agreements, looking into whether they can be incorporated into the Kenyan system and the possibility of creating legislation for them if incorporated into the Kenyan system. Chapter two brought out the nature and characteristics of Income Share Agreements and how they work in the United States of America where the idea originated. These distinctions from normal loans offered by government for example in our context HELB loans. Why Income Share Agreements are a viable option for alternative funding of higher institutions in Kenya. How various universities have used Income Share Agreements to advance funding for their students now especially in STEM-related courses. It also discussed students eligible for ISAs not only relying on the GPA of the student. .

The discussion in chapter three was a comparison between the existing education financing system in Kenya and Income Share Agreements. This brought out the exemplary work that has been done by the government in the funding of higher education through Helb for the last few decades. It has continually ensured that student from all walks of life got an opportunity to pursue their dreams in institutions of higher learning, First in public institutions and the recent shift to private and TVET institutions. It also brought out the fact that Income Share Agreements if well regulated have great potential in funding education for students around the globe. This is due to the fact that they offer great flexibility in education funding and repayment. Lack of regulation leaves the student and investor at a high risk of exploitation and discrimination practices.

Understandably, regulating something new is quite a daunting task. Considering it is something new in Kenya. It is however, a task that Kenya should consider undertaking with the main problem facing HELB loans being lack of financing[94] and the boards asking private investors to come on board to support the organization so as to give more loans. Undertaking to Incorporate

[94] Mary Nyawira Wachira, *Challenges of Financing Higher Education in Developing Countries- A Case study of the Higher Education Loans Board,* University of Nairobi, (2009), Dissertation Submitted in Partial Fulfillment of the Degree of Masters in Business Administration, Pg. 42

Income Share Agreements into the Kenyan system of funding higher education would mean that the government reduces its bulk in the number of students it funds and leaves the rest to organizations and individuals who buy into the idea of Income Share Agreements. Chances of organizations buying into the idea would be increased by the presence of legislation. To regulate Income Share Agreements. From this research the following conclusions can be drawn:

4.2 CONCLUSIONS

- Income Share Agreements are characteristically new but are here to stay and thus should further be researched on in order to better understand how they can be incorporated into our everyday system of funding higher education.
- In light of the research presented Income Share Agreement should be regulated in order to diminish the loopholes and questions asked about ISAs.
- How Income Share agreement is regulated should include all stakeholders their rights and responsibilities in the agreement and possible Punishment for individuals and organisations that do not fulfil their duties. There should be considerations as to the fact that they do not fit into one are of law thus the legislation should not be designed as for contract, consumer protection or Insurance but with the incorporation of all the areas of law that may be involved.
- A leaf should be borrowed from jurisdictions where Income Share Agreements have been better researched and regulated in order to enable Kenya to understand and develop a law that suits her in terms of Income Share Agreements.

4.3 RECOMMENDATIONS

In light of the above conclusions, the following recommendations are made in the hope that if they are adopted in the realization of the use of Income Share Agreements in the funding of higher education in Kenya and thus becoming a reality.

4.3.1 CONTENTS OF THE LAW

ISAs are not loans in that they don't have a principal balance nor an interest rate and applying the same usury rate concept that loans rely on to ISAs impedes on the function of the model.[95]This thus means the creation of new consumer protection laws that are tailor made especially for Income Share Agreements. This laws should be able to create a balance between the interest of students and potential lenders. This Law created should be flexible enough considering this is a new concept to allow both parties involved to be willing to participate. This will avoid scaring off parties especially potential investors. Allowing private investors to make a strong positive impact. The law should provide basic regulations as to how income share agreements should be treated for example, under state law, qualify income share agreements as a mode of funding higher education, treatment of income share agreement under securities laws, under consumer protection laws and insurance laws. This would legally help clear the air on what income share agreements really are. The law should then go further into giving clear definitions on what for example an investor under income share agreement laws are and the role they play. A payment cap should be given and the amount of time to pay back the loan clearly stipulated. However the law should endeavour to create very basic obligations because Income Share Agreements in numerous Scenarios have been found to vary with each individual this is to mean each agreement may be different from the first contracts also depend on who is offering and thus very clear cut instruction would be a barrier to the implementation of Income Share Agreements. Allowing room for creativity or rather creation of by-laws by institutions offering Income Share Agreement would be an easier way for investors to buy into Income Share Agreements. They would be able to tailor-make their own way of offering Income share agreements but with legislation by the national government. The legislation should incorporate grace periods that anticipate events such as starting a family, losing a job. The law should also ensure that the payment cap are set according to the individual is earning at the time he is required to pay back the money.

4.3.2 TAXATION

The taxman in Kenya would play a major role in creating an incentive for persons who choose to participate in Income Share Agreement. This would be done by for example creating a waiver for students who are repaying their money to investors. Tax waiver could also be offered to investors

[95] Zancolli, Patrick A., "Unintended Consequences In Higher Education Finance Policy: Implications For Current Income-Share Agreement Legislative Efforts And Beyond" 01 March 2018. CUREJ: College Undergraduate Research Electronic Journal, University of Pennsylvania, https://repository.upenn.edu/curej/217

who invest in students this will promote private sector increasing in funding Higher education, adding up to more educated members of Kenya’s population increasing chances of development. An example would be funding excluded from gross income. In the case of an individual, gross income shall not include the amount of any income-share funding which is paid to or on behalf of such individual under an Income Share Agreement.

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