

ACADEMIC FREEDOM AND FREEDOMS OF EXPRESSION IN EDUCATIONAL INSTITUTIONS

Executive Summary

Academic Freedom involves the freedom to take part in the entire range of activities involved in the protection of knowledge, including choosing a research focus, determining what to teach in the classroom, presenting research findings to colleagues and publishing research findings.

Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of expression by the state or any other actor, to participate in professional or representative academic bodies and to enjoy all the activities or endeavors related to academic work where necessary.

Autonomy and self-governance are currently enjoyed by educational institutions at different tiers of education in Kenya. Autonomy being the ability to take control of one's own learning, independently or in collaboration with others, enable learners to take more responsibility in learning and is likely to be more effective than a learner who is reliant on the teacher. Integrating technology in learning also plays an important role in education freedom, when it is applied properly, it can be a determining factor in influencing student's knowledge and learning.

Kenya has made great strides in democratization of education system. The adoption of free and compulsory primary education in 2003 as well as free day secondary education in 2008 was a major milestone towards equitable and equal access to all in basic education. The adoption of variable funding model in financing of universities and technical institutions has the potential of advancing academic freedom and institutional autonomy.

According to the Kenyan constitution, the enabling legislations and policy framework, academic freedom in Kenya is exercised at the individual level (see article 19, 33, 43 and 53 of the Constitution, basic education act, 2013, section 5 and universities Act, 2012, section 29).

Article 33 of the Constitution of Kenya 2010 provides, that every person has the right to freedom of expression, which includes:

- (a) Freedom to seek, receive or impart information or ideas.
- (b) Freedom of artistic creativity; and
- (c) Academic freedom and scientific research (Constitution of Kenya 2010)

1.1 Defining the concept of Academic Freedom

Heto, Ondari and Koku (2020) contend that freedoms are defined by the manner in which they are defended. This is an important entry point in examination of concept of academic freedom. The question we must answer is whether academic freedom is a constitutional or a professional imperative. According to Heto, Ondari and Koku (2020), there is a divergence between constitutional and professional definition of academic freedom. The trio argues that, how these freedoms are defined determines how they are assured, exercised, and defended.

According to Haastrup, Ekundayo and Adedokun (2009), academic freedom connotes freedom of expression and action, freedom to disseminate information and freedom to conduct research, distribute knowledge and truth without restriction. It includes complete and unlimited freedom to pursue inquiry and publish its results, professors' independence of thought and discourse within established professional standards (Adres, 2021). Adres (2021) insists that, academic freedom is not an individual right from any constrain but freedom to pursue the scholars' profession according to the established standards. Academic freedom thus means freedom of mind, inquiry and expression necessary for proper performance of scholarly professional conduct and therefore forming an essential part of a right to education.

Academic freedom therefore provides the liberty required for advancement of knowledge and practice of scholarly profession. It is a right to education that has individual and collective dimensions and is discharged through complex relationships between students, faculty, institutions, governments and society. Academic freedom therefore is to be viewed as both a legal and professional right that is to be exercised without restrictions within the prescribed legal and professional standards.

1.2 Academic freedom in Kenya

In order to appreciate the concept of academic freedom in Kenyan education institutions, three approaches are adopted: **one**; how it is assured, developed and defended, **two**; how it is exercised and **three**; the institutional framework for the enjoyment. Academic freedom in Kenyan education system is a deeply entrenched practice at all levels of education institutions and is assured through legal and policy frameworks. According to Kenya constitution, every person has the right to freedom of expression which includes academic and freedom of scientific

research (CoK, 33(1) (c)). Further, article 53(b) of the constitution provides for free and compulsory basic education. Section 5(1) of the Early Child Education Act, 2021 and Section 4(a) of Basic education Act, 2013 also provides for free and compulsory basic education, meaning that all school going children are entitled to free and compulsory basic education. In provision of this education, the Basic education Curriculum Framework (BECF) seeks to prepare students to compete in an industrialized nation and attain a quality of life and emphasis creativity, critical thinking, discovery and exploratory in the learning process (KICD, 2017). Furthermore, the BECF provides for different pathways and learners are expected to choose their pathways without undue persuasions.

At higher education level, academic freedom is a key tenet of academic discourse particularly in Kenyan universities. Article 33 of the constitution provides that “every person has a right to freedom of expression which includes academic and freedom of scientific research” in furtherance of this, section 29 of the universities Act, 2012, provides that, “universities in performing their duties shall have the right to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs”. In addition, section 29(b)(2) provides that a member of the academic staff of a university shall have the freedom to question and test received wisdom, to put forward new ideas and to state opinions and shall not be disadvantaged or subject to less favorable treatment by the university for the exercise of academic freedom.

It is therefore without doubt that academic freedom is exercised freely at all levels of education in Kenyan education institutions as a right to all and is assured through the constitution and the legal framework while the development and enjoyment of the academic freedom is ensured through the BECF at basic education and institutional policies at the higher education levels. The democratic choice of pathways at senior school and programmes for students joining tertiary education institutions has helped to strengthen academic freedom within education system in Kenya. According to the Kenyan constitution, the enabling legislations and policy framework, academic freedom in Kenya is exercised at the individual level (see **article 19, 33, 43 and 53 of the Constitution, basic education act, 2013, section 5 and universities Act, 2012, section 29**). In particular, Article 19(3) (a) provides that, “rights and fundamental freedoms in the bill of right belong to each individual and are not granted by the state”.

Academic freedom is discharged through complex relationships between students, faculty, institutions, governments, and society. The role of state in this mix therefore is to provide an enabling environment through flexible institutional structures and requisite facilitation. It would therefore imply that the educational institutions should enjoy some measure of autonomy to guarantee academic freedom. Discussion on institutional autonomy world over and in Kenyan educational institutions in particular raises three fundamental questions **one**; do Kenyan educational institutions have enough institutional autonomy for enjoyment of academic freedom? **Two**; are these institutions adequately resourced to assure academic freedom and **three**; is institutional freedom absolute?

Academic freedoms are currently protected by the United Nations International Covenant on Economic, Social and Cultural Rights, the Kenyan Constitution, regional human rights instruments, and Kenyan laws. These standards protect the right of scholars to independently and freely research, teach and debate. Campuses are protected from external interference and political intimidation, especially by state. For instance, the University of Nairobi, in their Research Policy demands Revised Edition (2013), it emphasizes the need for staff to balance between teaching and research and extension activities. Specifically, the University shall include research in the job description of every academic member of staff and ensure that time is allocated for research process and each member of academic staff is evaluated and rewarded for successful conduct of research. Further, the university recognizes the rights of staff and students in respect of academic freedom and research as enshrined in the Kenya Constitution 2010.

In Kenya, the function of the police is contained in the National Police Service Act No. 11A of 2011, as enshrined in the Kenya Constitution 2010. Article 49 of the National Police Service Act 2011 stipulates the general powers of police officers will only enter educational institutions when there is an order to do so. This is also applicable to the military personnel.

1.3 Institutional autonomy of educational institutions in Kenya

The governance structures in educational institutions are provided through the enabling legislations. All the legislations; the Early Childhood Education Act, 2021, the Basic Education Act, 2013, the TVET Act, 2013 and the Universities Act, 2012 provide for the governance of

respective institutions by the Board of Management (BoMs) or University Councils in the case of universities. These governance organs enjoy some measure of autonomy in management of the education institutions in Kenya. This autonomy however varies from one level to another. At the Basic education and TVET, BoMs have limited autonomy as they are responsible for overseeing infrastructural development, implementation of the curriculum and employment of non-teaching staff. At this level, institutions do not enjoy the freedom of choosing what is to be taught, who to teach and have no powers to award qualifications. This responsibility is exercised either by the county governments in the case of early childhood and vocational institutions or national for primary, secondary and TVET institutions.

Institutional autonomy at the university level is more visible as a key tenet of university governance. The enactment of universities Act, 2012 provided for the award of charters to universities as operational statutory instrument. Award of charter to universities signifies ceding of control by government over the governance of universities hence giving them more operational autonomy. Under the universities Act, university councils are in charge of recruitment and management of staff including the Vice Chancellors. Universities have the powers to decide; the admission criteria, what is to be taught, who to teach what to be researched and award qualifications. There is therefore minimal government control of academic activities in universities other than the oversight through Commission for University Education.

Institutional autonomy in Kenyan education institutions is however not absolute but is exercised as a delegated responsibility. Universities world over are established through legal instruments which provides legal boundaries beyond which the exercise of institutional autonomy would be violated. According to Dlamini (1996), autonomy of universities is not absolute because as a right, no right is absolute. Dlamini (1996) is of the view that, university autonomy architecture should be that which unites, the scholars, society and government. University autonomy therefore does not insulate universities or any other education institution in Kenya from external influence but subsist within that environment in a shared exchange of value. Sifuna (2012) advises that, too much autonomy might lead to university education being unresponsive to society while too much accountability might destroy the necessary academic ethos. University autonomy thus is the institutional authority to govern and manage their processes while

maintaining fiduciary and governance accountability to external authority, usually the government as price for protection, financial support and legitimacy.

1.4 Impact of technology on education freedom

Technology plays an important role in education freedom, when it is applied properly, it can be a determining factor in influencing student's knowledge and learning (Lister, 2015) integrating technology in learning and teaching makes learning more interactive and less boring. Further, technology enable learners to access relevant knowledge without incurring a lot of expenses thereby, contributing greatly to academic freedom.

1.5 Financing of education, academic freedom and institutional autonomy

There is a very close relationship between funding, academic freedom and institutional autonomy. Learners and institutions cannot fully enjoy academic freedom and institutional autonomy without sustainable financing by the government. Guruz (2021) is of the view that, for universities to exercise autonomy and academic freedom, it is the responsibility of the government to assure the financial sustainability of universities while keeping a reasonable distance from internal governance of universities. Over reliance on government funding can also lead to erosion of academic freedom and institutional autonomy. The role of government therefore is to facilitate through adoption of a sustainable financing model that guarantees universities adequate financial health to pursue their academic vision while maintain their ethos and traditions. At the basic institutions, funding approach should be that which ensures that every learner has an equal chance to pursue their dreams to their fullest.

Kenya has made great strides in democratization of education system. The adoption of free and compulsory primary education in 2003 as well as free day secondary education in 2008 was a major milestone towards equitable and equal access to all in basic education. Financing national examinations also greatly helped to ensure that all learners have sufficient latitude to pursue education. The adoption of variable funding model in financing of universities and technical institutions has the potential of advancing academic freedom and institutional autonomy. The model is based on the ability of the learners to pay and real cost of programmed in universities and TVET institutions. The students from poor backgrounds are given more government scholarships and loans while the households are expected to make minimal contributions. This

model helps to make universities financially stable and thus able to pursue the academic and institutional operations with minimal government control.

1.6 Main challenges to academic freedom and gaps in the legal freedom for protecting academic freedom in Kenya.

Academic freedom is central hub to academic profession and as one of its founding values. Academic freedom is also considered as a key condition to achieve several goals that advances knowledge and the quality of research. Academic freedom as the freedom to do academic work are faced with challenges. Challenges confronting students in Kenya are numerous. However, the main ones include lack of money, peer pressure, stress, media, parental care, and gender issue.

(a) High-cost limit access to education by vulnerable group

Not all the students in Kenya have enough money to pay their education fees. Some are forced to go back home until they can be able to pay their fees. This means that while the others are continuing with their studies at institution, they might be doing house chores or even doing nothing at home. This will be reflected in academic low results.

(b) Peer pressure

There are some things that students do only to please their peers without even thinking of the consequences that Such actions would have on them. Some students take harmful drugs to please their peers and end up wasting their lives with an addiction that continues to damage their bodies.

(c) Student health and safety in institutions

Many students in Kenya become absent in school or lectures and do not attend classes because they are feeling unwell. During this period, they are that they are absent, so much is taught which some teachers or lectures never repeat, this puts them a step behind of all the other students. Some students are killed and other commit suicide because of broken relationships and other cause.

(d) Media & Pornography

This include the television, cell phone, newspapers and magazines which inform students of what is going on in other places. Some information from the media makes students in

school to go on strike. Cellphones also impact negatively on students especially when they engage on pornographic items.

(e) Lack of adequate funding in research

To carry out research particularly on scientific field is very expensive. Therefore, for an individual to participate in research work must get funding from doners and government of which it is require lengthy and difficult process.

1.7 Conclusion

It is fair to conclude that education institutions in Kenya enjoy sufficient amount of academic and institutional autonomy. Arising from article 1(3) academic and institutional autonomy is however not absolute but a delegated responsibility for academic institutions to pursue their academic goals while at the same time being accountable to society through skill development, innovation and social economic transformation as a reason for their existence and continued support by the government through public resources.

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