

**REPUBLIC OF KENYA**

**MINISTRY OF EDUCATION**

**STATE DEPARTMENT FOR TECHNICAL VOCATIONAL EDUCATION & TRAINING**

**DIRECTORATE OF TECHNICAL EDUCATION**

**SUBMISSION TO UNITED NATIONS SPECIAL RAPPORTEUR ON RIGHT TO EDUCATION**

**Academic Freedom and Freedom of Expression in TVET Institutions**

**Preamble**

Academic freedom is the entitlement to receive and provide quality education and training. Its enjoyment and protection from attacks and interferences should be guaranteed by all actors. Academic freedom enables trainers and trainees to carryout research, teaching and discourse in pursuit of truth bounded only by standards of professionalism and social responsibility. The government has a legal obligation to protect and promote academic freedom.

**General Framework**

1. The Kenya Constitution protects academic freedom through various articles as follows:

Article 43 (1) (f) every person has the right to education

Article 53 (1) (b) states that every child has a right to free and compulsory basic education

Article 54 (1) (b) provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.

Article 55 (a) the State shall take measures, including affirmative action programmes, to ensure that the youth access relevant education and training.

Article 56 (b) Minorities and marginalized groups have a right to be provided with special opportunities in the field of education.

Article 10: *National Values and Principles of Governance*: (2) (b) “human dignity, equity, social justice, inclusiveness, equality,” and Article 232: *Values and Principles of Public Service:* (1) (c) “responsive, prompt, effective, impartial and equitable provision of services;” further arguments the states commitment in protecting academic freedoms.

**Policy**

The Sessional Paper No.1 of 2019 *A Policy Framework for Education and Training for Sustainable Development in Kenya* underscores the government’s commitment to enhancing access to quality and relevant education and training to its citizens at all levels, while ensuring equity.

The Presidential Working Party on Education Reforms (2023) has made some recommendations that will go a long way in addressing issues of academic freedom.

**Legal Provisions under the Technical Vocational Education and Training (TVET) Act No 29 of 2013**

Academic freedom is a guarantor for quality; therefore, TVET Act No. 29 of 2013, indirectly provides for academic freedoms through Part VII: Harmonization of Training Qualifications.

Section 38: Every institution shall in accordance with the provisions of this Act—

(a) adopt appropriate national and international standards in training;

(b) establish, implement and manage credible quality assurance systems;

(c) establish and promote appropriate collaborative arrangements with national and international agencies on standards and quality assurance; and

(d) establish systems and processes for the continuous review and improvement of standards and quality assurance.

There’s need for review of the laws to explicitly provide for academic freedoms and develop regulations and guidelines for full enjoyment of the freedom. Inadequate laws, regulations and guidelines on the implementation of the provisions of the Constitution on academic freedoms, limits or restricts the full enjoyment.

1. Academic staff (trainers) and trainees of TVET institutions are all entitled to academic freedom regardless of the level of education. Trainers and trainees have freedom to carry out research for enhancement quality of curriculum implementation.
2. (a) The main challenges of enjoyment of academic freedom are:

* Lack of awareness of the provisions of the constitution due to the gaps in the legal framework. This arises from weaknesses in policy development/review and implementation. There is need for a comprehensive plan to develop national policies to operationalize the provisions of the Constitution on academic freedom across the board.
* Insecurity, poverty and lack of support infrastructure are additional challenges to academic freedom but the government is committed to address them to meet the provisions of the Constitution.

(b) In TVET there is strong student leadership but the TVET Act has not provided for the student body curtailing their ability to influence decision making that touch on academic freedom in TVET institutions.

**Autonomy of TVET Institutions**

1. TVET Act Section 30 provides for Semi Autonomy of some TVET Institutions but it has not been fully implemented. The government has a stake in governance and management of institutions and this somehow guarantees protection of academic freedom. In situations of student unrest, the police are allowed to protect the freedom of community around the institution but they do not get into the institution.

The Presidential Working Party on Education Reforms (2023) recommended the establishment of an Intergovernmental Council for management of trainers of TVET institutions and the government is in the process drafting laws to support this.

1. The national education and training policies are formulated by the national government. To entrench best practices in TVET and ensure respect for academic freedom, Institutions are expected to develop internal policies, procedures and guidelines to support their governance and management. The academic policy is a comprehensive document that address all issues appertaining to the enjoyment and protection of academic freedom in the institutions.

**Funding**

1. Funding including for research in TVET institutions is regulated by the government. The process is transparent since the governance structure provide finance and audit committees to guarantee transparence in accounting for funds. Institutions also have internal auditors that operate independently and report directly to the Audit and Risk Management Committee. Further, for enhanced transparency, the Auditor General audits the books of TVET institutions. This ensures that funds allocated to research and training are not diverted to other activities.
2. The Public Finance Management Act of 2012 and its regulations 2015; and the Public Procurement and Asset Disposal Act 2015 and its Regulation 2020 protects academic freedom of TVET institutions from interferences by commercial actors and financial sponsors. During all governance and management meetings, members are expected to declare any conflict of interest in regard to every item on agenda. In cases where a member declares conflict of interest, that member does not participate in the deliberations of the concerned agenda item.

**Surveillance**

1. Academic staff (trainers) and students (trainees) of TVET institutions are not subject to surveillance by public authorities through on-site cameras or on-line scrutiny. Therefore, surveillance has no bearing on undue restriction to academic freedom or freedom of expression.

**Freedom of expression in teaching and access to books**

1. Academic staff (Trainers) in TVET enjoy freedom of expression as they deliver their lessons. There are no limitations imposed on them and they are never required to remain neutral or forward a particular perspective whether religious or political.
2. Academic staff (Trainers) in TVET are under no restriction as to which manuals, books and resources to choose for teaching. There are no books/materials banned and equally there are no mandatory books/materials. Section 45 (I) (g) of the TVET Act provides for promotion of the publication of books and other materials relevant for curriculum implementation in TVET. This promotes quality and protects academic freedom.