

# **Institutional autonomy and the realisation of objects of universities in Nigeria**

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**2015**

INSTITUTIONAL AUTONOMY AND THE REALISATION OF THE OBJECTS OF  
UNIVERSITIES IN NIGERIA

By

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Thesis submitted in fulfilment of the requirements for the degree of  
Doctor of Laws (LLD)

Prepared in the Department of Public Law, Faculty of Law, University of Pretoria  
Under the supervision of Professor JFD Brand

2015

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## **DEDICATION**

TO THE CREATOR, GIVER OF LIFE, AUTHOR AND FINISHER OF MY FAITH,  
THE STRENGTH IN THE TIME OF WEAKNESS, I GIVE GLORY.

## ACKNOWLEDGEMENTS

I do hereby place on record my appreciation to the following people:

- I appreciate my Promoter, Professor JFD Brand who was able to identify the research potentials in my choice of topic. He eventually absorbed me to drink from his wealth of knowledge. In spite of his very tight schedules, he has delivered. Baie Dankie !
- The Management and staff of the Faculty of Law, University of Pretoria under Prof Andre Boraine, the Dean and Prof Pieter Carstens, the Head of Department of Public Law and Ms JeanneKay Goodale, then, of the Administrative Office. The observance of rules and regulations of the University in the Faculty is commendable.
- I gained tremendously in reading the works of writers, which made my understanding of this topic clearer. I appreciate in particular Prof Elijah Adewale Taiwo and Chief (Dr) Afe Emmanuel Babalola, SAN, OFR.
- I appreciate the Management of The Polytechnic Ibadan under Mr Fidelix Adebisi Adeniran for releasing me to proceed on the programme. I am indebted to the Management under Prof Olatunde Fawole, as Rector and Mr Ayodele Fehintola as Registrar for creating enabling environment to run the programme. To my colleagues and other members of staff in the Legal Matters Unit, I acknowledge your support.
- I enjoyed the support and encouragement of the following families at various stages of my programme. Engr and Mrs Adewale Fadeke Adegbenjo, Surveyor and Mrs Oluwaseun Jumoke Adetoyinbo, Revd and Mrs Simeon Kehinde Ayoola, Mr and Mrs Iyiola Lola Eyitayo and Dr and Mrs Felix Victoria Anyanwu, as well as Mr and Mrs Taiwo Bimbola Adegbenro.
- I enjoyed friendship and warm relationship with the following people while I was in South Africa. Mr Sonty Monakhisi, Dr Ntombi Zita, Mrs Audrey Lenoge. All members of staff of the Faculty of Law Library were wonderful and accommodating. .
- I made friends with Dr Dan Kuwali, Dr Vivek Divedi, Joelle Dountio, Dr Pardikor Madjetey, Dr Ademola Jegede, Dr Akinola Akintayo, Dr and Mrs Olufemi Soyaju and Barrister Alabo Ozubuike. The relationships were rewarding.
- I appreciate my parents, Pa Lawrence Adegoke Olayinka and Deaconess Alice Adebimpe Olayinka as they supervised my graduation from stage A,B,C and are living witnesses to the pinnacle of academic attainment. They were my first set of teachers and the foundation they laid sustained this height. To my siblings, I appreciate your words of encouragement. To my mother-in-law, Chief (Mrs)

Alice Olufunke Adedapo, she took good care of my children and home while my wife visited me in South Africa. Thank you, Ma.

- To my love and confidante, Abimbola Omolade, I appreciate your perseverance and endurances during my long trips outside Nigeria. You have had to take up my roles at such occasions, which you performed excellently. To my children, Victor, Blessing and Ololade, I appreciate your cooperation with mummy in my absence. I also acknowledge my very curious daughter, Eniola. She queried my long absence from home on the basis of further studies contending that I have had to study from home previously.

## SUMMARY

Institutional autonomy is a university's academic freedom to guide and direct the teaching and scholarship of its students and faculty. In this thesis I reveal the extent to and manner in which, despite the ideal of institutional autonomy, councils of universities in Nigeria are unable to resist political and external control over affairs of their universities. I further point to legislation that relieves universities of certain statutory powers.

I argue that the regulation of institutional autonomy of universities in Nigeria is such that it takes away the normal functions of a university, so lowering academic standards and impeding realisation of the objects of universities. Government established the National Universities Commission (NUC) to regulate academic standards. This function was hitherto within the purview of the Senate of a university. Also, with the establishment of the Joint Admissions Matriculation Board (JAMB) in 1978 senates of universities ceased to determine student admission criteria.

I argue that on account of such regulation, also the academic freedom of staff and students can no longer be guaranteed. The state of university autonomy as at present is not in the best interest of staff, students and the university. This manifests most clearly in the area of on-campus discipline, the enforcement of which has in some cases been externalized.

I recognize the gaps and omissions in laws regulating universities and submit that the various laws have to be revisited and the scope of operation of bodies like the NUC, JAMB, Governing Councils, Senates have to be reviewed.

## **KEYWORDS AND PHRASES**

Academic freedom, institutional autonomy, degree of autonomy, substantive autonomy, and procedural autonomy.



## **STYLE OF REFERENCING**

Pretoria University Law Press (PULP) Publication Style Guideline 2011

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# CHAPTER ONE

## GENERAL INTRODUCTION

### 1 Background and rationale for the study

University system exists in Nigeria on account of the need for it. The teaching and impartation of knowledge to deserving students is done with a view of bringing development to the nation in particular and to the world in general. The law establishing each university provide for the various objectives and how such are to be realised and at the same time limiting the extent of its external control or influence.

University autonomy is essential for the advancement, transmission and application of knowledge.<sup>1</sup> This is based on the assumption that institutional autonomy or reasonable level of autonomy for the university makes for the realisation of the objects of a university possible. In practice, however, the Nigerian universities have not been fine in meeting their objectives on account of operations of some regulatory bodies such as the Nigerian University Commission (NUC)<sup>2</sup> and the Joint Admissions and Matriculations Board (JAMB),<sup>3</sup> which interfere with the university's management and administration as well as its rights to admit students on set criteria.

In the same vein, teaching and development of the nation have links with discipline in the university.<sup>4</sup> The reality in Nigeria is that due to unnecessary intervention, universities have lost their disciplinary powers to the law courts. Indiscipline, which is condoned in the circumstances, affects adversely, the realisation of objects of the universities. As a

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<sup>1</sup> Ajayi, & Ayodele (2004) *Fundamentals of educational management* Ado-Ekiti: Green-line publishers .  
See also I A Ajayi & Ekundayo T Haastrup 'Management of university education in Nigeria: Problems and possible solutions Revitalization of African Higher Education 228.

<sup>2</sup> In section 6, I give an explanation on the existence and purpose of this Commission. See generally section 4, chapter two.

<sup>3</sup> In section 6, I give an explanation on the existence and purpose of this Board. See generally section 4.1.4, chapter two.

<sup>4</sup> I consider institutional autonomy of the university to carry out functions of teaching; individual academic freedom of stakeholders in the teaching business and the disciplinary autonomy of the university to maintain discipline.



result of this, universities have equally not been fulfilling their missions and objectives due to limited autonomy and lack of desired academic freedom.

Given this, the thesis investigates the issue of institutional autonomy of universities in Nigeria. It explores the links between institutional autonomy and freedom, as well as academic freedom of staff and students, and the realisation of the basic objects of the universities. The main purpose for this is to make recommendations about the protection of institutional autonomy particularly, with respect to the on-campus discipline in Nigerian universities.

Every university has a law, which establishes and prescribes how it is to be administered. The law set out the objects of the university, which, *inter alia*, is to produce a high-level human resource to drive the nation's social, political and economic machineries.<sup>5</sup> The law present the institution as an autonomous body, which is capable of carrying out the activities of the university without unnecessary external control. It is in this sense that the total take over of the universities by the NUC and JAMB is considered as unnecessary hindrance towards the realisation of the objects of the universities.

I further examine the relationship between institutional autonomy and academic freedom in the positive and negative dimensions. The thesis dwells on disciplinary autonomy, the issue of indiscipline and the impact of this on the realisation of the objects of the university.

It is important to mention at the onset that the concepts 'academic freedom' and 'institutional autonomy' intersect as in most instances the enjoyment of academic freedom requires the autonomy of institutions of higher education.<sup>6</sup>

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<sup>5</sup>Education is expected to advance the full development of the human personality and to strengthen respect for human rights and fundamental freedoms. See Article 26(2) of the Universal Declaration of Human Rights. William Saint, Teresa A. Hartnett and Erich Strassner 'Higher education in Nigeria: A status report' attests to the fact that knowledge is the most important factor for economic development with capacity to augment productivity and the foundation of a country's competitive advantage in 21<sup>st</sup> Century. See also South Africa's Higher Education Policy, 2003 260.

<sup>6</sup> CESCR, The Right to Education (Art. 13): General Comment No.13 (E/C. 12/199/10 of 8 December 1999), para 40.

## 2 Statement of problem

The concepts of academic freedom and institutional autonomy are among the most important issues concerning the existence, mission and role of the university throughout the world.<sup>7</sup> All over the world, universities have always considered the two concepts to be indispensable values and have defended them as such.<sup>8</sup>

Ajayi, Goma and Johnson consider the two concepts and contend that they link with the protection of the university from day to day direction by government officials, specifically on the selection of students; the appointment and removal of academic staff; the determination of the content of university education and the control of degree standards; the determination of size and rate of the growth; the establishment of the balance between teaching, research and advanced study; the selection of research projects, and freedom of publication; and the allocation of recurrent income among the various categories of expenditure.<sup>9</sup>

Thus, no one that is familiar with the operations of the university in the area of the discharge of its mission and role in society could doubt the value of academic freedom and institutional autonomy.

However, the ways in which NUC, JAMB and other regulatory institutions perform their functions go beyond lawful limitations and, therefore, poses a serious threat to academic freedom and institutional autonomy. For instance, the centralisation and bureaucratisation of higher education and the enforced standardization and uniformity in the Nigerian tertiary education through the NUC<sup>10</sup> and the JAMB<sup>11</sup> apparently pose tension and threat to the concept of university autonomy.

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<sup>7</sup> See JFAde Ajayi, LKH Goma & GA Johnson *The African experience with higher education*, The Association of African Universities, Ghana (1996) 167.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, 167-168.

<sup>10</sup> See Preamble to the NUC Act, Cap N81 Laws of the Federation of Nigeria (LFN) 2004.

<sup>11</sup> See section 5 of the JAMB Act Cap J1, LFN 2004.

The establishment of these regulatory bodies in the Nigerian tertiary education sector has compromised the ideal concept of academic freedom and institutional autonomy in the country. NUC<sup>12</sup> for instance, is charged with the responsibility of advising the Federal and State Governments on all aspects of university education and general development of universities in Nigeria. It is also vested with the power to disburse money to universities in the country.<sup>13</sup>

In terms of section 4(1) of the National University Commission Act, the functions of the Commission are elaborate and numerous which include advising the government and making inquiry into the financial needs, both recurrent and capital, of university education in Nigeria; receiving block grants from the Federal Government and allocate them to the federal universities, undertaking periodic reviews of the terms and conditions of service of personnel engaged in the universities, among others. The problem is that in the process of performing these functions, the institutional autonomy of Nigerian universities is often compromised.

In the same vein, the Joint Admissions and Matriculation Board (JAMB)<sup>14</sup> was established to conduct examinations into the Nigerian universities and other tertiary institutions. The institutional autonomy in the context of the university having to decide by itself on academic ground, who to admit and the criteria of admission has invariably been transferred from tertiary institutions to JAMB as a body. In terms of the Joint Admission and Matriculation Board Act, the Board has the sole responsibility to set the admission standard and to determine whom and when to admit.<sup>15</sup>

Many factors such as a quota system, federal character policy and other considerations have been introduced into admission processes thereby putting merits into second position in most cases. While JAMB determines the number of students each university is to admit, NUC determines those courses that are to be offered, who will teach them and

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<sup>12</sup> See Preamble to the NUC Act, Cap N81 Laws of the Federation of Nigeria (LFN) 2004.

<sup>13</sup> See section 4 of the National University Commission Act Cap N81, LFN 2004.

<sup>14</sup> See section 5 of the JAMB Act Cap J1, LFN 2004.

<sup>15</sup> See section 5 of the JAMB Act Cap J1, LFN 2004.

the qualifications of those to teach those courses.<sup>16</sup> All these have been taken away from the university council.

Also, in terms of discipline, the consequences of the judgment of the Supreme Court of Nigeria in *Garba v University of Maiduguri*<sup>17</sup> swiping the universities of their hitherto disciplinary powers, especially on acts of misconduct with criminal element has left the universities impotent in terms of discipline and maintaining standard in the universities. With this arrangement, the universities are left with no autonomy. A bureaucrat, rather than the university decides whether a particular lecturer is fit to teach. In addition, JAMB prescribes admission requirements (and eventually select and allocate students), assessment methods and criteria and, in effect, decides whom qualifications should eventually be awarded. These are the main problems, which this study investigates.

### **3 Aims and objectives of the study**

The overall aim of this study is to examine the institutional autonomy as obtainable in Nigeria, in order to assess whether same guarantees the realisation of the objects of universities in the country. However, the specific objectives of this study are:

- To examine the tertiary educational system management in Nigeria, with a view of determining whether same can guarantee quality educational standard that can meet global competitiveness.
- To analyse the existing legal framework for quality education in Nigeria and to propose effective means through which this can be better achieved should the existing legal framework prove to be inadequate.
- To bring out the adverse effect of swiping university its disciplinary power on realising its object of producing graduates who can meet global standard not only in terms of quality education, but also student found worthy in learning and character.

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<sup>16</sup> See section 4(1)(b) of the NUC Act.

## 4 Research questions

This study is set out to investigate the following questions:

- What are the links between institutional autonomy of universities, academic freedom of staff and students and the realisation of the objects of a university?<sup>18</sup>
- How is institutional autonomy of universities regulated in Nigeria and what are the consequences of that regulation for academic freedom and on the realisation of the objects of the university?<sup>19</sup>
- Are institutional autonomy, academic freedom and the realisation of the basic objects of universities in Nigeria under threat, particularly in the context of disciplinary autonomy, and if so, how and in which ways?<sup>20</sup>
- Can changes in law contribute to the achievement of university institutional autonomy, academic freedom and the objects of universities in Nigeria and if so, what are the desired changes.<sup>21</sup>

## 5 Methodology or Approach

According to Oosthuizen, *et al*, method is a specific research technique utilised by the researcher to do research on a particular problem.<sup>22</sup> This study shall use both primary and secondary sources of data. The primary data to be used include the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the NUC Act, 2004,<sup>23</sup> JAMB Act, 2004,<sup>24</sup> various Nigerian Universities Acts, other legislation and enactments bearing on

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<sup>17</sup> *Garba v University of Maiduguri* [1986] 1 NWLR (pt 18) 550. This case will be discussed in details later in the thesis.

<sup>18</sup> See chapters two and three.

<sup>19</sup> See section 4 of chapter two.

<sup>20</sup> See in particular section 4 of chapter four.

<sup>21</sup> See section 6 of chapter two and chapter five.

<sup>22</sup> Oosthuizen, Botha, Roos *et al Aspects of education law* 4 ed (2009) 10.

<sup>23</sup> See Preamble to the NUC Act, Cap N81 Laws of the Federation of Nigeria (LFN) 2004.

<sup>24</sup> See section 5 of the JAMB Act Cap J1, LFN 2004.

university administration and management in Nigeria, case law, the United Nations and African Union treaties and documents relevant to the topic.

The secondary data for consideration include journal articles, law texts, documents and reports collected by government agencies, bodies and commissions, the United Nations' specialized agencies on education, Non-Governmental Organizations (NGOs), and other electronic sources. These data shall be subjected to an in-depth content analysis. The study is a conceptual rather than an empirical or sociological one. I employ the traditional method of scholarship in law in analysing and engaging with primary legal sources (legislation and case law) and secondary scholarly sources on my topic.

## **6 Assumptions**

This study is based on some assumptions and or fundamentals. I work on the assumption that in the course of attaining the objects of teaching, research and the nation's development, indiscipline of members of a university is a constraint. I do this, believing that the maintenance of discipline by the university constitutes an ancillary, incidental or procedural object<sup>25</sup> of the university.

## **7 Context of the study**

There is an increasing external control on the activities of the university in Nigeria. This development is thus a threat to the accomplishment of the mission of the university in the Country. In this thesis, I address the issue of external control on the activities of the universities, I examine the extent of the control and identify the problems attaching thereto.

The external control is orchestrated by the establishment of two state institutions that exert control over universities to an increasing degree: the National Universities Commission (NUC) and the Joint Admissions Matriculation Board (JAMB). Ifeanyi

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<sup>25</sup> I describe my understanding of ancillary or procedural object in section 2, chapter two.

Onyeonoru<sup>26</sup> reiterates the views of Adesina<sup>27</sup> on the expansion of external control by the NUC and the declining efficiency of the university. The writer observes thus:

In several areas, universities have lost their power to develop new programmes, realign their courses, and the content of their curricular to match labour market requirements. Changes in undergraduate programmes, introduction of new degree programmes and even changes in the names of university Departments must attract the approval of the NUC. Where the NUC's position conflicts with that of the senate and experts in the field within the universities, the opinion of NUC will prevail-no matter how wrong or unappreciative of the rapid development in the field.<sup>28</sup>

Against the clamour for institutional autonomy in the realisation of objects of the university, Government established the National Universities Commission (NUC) to handle regulation of academic standards. This function was hitherto within the purview of the Senate of each university.

One of the problems, which inform this thesis, is the issue of monopoly of knowledge by the NUC. I consider the fact that an autonomous university operates by committee system, which produces quality ideas. The power wielded by the Commission is superfluous of the powers of the senate of a university. The stance of the NUC in arrogating to itself final authority on decision making, even on contentious matters, hampers the quality of services, which the university renders.

Institutional autonomy accords the senate of a university the prerogative of applying its curriculum and researches towards finding solutions to the challenges of the country. The university is not expected to exist as an ivory tower, which exists for its own cause. It is expected to discover the needs of the society and to proffer solutions to them. The Technical University Law provides in Section 4(f) as follows:

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<sup>26</sup>Ifeanyi Onyeonoru 'University autonomy and cost recovery policies: Union contestation and sustainable university system' 11 <http://mail.ui.edu.ng/src/login.php> (accessed 29 July 2013)

<sup>27</sup>J Adesina 'Civil society and the Abacha State: Reflection on the 1996 ASUU strike' 1 (1998) 3 *Review of Economy and Society*; J Adesina 'The changing relations of unions and state in Nigeria: Neo-liberalism and the dilemma of democracy' Paper prepared for the colloquium on Etat et Acteurs Emergents en Afrique held at Maison des Sciences de L'Homme, Paris, France 16 18 November 2000.

<sup>28</sup> Underlining is mine for emphasis

To research into indigenous technologies so as to develop, modernize and relate them to the social, cultural, technological and economic needs of the people of Oyo State in particular and of Nigeria and the world in general.

On the expectations from the universities, challenges facing the nation in the areas of power generation and distribution, youth unemployment and of recent terrorism should be addressed by carefully drawn curricula and research works.

I contend in this thesis that the universities have been failing the nation in effecting positive changes and in proffering solutions to the myriad of problems in the country. I attribute the default of the nation's universities in this respect to the loss of autonomy to the NUC, the JAMB and to political and other external controls.

One of the functions of the NUC is the periodic reviews of the terms and conditions of service of personnel engaged in the universities.<sup>29</sup> The NUC conduct institutional accreditation of older universities to establish that the required infrastructure is put in place and are maintained in good state.<sup>30</sup> This is meant to facilitate the smooth realisation of the teaching and impartation of knowledge as objects of the university.

The excessive powers of the NUC have not been adequately deployed to prevent standards from falling in most institutions. Abuses in the accreditation exercises of the NUC, and inability to apply sanctions on erring universities makes it worthwhile to review the regulatory powers of the NUC.<sup>31</sup> In this thesis, standard of university education is given desired attention. This is based on the fact that the objects of the university are realised when the products of the university system are suitable for the labour market and can compete with their peers from other countries.

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<sup>29</sup>See section 4 (1)(i)NUCA. See also section 4 of chapter 2. It is expected that an autonomous university with clear objectives should be able to determine how to achieve its objectives.

<sup>30</sup> This is discussed extensively in chapter three.

<sup>31</sup>The Guardian Editorial 'The bills on varsity standards' The Guardian Friday 19 August 2011 14. See generally section 4 of chapter two.



Institutional autonomy accords the senate of universities the prerogative to determine what criteria are adopted in giving out admission to potential students. This was the situation in Nigerian universities pre-JAMB. Admissions into Nigerian Universities became centralised under JAMB.<sup>32</sup>

I consider the impact of examination malpractices and the Government policy of quota system in the context of examination as a true test of a candidate's ability. I submit that the development here makes a reasonable number of candidates who made the entrance examination to drop out because of academic deficiencies.<sup>33</sup> I consider the call by education stakeholders for the scrapping of the JAMB on account of deficiencies in the operation of the board.<sup>34</sup> In this thesis, I investigate the areas of operation of the JAMB, which amounts to undue control or overbearing influence on the academic activities of the university.

Further, on institutional autonomy and undue influence of the JAMB on the universities, I consider the substitution of the power of admission to universities. I ask whether this poses a problem, which denies each university the desired flexibilities that can be explored to offer admissions to more applicants that are qualified. I also consider whether this has any negative effect on accessibility of university education in Nigeria.<sup>35</sup> A further area of concern in the thesis is the assertion that the admission process is no longer a true test of a candidate's ability, this time because of the adoption of a *quota* system by the JAMB.<sup>36</sup>

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<sup>32</sup>The Joint Admission and Matriculation Board Act (Cap J1), LFN 2004. See section 5(1) (a). In practical terms, where a candidate passes the university's weeding test, known as the Post-JAMB examinations, but did not pass the JAMB examinations, such candidate is deemed to have failed and he is not admitted. This is not a beneficial control on the university as a candidate that passes its examination is disqualified by the JAMB.

<sup>33</sup>Edoba Omoregie 'Legality or otherwise of the post-UTME' The Guardian 13 December 2011 88.

<sup>34</sup>Ike Onyechere 'Still on the need to scrap JAMB (1)' The Guardian Monday 8 April 2013 67.

<sup>35</sup> See Taiwo (Codesria) 10. Universities are only able to offer places to less than 10 per cent of their prospective applicants. See 'Recommendations of the Committee on Needs Assessment of Nigerian Public Universities (3)' The Guardian Thursday 13 December 2012 53. Reiterating the poor access to university education is the Vice-Chancellor of the Kwara State University who confirms thus: Of the 7,525 candidates who applied for admission to the university in the 2012/2013 session the institution could only admit 1525. See 'Kwasu VC warns students against vices' The Guardian Thursday 6 December 2012 65.

<sup>36</sup>A candidate is admitted in the place of others with exemplary performances in the examinations because of his tribal affiliation. See also section 4 of chapter two.

The establishment of JAMB<sup>37</sup> and vesting of admission processes on it is aimed at improving on the decentralised admission processes pre-JAMB era. The ultimate aim therefore is to improve on the quality of education in the tertiary institutions.

I write this thesis in the context of the JAMB, which is saddled with the responsibility of selecting suitable candidates for the tertiary institutions.<sup>38</sup> The background to this research in the context of JAMB's conducted examinations is the high standard of education, which can be attained and sustained only if suitable candidates are selected for the tertiary institutions.

Further, on the concept of institutional autonomy and related problems, there is the increasing threat to the realisation of the objects due to judicial interpretation of the disciplinary powers of universities. Section 36(1)(4) of the 1999 Constitution has been interpreted by the courts to establish that a person may only enjoy a fair hearing before a court or other tribunal established by law. The court or tribunal should be independent and the members should be impartial. I consider the courts' interpretation of this section to mean that domestic tribunal of universities have no disciplinary power. This leads to moral decadence in the university,<sup>39</sup> and a further problem for the university to realise its objects. I see this development as a problem to which this thesis addresses and proffers solutions to.

Related to the issue of disciplinary autonomy is the violation of individual academic freedom of members of the university because of delay in judicial proceedings. I consider in this thesis the violation of the right to fair hearing within a reasonable time, which is

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<sup>37</sup> See Section 1 of the Joint Admissions and Matriculation Board Act, 2004 (JAMB). See also section 5 of chapter three.

<sup>38</sup> See Section 5 of JAMB Act, 2004. See also section 5 of chapter three.

<sup>39</sup> Lord Kenyon in *R v Chancellor, et al of the Universities of Cambridge* (1794) 6 TR 89 observed thus: It is not probable that so great a body as the University could have existed so long, without having some power within itself of controlling and checking those evils, which without correction, would be subversive of all discipline in the university. Discipline is the soul of such a body... In the same vein, Sholanke submits that the much talked about academic freedom and advancement of knowledge will be futile if discipline is thrown to the dogs and everyone is allowed to do whatever he wishes. Sholanke, O., 'Sacking professors in Nigerian Universities: The role of the visitor'(1990)(1)(1) *LASU Law Journal* 15.

no longer feasible because of judicial review, which spans an average of ten years. I contend that justice, which is delayed, is a denied justice.<sup>40</sup>

## **8 Definition and meaning of major terms:**

The following five terms, academic freedom, institutional autonomy, degree of autonomy, substantive autonomy, and procedural autonomy, as used in this work, call for explanation which this part is devoted to.

### **8.1 Academic freedom**

‘Academic freedom’ as a concept defies absolute definition.<sup>41</sup> Over the ages, the meaning and content of academic freedom varied and still today there is no general consensus on its definition.<sup>42</sup> Russell posits that the word ‘academic freedom’ has often caused confusion because it comes from a medieval intellectual tradition which pre-dates most of the current meanings of the word ‘freedom.’<sup>43</sup> In this regard, Kaplan and Schrecker observed thus:

There is little consensus regarding the meaning of academic freedom although there is agreement that it is something worth protecting. The concept has been invoked in support of many contrary cause and positions. It has been used for example, to justify student activism and to repress it, to defend radical faculty and to defend their suppression, to support inquiry into admissions or promotion or tenure decisions and to deny such inquiry. It is, at best, a slippery notion, but clearly a notion worth analysis.<sup>44</sup>

However, writers and scholars have attempted identifying various manifestations of academic freedom. Mostly cited is the definition of academic freedom as a fourfold right

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<sup>40</sup> See section 7.1 of chapter four.

<sup>41</sup> *The Open Universities in South Africa and Academic Freedom 1957-1974*, A Review by the Academic Freedom Committees of the University of Cape Town and the University of Witwatersrand, Juta & Co, 1974, p. 4.

<sup>42</sup> K. Alston & R Malherbe, ‘The constitutional right to academic freedom: An exploration into definition, scope and threats’ (2009) 1 *Journal of South African Law* 102-123, 103.

<sup>43</sup> C Russell *Academic Freedom*, Routledge: London & New York, 1993, p. 1.

<sup>44</sup> C Kaplan, & E Schrecker *Regulating the intellectuals: Perspectives on academic freedom in the 1980s*, New York, Praeger, 1983, 6.

of a university ‘to determine for itself on academic grounds *who* may teach, *what* may be taught, *how* it shall be taught, and *who* may be admitted to study.’<sup>45</sup>

According to Goodlad, academic freedom has four aspects namely:

The freedom of students to study; an issue concerning access; the freedom of students in what they learn and how they learn it; an issue concerning curriculum and pedagogy; the freedom of faculty (members of the lecturing staff) to decide what to teach and how; issues concerning course approval, validation, and accreditation, and the freedom of faculty to carry out researches; an issue concerning choices to be made both by faculty themselves and by those who fund their researches on the relative intellectual, practical, financial and other merits of the claims of different programmes and projects for time and attention.<sup>46</sup>

The concept entails the freedom of a university to select its own staff and to determine its own standards, and the freedom of both staff and students to free expression in their teaching, studying, publishing and research. According to Nicol, academic freedom means the freedom of the university to select its teachers and students, to set the contents and standards of its curriculum and research and to provide a favourable atmosphere where professors and students are free to be involved in creative processes leading to discovery of new truths and the confirmation of old ones.<sup>47</sup>

Tight submits that ‘academic freedom refers to the freedom of individual academics to study, teach, research and publish without being subject to or causing undue interference...’<sup>48</sup> It has also been defined as ‘the freedom of members of the academic community, individually and/or collectively, in the pursuit, development, and

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<sup>45</sup> This definition was developed during the fifties by South African academic in relation to apartheid, and made famous by its reception into American law by the Supreme Court in *Sweezy v New Hampshire* 354 US 234 (1957) 263, Frankfurter J; See also *Keyishian v Board of Regents* 385 US 589 (1967). See Alston & Malherbe, *op. cit.*, at 104; see also, N Smith, ‘Constitutional academic freedom’ *South African Law Journal*, (1995)(112)(4) 680.

<sup>46</sup> S Goodlad, ‘Four forms of heresy in higher education: Aspects of academic freedom in education for the professions’ in Tight (ed.) 49.

<sup>47</sup> D. Nicol, ‘Academic Freedom and Social Responsibility’ in Stephen D. Kertesz (ed.), *The Task of Universities in a Changing World*, Notre Dame University Press, Notre Dame, 1972, 406.

<sup>48</sup> M. Tight, ‘So What is Academic Freedom?’ in Malcolm Tight (ed.), *Academic Freedom and Responsibility*, Society for Research into Higher Education & Open University Press, Milton Keynes, 1988, p. 132.

transmission of knowledge.<sup>49</sup> In the pursuit of knowledge, academics should not be hindered from following the approach, which they think is most fruitful with regard to scientific or scholarly discovery.

Academic freedom guarantees the right of academics to freely teach according to his/her conscience and convictions.<sup>50</sup> It is seen in this context as ‘the freedom for academics within the law, to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy...’<sup>51</sup>

The Council for the Development of Social Science Research in Africa (CODESRIA 1990) in its *Dar es Salaam Declaration on Academic Freedom* defines academic freedom as:

The freedom of members of the academic community, individually or collectively, in the pursuit, development and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing.<sup>52</sup>

In this thesis, I consider the impact of external or political control on the university. I examine if the external control has any impact on the protection of institutional autonomy. In the same vein, I consider whether institutional autonomy has any link with the enjoyment of academic freedom in the discharge of the teaching and research activities of the academic staff.<sup>53</sup>

Academic freedom by its various definitions has two connotations.<sup>54</sup> One, it implies the freedom of the university to conduct its affairs without any external control and two, the

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<sup>49</sup> See Ajayi, et al *op. cit.*, p. 242.

<sup>50</sup> Ibid.

<sup>51</sup> See Russell, *op. cit.*, p. 18. See also, P. Horn, ‘Academic Freedom within the University’, The Eleventh E. G. Malherbe, Academic Freedom Lecture delivered at the University of Natal on 2 August 1978, p. 4.

<sup>52</sup> Arko-Cobbah, A ‘Intellectual freedom and academic freedom: Some challenges and opportunities for academic libraries in Africa’ 28 (2) 2011 *Mousaion* 78.

<sup>53</sup> Byrne ‘Librarian’: University libraries and intellectual freedoms. *Australian Academic Research Libraries* 1999(30)(2):107–118. <http://archive.ifla.org/faife/papers/others/byrne2.htm> (Accessed 10 February 2013). See also Cobbah 78.

<sup>54</sup> McConnell Academic freedom 305

enjoyment of rights by members of the university. I apply the latter definition in this thesis.

The purpose of academic freedom is to enable both academics and students to do their job effectively. The various definitions propounded by writers and scholars examined above confirm the complex nature of the concept ‘academic freedom.’

## 8.2 Institutional autonomy

I align with McConnell<sup>55</sup> who contends that institutional autonomy operates as a twin concept. To the writer, academic freedom is the right of the individual scholar to teach and research without interference and to the freedom of the academic institution from outside control.

I submit that the second leg of the definition of academic freedom describes institutional autonomy.<sup>56</sup> McConnell then contends that by implication, outside interference on the academic institution takes away the institution's exclusive authority to govern academic matters within its walls.<sup>57</sup>

Autonomy refers to the right of universities to govern themselves without external control. It therefore denotes self-governance or independence and academic freedom of universities to pursue their work within the limit of the law establishing them.<sup>58</sup>

To Okojie, institutional autonomy is the state where the university operates not as a parastatal of the Ministry of Education but as a statutory body, established by law to deliver university education in Nigeria. This the university does base on the committee system, with the vice-chancellor providing overall guidance and leadership for academic, administrative and financial matters.<sup>59</sup>

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<sup>55</sup> McConnell Academic freedom 305

<sup>56</sup> I submit that Institutional autonomy and university autonomy have the same meaning and are used interchangeably in this thesis.

<sup>57</sup> McConnell Academic Freedom 305

<sup>58</sup> Mukoro, Akpoyovwaire Samuel ‘The erosion of university freedom and autonomy: Nigerian Experience *Journal of Educational and Social Research* (3)2013 (6) 131.

<sup>59</sup> Okojie 9. See also section 3 of chapter three.

I consider the autonomy of the universities in the context of establishment of the two Federal Government agencies, the National Universities Commission the (NUC) and the Joint Admissions Matriculation Board the ‘(JAMB).’ The NUC regulates the operations of the universities and provides the minimum standard for their operations.<sup>60</sup> I consider the areas of appointment,<sup>61</sup> curriculum development,<sup>62</sup> accreditation of programmes and accreditation of existing universities. The NUC also draws criteria for the establishment of new universities.<sup>63</sup>

On the other hand, the JAMB now controls the processes of admissions to the universities, as well as to other tertiary institutions. The Board is saddled with the responsibility of conducting matriculation examinations for admissions into all universities, polytechnics and colleges of education in the country.<sup>64</sup> I then consider institutional autonomy in the context of the NUC, which controls the appointment, tenure and promotion of academic staff and the general administration of the university. I also consider institutional autonomy in the context of the JAMB, which conduct matriculation examinations for tertiary institutions.

### **8.3 Degree of autonomy**

Degree of autonomy is a fall-out of the debate on the concept of institutional autonomy and the practical application of the concept. Within the Nigerian educational system, in contrast to the agitation for absolute autonomy,<sup>65</sup> the issues of accountability and the need to enforce educational policies of the government are considered.

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<sup>60</sup> I discuss more on the NUC later in this section.

<sup>61</sup> See section 4 (1)(i) National Universities Commission Act (NUCA) (Cap N81), LFN, 2004.

<sup>62</sup> See section 4(1)(b)(i) NUCA.

<sup>63</sup> See section 4(1)(b)(ii) NUCA.

<sup>64</sup> See section 5(1) (a) of the JAMB Act.

<sup>65</sup> This is a concept having the effect of the government being the sole financier of the university education, but with no control in whatever form on how the university conduct its activities. It is equally not envisaged that the state should have an education policy to enforce or that there should be an account of funds released by the government.

Degree of autonomy is otherwise categorised as qualified autonomy, it becomes relevant on account of the universities' obligation to meet the needs of the society. The universities do this when they subject their curriculum and researches to external input. The university is expected to relate with external stakeholders like donor agencies and the private sector in this regard.<sup>66</sup> The need to draw a balance between absolute autonomy<sup>67</sup> and the desire to realise the objects of the university creates the truce, 'degree of autonomy'.<sup>68</sup>

I further explain degree of autonomy in the context of definition of university autonomy by Julius Okojie.<sup>69</sup> To the writer, university autonomy is the right of a university to choose its government (institutional autonomy), academic staff and programmes (academic autonomy) and to generate and expend its financial resources (financial autonomy) *et cetera* without the interference of government or any of its agencies, all within the limits of existing laws and guidelines.<sup>70</sup>

I consider the degree of autonomy on the basis of the various levels of external control on each autonomy. In the circumstances, a degree of autonomy for the universities is then more appropriate as against absolute autonomy.

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<sup>66</sup> Ekundayo & Adedokun consider the issues of 'limited' or 'total' autonomy in public schools and then doubt if universities can be totally autonomous. Ekundayo & Adedokun 'The unresolved issue of university autonomy and academic freedom in Nigerian Universities' (2009)(4)(1) *Humanity and Social Science Journal* 64.

<sup>67</sup> It has often been said that for universities in Nigeria to play a meaningful role and discharge its responsibilities effectively, the system must enjoy high degree of autonomy in addition to the academic freedom of its academic staff. Ekundayo & Adedokun 'The unresolved issue of university autonomy and academic freedom in Nigerian Universities' (2009)(4)(1) *Humanity and Social Science Journal* 62.

<sup>68</sup> The courts treat universities with some "degree of deference," in respect of academic decisions. See Goldberg & Sarabyn, 221. I submit that the courts' recognition of degree of deference or autonomy is desirable if the universities would fulfill their objects.

<sup>69</sup>Okojie 9.

<sup>70</sup>Okojie 9.



## 8.4 Substantive autonomy

To Berdahl *et al*,<sup>71</sup> the substantive autonomy entails ‘the power of the university or college in its corporate form to determine its own goals and programs.’ To the writers, core educational issues such as curriculum and academic programs, major decisions, concerning institutional goals and priorities come under substantive autonomy and are regarded as the ‘what of academe.’<sup>72</sup>

I discuss substantive autonomy in the realm of the classification of the various objects of the university in the area of main objects and support-objects. I identify the teaching, impartation of knowledge and research<sup>73</sup> for nation’s development as the main activities and substantive objects of the university. I consider substantive objects in respect of Section 1(2) of the University of Ibadan Act,<sup>74</sup> which provides that the general function of the University shall be to encourage the advancement of learning.<sup>75</sup>

I identify substantive objects and contend that the substantive autonomy is desirable for the universities to specifically protect and realise the substantive objects.

To Berdahl *et al*<sup>76</sup> the core educational issues such as curriculum and academic programs, major decisions, concerning institutional goals and priorities come under substantive objects of which substantive autonomy are desired for their protection and enforcement.<sup>77</sup>

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<sup>71</sup>R Berdahl, *et al* ‘The contexts of American higher education, in PG Altbach (ed) *American higher education in the twenty-first century: Social, political, and economic challenges* (1999)1, 5-8. See also, Neal Hutchens ‘Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities’ (2008-2009) 35 *Journal of College and University Law* 271, 280.

<sup>72</sup>Robert O Berdahl *et al*, 6.

<sup>73</sup> I regard the conduct of research as incidental object of a university, since the exercise promotes the generation of new knowledge. See also Section 4(m) of The Technical University Law, 2012. Research thus enhances the discharge of objects of teaching and impartation of knowledge. In the same vein, the objective of contribution to nation’s growth and development can as well be realized by the conduct of research. To the above extent, I regard the conduct of research not as an end in itself, but as a means to an end.

<sup>74</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

<sup>75</sup>Section 1 (3) (a) of the University of Lagos, Act, Cap U9, 2004.

<sup>76</sup>Robert O Berdahl *et al*, 6.

<sup>77</sup> I discuss more on substantive autonomy in section 3 of chapter 2.

## 8.5 Procedural autonomy

I discuss procedural autonomy in relation to objects of the university, which are consequential to the realisation of the substantive objects. I however regard other objects aside from the substantive objects as incidental or procedural objects.

To Berdahl *et al*, procedural autonomy is ‘the power of the university or college in its corporate form to determine the means by which its goals and programs will be pursued.’ This they regard as ‘the *how* of academe.’<sup>78</sup>

Section 1(2) of the University of Ibadan Act<sup>79</sup> mandates the university to carry out incidental or procedural objects:

- a. provide such facilities for the pursuit of learning and acquisition of liberal education as are appropriate for a university of the highest standing.
- b. make the facilities available on proper terms to such persons as are equipped to benefit from them.<sup>80</sup>

The provision of facilities and deployment of the facilities for the realisation of the teaching, research and impartation of knowledge constitute incidental objects. Berdahl *et al*<sup>81</sup> contend that to function efficiently, institutions need to retain considerable control over procedural autonomy.<sup>82</sup> I consider procedural autonomy as essential for the protection of procedural objects.

## 9 Limitations of the study

This study has some limitations that need to be expressed. First, Nigerian Legal System does not have adequate provisions defining academic freedom. In this regard, reliance is placed on some foreign authorities and writings, statutory provisions relevant to this

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<sup>78</sup>Robert O Berdahl *et al*, 6.

<sup>79</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

<sup>80</sup> See also Section 1(3)(b) of University of Lagos Act, Cap U9, Laws of the Federation, 2004.

<sup>81</sup>Robert O Berdahl *et al*, 6.

<sup>82</sup> See also section 3 of chapter three.

subject.<sup>83</sup> Another limitation worth mentioning is that limited literature is available on the subject of institutional autonomy in Nigeria. On account of this, reliance is also placed on some foreign materials.

References to the university in most cases are made to public universities as against the private universities. The private universities came lately into the Nigerian tertiary education system as late as 1999 and as such the country has negligible volume of cases bothering on enforcement of academic freedom in private universities in Nigeria. Notwithstanding this, however, the same principles of law apply to the public and the private universities in terms of standard and quality as well as regulation by the statutory bodies such as NUC and JAMB.

## **10                    Structure of the thesis**

This thesis is divided into five chapters. Following this chapter, which is the general introduction, is chapter two. It discusses the legal provisions relevant to the observation of institutional autonomy, enjoyment of academic freedom and the realisation of objects of the university.

Chapter 3 discusses the links between institutional autonomy and academic freedom in its positive and negative dimensions. The chapter also considers individual academic freedom as an amalgamation of rights such as freedom of association, freedom of expression, security of tenure, secured studentship and lastly unfettered inquiry.<sup>84</sup> It argues that by convention, institutional autonomy provides an environment conducive to the enjoyment of academic freedom. It also identifies those areas where the autonomous university hampers the enjoyment of academic freedom.<sup>85</sup>

Chapter 4 examines the disciplinary autonomy of universities as an aspect of institutional autonomy. It describes and examines provisions of law establishing a university as it

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<sup>83</sup> See section 5 of chapter three.

<sup>84</sup> See section 3 of chapter three.

confers disciplinary autonomy and the limiting effect of the judicial intervention in disciplinary procedure in the universities.

Chapter 5, which is the concluding chapter makes appropriate recommendations and suggestions.

## **11 Summary of the Chapter**

The objective of this chapter is to place the research work into perspective by providing an introduction to the study, stating the research problem and research questions, research aims and objectives, research methodology, meaning and definition of the major concepts as well as providing chapters' overviews. Having this as the background, the next chapter will build on it by discussing in a more detailed form, institutional autonomy and the objects of the universities in Nigeria.

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<sup>85</sup>See section 4, chapter three.

## **CHAPTER TWO**

### **INSTITUTIONAL AUTONOMY AND THE OBJECTS OF THE UNIVERSITIES IN NIGERIA**

#### **1 Introduction**

In this chapter, I examine the institutional autonomy of Nigerian universities. I link institutional autonomy with the capacity of universities to realise their basic objectives of teaching, research and development.

In doing so, I consider the various institutions involved with institutional autonomy and their respective roles. I of necessity examine the external management of universities in Nigeria, because by law powers of administration, appointment and admissions now vest in certain external bodies. I consequently also examine the internal management of a university.

I focus on the external control by two institutions: the Nigerian University Commission (the NUC) and the Joint Admissions Matriculation Board (the JAMB).<sup>86</sup> The NUC has since its establishment accrued enormous power over Nigerian universities. I consider in particular its powers to decide which institutions qualify as universities, what programmes are approved and how they are run and its power to ensure that there is adequate human and material resources to run academic programmes. I consider if the NUC has sufficient power to support the universities in realising their objectives. I then examine whether the powers wielded by the NUC compromises the university autonomy.

The JAMB regulates admission to Nigerian universities. I investigate its powers in this respect and ask the question whether the exercise of those powers compromises institutional autonomy.

I also examine the internal management of a university, particularly the various organs saddled with specific responsibilities in the teaching and research project. In this respect, I focus on the composition of a university council and the required qualifications for appointment as a council member. I also consider the senate of a university and its powers to ensure academic autonomy for the university.

I further examine the funding of universities by government, the private sector and through the internally generated revenue and link them with institutional autonomy.

I finally discuss the enabling laws of universities to determine whether they reflect the realities of power distribution. I do so also to determine whether a review of relevant legal provisions is required.

## **2 Objects of a university**

In this section, I explain objects of a university within the context of the Act establishing the university. I discuss the teaching and impartation of knowledge along the line of character and learning. I consider the teaching and impartation of knowledge under the substantive objects while the provision of environment conducive to learning I discuss under the incidental or procedural objects. I argue that the universities are expected to relate their research activities to the needs of the nation and that the universities may collaborate with local and international bodies in the realisation of their objects

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<sup>86</sup> The Nigerian University Commission Act, Cap N 81, Laws of the Federation of Nigeria, 2004 and the Joint Admission and Matriculation Board Act, Cap J1, Laws of the Federation of Nigeria, 2004.

Objects of a university are the authorised line of activities that a university is allowed by law to carry out. Objects are purposes, permitted activities and the essence of a university. They are the legal provision upon which institutional autonomy can be asserted. To Ayorinde Ogunruku, university objectives set out limitations to functionality that prevent them from amorphous undertakings and unnecessary dissipation of energy and resources.<sup>87</sup>

Ogunruku thus prescribes the confines within which a university has to operate. I as such identify the substantive and incidental objects as the scope, which a university has to cover. No university as such has the competence to engage in any other activity outside the substantive and incidental objects.

Of the various objects of the university, the teaching and impartation of knowledge is the main activity and a substantive object.

Section 1(2) of the University of Ibadan Act<sup>88</sup> provides that the general function of the University shall be to encourage the advancement of learning<sup>89</sup> throughout Nigeria.<sup>90</sup> On account of this, I regard students as prominent members of a university as they are groomed to take up positions of responsibilities in the labour market and in governance of the nation.

Further, on advancement of knowledge, Peters considers the various Acts establishing the universities in Nigeria and submits that a university has a mandate to build requisite human capital, people with the right skills, and capabilities of its citizens to manage available resources.<sup>91</sup> I consider this as essential, just as human capital is the driver of other factors of production. In the same vein, building of human capital through high

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<sup>87</sup> AO Ogunruku 'University administration in the 21<sup>st</sup> Century: A new direction (2012) 29. See Section 4(a) of The Technical University, Ibadan, Oyo State Law, 2012, Oyo State of Nigeria Gazette 21 of 2012; section 1(3) of the University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004.

<sup>88</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

<sup>89</sup>Section 1 (3) (a) of the University of Lagos, Act, Cap U9, 2004.

<sup>90</sup> From the provisions above, the law provides for purposes of the university and there is no separate provision for objects. The term 'functions' of a university is the same and can be used interchangeably with 'objects' of the university.

<sup>91</sup>Peters 14.

quality education for the successful implementation of sustainable development cannot be overemphasized.<sup>92</sup>

I consider the objective of the university, which is to bring development to the Nigerian Nation, and do conclude that this is only feasible where there is trained and skilled workforce.

I earlier identify the teaching and impartation of knowledge as the main and substantive object of every university. Apart from the substantive object, there are ancillary objects or other objects, which spell out how the substantive object may be realised.

In respect of ancillary or incidental objects, I identify objects such as the provision of learning facilities, conduct of research, making available research findings, establishing appropriate relationships with other national and international institutions *et cetera* as incidental or procedural objects.

The list of incidental objects is however not exhaustive. The Technical University Ibadan Law,<sup>93</sup> for example, provides in Section 4(q) for what I regard as extensive incidental objects. This is regarded in the section as the power ‘to undertake any other activities appropriate for a university; and such other things as are incidental or conducive to the attainment of the above objects.’

Further on the symbiotic relationship between the incidental objects and the substantive objects, Section 1(2) of the University of Ibadan Act<sup>94</sup> mandates the university to:

- c. provide such facilities for the pursuit of learning and acquisition of liberal education as are appropriate for a university of the highest standing.
- d. make the facilities available on proper terms to such persons as are equipped to benefit from them.<sup>95</sup>

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<sup>92</sup>Ajibade Peters Director-General Administrative Staff College of Nigeria (ASCON) in his paper ‘Building human capital for sustainable development: Role of the university’ delivered at the University of Ibadan 2013 Registry Discourse Thursday 26 September 2013 4 5.

<sup>93</sup>The Technical University, Ibadan, Oyo State Law, 2012, Oyo State of Nigeria Gazette 21 of 2012.

<sup>94</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.



I argue in the circumstance, that ancillary and incidental objects are the procedural steps that a university has to take to realise the substantive object. Subsequently, a case is made for the university to enjoy procedural autonomy,<sup>96</sup> in order to realise its objects.

Following from the above, I consider the maintenance of discipline as an incidental object. The requirement of character and morals for university graduates is essential. The Technical University Ibadan Law,<sup>97</sup> for example, provides in Section 4(a) for:

(t) he development and offer of academic and professional programmes leading to the award of diplomas, first degrees, postgraduate research and higher degrees with the aim of producing mature men and women with good moral standing and...<sup>98</sup>

The provisions above cover the teaching and the creation of new knowledge. The object also emphasises an education, which is a blend of learning and good character. In the early life of the university in Nigeria, much emphasis was placed on academic attainment without reference to character issues. Experience has however shown that students who violate the rules and regulations of their institutions hinder the teaching and impartation of knowledge and do bring such institution into state of disrepute. Such students by their conduct equally create an environment not conducive to learning.<sup>99</sup>

Teaching and nation's development are held to be paramount as they have links with discipline in the university.<sup>100</sup> The issue of a university having to maintain discipline on

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<sup>95</sup> See also Section 1(3)(b) of University of Lagos Act, Cap U9, Laws of the Federation, 2004.

<sup>96</sup> This I discuss in detail in Section 3 cap two.

<sup>97</sup> The Technical University, Ibadan, Oyo State Law, 2012, Oyo State of Nigeria Gazette 21 of 2012.

<sup>98</sup> The Education (National Minimum Standards and Establishment of Institutions) Act No 9 of 1993 in section 11(b)(c) mandate tertiary education on teaching goals on the: The development of the intellectual capacities of individuals to understand and appreciate their environment; the acquisition of both physical and intellectual skills to enable individuals to develop into useful members of the community.

<sup>99</sup> This is the basis on which I explain in section 7 chapter three, the abuses of individual academic freedom and on which I analyse disciplinary violations in section 4, chapter four.

<sup>100</sup> I consider institutional autonomy of the university to carry out functions of teaching; individual academic freedom of stakeholders in the teaching business and the disciplinary autonomy of the university to maintain discipline.

its campus comes under incidental objects: ‘such other things as are incidental or conducive to the attainment of the above objects.’<sup>101</sup>

I then contend that for the university to realise its teaching object, the maintenance of discipline as an incidental object of the university must be successfully handled.

On the good character requirement, discipline of members of the university<sup>102</sup> is essential. For me, the scope of discipline extends beyond objectionable conduct that happens within the classroom. It covers such conduct on or off campus, which brings the good name of the institution into disrepute. Maintenance of discipline having thus been identified as an incidental object, it is essential that a university exercise disciplinary autonomy<sup>103</sup> to attain and maintain an orderly institution of learning.

Though discipline of members of the university does not feature expressly as an object of a university, it comes as an incidental object. The recognition of the subject of discipline is seen in the meticulous provisions in the Act establishing each university. The University of Lagos, Act<sup>104</sup> for instance provides in Section 17 for the removal of the Pro-Chancellor, Chairman of Court of Governors and certain members of Council or Court of Governors. Section 18 deals with the removal of academic and administrative officers and staff. Section 19 deals with the removal of examiners and section 20 with the discipline of students.

Afe Babalola considers the provisions of law and argues that no officer of the University is above discipline, in-house.<sup>105</sup> To my mind, for purposes of realising the objects of the university, disciplinary autonomy is essential. With the references to provisions on

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<sup>101</sup> See The Technical University Ibadan, Law’s provision in Section 4 (q).

<sup>102</sup> Members of the University include the Pro-Chancellor and the Council, Vice-Chancellor and other management staff, staff and students.

<sup>103</sup> See section 3 of chapter two and section 4 of chapter 4.

<sup>104</sup> University of Lagos Act, Cap U9 Laws of the Federation of Nigeria, 2004.

<sup>105</sup> Afe Babalola ‘University administration in Nigeria: The role of pro-chancellor and the Governing Council’ Paper presented to the Committee of Pro-Chancellors from Federal, State and private Universities in Nigeria 35. Going by the provisions of section 26 of the Act, the Visitor is excluded from the university disciplinary action.

discipline of members of the university, I lay foundation for discussion of disciplinary procedure in chapter four. However, I discuss in chapter three, the various acts of misconduct of members of the university.

Further, on incidental objects of a university, I contend that the provision of an environment, which is conducive to learning, is essential. An ancillary function of the University of Ibadan is the provision of facilities for the pursuit of learning and acquisition of liberal education. The provision of a suitable environment enhances acquisition of education. It is however an autonomous university that can set aside financial resources to provide an environment conducive to learning.<sup>106</sup> Such an environment incidentally is helpful for the teaching and impartation of knowledge by members of the university.

I consider the conduct of research as a procedural step towards the expected nation's development. The object of the Technical University<sup>107</sup> in section 4(f) provides:

To research into indigenous technologies so as to develop, modernise and relate them to the social, culture, technological and economic needs of the people of the state in particular, Nigeria and the world in general

The provision as such mandates the university to discover through research how well to bring positive development to the nation and to the world.

The objects of Usmanu Dan Fodio University, Sokoto Act<sup>108</sup> in section 1(3)(c) and (d) provide for the conduct of research in all fields of learning,<sup>109</sup> and mandates the university to relate its activities to the social, cultural and economic needs of the people of Nigeria. I contend that on the strength of the expectations from the universities,

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<sup>106</sup> In chapter three, I contend that institutional autonomy links with the enjoyment of individual academic freedom in the positive and negative dimensions.

<sup>107</sup> The Technical University, Ibadan, Oyo State Law, 2012, Oyo State of Nigeria Gazette 21 of 2012.

<sup>108</sup> Usmanu Dan Fodio University, Sokoto Act Cap U14, Laws of the Federation 2004; see also section 1(3)(c) and (d) of the University of Port Harcourt Act, cap U13, Section 1(3)(c) and (d) of the University of Maiduguri Act, cap U10.

<sup>109</sup> The University of Lagos provides in Section 1 (3) (c) on promotion of research.

challenges facing the nation in the areas of power generation and distribution, refining the nation's crude oil, youth unemployment and of recent terrorism should be addressed by carefully drawn curricula.<sup>110</sup>

The University of Lagos provides in Section 1 (3) (c) on promotion of research. It seeks to encourage, promote and conduct research in all fields of learning and human endeavour. I consider the promotion of research as a procedural object of a university. This is because it is the process through which an accomplished teaching and development may be attained. Research paves way for the creation of new knowledge that can be imparted to students.

William Saint *et al* further submit that research facilitates the generation of sustainable development and improved living standards.<sup>111</sup> Research is an essential activity of the university as it makes it possible to discover the needs of the nation and to invent ways of meeting them.<sup>112</sup>

From the objects of The Technical University and the Usmanu Dan Fodio University, it appears that the university is not expected to exist as an ivory tower, which carries on operation for its sole purposes. There is a symbiotic relationship between the university and the Nigerian nation. Expectedly, the university should first establish what the economic needs of the nation are; and should proceed to identify and deploy the appropriate technology to tackle the challenges. The university is thus expected to contribute extensively to the nation's development.

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<sup>110</sup>On account mandate of universities to finding solutions to national and international challenges, Obasanjo charges universities in the West African Universities to develop curriculum and research methodologies that will engender peace and human security in Africa and the world. See Kanayo Umeh 'Obasanjo charges varsities on solutions to terrorism' The Guardian 24 November 2015, 5.

<sup>111</sup>World Bank.(2002a). World Development Indicators, Washington, D.C.: The World Bank. See also William Saint *et al* 2.

<sup>112</sup> Obasanjo observes that peace in Africa and in the world is increasingly compromised through violent extremism. On account of the mandate of universities towards finding solutions to national and international challenges, he charges universities in the West African Universities to develop curriculum and research methodologies that will engender peace and human security in Africa and the world. See Kanayo Umeh 'Obasanjo charges varsities on solutions to terrorism' The Guardian 24 November 2015, 5.

In carrying out the objects of the Technical University, the University is not expected to limit its focus to Nigeria, but to the whole world. It provides in Section 4(f):

to research into indigenous technologies so as to develop, modernize and relate them to the social, cultural, technological and economic needs of the people of Oyo State in particular and of Nigeria and the world in general;

In the bid to make national and global impact, the university is expected to establish appropriate relationships with other national and international institutions involved in training, research and development of technologies.<sup>113</sup> In line with the global focus, Frank Nweke submits that Nigeria's education sector is expected to prepare the country to compete in the global economy.<sup>114</sup> The implication seems to be that, since the world is now a global village, any meaningful venture should aim at having the global positive impact. A Nigerian University graduate should thus be groomed to excel in an international calling.

To my mind, teaching and building of human capital cannot be realised where a university is not autonomous. My idea of autonomy here is substantial as against absolute autonomy. Autonomy enables the university to appoint its own staff, select its students and to appropriate financial resources without external control. Autonomy is then a condition precedent to realisation of the objects of the university.

In the teaching of students in their respective disciplines, the universities provide society with better-equipped graduates-what Uri Abt calls 'truth-seekers.'<sup>115</sup> To him, the universities produce the truth-seekers who in turn produce the next generation of truth-seekers. I submit that the better the quality of graduates that are produced, the better is the society that absorbs them.

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<sup>113</sup> Section 4(d) of the Technical University Act

<sup>114</sup> Frank Nweke (Jnr), is the Director General, Nigerian Economic Summit Group (NESG), see 'Oyewole identifies five challenges facing tertiary education' *The Guardian* 27 March 2014 44.

<sup>115</sup> See Uri Abt 'Constitutional academic freedom and anti-affirmative action laws' *Journal of College and University Law* (2010 - 2011) 37 609 615.

The National Policy on Education charges Nigerian universities thus:<sup>116</sup>

To contribute to national development, manpower training, development of intellect and inculcation of proper value orientation for the survival of the individual and society...forging and cementing national unity; and to promote national and international understanding and interaction.

I consider the national education directive as an alternative version of objects of a university.

In this section, I point out objects of a university are classified as substantive and incidental objects and that outside the two, no university has the competence to operate. I argue that in the realisation of the objects, maintenance of discipline as an incidental object of the university must be successfully handled. I argue that the university is obliged to discover the needs and challenges of the country and should by its research and curriculum find solutions to them. I dwell as well on the essence of research, particularly as it improves teaching qualities. I concede that in meeting the desired development of the Nigerian Nation, the university are free to collaborate with other stakeholders.

I point out through the objects the need to provide an environment conducive to learning, to bring development to the Nigerian Nation. In the next section, I discuss the concept of institutional autonomy as it relates to the realisation of objects of the university.

### **3 The concept of institutional autonomy**

In section 2, I consider objects of the university as a foundation for the observance of institutional autonomy. On the strength of this, I here describe institutional autonomy as the power to carry out academic activities within an environment conducive for such. I

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<sup>116</sup>FRN, 2004, 36: See also AK Okorosaye-Orubite *et al* 'University autonomy, academic freedom and Academic Staff Union of Universities (ASUU) struggles in Nigeria: A Historical Perspective' *Asian Social Science*; Vol. 8, No. 12; 2012 266. To Ekundayo & Adedokun, nations invest in university education to produce their own crops of academic personnel and highly skilled personnel for other sectors of the economy. HT Ekundayo & MO Adedokun 'The unresolved issue of university autonomy and academic freedom in Nigerian Universities' *Humanity and Social Science Journal* (2009) (4) (1) 61.

contend that in the running of a university, absolute autonomy is not feasible, but that an appreciable degree of autonomy is essential. I consider institutional autonomy exercisable under the substantive objects and on the procedural objects. I look at the features of an autonomous university such as the distinct entity status, power to sue and to be sued as well as perpetual succession. I close the section as I contend that the essence of autonomy is contingent on achieving objects of a university. I discuss the section under three subsections such as institutional autonomy, substantive and procedural autonomy and essence of autonomy in a university system.

### **3.1 Institutional autonomy**

In this sub-section, I consider the requisite features of a university that enjoys autonomy. I argue that features such as corporate status, perpetual succession, power to sue and to be sued are meant to facilitate the realisation of objects of the university. I consider the futility of discussing absolute autonomy as against degree of autonomy on the strength of the recognition of diverse autonomy such as institutional autonomy, academic autonomy and financial autonomy. I finally examine the provisions of the University Autonomy Act 2007 as it restores the appointment powers of the Council and as it prescribes qualification for membership of the Council.

Julius Okojie<sup>117</sup> defines university autonomy as the right of a university to choose its government (institutional autonomy), academic staff and programmes (academic autonomy) and to generate and expend its financial resources (financial autonomy) *et cetera* without the interference of government or any of its agencies, all within the limits of existing laws and guidelines.<sup>118</sup>

I find the definition<sup>119</sup> to be very helpful because of Okojie's recognition of diverse autonomy and his appreciation of degree of autonomy. A discussion of institutional autonomy without exploration of the diverse autonomy and degree of observance of the

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<sup>117</sup>Okojie 9.

<sup>118</sup>Okojie 9.

autonomy will not make any mark. I discuss the varied degrees of autonomy in Chapter One.<sup>120</sup>

Institutional autonomy to Okojie is the state where the university operates not as a parastatal of the Ministry of Education but as a statutory body, established by law to deliver university education in Nigeria. This the university does base on the committee system, with the vice-chancellor providing overall guidance and leadership for academic, administrative and financial matters.<sup>121</sup>

Autonomy is a state where there is no dictation from outside the university as to what its standard should be. It is a system of internal regulation in the area of appointment of key officers, determination of conditions of service of staff, control of students' admissions, determination of academic curricula, control of finances and finally to operate as separate legal entities.<sup>122</sup>

With autonomy, a university is free to govern its affairs by rules and regulations made by it without taking undue dictation from outside. As such, it formulates policies, which have no input of the government, it selects its pro-chancellor, vice-chancellor, and appoints the council members, it employs its staff and determines their salaries and emoluments *et cetera*.<sup>123</sup>

Section 1(1) (2) of the Acts establishing most of the federal universities provide that each university 'shall be a body corporate' by the name of the particular university. Afe Babalola observes that the University of Ilorin and University of Lagos Acts have provisions that are more comprehensive on their establishment. The legal provisions

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<sup>119</sup> Okojie 9.

<sup>120</sup> See the absolute and qualified autonomy in section 6 of chapter one.

<sup>121</sup> Okojie 9.

<sup>122</sup> University of Ibadan in its Press Release (15 May 1981 No 46); see also Ekundayo & Adedokun 62.

<sup>123</sup> Afe Babalola 53 54.



establish each university as ‘a body corporate’ with ‘perpetual succession’ and ‘a common seal.’<sup>124</sup>

The internal administration of universities in Nigeria is linked to the university’s right to operate as a separate legal entity. The provisions of the Act establishing a university, in line with its objects establish the distinct corporate status by which the university can be made accountable for its acts and omissions. It also makes the university liable for wrongs done in course of its teaching and research activities. The corporate status of the university protects officers of the university from being made liable for the wrongs of the institution.<sup>125</sup> This protection enhances the enjoyment of individual academic freedom of the professor, as he is much more comfortable to perform his teaching and research works.

The corporate status, on the other hand gives the university the right to assert copyright and intellectual property rights on its research publications and inventions.

I regard ‘common seal’ as the symbol of authority of the corporate university. The application of the common seal to a legal document is the expression of affirmation of the terms contained therein.

Also, the state of ‘perpetual succession’ is essential for the university to realise its teaching and research goals. The life span of the university should not be tied to the tenure of the council, management or of any other officer or that of a staff. Where a university merges with another, or it transforms to another body, there must be continuity in the functions of the university. An emerging entity shall continue on the activities of the former body, it shall pick the assets and liabilities of the former university. This position favours students whose programmes must be protected in the transition and whose transcripts and certificates must be issued by the new institution.

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<sup>124</sup>Afe Babalola ‘University administration in Nigeria: The role of pro-chancellor and the Governing Council Paper presented to the Committee of Pro-Chancellors from Federal, State and private Universities in Nigeria.

To apportion liability for the act and omission, a university must be able to sue and to be sued. The provisions of the University of Ilorin Act,<sup>126</sup> the University of Port Harcourt Act,<sup>127</sup> and the Usmanu Dan Fodio University, Sokoto Act,<sup>128</sup> in their Section 1(2) provide that each of the university ‘may sue or be sued in its corporate name.’

The University of Ibadan Act<sup>129</sup> and the University of Lagos Act<sup>130</sup> in their separate Acts do not specify how a university may sue or be sued. Babalola argues that the necessary implication of the universities being body corporate is that each university can sue or be sued in its name.<sup>131</sup>

The right to sue or be sued came up for consideration in the case of *Carlen (Nig) Ltd v University of Jos*.<sup>132</sup> Under the University of Jos Act, a right to sue or to be sued *eo nomine*, was not expressly conferred on the Council of the University or on its Vice Chancellor. This is notwithstanding the nature or functions, the powers, duties and responsibilities conferred on the university by the University of Jos Act.

The court held that the Council of the University and the Vice Chancellor are deemed to have been given the power to sue and to be sued. The court per Ogundare JSC held thus:<sup>133</sup>

I hold the view that upon the reading of the University of Jos Act as a whole, both the Council of the University and the Vice Chancellor, are by implication, given juridical personality that enables each of them to sue and be liable to be sued *eo nomine*.

For me, the status of ‘a body corporate’ with ‘perpetual succession’ and ‘a common seal,’ a body ‘that can sue’ or ‘be sued’ in its name is essential for the performance of the

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<sup>125</sup> I argue that an officer may not be liable individually or collective on the wrongs of the university if he acted diligently and by the standards of his professional callings.

<sup>126</sup> University of Ilorin Act, Cap U7, Laws of the Federation, 2004.

<sup>127</sup> University of Port Harcourt Act, Cap U13, Laws of the Federation, 2004.

<sup>128</sup> Usmanu Dan Fodio University, Sokoto Act, Cap U14, Laws of the Federation, 2004.

<sup>129</sup> University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

<sup>130</sup> University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004.

<sup>131</sup> Afe Babalola 6.

<sup>132</sup> *Carlen (Nig) Ltd v University of Jos* (Carlen) (1994) INWLR (Pt.323) 631,655-656. See also Afe Babalola 6.

functions and exercise of the powers conferred on the university. The exercise of the functions and powers of the university may violate the rights of third parties who reserve the right to seek legal redress.

There should not be a university with a wide range of institutional autonomy without responsibility for its acts and omissions in its corporate name. On the contrary, a university, which acts with overwhelming external control on its activities, should be made liable individually and collectively with applicable regulatory authorities. In the later situation, where an academic staff of Nigerian University seeks a court action on his non-promotion to the readership cadre, he should be able to join the NUC with the university as co-defendant.<sup>134</sup>

University autonomy amongst other considerations entails that the university has control over appointment of its vice-chancellor and other members of staff.<sup>135</sup> As I argue under the composition of council, the responsibility of protecting the right to appoint rests on the council. The council also has the responsibility to protect the authority of the Senate to regulate academic activities in the university.<sup>136</sup>

Oshio considers the provisions of The Universities (Miscellaneous Provisions) (Amendment) Act 2003 (otherwise called the Universities Autonomy Act No 1, 2007) especially Section 2 AA and 2AAA and submits that they are to insulate the universities from external influences or control.<sup>137</sup> Oshio however observes further:<sup>138</sup>

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<sup>133</sup>Carlen 656 659, See also Afe Babalola 6.

<sup>134</sup>The NUC's condition of service prescribes that without possession of Ph.d degree, no academic staff shall rise to the readership rank.

<sup>135</sup>Ekundayo & Adedokun 61.

<sup>136</sup> See section 4, chapter two.

<sup>137</sup>'2AA The powers of the Council shall be exercised, as in the Law and Statutes of each University and to this extent establishment circulars that are inconsistent with the Laws and Statutes of the University shall not apply to the Universities.' See also '2AAA -The Governing Council of a University shall be free in the discharge of its functions and exercise of its responsibilities for the good management, growth and development of the university.'

<sup>138</sup>Professor P Ehi Oshio 'Autonomy and management of federal universities under the Universities Autonomy Act' [www.nigerianlawguru.com](http://www.nigerianlawguru.com) accessed 4 April 2012.

Government retains the ultimate power of control over the Universities through dissolution of Council, Visitation, the final appeal to the Visitor by a removed Vice-Chancellor and the power of legislation. Thus, it may be argued that autonomy under this Act is not absolute but qualified.

Rather than an absolute concept, institutional autonomy operates in a flexible manner with public colleges and universities subject to varying degrees of control. McClendon states:<sup>139</sup>

(b)ecause neither absolute autonomy of the campus from the state nor complete accountability of the campus to the state is likely to be feasible, the vexing question confronting policymakers is where, precisely, the line should be drawn between campus and state.

The position taken by Oshio and McClendon align with the ‘degree of autonomy,’ which Julius Okojie advocates. To the writers ‘degree of autonomy’ as against ‘absolute autonomy’ is better addressed. Ade Ajayi explains scepticism on absolute autonomy for a group of scholars and students being financed by the public, but which claims a large measure of autonomy to regulate its affairs.<sup>140</sup> To the writer, absolute autonomy is a difficult concept to accept in the circumstances.

The universities are not free in the selection of their students and in making their appointments. Government’s influence cannot be over-emphasised, just as merit as a criterion is often sacrificed.<sup>141</sup>

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<sup>139</sup> Michael K McLendon ‘State governance reform of higher education: Patterns, trends, and theories of the public policy process’ in JC Smart (ed) *Handbook of theory and research* (2003) 57. Neal H Hutchens ‘Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities’ (2008-2009) 35 *Journal of College and University Law* 271, 279 280.

<sup>140</sup> See JF Ade Ajayi ‘Towards an African academic community’ in TM Yesufu (ed) *Creating the African University: Emerging issues of the 1970’s*. The Association of African Universities, Ibadan, Oxford University Press (1996)11.

<sup>141</sup> In terms of appointment as vice-chancellors, less credible candidates plead for government’s involvement, to set aside nominations that are made based exemplary performances. Closeness of state universities to the seat of government makes externalisation of domestic issues very easy. Government most times apply party loyalty and other parochial yardsticks, to pick its choice candidates. In addition, unrestrained involvement of chancellor and pro-chancellor in daily affair of a university robs such universities of autonomy.

Different views have been expressed, doubting the efficacy of the council in maintaining institutional autonomy. Going by the views expressed above, a pragmatic council will still submit to the external control of the university. The various writers above have argued that external control by government is justified because of Government's desired regulation of academic curricula, and the necessity to protect public interest. Government's proprietary interest and the desire to enforce its educational objectives have been cited.

The desired features of an autonomous university include the power to sue and to be sued. This puts the university in a position to take benefits and liabilities for its acts. I conclude on the adoption of degree of autonomy as against absolute autonomy as a basis of discussion in this thesis.

In conclusion, I consider as helpful the diverse autonomy such as on administration and appointment, academic matters and finally that of finance. I point out that on account of peculiar differences of concepts, a blank degree of autonomy on the three is not feasible and hence an absolute autonomy is a myth in the circumstances. I point out that the corporate status of the university is beneficial to the university that is able to take benefit of its inventions. The status is equally a plus for the professor who will not be found liable where the university should be made to give an account of its activities. I finally consider the University Autonomy Act as it boosts the glory of the university in terms of conferment of autonomy. I now consider the substantive and procedural autonomy as they protect in ways particular, the different categories of objects.

### **3.2 Substantive and procedural autonomy**

I consider the various objects of universities in Nigeria, and I argue that there is need for institutional autonomy for their protection. On account of the diverse objects, I now present substantive autonomy as it protects academic programmes and university curriculum. I consider the procedural autonomy as it protects incidental objects relevant to the attainment of substantive objects.

To Berdahl *et al*,<sup>142</sup> the concept of institutional autonomy aims at protecting functions exercisable as domestic concerns of a university. The writers classify institutional autonomy as substantive autonomy and procedural autonomy. The substantive autonomy entails ‘the power of the university or college in its corporate form to determine its own goals and programs.’ To the writers, core educational issues such as curriculum and academic programs, major decisions, concerning institutional goals and priorities come under substantive autonomy and are regarded as the ‘what of academe.’<sup>143</sup>

The distinction of substantive autonomy and procedural autonomy, for me, is a precise and more pragmatic approach towards the protection of objects of a university. The distinction answers the likely question of what exactly is to be protected.

I consider the evolution of the university on account of the need for it. Among such needs are the teaching, research and development of human resource. References to teaching and research, and its contributions to national development have been provided in the Education (National Minimum Standards and Establishment of Institutions) Act.<sup>144</sup> Section 11(e) of the Act charges the universities on; the making of optimum contributions to national development through the training of higher-level manpower. The human resource is expected to be partners in the development of the nation in general. I confirm teaching as substantive academic activity of the university. The protection of this object enhances individual academic freedom of the student to learn.<sup>145</sup>

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<sup>142</sup>R Berdahl, *et al* ‘The contexts of American higher education, in PG Altbach (ed) *American higher education in the twenty-first century: Social, political, and economic challenges* (1999)1, 5-8. See also, Neal Hutchens ‘Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities’ (2008-2009) 35 *Journal of College and University Law* 271, 280.

<sup>143</sup>Robert O Berdahl *et al*, 6.

<sup>144</sup>Education (National Minimum Standards and Establishment of Institutions) Act No 9 of 1993. An Act to deal amongst other things with the specification of various authorities empowered to prescribe minimum standards of education in Nigeria; and to impose penalties for any contravention of its provisions. [1985 No 16] [6 August 1985]

<sup>145</sup> I discuss secured studentship in section 3 of chapter three.

Further, on the developmental role of the university, the Technical University, Ibadan Law<sup>146</sup> is emphatic on the fact that the university will not be an island, which exists for its own purposes alone. Section 4 provides for objects thus:

- (a) to establish appropriate relationships with other national and international institutions involved in training, research and development of technologies;
- (b) to identify the technological problems and needs of the society and to assist in finding solutions to them within the context of overall national development;
- (c) to research into indigenous technologies so as to develop, modernize and relate them to the social, cultural, technological and economic needs of the people of Oyo State in particular and of Nigeria and the world in general;

I contend that on the strength of the expectations from the universities, challenges facing the nation in the areas of power generation and distribution, refining the huge natural crude oil, youth unemployment and of recent terrorism should be addressed by carefully drawn curricula.<sup>147</sup>

On the steps to effect development in the nation, going by the provisions of law as above, I presume that substantive autonomy prescribes that a balance has to be struck between institutional autonomy and public interest. The university in the circumstance shall not be allowed to adduce freedom from external control to shy away from its mandate on nation's development. In that respect, the private sector, corporate bodies and employers of labour will have to collaborate with the university. The partnership shall cover funding for the university to make inventions beneficial to the private sector in particular and to the nation in general.

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<sup>146</sup> The Technical University, Ibadan, Oyo State Law, 2012, Oyo State of Nigeria Gazette 21 of 2012.

<sup>147</sup> On account mandate of universities to finding solutions to national and international challenges, Obasanjo charges universities in the West African Universities to develop curriculum and research methodologies that will engender peace and human security in Africa and the world. See Kanayo Umeh 'Obasanjo charges varsities on solutions to terrorism' The Guardian 24 November 2015, 5.

The Technical University, Ibadan provides for collaborations in its object clause as follows:<sup>148</sup> ‘(t)o establish appropriate relationships with other national and international institutions involved in training, research and development of technologies.’

Paul Brennan shares experience of Canada on positive collaboration of the university and external collaborators and which relationship I summarise as ‘the town and gown.’<sup>149</sup> He explains that the universities have entered into partnership with corporate and international bodies in areas of mutual benefits. The university curriculum is drawn along the line of corporate needs of the external bodies. Many students in Canada after graduation build on the partnership to create their own jobs. They set up small businesses and services, which meet the needs of large corporations and international bodies.

I consider the alarming rate of graduate un-employment in Nigeria. The Canadian exploits, which generate employment for most university graduates, outweighs whatever argument on loss of autonomy because of collaborations. Teaching and learning which empower a university graduate to create his own job is an object, which should not be overlooked. I observe that Nigerian universities are yet to design their curricula and to direct their researches towards the ideal education that can make their products self-reliant.<sup>150</sup> This explains the youth unemployment in the country.<sup>151</sup>

Okojie submits that total autonomy, total independence and separation from society, is simply impossible.<sup>152</sup> To Okojie, international cooperation in the exercise of academic freedom and university autonomy should not lead to intellectual hegemony over others. It should rather strengthen the principles of pluralism, tolerance and academic solidarity between institutions of higher learning and between individual scholars and students.

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<sup>148</sup>The Technical University, Ibadan, Law, Oyo State of Nigeria.

<sup>149</sup>Paul Brennan, Vice President, International Partnerships of the Association of Community Colleges (ACCC) in a chat with Oghogho Obayuwana ‘Unemployment crisis: Nigeria can learn from Canadian solutions’ The Guardian Monday 31 March 2014 71.

<sup>150</sup> Ujunwa Atueyi ‘Gregory varsity chancellor restates importance of technical education’ The Guardian 26 November 2015, 51. The default of the universities in meeting this challenge is on account of loss of autonomy to the NUC, which approves academic programmes.

<sup>151</sup> Collins Olayinka ‘NASU decries rising unemployment saga’ The Guardian 24 November 2015, 37.

<sup>152</sup> Okojie 6.



Okojie however canvasses for the establishment of a broadly recognised national charter of mutual rights and obligations governing the relationship between university and society, including adequate monitoring mechanisms for its application.<sup>153</sup> Okojie points out the multiple benefits of external collaboration, which cut across the institution, staff and students. He however cautions on abuses in collaboration as he calls for regulation and monitoring of the exercise.

Berdahl *et al* make concession on external control on the university on core educational curriculum and academic programs.<sup>154</sup> However, they insist that institutional actors should play active role in reaching decisions relating to substantive autonomy. There is the need to protect the core academic activity of the university to facilitate national development.

I align with Okojie on the need for collaborations as a means of strengthening the principles of pluralism, tolerance and academic solidarity.<sup>155</sup> Autonomy on curriculum has to accommodate external inputs to meet the nation's economic and developmental needs.

In contrast to substantive autonomy, procedural autonomy is considered in the context of ancillary and incidental objects provided for in the laws establishing universities in Nigeria. The ancillary and incidental objects, I regard as procedural objects with which a university seeks to realise its substantive object. To Berdahl *et al*, procedural autonomy is 'the power of the university or college in its corporate form to determine the means by which its goals and programs will be pursued.' This they regard as 'the *how* of

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<sup>153</sup> Okojie 16.

<sup>154</sup> Berdahl *et al* 'The contexts of American higher education, in PG Altbach (eds) (1999) *American higher education in the twenty-first century: Social, political, and economic challenges* 1, 5 – 8.

See also Neal H Hutchens 'Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities' 35 *Journal of College and University Law* 271 2008 - 2009 280.

<sup>155</sup> Okojie 16. See also Yetunde Ebosele 'Public Private Partnership as panacea to unemployment' *The Guardian* 26 November 2015, 34.

academe.’<sup>156</sup> Procedural autonomy enables institutional actors to bring to reality the substantive goals of a university.

The Technical University, Ibadan Law<sup>157</sup> provides the following as procedural objects:

To undertake any other activities and programmes appropriate for a technical University of the highest standard that is conceived as a purposeful agency of development;

- a. to provide facilities for learning, and to give instruction and training in such branches of knowledge as the University may desire to foster and in doing so to enable students to obtain the advantage of a liberal education;<sup>158</sup>
- b. to undertake any other activities and programmes appropriate for a technical University of the highest standard that is conceived as a purposeful agency of development;<sup>159</sup>
- c. to promote by research and other means the advancement of knowledge and its practical application to social, political culture, economic, scientific and technological problems;<sup>160</sup>
- d. to establish appropriate relationships with other national and international institutions involved in training and research.<sup>161</sup>

I regard procedural autonomy as incidental powers, which a university should exercise exclusively. The items featuring as procedural objects should be protected from being violated via procedural autonomy. Berdahl *et al*<sup>162</sup> contend that to function efficiently, institutions need to retain considerable control over procedural autonomy.

I examine the need for the university in the area of teaching and research, towards the nation’s development. The universities are by their objects expected to tackle the challenges facing a nation.<sup>163</sup> I point out that the human resource produced by the university is vital agents in the development of the nation. Further, on development of the nation, I contend it is desirable for the university to collaborate with other stakeholders.

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<sup>156</sup>Robert O Berdahl *et al*, 6.

<sup>157</sup>Law of 2012, Oyo State of Nigeria.

<sup>158</sup> See Section 4(l).

<sup>159</sup> See Section 4(k).

<sup>160</sup> See Section 4(m)

<sup>161</sup> See Section 4(d).

<sup>162</sup>Robert O Berdahl *et al*, 6.

<sup>163</sup> The Technical University, Ibadan is by its object obliged to promote by research and other means the advancement of knowledge and its practical application to social, political culture, economic, scientific and technological problems. See Section 4(m) of The Technical University Law, 2012.

A distinction has been drawn between substantive autonomy and procedural autonomy. I point out that the substantive autonomy cannot be the exclusive preserve of the university,<sup>164</sup> as it must receive external inputs. This is done to meet set goals of teaching and development. On the other hand, external control on procedural autonomy is injurious to the realisation of substantive object of the university. I argue that the essence of the distinction between the substantive and procedural autonomy is to know the applicable degree of autonomy and ultimately for protection of exact object. This makes consideration of essence of institutional autonomy worthwhile.

### **3.3 Essence of institutional autonomy**

In this sub-section, I consider whether institutional autonomy paves the way for goals realisation in the area of advancement and transmission of knowledge, search for truth and democratic practices. In the same vein, I investigate whether autonomy confers on the university, the desired competitiveness in a university.<sup>165</sup>

To achieve the objectives of having a university, autonomy for the university is a condition precedent. Ekundayo and Adedokun argue that the lack of autonomy and academic freedom in the nation's 'ivory towers' seems to be an impediment to the full realisation of the goals of the university.<sup>166</sup> The reference to the university as 'ivory tower,' I submit is capable of making the university to lose focus on its object of teaching and research to effect the nation's development. Having to place the university, as an island will not however bring desired results, especially when collaboration with outside stakeholders is essential.

With reference to prevailing argument of having to preserve university autonomy by having no external relationship with other bodies, I submit that external stakeholders

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<sup>164</sup> This position buttresses the argument in the last section that absolute autonomy may not be feasible, but degree of autonomy as applicable in a given object.

<sup>165</sup> Ojedele & Ilusanya (2006); Babalola, Jaiyeoba & Okediran (2007). See also Ajayi & Ekundayo 228.

<sup>166</sup> Haastrup T Ekundayo and MO Adedokun 'The unresolved issue of university autonomy and academic freedom in Nigerian Universities' Department of Educational Foundations and Management, Faculty of Education, University of Ado-Ekiti, Ado-Ekiti, Nigeria 61.

effecting the desired nation's development along with the university should be seen as agents of the university. They should not be seen as eroding institutional autonomy of the university.

I refer to Section 4 of the Technical University Ibadan Law, which mandates the university to collaborate with external bodies to effect object of the university thus:<sup>167</sup> '(t)o establish appropriate relationships with other national and international institutions involved in training, research and development of technologies.'

I submit therefore that when the university collaborates with other stakeholders, it is lawful. I contend that a university that acts by the provisions of its object clause, acts *bona fide* and *intra vires*. As I argue in chapter four, collaboration will not be caught under the *ultra vires* doctrine.<sup>168</sup>

Ajayi and Ayodele consider as essence of university autonomy, the attainment of advancement, transmission and application of knowledge.<sup>169</sup> I submit that the writers are simply asserting that institutional autonomy is essential for the realisation of objects of the university. In support of the submission of the writers, it has further been argued that institutions that enjoy full autonomy in conducting their admission processes rank higher than others do.<sup>170</sup> I do not contest the claim herein but I simply add that ranking notwithstanding, a university would have an output commensurate with its input.

University autonomy aids the search for truth and enhances democratic practices.<sup>171</sup> The university and its academic project aid and nurture democracy. Products of universities are equipped with rational judgment; they are informed and as such cast their votes as a

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<sup>167</sup> See Section 4(d). I submit that the federal universities have similar provisions in their laws.

<sup>168</sup> See Section 6.3 of Chapter Four.

<sup>169</sup> Ajayi and Ayodele (2002), see also I A Ajayi & Ekundayo T Haastrup 'Management of university education in Nigeria: Problems and possible solutions Revitalization of African Higher Education' 228.

<sup>170</sup> See A K Okorosaye-Orubite *et al* 270. Where a candidate passes the post UTME (university's organized examination) and makes the university's admission list; if he scores below JAMB's cut-off mark, he stands disqualified for admission. I will however argue in a contrast that, universities in their quest to meet the ranking criteria end up losing their value system and internal autonomy.

<sup>171</sup> Amy H Candido 'A right to talk dirty?: Academic freedom values and sexual harassment in the university classroom (1997) 4 University of Chicago Law School Roundtable 85-89.

reflection of their convictions.<sup>172</sup> Where no external limitation has been placed on the university because of what curriculum to run, no invasion has thus been placed on the university's liberty.<sup>173</sup> I submit then that a product of an unhindered university has the confidence to assert her right even outside the university.

Afe Babalola presents the advantages derivable from granting autonomy to the universities as follows:<sup>174</sup>

1. It is universal and traditional as universities all over the world now look for their own funds and exercise freedom in their spending;
2. Funds that otherwise would have been spent on the universities by government can better be used for the provision of other social amenities;
3. Autonomy will minimize comparability-induced conflicts as university will employ staff based on need and remunerate them based on their worth;
4. Rewards and salaries will be based on affordable resources; and
5. It is compatible with privatization, which is now the global economic policy.

Afe Babalola's idea of university autonomy is the university system, which is independent of government's funding. He argues that each university maintains its uniqueness on salaries and conditions of service.<sup>175</sup> I argue that a situation where academic staff are paid salaries commensurate with their input, brings the best out of each member of staff. This accords with my submission in chapter three that the enjoyment of individual academic freedom must be met with an obligation of diligence at work. I submit that University autonomy in the circumstances brings competitiveness to the university system.<sup>176</sup>

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<sup>172</sup> Amy H Candido 92, 93.

<sup>173</sup> Matthew W Finkin 'On "institutional" academic freedom' 61 *Texas Law Review* 1982-1983 849. I relate the view expressed here with the inability of the Nigerian Universities to address and proffer solutions to the nation's challenges and problems. The control by the NUC on the university curriculum is an obstacle. The universities operate under the regulation of the NUC (See section 4, chapter two), which has failed to draw relevant curriculum to face the identified challenges of the nation.

<sup>174</sup> Afe Babalola 54.

<sup>175</sup> Afe Babalola 53.

<sup>176</sup> See also Afe Babalola, 53.

Further, on competitiveness as a positive impact of autonomy status for a university, I contend that a university is thus able to determine the condition of service of its workforce; this will stem the tide of incessant strike actions by the Academic Staff of Union of Universities (ASUU) and other labour unions in the Nigerian universities. I reason that comparison of conditions of service, which causes agitation by union members, will no longer hold.<sup>177</sup>

I point out that institutional autonomy is a condition precedent to the realisation of the objects of a university. This I do in the area of advancement and transmission of knowledge, advancement of democratic practices and the eventual attainment of competitiveness in the university system.

I now consider the management of the university as it relates to its external and internal control and the realisation of its objects.

## **4 Management of university education in Nigeria**

In this section, I discuss the management structures of universities in Nigeria focusing on external and internal structures as the university realises its objects.

### **4.1 External management**

In this section, I consider the external management of the university through the National Universities Commission (NUC). The NUC is a body charged with the coordination of university management in the country. I also consider the Joint Admissions and Matriculations Board (JAMB). I submit that the JAMB and the NUC<sup>178</sup> maintain overlapping functions on admissions and university administration. I consider

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<sup>177</sup> See also Afe Babalola, 53-54.

<sup>178</sup> Power of the Senate to organise and control the teaching of students is equally threatened by competing role of NUC in giving approval on the establishment of faculties; the Council of Legal Education in giving accreditation to faculties of Law in Nigerian Universities and the competing role of JAMB in

the possibilities of the two bodies infringing on the academic autonomy of the university.<sup>179</sup>

I consider other bodies having control on the university, such as the Independent Corrupt Practices and Other Related Offences Commission's (ICPC);<sup>180</sup> the Legislature through appropriate committees on education; ranking and donor organisations; and the alumni associations.

#### **4.1.1 The visitor**

I consider the visitor as the head of government, and as an external influence and control on a university.<sup>181</sup> Public universities have government of the federation or government of a state in the federation as proprietor. The President or Head of the Government of Nigeria is the Visitor in case of federal universities. The Governor or Head of Government is the Visitor in the case of a State university. Each university has in the law establishing it, provisions for the office of a visitor.<sup>182</sup> Section 13(1) of the University of Ilorin Act<sup>183</sup> as such provides that the President of Nigeria shall be the Visitor of the University.

The visitor occupies dual capacities. He is the head of government that owns a public university. In that respect, he represents the government and wields an external influence and control on the university. I regard this office as that of the proprietor or head of government. His external control in this respect comes because of formulation and monitoring of the State's educational policies.

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regulating admission of university undergraduates. See JD Ojo 'Law and university administration in Nigeria' Malt House Press Ltd, (1990) 75 76.

<sup>179</sup> Julius Okojie 9.

<sup>180</sup> Independent Corrupt Practices and Other Related Offences Act, 2000.

<sup>181</sup> The Visitor is seen here, not merely as head of the executive, but rather, head of government. I argue that he has influence over other organs of government through his power of incumbency.

<sup>182</sup> The office of a visitor is thus a creation of statute.

<sup>183</sup> University of Ilorin Act, Law of the Federation, Cap U7, 2004.

The visitor under the law establishing most universities plays a decisive role in the appointment and conditions of service of key officers of the institutions. The names of three best candidates at a screening interview are made available to the visitor. The visitor uses his discretion to pick any of the three. By the 2007 University Autonomy Act, the Council makes appointment of vice-chancellor independent of the visitor.<sup>184</sup>

The Visitor as head of the Government interferes in university affairs via direct appointment of vice-chancellors and, in some cases, of military ‘sole administrators.’<sup>185</sup> The continuous exercise of appointment power of the visitor and head of government is a foundation for interference in the affairs of the university. This is because of loyalty of the appointee to the head of government.

By the provisions of the Universities Autonomy Act, 2003 and 2007, the visitor ceases to appoint vice-chancellors of universities. That function now vests on the governing council.

On the other hand, the head of government drops that status and take that of the visitor. In this respect, he is the most senior internal officer of the university. He acts in that position at the convocation ceremony and by his visitation to the university. At other occasions, he delegates his functions to the appropriate committees and officers of the university.

The dual offices have been given judicial recognition in the case of *Okaru v Ndili*.<sup>186</sup> The Head of Government or Head of State or President is the Visitor of a University; he is in

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<sup>184</sup>The Governing Council of Federal University of Technology, Akure (FUTA) exercised its powers under the University Autonomy Act, 2007 to appoint Adebisi Daramola. Also, the Council of the University of Maiduguri (Unimaid) appointed Prof Jordi as vice chancellor effective from 3 June 2014. However, most institutions are yet to amend the laws establishing them in line with provisions of the Universities Autonomy Act. As such, recourse is still being made to the visitor on appointment of the vice-chancellor. Information Nigeria posted on 30 May 2012.

<sup>185</sup>*Saint et al* 4.

<sup>186</sup>*Okaru v Ndili* (1989) 4 NWLR (Pt 118) 700. In *David Osuagwu v AG Anambra* (1983) 4 NWLR (Pt.285) 13: Uwaifo, JCA (as he then was) in his dissenting opinion, states that (a)Visitor is part of the university community but at the apex of it and in that capacity he acts completely outside the officialdom of government (when he is at the same time a governor of a State or the President of the Country). See also Afe Babalola 32 33.



one capacity dealing with matters of government or state and in another capacity dealing with the affairs of the university. In the latter capacity, he is a Visitor.

The officers of the university represent the visitor and their acts must be within the conception of the law establishing the university. Where their acts exceed the law, they are said to have acted *ultra vires* the law.<sup>187</sup> Such action will not be binding on the university. The Supreme Court also confirmed the power of the law court to review actions of the visitor.<sup>188</sup>

The visitor attends the convocation ceremonies where he addresses the academic communities on matters of the moment.<sup>189</sup> He also appoints visitation panels to visit such institutions on challenges facing the university. This he does once every five years though the space of time may be shorter at period of crises.

The Supreme Court of Nigeria in the case of *Olaofe v University of Ibadan*<sup>190</sup> examines the meaning of visitor and the statutory nature and scope of the office of visitor. The Court held as follows:<sup>191</sup>

A Visitor is a person appointed to visit, inspect, inquire into and correct irregularities of a corporation... Courts have power to determine whether a visitor has acted within the scope of his jurisdiction and will prohibit the exercise of visitorial powers...

From the above position, I see the visitor as an arbiter who uses the instrument of his office to put things right in the university. Every university has provisions on the disciplinary powers of the visitor. The Act<sup>192</sup> establishing University of Lagos provides in

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<sup>187</sup> I discuss *ultra vires* in section 6.3 chapter four.

<sup>188</sup> *Okaru v Ndili* (1989) 4 NWLR (Pt 118) 700. See also Afe Babalola 32-33.

<sup>189</sup> JGO Adegbite 'The education reform agenda: challenges for tertiary education administration in Nigeria' Being a paper presented at the Sixth Annual Seminar of the Conference of Registrars of College of Education in Nigeria. (South-West Zone) at the College of Education, Ikere-Ekiti, Ekiti State. 12-13 June 2007. See also I AAjayi and Ekundayo T Haastrup 225.

<sup>190</sup> *Olaofe v University of Ibadan* (2001) 10 NWLR (Pt720) 126, see also Afe Babalola 34.

<sup>191</sup> *As above*.

<sup>192</sup> University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004. See also section 15 of the University of Maiduguri Act, Cap U10 LFN, 2004.

Section 17 that Pro-Chancellor, Chairman of Court of Governors and a member of Council, and of the Court of Governors is removable on the approval by the Visitor on the recommendation of the Council or the Court of Governors.<sup>193</sup> Section 17(3) of the University of Lagos Act provides on further disciplinary role of the Visitor:

It shall be the duty of the Visitor, on signing an instrument of removal in pursuance of this section, to use his best endeavours to cause a copy of the instrument to be served as soon as reasonably practicable on the person to whom it relates.

The rules, regulations and the law of the university bind the visitor in the discharge of his duties. In *Okeke v AG Anambra State*,<sup>194</sup> the Court held that in taking a decision on a university matter in his position as a visitor, a visitor must be guided by the statute, rules and regulations of the university.

Further, on disciplinary role of the visitor, *David Osuagwu v AG Anambra*<sup>195</sup> considered the powers of the Visitor to terminate appointment. The court per Uwaifo, JCA held thus:<sup>196</sup>

Where a visitation panel of a University has indicted a member of staff of the University, the Visitor in his comment on the panel's report would be going too far if he directs that the university council should terminate the appointment of that member of staff with immediate effect. What the visitor ought to do in the circumstance is merely to direct the Council to take appropriate action and the council would then have to comply with the laid-down procedure for relieving the member of staff of his appointment.

In respect of the disciplinary powers of the visitor, I submit that the law does not allow the termination of an appointment except with the observance of due process.<sup>197</sup> This I argue protects the individual academic freedom of members of the university as I

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<sup>193</sup> Disciplinary action on an ex-officio member does not come under this provision, but under the category of members of staff.

<sup>194</sup> *Okeke v AG Anambra State* (1992) 1NWLR (Pt.215) 60 See also *Okaru v Ndili* (1989) 4 NWLR (Pt.118) and *Olaofe v University of Ibadan* (2001) 10 NWLR (Pt 726) 126.

<sup>195</sup> *David Osuagwu v AG Anambra* (1983) 4 NWLR (Pt 285) 13.

<sup>196</sup> Uwaifo, JCA 58 considers the scope of the Visitor's powers under the Anambra State University Edict No 20 of 1985. See also Afe Babalola 33.

<sup>197</sup> See section 3 of chapter four on provisions guiding enforcement of discipline in-house.

examine in chapter three.<sup>198</sup> In chapter, four I point out the rules, which the visitor's domestic tribunal has to follow in the dispensation of justice.<sup>199</sup>

At the Federal University of Petroleum Technology, Effurum, Delta State, the Federal Ministry of Education's directive was that the suspended Vice-Chancellor and Registrar of the university should be recalled. A visitation panel was immediately raised to look into the remote and immediate causes of the crisis in the institution and to come up with appropriate recommendations. The move was to give all parties in the crisis fair hearing. The Minister of Education directed that the National Universities Commission should deploy a team to the institution to speed up the peace process.<sup>200</sup>

I submit that the role of the Visitor is that of an unbiased umpire who receives the various sides to a matter. The government considers the recommendations of a visitation panel, where such is approved and then gazettes those that it approves.

I consider the exercise of discretion of the visitor in determining when there are crises or challenges to meet in a university. I also take note of the fact that the visitor appoints the panel members and to him recommendations are made. He approves that desirable recommendations should be effected. I submit that in the discharge of said functions, he controls the university.

In *University of Ilorin v Stephen Olanrewaju Akinola*,<sup>201</sup> the Supreme Court relied on the visitorial report to overrule the decision of the Senate and Council of the University. The Court held that the powers of the Head of State and Commander of the Armed Forces are overriding when occasion warrants it. The Court held further that as the Visitor had pardoned a university student, it was right for the university to go ahead to graduate him. It was the default of the university, which led to invocation of overriding power of the Visitor.

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<sup>198</sup> Section 4.1.

<sup>199</sup> See Section 3.

<sup>200</sup> Mohammed Abubakar 'Govt orders recall of FUPRE VC, registrar, probes varsity's crisis' *The Guardian*, Friday 18 November 2011 5.

<sup>201</sup> *University of Ilorin v Stephen Olanrewaju Akinola* (2014) 7 *Supreme Court Monthly* 174.

The controlling power of the Visitor is seen in the power to overrule the decisions of the university. This is justified in the sense that all officers of the university perform functions believed to have been delegated to them by the same Visitor.

For me the case of *University of Ilorin v Stephen Olanrewaju Akinola*,<sup>202</sup> has shown that the exercise of disciplinary autonomy of the university is not beyond abuses. This justifies the checks on the university by the Visitor. Thus, I submit in chapter four, that for the avoidance of external control on disciplinary autonomy of the university, there must be due compliance with the natural justice rules.

In this section, I pointed out the scope of authority of the Head of Government or the President as an external control on the federal university's autonomy. The office of visitor I regard as the head of the internal structure of the university. I also pointed out that the visitor is bound to observe the provisions of the relevant laws and regulations in the discharge of his duties. In the next section, I proceed to examine the NUC and university academic autonomy.

#### **4.1.2 The NUC and academic autonomy**

In this section, I examine the NUC as it prescribes standards for the Nigerian university system. This I do against the supposed academic autonomy of the universities to determine what to teach, how to teach without external control.

In 1962, the National Universities Commission (NUC) was established as an administrative department. By Decree 16 of 1985 and its amendment in 1988, the role of NUC shifted from mere supervisory body to a regulatory entity. It became a statutory body via National Universities Commission Act, 2004.<sup>203</sup> The NUC is also empowered by the Education (National Minimum Standards and Establishment of Institutions) Act<sup>204</sup>

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<sup>202</sup> As above.

<sup>203</sup> Cap N81, Laws of the Federation of Nigeria, 2004.

<sup>204</sup> Cap E3 Laws of the Federation of Nigeria, 2004. See NO Adedipe 'Strains and stresses in the Nigerian University system: sustainable quality assurance prospects by private universities.'

to lay down minimum standards for all universities and to accredit their degree and other academic awards. Section 10 (1) provides:

the power to lay down minimum standards for all universities and other institutions of higher learning in the Federation and the accreditation of their degrees and other academic awards is hereby vested in the National Universities Commission in formal consultation with the universities for that purpose, after obtaining prior approval therefore through the Minister, from the President.

I submit that the Act vests in the NUC enormous powers to which the NUC can be questioned on the state of the university education in Nigeria.

I examine the important areas in which the regulatory activities of the NUC conflicts with academic autonomy of the Nigeria's University. I consider the areas of appointment,<sup>205</sup> curriculum development,<sup>206</sup> accreditation of programmes and accreditation of existing universities. The NUC also draws criteria for the establishment of new universities.<sup>207</sup> The Commission also plays vital role on admission, as it determines the number of students to be admitted.<sup>208</sup>

I argue that most of the above schedules are areas of competence of every university with tested committees who had been discharging such functions before the empowerment of the NUC.<sup>209</sup>

### ***The NUC and appointment power***

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<sup>205</sup> See section 4 (1)(i) National Universities Commission Act (NUCA) (Cap N81), LFN, 2004.

<sup>206</sup> See section 4(1)(b)(i) NUCA.

<sup>207</sup> See section 4(1)(b)(ii) NUCA.

<sup>208</sup> See generally section 4 of NUCA.

<sup>209</sup> The universities in Nigeria are run through committee system which are either responsible to the Council or the Senate. See SJA Mgbekem 'Management of university education in Nigeria' Calabar: Unical Press 2004. See also I A Ajayi and Ekundayo T Haastrup 225.

One of the functions of the NUC is the periodic reviews of the terms and conditions of service of personnel engaged in the universities. The NUC makes recommendations on the condition of service to the Federal Government.<sup>210</sup>

In the above regard, the Commission has prescribed the possession of PhD degree as the minimum requirement for lecturers in Nigerian Universities. The NUC has given deadline for the acquisition of the degree, just as it places defaulters within promotion cadre of Lecturer 1.

The Nigerian Medical Association has expressed displeasure over the circular of the NUC, which prescribes possession of PhD as a basis for promotion. The Association however canvasses for possession of a Fellowship as a basis for promotion. To the Association, the Executive Secretary, NUC should be conversant with what operates world over; to the effect that postgraduate education does not go by the way of Masters or PhD but by a Fellowship. To the Association, non-recognition of Fellowship for promotion is a step to destroy medical education and practice in Nigeria.<sup>211</sup>

The protest by the Nigerian Medical Association is indicative of the fact that the NUC did not make sufficient consultation before making its regulation. I argue there are other professions that recognise the possession of professional fellowship as requisite experience to impart on the students. Such is the accounting bodies in Nigeria, just as the professional qualification as a holder of the Barrister-at-Law is essential to teach at the Nigerian Law School.<sup>212</sup>

Afe Babalola argues that the NUC has no legal right to direct the term of appointment or to order the Council to act in a particular manner on a matter, which is statutorily within the powers of the Council.<sup>213</sup>

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<sup>210</sup>See section 4 (1)(i)NUCA.

<sup>211</sup>Emeka Anuforo 'NMA wants prescription laws enforced, faults NUC on PhD' The Guardian Thursday 6 September 2012 5.

<sup>212</sup>This professional attainment qualifies a law graduate as a legal practitioner.

<sup>213</sup>Afe Babalola was Pro Chancellor of the University of Lagos. See Afe Babalola 33.

For me, the NUC's prescription of a minimum operating standard is laudable. My reservation however is that it has retrospective effect on those who had secured teaching appointment before the directive. This amounts to changing the terms of on-going contracts. If the directives are made to apply to prospective employees, it would have been justified.<sup>214</sup>

I examine the powers of the NUC as it actively involves itself in the issue of appointment of members of staff of the university. I point out this involvement makes the NUC a necessary party in any legal action on this subject.

### ***The NUC: Regulating Nigeria's University System***

In this subsection, I examine why the NUC has to regulate the Nigerian University System and how successful this has been. I recognise the propensity of the universities to flout set regulations and consider the prospect of vesting the NUC with adequate powers to punish erring universities.

The main objective of the NUC is to ensure the orderly development of university education in Nigeria, to maintain its high standard and to ensure its adequate funding. I consider the NUC's aims at improving quality of university education in the country. In addition to the above identified roles, the NUC carries out the monitoring of private universities, prevention of the establishment of illegal campus, meting out of appropriate sanctions.<sup>215</sup>

I contend that the essence of regulation of the universities by the NUC is to ensure that the objectives of having the universities are accomplished. In the light of this, quality education is ensured, the academic freedom of the students is assured, and the

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<sup>214</sup> In contrast to this position, the concept of institutional autonomy is relied upon to question the justification of external control on an autonomous university in respect of how it appoints its staff.

<sup>215</sup> 'The National University Commission: Undaunted in regulating universities' (NUC Advertorial) The Guardian Thursday 11 October 2012 63. See also WO Ibukun 'Educational management: Theory and practice' Ado- Ekiti. Green-line publishers.(1997) See Okojie (2007), see also Ajayi &Ekundayo 224 225.

universities are able to contribute in proffering solutions to the challenges facing the nation.

In the discharge of its regulatory duties, however, the NUC is resilient as Okojie remarks:<sup>216</sup>

The agency puts on a human face in the discharge of its duties. It never wields the big stick until after engaging in an almost unending dialogue with universities, encouraging them to do what is right, so as to maintain standards and public confidence in the system...this takes several months and in some cases, years of ignored advice and directives.

The problem I identify here is that students pay tuition fees and other service charges to unapproved universities and for programmes of study that are not accredited. The unending dialogue and persuasive efforts of the NUC in the circumstances are inadequate control over the criminal act of obtaining money by false pretences. I submit that when an illegal university evolves or when a university compromises on set teaching standards, these violate the individual academic freedom of the students.<sup>217</sup>

In the above situation, the NUC should be vested with sufficient powers to apply sanctions with dispatch. The longer the delay, the more the innocent students suffer.

On the propensity of the universities to flout set regulations, I consider the NUC as it facilitates issuance of operational licences. On 4 July 2012, the Commission suspended the operational licences of six private universities and withdrew that of the seventh<sup>218</sup> for various offences, including unwillingness to comply with Commission's regulations; commencement of academic programmes without approval; mounting illegal programmes; and inappropriate governance structure, among others.<sup>219</sup>

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<sup>216</sup> NUC Advertorial 63.

<sup>217</sup> This I discuss in chapter three.

<sup>218</sup> Madonna, Lead City, Tansian, Caritas, Joseph Ayo Babalola, Achievers and Obong RL Oyekanmi 'How Appeal Court decided NUC, Lead City varsity's case' The Guardian 17 October 2013 55.

<sup>219</sup> THISDAY checks revealed that licences of private universities are granted by the Federal Executive Council on the recommendation of the minister of education and are suspended or withdrawn by the same procedure after due consultation and visitations to the affected universities. Davidson Iriekpen 'From whence come NUC's powers to suspend varsities' licences?' THISDAY 29 Aug 2012. See also THISDAY Life Saturday 26 April 2014.



Lead City University was specifically accused of commencing academic programmes before the issuance of operational license; mobilizing students for National Youth Service Corps in 2007/2008, two years after approval, commencement of post-graduate courses in programmes wherein full accreditation had not been obtained; the establishment of College of Law without approval failed.<sup>220</sup>

On the strength of those allegations, the University challenged the NUC regulatory, quality assurance and operational guidelines to the Nigerian Universities. Lead City University petitioned the House Committee on Public Petitions.<sup>221</sup> The Committee submitted that the NUC lacked the power to suspend or withdraw licences of universities. The House of Representatives in the discharge of its oversight functions on education acts as a check on possible excesses of the NUC. The House Committee however relied on the authority of *CETEP v NUC*<sup>222</sup> that decided that the Commission had regulatory authority over the universities, but was not authorised by law to suspend their operational licences.

The possible *ratio* of the court's decision is that the NUC should not suspend or withdraw what it did not grant or approve in the first place. I consider this as authority to the effect that the NUC is not sufficiently empowered to bring sanity to the university system. I observe the NUC's regulatory authority over the universities, but which is without the authority to suspend their operational licences. This is a case of having a toothless bulldog which can bark, but when occasion demands cannot bite. I argue that it is when the operational licence is either suspended or revoked that the security agencies can be invited to enforce compliance.

In the event of inability of the NUC to enforce its regulations, and the fact that the universities had lost their autonomy to the NUC, I contend that in the circumstances, the

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<sup>220</sup> As above.

<sup>221</sup>The University cited Section 4(1)(a), b(i) c(ii) and (iii) of the NUC Act, Cap N81, Laws of the Federation of Nigeria, 2004.

<sup>222</sup>*CETEP v NUC* (Unreported) Suit No: FHC/AB/M/489/06.

essence of having the universities may not be achieved. In the light of this, the quality of education nose-dives; the enjoyment of academic freedom is violated. The universities have as such failed to rise up to the occasion in proffering solutions to the challenges facing the nation.

Still on the propensity of the universities to flout set regulations, I contend that some private universities are notorious at cutting corners to make ends meet. I argue that the establishment of a university by private bodies should not be for a profit motive. Only individuals and bodies that have the resources and that are ready to expend the same for the development of the nation should be allowed to register universities.

In this section, I pointed out that for the NUC to succeed in enforcing minimum standard of university education and to successfully monitor the university, it needs to be adequately empowered to sanction erring universities. This, I submit is essential if the essence of having the universities is to be realised.

### ***NUC - Institutional accreditation***

In this subsection, I consider how the NUC's institutional accreditation complements the universities in the provision of facilities and provision of environment conducive to academic functions. I also consider the possible relationship between institutional accreditation of the NUC and the realisation of the objects of a university.

The NUC's institutional accreditation is the Commission's pilot scheme to ensure that a university maintains an environment conducive for teaching, research and learning.<sup>223</sup>

The NUC's institutional accreditation goes beyond the running of academic programmes to cover every aspect of the institution's life, including, administration and management of the institution, quality of staff and students, welfare, etcetera. Under the scheme, universities that are younger than ten years are not eligible for institutional accreditation,

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<sup>223</sup> NUC Advertorial 63.

but only qualify for programme accreditation.<sup>224</sup> Environmental factors which make the teaching and impartation of knowledge an easy task are considered under institutional accreditation.<sup>225</sup>

I refer to Section 1(2) of the University of Ibadan Act,<sup>226</sup> which mandates the university to:

- a. provide such facilities for the pursuit of learning and acquisition of liberal education as are appropriate for a university of the highest standing.
- b. make the facilities available on proper terms to such persons as are equipped to benefit from them.<sup>227</sup>

In the early part of this chapter, I discuss extensively on provision of facilities for use in the universities,<sup>228</sup> I point out that the university has a mandate to provide facilities and enabling environment to carry out its teaching function. Here, the NUC is vested with the power to ensure compliance at the expense of de-accrediting a university.

Further to the role of the NUC in complementing in the provision of an environment conducive for academic activities, the NUC also complements generally in the realisation of the objects of a university.

On this submission, I rely on the extensive discourse on objects of a university<sup>229</sup> and do contend that none of the items under the object clause can be realised without the provision of logistic support. The NUC by its institutional accreditation is thus relevant to a fulfilled university system.

I consider as a consequential benefit of the NUC institutional accreditation, a boost to the enjoyment of individual academic freedom of members of the university. The academic staff has an array of equipments at his disposal to teach his students. He discharges his

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<sup>224</sup> NUC Advertorial 63.

<sup>225</sup> This i discuss extensively in chapter three.

<sup>226</sup> University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

<sup>227</sup> See also Section 1(3)(b) of University of Lagos Act, Cap U9, Laws of the Federation, 2004.

<sup>228</sup> See section 2 of this chapter.

duty without any stress and the teaching session is rewarding. On the part of the students, they have easy understanding and do enjoy the opportunity of familiarising themselves with machines and equipments they would be using later at the labour market.<sup>230</sup>

The NUC's institutional accreditation has been examined as it complements in the university realising particularly its mandate to provide an environment conducive for academic exercise and generally in realising all other objects of the university. I identify as a benefit of this exercise, a boost to the enjoyment of academic freedom by members of the university.

### **4.1.3 Reservations on operations of NUC**

Given the assumption that the regulation of the universities by the NUC is to attain orderly development of the university education system; on the further premise that the NUC's activities are aimed at ensuring the discharge of the objective of the universities, I examine here, how well the above have been attained.

#### ***Inadequate Staffing***

I consider here, the essence of human resource in any productive venture. For a result-oriented university system, I consider whether a right mix in the workforce and the right quality are essential.

The NUC's mission is to ensure an orderly development of a well-coordinated and productive university system. Such system is believed to guarantee quality and relevant education for national development and global competitiveness. The deplorable

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<sup>229</sup> See section 2 of chapter two.

<sup>230</sup> I argue in section 4.1, chapter three that institutional autonomy enables a university to provide for its needs. The provision of desired facilities in the circumstance has positive impact on individual academic freedom of members of the university.

environment in the universities in which the Commission hopes to achieve this has been captured by NEEDS Committee thus:<sup>231</sup>

Majority of the universities are grossly under-staffed and they rely heavily on part-time and visiting lecturers, have under qualified academics and have no effective staff development programmes outside the TETFund's intervention and Presidential First Class Scholarship programme. Instead of having 100 percent academics having doctorates only 43 percent have the qualification. The Kano State University of Science and Technology established in 2001 has only one professor and 25 Ph.D. holders. Kebbi State University of Science and Technology established in 2006 has only 2 professors and five Ph.D. holders. In Gombe State University, only 4 of 47 professors are full-time. In Plateau State University, 74 percent of the lecturers are visiting while in the Kaduna State University, only 24 out of the 174 Ph.D. holders are full-time staff.

It has been observed further that out of the 37 504 lecturers in the public universities, only 28 128 or 77.5 per cent are engaged on full time basis. The remaining 9 376 or 25 per cent are recycled as visiting adjunct, sabbatical and contract lecturers.<sup>232</sup>

With respect to the staffing situation which has been released on the authority of the Federal Government, I contend that where the lecturers' profile, standards and size of the workforce is as above stated, the business of teaching and learning cannot be thorough. Production of half-baked students in the circumstances is derogation from the right to individual academic freedom of the students. I submit that the envisaged national development on account of teaching and research, given the above scenario, will be elusive.

I examine the inadequate workforce in the universities and discovered that the right academic attainment for the academic staff is yet to be met. In the circumstances, the NUC in its regulatory role should direct that the defaulting academic staff should obtain the PhD degree.

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<sup>231</sup> See the 10 member Needs Assessment Committee, Prof Mahmood Yakubu Committee on the 2009 ASUU/FG agreement. See Rotimi Lawrence Oyekanmi 'Report exposes rot in public varsities, proposes 189 recommendations' The Guardian Thursday 15 November 2012 47.

The Nigerian University System (NUS) consists of 141 universities, which consists of 40 Federal, 40 State, and 61 Private.<sup>233</sup> The Nigerian University System (NUS) as at 2013 had the following features:<sup>234</sup>

Student enrolment (Undergraduate):	862 601
Student enrolment (Postgraduate):	98 804
Total Student enrolment:	961 405
No. of Academic Staff:	39 780
No. of Senior Non-Teaching Staff:	37 535
No. of Junior Staff:	44 100
Total No of Staff:	121 415

Given the inadequate staff strength,<sup>235</sup> I assume that the NUC is aiding the rot in the university sector. My concern is that the NUC allows for the establishment of more universities whilst staff strength is static and may only assist some of the existing universities.

Going by the figures as above, there is an un-equitable distribution of workforce, this by implication means under utilisation of the non-teaching staff while the teaching staff is over-worked. Non-teaching staff in tertiary institution complement in the discharge of academic duties. The proportion of the academic and non-teaching staff should thus be justifiable.<sup>236</sup>

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<sup>232</sup>Rotimi Lawrence Oyekanmi 'Issues in 2012 Education Ministry Report' The Guardian Thursday 25 July 2013 49.

<sup>233</sup><http://www.nuc.edu.ng> accessed 8 September 2015.

<sup>234</sup>Source, NUC 2013. See also NO Adedipe 'Strains and stresses in the Nigerian University system: Sustainable quality assurance prospects by private universities' <http://saharareporters.com/article/strains-and-stresses-nigerian-university-system-sustainable-quality-assurance-prospects-priv> accessed 28 February 2014.

<sup>235</sup> It has been observed that 77.5 per cent of lecturers in the public universities are engaged on full time basis. The remaining 25 per cent are recycled as visiting adjunct, sabbatical and contract lecturers. See Rotimi Lawrence Oyekanmi 'Issues in 2012 Education Ministry Report' The Guardian Thursday 25 July 2013 49. The inadequate staff situation leads to deteriorating health of existing staff members due to work-overload. See Iyabo Lawal 'ASUU Members protest against work overload' The Guardian, 27 November 2015 9.

<sup>236</sup> In this respect, certain job schedules such as security, cleaning, and maintenance of equipments should be firmed out.

The existing openings in the teaching cadre are not adequately filled. This lead to overstressed human resource, which dashes the hope of realising the objects of a university.

A way out of the quagmire is for the NUC to mandate the universities to give desired training to appreciable percent of the non-teaching staff, to get additional degrees to qualify to teach.<sup>237</sup> Incentives should be given to non-teaching staff who have requisite qualifications to take teaching appointments. This will lessen the workload on existing academic staff and will pave the way for admission of more students. The staffing situation according to Emeka Anuforo has led to overstretched staff just as he calls for a freeze on the establishment of new universities to enhance efficiency or effectiveness.<sup>238</sup>

I discuss the inadequate staffing in the context of achieving the objects of a university. I acknowledge the shortfall in staff strength, and the poor quality of most staff. The existing openings in the teaching cadre are not adequately filled. This lead to overstressed human resource, which dashes the hope of realising the objects of a university. Poor quality education, un-equitable distribution of workforce, under utilisation of the non-teaching staff while the teaching staff is over-worked. The combination of these robs the nation of the essence of having the university system.

### ***NUC: Abuse of accreditation processes***

On the further assumption that the NUC's regulation of the university achieves orderly development of universities and the nation, I consider what the NUC has thus been able to achieve. I consider the NUC accreditation processes as a mechanism to ensure quality education and for due realisation of other objects of the university. I consider how far this has been realised.

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<sup>237</sup> Appreciable number of the non-teaching staff hold higher qualifications to teach, the NUC should supervise how to spread existing workforce for optimum returns.

<sup>238</sup> Johnson Barovbe, Managing Director of Westminster College, Lagos. See 'Barovbe wants Higher School Certificate re-introduced' The Guardian Thursday 22 August 2013 55.

One of the functions of the NUC is to ensure that quality is maintained within the academic programmes of the Nigerian University System.<sup>239</sup> The NUC does this via its academic accreditation<sup>240</sup> exercises and on the spot assessment of human resource and infrastructure that can sustain an academic programme. To Julius Okojie,<sup>241</sup> academic accreditation is one area of autonomy that the Government has little or no input. He submits however that there is no absolute academic autonomy, as the universities are subjected to the scrutiny of their peers through the instrumentality of the accreditation exercises.

Federal Government of Nigeria is the proprietor and main financier of Federal Public Universities. NUC is an educational agency of Federal Government, which is saddled with regulation of university education. Federal Government, NUC, the universities and every other stakeholder all know the inadequate budgetary allocation to education. The fact remains that university education in Nigeria is under-funded. The effect is that where the desired infrastructure to run a programme is lacking, the NUC in the circumstances opt to look the other way over a game of deceit perpetuated by most universities.<sup>242</sup>

The NUC would insist that the required infrastructure is put in place at time of inspection. The abuse in this exercise is regrettable. Nta observes that when the ICPC visits, it demands documents and equipments that have been listed as existing in the various universities. He expresses shock at situations where appropriation for the procurement of certain equipments is made and a university goes ahead to borrow during an accreditation exercise and then return them after accreditation.<sup>243</sup>

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<sup>239</sup><http://www.nuc.edu.ng/pages/pages.asp?id=31B>, accessed on 28 February 2014.

<sup>240</sup> Academic accreditation is conducted to ascertain that prescribed standard in the workforce is met. Institutional accreditation on the other hand covers provision of environmental factors.

<sup>241</sup> Julius Okojie 11.

<sup>242</sup> Oseni also condemns the exercise of accreditation as fraud and an act of self-deception. Michael Oseni 'Adequacy of budgetary allocation to educational institutions in Nigeria' *Pakistan Journal of Business and Economic Review* (3)(2012)(1) 153. It appears that the NUC opts to show 'understanding' in not rocking the boat and by refusing to expose the rot in the university project of the Federal Government; proprietor of the university and of the NUC.

<sup>243</sup> Mary Ogar 'ICPC set to prosecute perpetrators of sexual harassment, corruption in varsities' *The Guardian* Thursday 25 July 2013 50.



I submit that fraud on accreditation exercise covers ‘arrangee employment.’<sup>244</sup> A required staff list is generated solely to secure accreditation. Letters of employment and personal files are generated for the staff. The appointment lasts only for the exercise.<sup>245</sup> The NUC is aware of these fraudulent practices, but it has opted to overlook the same.

In the wake of graduates who are unable to write their names or being unfit for employment; Hussain Obaro queries what the NUC’s accreditation is all about and what the several visitations have achieved. Little wonder, all such exercises are dismissed as mere jamboree. There have been reports of accreditation teams being carried away as soon as they reach a university; and they are warmly received; they are compromised.<sup>246</sup> Officials and representatives of NUC are aware of prevailing game of deceit and for promise of gift or monetary gains fail and omit to discharge their duties as appropriate.

Nta, Chairman of the Independent Corrupt and other related practices Commission (ICPC) decries the corrupt tendencies of the representatives of the NUC. He wonders who could monitor ‘the monitors.’ Nta has however expressed the resolve of his commission to treat the same not as a minor offence once the intention to defraud is established.<sup>247</sup>

Going by the above, it can safely be concluded that the NUC has not prevented standards from falling in most institutions, because, the task of ensuring academic quality is more effective from inside.<sup>248</sup> Ekundayo and Adedokun are right to have submitted that an essential requirement of academic autonomy is the protection of the powers of the Senate as the supreme organ in academic matters.<sup>249</sup>

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<sup>244</sup> Such appointments are valid for the duration of accreditation exercise only. See for instance Lawrence Njoku ‘Enugu varsity sacks 153 lecturers’ The Guardian 24 November 2015, 8

<sup>245</sup> This is a regular phenomenon in some universities.

<sup>246</sup> Hussain Obaro ‘A look beyond N200bn to save education system’ The Guardian Tuesday 24 March 2014 80.

<sup>247</sup> Ogar 50.

<sup>248</sup> The Guardian Editorial ‘The bills on varsity standards’ The Guardian Friday 19 August 2011 14.

<sup>249</sup> Ekundayo & Adedokun 61.

Fruitless mission of a university is noticed particularly where its graduates are poorly trained and unproductive in the labour market. The object of teaching and research cannot be said to have been achieved as such.<sup>250</sup>

In this section, I considered the essence of academic accreditation, which is to enforce the quality realisation of the objects of a university. I point out that the NUC has compromised in the discharge of its academic regulatory role. In the circumstance, the academic accreditation now seems to be a mere jamboree amounting to waste of public fund. This development in which the NUC fails in discharging its academic accreditation functions hinders the realisation of a rewarding university education system. Realisation of the objects of the universities in the circumstances appears to be a herculean task.

Given the state of university education under the NUC regulation, I submit that the time is ripe to re-designate the NUC as a supervisory body from its present regulatory status.

### ***The NUC: Uncontrolled students intake***

The identification of certificate as meal ticket in Nigeria accounts for the mad rush for university certificates. The person of the holder and what he hopes to contribute to nation's economy become secondary. As a result, there is an uncontrolled drive towards certificate acquisition and white collar jobs.

Notwithstanding, a premium is placed on certificate or paper qualifications by regulatory authorities. This has closed the chapter on objective value of such certificates. Put better by Okoli, the huge emphasis on the 'endorsement' by education measurement

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<sup>250</sup> Dabalen *et al* capture a fruitless mission of a university when they re-echo the argument of employers of labour; that university graduates are poorly trained and unproductive on the job...and shortcomings are particularly severe in oral and written communication, and in applied technical skills. See A Dabalen *et al* 'Labour market prospects for university graduates in Nigeria' Higher Education Policy November 2000 22 [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/09/14/000090341\\_20040914113724/Rendered/PDF/299420UNI0Labor1market0graduates.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/09/14/000090341_20040914113724/Rendered/PDF/299420UNI0Labor1market0graduates.pdf) (accessed 29 July 2013).

mechanisms has no doubt taken a heavy toll on the efficacy of the average ‘Nigerian Certificate.’<sup>251</sup>

Both the government and citizens of Nigeria see the current enrolment ratio for higher education as too low. This is in comparison with other oil-producing developing countries such as Indonesia and Brazil.<sup>252</sup> The issue of comparison of enrolment rate may however not assist Nigeria. I submit that the market size should rather be a deciding factor. In Nigeria, thousands of graduates are being churned out, just as the private sector, the non-oil sector is shrinking. I submit however, that the training of human resource should rather be on account of needs.<sup>253</sup>

The ‘needs’ factor is ignored in Nigeria; education policies over the decades have equally supported increase in the numerical output of students at the expense of quality.<sup>254</sup>

Successive governments have however failed to implement as appropriate the educational policy of 6-3-3-4.<sup>255</sup> This development now opens the universities to qualified and unqualified candidates.

Adeniran observes that every candidate of the junior secondary school now progresses to the senior secondary school with the intention of enrolling for tertiary education. To him,

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<sup>251</sup> Ikechukwu Okoli ‘Rethinking education measurement in Nigeria’ *The Guardian* Wednesday 20 March 2013 64.

<sup>252</sup> In response to strong social demand, the Federal Government has repeatedly taken steps to expand access. Among its more notable policy actions have been: (i) increasing the numbers of federal universities, (ii) expanding enrollments, (iii) introducing an admissions quota system to address regional and class imbalances, (iv) constructing new student residence halls, (v) launching a scholarship program for 50,000 needy students, (vi) approving the establishment of private universities, and (vii) announcing the establishment of a National Open University. Hartnett *et al* 11.

<sup>253</sup> My position is based on an assumption that a very sound primary education is sufficient to meet the government’s obligation of providing education for all its citizens. A good primary education can still produce citizens that are literates if the right policies are put in place. In essence, every Nigerian need not be university graduate to contribute to the nation’s development.

<sup>254</sup> One of the goals of the NUC is to match university graduate output with national manpower needs. The power generation and distribution which will drive productivity in the private and public sectors has for decades been in comatose. NUC is conscious of exodus of manufacturing companies to more conducive neighbouring countries, NUC is unaware that recurrent expenditure is not less than 70 per cent which is not a healthy economic indicator, NUC however fails to match surging enrolment with economic needs.

<sup>255</sup> The 6-3-3-4 policy provides for an academic transition from the primary, junior secondary, senior secondary and university respectively.

available spaces are grossly inadequate for those qualified for studies in these institutions, not to talk of those who are still struggling to qualify for admission. It should be possible to make up a career upon graduation from the intermediate schools. The prospect of advancement on the career to tertiary level should equally be established. This will reduce the congestion of transiting directly to tertiary level from secondary level.

Federal Government's educational policy of 6-3-3-4 proscribed the Advance Level General Certificate in Education.<sup>256</sup> This programme used to be a 'stepping stone' to the universities.<sup>257</sup> In fact, the plan under 6-3-3-4 was that a student who did not perform at either the junior or senior secondary school should be advised to attend a technical college.<sup>258</sup>

In the same vein, Adeniran advises that facilities should be made available at the tertiary educational institutions, adequate for the population it will cater for.<sup>259</sup> Clark Kerr<sup>260</sup> in the circumstances throws a challenge to higher education systems to develop entrepreneurial training. This he says will make them to be dynamic and to move fast in international competition. This suggestion complements the advice of Adeniran in having to make the tertiary institution open for the brilliant and serious students that the openings can accommodate.

On the further need to reserve the tertiary institutions for the best minds, the GCE Advance Level, and other intermediate educational institutions that were phased out under the 6-3-3-4 educational policy should be resuscitated. Those institutions hitherto gave opportunities to those who could not transit from senior secondary to the tertiary

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<sup>256</sup> See the 6-3-3-4 policy on education.

<sup>257</sup> Barovbe, Managing Director of Westminster College, Lagos. See 'Barovbe wants higher school certificate re-introduced' *The Guardian* Thursday 22 August 2013 55.

<sup>258</sup> Such intermediate schools include trade centres or technical colleges, agricultural schools, health institutions, and teachers colleges. FA Adeniran 'Where there is no vision' Inaugural Lecture series 1, The Polytechnic, Ibadan – Nigeria delivered at the North Campus Assembly Hall, The Polytechnic Ibadan on Wednesday 18 June 2014 13.

<sup>259</sup> Adeniran 13, 29.

<sup>260</sup> Clark Kerr, an internationally recognised higher education expert from the United States, See Saint et al (n 3 above) 10.

educational institutions a second chance to prepare for entrance examination and or for training to be artisans and technologists.

In a bid to reserve the tertiary institution for the best minds, and in order to promote vocational training, the government policy of automatic promotion in the secondary school should be reversed.<sup>261</sup> I consider that rather than for students to waste away in the academic line, such should be advised to embark on vocational studies.<sup>262</sup>

Alternatively, however, and in the event that Government desires to boost students' intake at the tertiary institutions, it has to increase its budgetary allocation to education. Unfortunately, however, among the 11 countries considered in the African continent, Nigeria was the least spender on education.<sup>263</sup> It is therefore a condition precedent for Nigeria to increase its funding of education as it contemplates increased access to education, particularly at the tertiary level.

Nigeria aspires to have the largest enrolment because of its huge admission seekers. The NUC's existence would be justified if it adopts measures to discourage excessive enrolment at the universities. Government of Nigeria needs to be advised to encourage plethora of admission seekers to explore alternative levels of education. The meagre budgetary allocation to education should be increased to meet the UNESCO prescribed 26 per cent.<sup>264</sup>

I submit that for the NUC to function effectively, all hands must be on deck. The populace has to be educated on the prospects of vocational studies. I submit that if the

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<sup>261</sup> Under the automatic promotion policy, no student is made to repeat a class notwithstanding that he cannot cope.

<sup>262</sup> See also FA Adeniran, 13.

<sup>263</sup> The budget allocation to education sector in 2012 in 11 African Countries was: Ghana – 31.0; Cote d'Ivoire – 30.0; Uganda – 27.0; South – Africa – 25.8; Swaziland -24.6; Kenya - 23.0; Botswana – 19.0; Morocco – 17.7; Tunisia - 17.0; Burkina Faso 16.6; Nigeria 8.43. US Department for International Development Official Bulletin 2012 14. See also Peters 36. See generally the data on inadequate funding of education in section 5 of chapter two.

<sup>264</sup> This will assist in accommodating more admission seekers as they enjoy right to education.

Government continues to promote enlarged enrolment while resources remain constant, monitoring role of the NUC will remain an official window dressing.

#### 4.1.4 The JAMB and quality education

The JAMB regulates admission processes on the premise that it will enhance quality education, which is an object of the tertiary institutions. One of the three vital elements of institutional autonomy is a university's right to determine who qualifies to study in the institution. I also consider the relevance of a thorough admission process in a quality education system. I however consider if and in what ways the activities of JAMB contravene institutional autonomy.

Institutional autonomy implies: (a) the freedom of universities to select their students and staff by criteria chosen by the universities themselves.<sup>265</sup> This is an area of competence of every university and in which JAMB activities conflict with that of the university.

The Nigerian Military Government established JAMB in 1978. The Board is saddled with the responsibility of conducting entrance examinations into the Nigerian tertiary institutions. With this development admission processes in Nigerian universities becomes a unified activity. The JAMB Decree of 1978 was re-enacted under the Joint Admissions and Matriculations Board Act.<sup>266</sup> The Board is saddled with the responsibility of conducting matriculations examinations for admissions into all universities, polytechnics and colleges of education in the country.<sup>267</sup> The Board does the placing of suitably qualified candidates in collaboration with the tertiary institutions. In doing this, the Board considers the available vacancy in a university, choice of candidates and other yardsticks.<sup>268</sup>

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<sup>265</sup> See University of Sokoto (now Uthman Dan Fodio University, Sokoto) *Memorandum submitted by Senate to the Presidential Commission on Salary and Conditions of Service of University Staff* (February, 1981) 20. See also Taiwo (Codesria) 4.

<sup>266</sup> Joint Admission and Matriculation Board Act (Cap J1), LFN 2004.

<sup>267</sup> See section 5(1) (a) of the JAMB Act.

<sup>268</sup> See section 5(1)(c) of the JAMB Act. I carry out further examination of provisions of the JAMB Act in chapter three.

The establishment of JAMB<sup>269</sup> and vesting of admission processes on it was aimed at improving on the decentralised admission processes pre-JAMB era. The ultimate aim therefore is to improve on the quality of education in the tertiary institutions. It is believed that if JAMB could get suitable candidates for the institutions,<sup>270</sup> the high standard of education can be attained and sustained.

On account of examination malpractices, the examination ceases to be true test of candidates' abilities. A reasonable number of candidates who made the examination dropped out on academic deficiencies.<sup>271</sup> Education stakeholders have thus been calling for the scrapping of JAMB to allow tertiary institutions in Nigeria full autonomy to conduct their own admission examination from start to finish.<sup>272</sup>

Dibu Ojerinde, JAMB Registrar explains steps to improve on services of the Board. To him, JAMB has adopted a biometric verification of candidates, which had brought a sharp drop in the incidence of impersonation and similar mal-practices. Another step is the merging of the Polytechnic and College of Education (PCE) and University Matriculation Examination (UME) examinations to avoid duplication of efforts and wastage of scarce resources.<sup>273</sup>

A flaw in the Board's operation is that of typographical errors in some question papers. Oyeniyi queries why students have to fail an examination on account of these irregularities.<sup>274</sup> I submit that irregularities as above violate individual academic freedom of the students. In situations as above, established irregularities that are substantial should warrant a cancellation of the paper and for new examination to be conducted for affected students.

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<sup>269</sup> See Section 1 of the Joint Admissions and Matriculation Board Act, 2004 (JAMB). See also section 5 of chapter three.

<sup>270</sup> See Section 5 of JAMB Act, 2004. See also section 5 of chapter three.

<sup>271</sup> Edoba Omoregie 'Legality or otherwise of the post-UTME' *The Guardian* 13 December 2011 88.

<sup>272</sup> Ike Onyechere 'Still on the need to scrap JAMB (1)' *The Guardian* Monday 8 April 2013 67.

<sup>273</sup> Joshua Oyeniyi 'UTME, irregularities and allied issues' *The Guardian* Wednesday 15 May 2013 14.

The efficacy of JAMB's conducted examination has been considered and Universities complain that candidates who had high marks in JAMB's administered tests often fail to record average marks in the courses offered by the universities. To them sharp practices smeared the credibility of tests organized by JAMB.<sup>275</sup>

It is observed that a quality university education can be attained and sustained based on the quality of students that are admitted. A category of students is untrainable as they lack the basic qualification to receive a university education, and no effort of the teachers can transform them. The best of facilities in the university cannot be of assistance to them as well. This class of students find their ways to the university under the JAMB organised admission. It is therefore very important for the admission processes organised by the JAMB to be revisited to produce the best students.

It is on this note that the JAMB instituted the Post University Tertiary Matriculation Examination (UTME) test in 2005.<sup>276</sup> The essence of this test is to fish out those who explored weaknesses in the admission processes out of the university. Harmonised UTME was conceived in 2009 to streamline the activities of JAMB. Going by this, the matriculation examinations into all the tertiary institutions in Nigeria become harmonized, writing the same paper and holding simultaneously. Every candidate applies to a university, polytechnic and a college of education simultaneously. The cut off points for university admission is highest, followed by the polytechnics and finally by the colleges of education. A successful candidate is thus admitted by his performance at the examination.<sup>277</sup>

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<sup>274</sup> Oyeniya (as above)

<sup>275</sup> Afe Babalola considers unscrupulous parents and guardians of candidates and even candidates themselves who act in collusion with elements in JAMB to forge and falsify results of JAMB examinations. Afe Babalola 'An address on the occasion of the NUC presentation of the best University Council of the year 2002 award to the university of Lagos 15 December 2003 at the NUC Auditorium in Afe Babalola the living legend, his articles, lectures and speeches (2) Olanrewaju & Fawehinmi-Biobaku (eds 2008)194.

<sup>276</sup> Edoba Omoregie 'Legality or otherwise of the post-UTME' The Guardian 13 December 2011 88. Afe Babalola informs that his Council at University of Lagos introduced weeding tests for those students admitted into the University effective from 2002. See Afe Babalola (as above) 200.

<sup>277</sup> See also Mohammed Abubakar 'ASUU, JAMB differ on unified exams for varsities, others' The Guardian, Tuesday 24 November 2009 5. The Federal Government, Joint Admission and Matriculations Board (JAMB) and other stakeholders pegged the 2014 admissions into universities at 180, while that of polytechnics and colleges of education were pegged at 150.



Academic autonomy accords university senate an unhindered prerogative to determine what criteria the institution shall adopt in giving out admission to potential students. Each university, pre-JAMB era, adopted its admission policy. To some, a year pre-degree programme and to some others, written examinations, with or without oral interview. The result was that students that were more qualified were given admission as compared to JAMB era. With JAMB however, the challenge of access to university education<sup>278</sup> consequently persists.

The argument on a common standard assured under JAMB, I argue is not better when compared with the pre-JAMB era. I consider the UTME, whereby the cut off points for university admission is highest, followed by the polytechnics and finally by the colleges of education. The disadvantage here is that it makes the polytechnics and colleges of education less important.

However, going by Government's education policies, each tier of education has its own peculiarities and none is to be inferior to the other.<sup>279</sup> In addition, I contend that the UTME destroys the potency of programmes offered by the Polytechnic and Colleges of education. The successes recorded in teaching and impartation of knowledge has to do with suitability of candidates that are given admission. Here, the best brains are drawn into the universities, while the JAMB gives consolatory admissions to other candidates who ordinarily should sit for the examination again. Most of such students at the Polytechnics and Colleges of Education later abandon their academic programmes for the universities.

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<sup>278</sup> Universities are only able to offer places to less than 10 per cent of their prospective applicants. See 'Recommendations of the Committee on Needs Assessment of Nigerian Public Universities (3)' The Guardian Thursday 13 December 2012 53. Reiterating the poor access to university education is the Vice-Chancellor of the Kwara State University who confirms thus: Of the 7,525 candidates who applied for admission to the university in the 2012/2013 session the institution could only admit 1525. See 'Kwasu VC warns students against vices' The Guardian Thursday 6 December 2012 65.

<sup>279</sup> This development explains the clamour in the labour market for parity in the university and polytechnic degrees. I argue that if the peculiarities with each level of education is maintained, parity issue becomes unnecessary.

Further on disadvantage of centralised entrance examination by JAMB, survey has shown that world institutions that enjoy full autonomy in conducting their admission processes rank higher than Nigerian institution each year.<sup>280</sup> I align with this submission, as a wrong choice of candidates cannot produce quality graduates that can contribute to a nation's growth.<sup>281</sup>

To compound the problem identified in centralised admission, there is the public policy of quota system.<sup>282</sup> With the quota system, it becomes mandatory for universities to admit candidates from certain areas whether or not they qualify for admission while candidates that are more qualified do not gain admission.<sup>283</sup> Afe Babalola condemns as immoral and sinful act, having to refuse admission to a person with 270 marks and proceeding to offer to another with 200 in the same country.<sup>284</sup> This is discrimination on account of race and creed.

The Senate of a university no longer exercises its power on admission of students. The JAMB as well does not act fully on its standards, but by the stipulations of the government. I submit this infringes on the institutional autonomy of the university.

I consider the fact that JAMB is expected to play a leading role in attaining an enviable tertiary education. I point out this was to be achieved by organising a thorough admission exercise. I refer to incidences of examination malpractices, which compromised on set standards, and the operation of Government's policy of quota system. I contend that the two combine to render JAMB's examination non-reflective of a candidate's ability.

#### **4.1.5 Other external bodies regulating Nigerian Universities**

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<sup>280</sup> AK Okorosaye-Orubite *et al* 270.

<sup>281</sup> However, a university cannot because of admission processes alone excel. Other essential resources I argue must be committed into the teaching and research for a university to command appreciable rating.

<sup>282</sup> See section 14(3)(4) of the 1999 Constitution of Nigeria.

<sup>283</sup> Ekundayo & Adedokun 64.

<sup>284</sup> Afe Babalola 57.

I discuss external bodies that are stakeholders in the regulation of Nigerian universities. I examine their roles on the realisation of the objectives of the universities.

### ***Ranking and donor agencies***

I examine the ranking agencies in two perspectives. One, I consider the prospect of a university hierarchy for purposes of institutional rediscovery. I enquire whether ranking exercise promotes research by a university. In the alternative, I look at the possibility of a compromise of academic autonomy on account of the ranking criteria.

Adedipe contends that global academic ranking of universities was introduced to serve as a wake-up call on research docile universities.<sup>285</sup> He argues that with ranking, performances of universities are determined and this provides a rational basis of choice by potential students. To the writer, result of ranking exercise attracts financial, social and corporate support for benefitting universities.

There are various ranking agencies with applicable criteria. The adopted criteria include the number of highly cited researchers, the number of articles published in journals, the number of articles indexed in Science Citation Index and per capital performance. I argue then that research, which is promoted in ranking, makes for teaching excellence and associated invention for the generation of additional knowledge and for a sustainable development. As a result, I submit that ranking agencies and their activities aid the realisation of teaching and development objects of the university.

At its inception in 1948 up to 1973, the University of Ibadan (UI) was rated amongst the top 100 in the world. By July 2012, the University of Ibadan was rated 3 216th position in the Webometrics World Ranking of Universities. In Africa, UI was rated 45th position, behind South African and Ghanaian universities.<sup>286</sup>

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<sup>285</sup>NO Adedipe 17.

The initial upward rating was due to the availability of state-of-the-art facilities. I contend that because of persistent decline in the funding of university education in the country in general, the low rating became inevitable. The Government and Nigerian University Regulators fail to take advantage of ranking as a wake-up call to make necessary amends.

On the above position, I submit that if ranking is taken seriously, it complements the promotion of research, which I earlier describe as a procedural object of a university.

The above discourse has been on a positive note, on the contrary however, ranking and its results induce the average and lowly rated universities to abandon their teaching and research priorities for the ranking criteria. Adedipe<sup>287</sup> condemns this development, which he claims had produced ‘unintended value judgments.’ I contend that it is counter-productive for a university to allow external rating, no matter how objective or intellectually sound to determine the course of its activities.

I submit that this development is an external control on teaching and research object of the university. Abandonment of established research goal of a university in above circumstances is condemnable as derogation from institutional autonomy.

Donor agencies and their contributions to teaching and research are also important, in two ways. One, I submit that the agencies complement the realisation of objects of a university. I submit that donor agencies fit into the class of external stakeholders.<sup>288</sup>

On the other hand, donor agencies may by their operations effect the erosion of institutional autonomy. This they do as they insist on their preferred research focus. The damage to the independent schedules of the university is attributable to the university Senate’s failure to make adequate contributions in arriving at the research focus of the donor agency.

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<sup>286</sup> See Odiaka Timothy & Isioma Odiaka ‘2013 budget and Nigerian universities’ Punch 31 October 2012. See also *The Guardian* 47, 9 August 2012.

<sup>287</sup> NO Adedipe at the 3rd Convocation lecture of Al Hakimah University 17.

<sup>288</sup> In section 3, I contend that collaboration with external bodies is an object of the university.

In respect of activities of donor agencies, Okojie however believes collaboration should not lead to intellectual hegemony over the university. Collaboration to him will be beneficial if the relationship is defined under a broadly recognised national charter of mutual rights and obligations.<sup>289</sup>

I submit that imposition of a research focus on the university contravenes institutional autonomy. I consider the similarity of ranking agencies and donor agencies as their collaborative activities with the university substitutes the research priority of the university. This I argue erodes institutional autonomy. On the other hand, I consider the activities of the two bodies as complementary in the realisation of the teaching and research objects of the university.

### ***Legislative Houses' Committee on Education***

I investigate if the legislature on its over-sight function does assist in having a university system that is positioned to realise its objects. On the other hand, I enquire whether checks on the internal operation of the university confers any benefit on the university.

Nigeria's Constitution recognises three organs of government. There is thus separation of powers and the principles of checks and balances apply. The legislature on account of its over-sight function plays supervisory role on the Nigerian Education System.<sup>290</sup>

Appropriate officers in the education sector are invited for briefing. Instructions are passed for necessary implementation. On the basis of this, the Registrar of the Joint Admission and Matriculation Examination (JAMB), Dibu Ojerinde was summoned by the House of Representatives to explain the mass failure recorded by students who sat for the Unified Tertiary Matriculation Examination (UTME) conducted by the body.

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<sup>289</sup> Okojie 16.

Prior to the invitation, the House of Representatives passed a resolution asking JAMB not to use computers for the 2013 examinations, and the JAMB undertook to make the use of computers to be optional. The bone of contention was that JAMB eventually mandated the use of computers, to the disadvantage of many applicants. There was then a mass failure. This development was coming on the heels of a peaceful demonstration by students in Kano State who protested the poor results as well as the withholding of their results over thumbprint verification.<sup>291</sup>

I submit that checks on an organ are desirable as abuses are curtailed. Nonetheless, the control on the internal standard of the university system keeps the university on its toes.

In conclusion, I point out that the essence of bringing the legislature to intervene in the operation of the university is achieved where such leads to quality education.

### ***The Independent Corrupt Practices and Other Related Offences Commission's (ICPC)***

I investigate whether the issue of corruption has any relationship with the realisation of objectives of a university and if it does, I examine how the ICPC<sup>292</sup> may be relevant in the activities within the university.

Section 6(b)-(d) of the Independent Corrupt Practices and Other Related Offences Commission's (ICPC) enabling Act, empowers the Commission to undertake a comprehensive review of the Nigerian university system. To Ekpo Nta,<sup>293</sup> the Commission does not regulate the tertiary education system, but only works in alliance with the NUC and other stakeholders like the Tertiary Education Trust Fund (Tetfund).

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<sup>290</sup>The House of Representatives in the discharge of its oversight functions on education acts as a check on possible excesses of the NUC and other regulatory bodies.

<sup>291</sup>UTME 2013: House of Reps summon JAMB Registrar over mass failure Posted by Daniel on 10 May 2013. Information Nigeria Portal accessed Saturday, 17 May 2014.

<sup>292</sup> The Independent Corrupt Practices and Other Related Offences Act, 2000.

<sup>293</sup>Ekpo Nta,Chairman of the ICPC. See Mary Ogar 'ICPC set to prosecute perpetrators of sexual harassment, corruption in varsities' The Guardian Thursday 25 July 2013 50.

To the Commission, a ‘template for prevention’ of systemic corruption in the universities is a desirable measure to curb corruption.<sup>294</sup> The idea is to ensure that Nigerian tertiary institution comply with the basic tenets of higher education management and conform with the international best practices.

To Nta, the Commission’s role is limited strictly to correcting and preventing corruption prone procedures.<sup>295</sup> On sexual harassment in tertiary institutions, Nta debunks the claim of adult female students being in love with their lecturers as un-acceptable. He advises that love affairs in the circumstances should be held in abeyance until after graduation. He concludes that a violation of master-student relationship would surely affect the grading of students’ paper.

The Commission considers the challenge of delay or missing transcripts on account of extortion. Nta hopes that his Commission and university will agree on a period to apply for and collect transcript.<sup>296</sup> This deadline is essential, as the delay may be a deliberate attempt by mischievous members of staff to extort money from students. Curbing corrupt prone procedures in the institution is equally more pragmatic than embarking on prosecution of offenders.<sup>297</sup>

On the issue of sexual harassment, I point out in chapter three<sup>298</sup> that it violates the individual academic freedom of the students (particularly the female students). I also argue that delay in the issuance of academic transcript deters the competitiveness and progress of a student. The goals of the ICPC<sup>299</sup> are such that enhance the quality of education and status of the students.

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<sup>294</sup>This position is important against the backdrop of inadequate funding of public universities and the mismanagement of such resources. See Rasheed A Tihamiyu ‘Questioning the claim of inadequate funding of tertiary education in Oyo State, Nigeria’ *International Journal of Governmental Financial Management* 47.

<sup>295</sup>See section 6(b-d) of the Independent Corrupt Practices and Other Related Offences Act, 2000.

<sup>296</sup>See Mary Ogar ‘ICPC set to prosecute perpetrators of sexual harassment, corruption in varsities’ *The Guardian* Thursday 25 July 2013 50.

<sup>297</sup> The adage ‘prevention is better than cure’ is relevant here.

<sup>298</sup> See sections 3 and 7.

<sup>299</sup> The Independent Corrupt Practices and Other Related Offences Act, 2000.

The ICPC frowns at illegal degrees and un-approved degree awarding institutions across the country. To Nta, there are approved institutions running unaccredited programmes, which is a deceit and fraud on innocent students and their sponsors. The ICPC boss disclosed that the Commission closed down 20 illegal degree awarding mills, including those with acclaimed foreign affiliations without proof. To him, out of the 41 identified illegal degree mills scheduled for investigation, some of them voluntarily closed shop and went out of business. Further to the exercise is series of arrests and arraignments in court.<sup>300</sup>

The steps of the ICPC<sup>301</sup> complement that of the NUC in the area of curbing exploitation of innocent students. I submit that proprietors of illegal universities should be prosecuted and be punished to serve as deterrence to others.

The ICPC has condemned the abuse of accreditation processes. To Nta, his Commission shall prosecute mis-appropriation of money under the guise of procuring equipment for the use of the university.<sup>302</sup> I contend that the involvement of bodies such as the ICPC will stop the abuses in accreditation exercises, thus restoring quality to Nigerian University education.

On examination mal-practice, the ICPC chairman contends that when an allegation of examination fraud is made against a student, the school environment should be examined.<sup>303</sup>

On this note, experience has shown that sitting arrangement in most examination halls is to maximum capacity. A candidate can easily see what the next candidate is writing even without the intention to cheat. The examination halls, which are supposed to be tidied up before and after each examination, are full of litters. This may implicate a candidate

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<sup>300</sup>Ogar 50.

<sup>301</sup>The Independent Corrupt Practices and Other Related Offences Act, 2000.

<sup>302</sup>Ogar, 50.

<sup>303</sup>Ogar, as above.



sitting near an implicating material in the examination hall. Going by this environmental factor, I subscribe to the view of Nta that not all blame might go to students alleged of malpractice except where the institution has already played its role adequately.<sup>304</sup>

I contend in chapter three<sup>305</sup> that the discharge of the functions by the institution has links with the enjoyment of individual academic freedom. By implication, where the institution maintains a neat academic environment, a student may not be alleged of examination malpractice.

ICPC seeks to have criminal records of students. The Commission hopes to have a new template wherein universities would be required to give names of students that have been punished for examination malpractice. Criminal records of students would be included in the Commission's database of offenders.<sup>306</sup> I submit that this is a crime preventive measure by which intending students with criminal records would be denied admission. Crime prevention is better than having to prosecute erring members of the university, which exercise drains funds meant for research and other academic ventures. Prosecution equally wastes the precious time of the institution just as the attention of the university is distracted.<sup>307</sup>

Earlier in this chapter,<sup>308</sup> I pointed out that the object of the university is to produce graduates who have been found worthy in learning and in character.<sup>309</sup> I submit that the database of criminal record of students being muted by the ICPC is a step in the right direction.

I examine the corrupt prone procedures, which the ICPC condemns as undesirable. By this, the lecturer and student love life, which is prone to abuse, has been discouraged.

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<sup>304</sup>Ogar, 50.

<sup>305</sup> Section 4.

<sup>306</sup>Ogar,50.

<sup>307</sup> See limits of judicial review in section 7 of chapter four.

<sup>308</sup> See section 2.

<sup>309</sup> See section 2.

Undue delay in issuing academic transcripts and opening of crime data for intending students are crime preventive steps in the right direction.

### ***Alumni associations***

I venture into what stake old students do have in their *alma mater* as to make them contribute towards ensuring that the institution discharges its obligations in the most rewarding way.

Alumni of institutions can be said to have a stake in the well-being of their *alma matters* as it provide facilities, funding of certain projects. To Adedipe, an alumni relation is key to university development.<sup>310</sup>

Tunde Babawale advocates the involvement of alumni associations in the management of tertiary institutions. To him, the association's involvement in the management of tertiary institutions is a way of curbing the excesses of administrators of each institution. The association is a major stakeholder and in good stead to help promote transparency and accountability by challenging the culture of impunity and corruption, which are beginning to take root in most institutions in the country. They should be more involved in the process of returning their *alma matters* to their enviable positions.<sup>311</sup>

In this direction, the laws establishing some tertiary institutions make representative of alumni association members of the governing council. Membership of representative of alumni affords a platform for the association to influence the administration of the university.

The roles of the old students in the provision of environment conducive to learning and in ensuring transparency in the university administration have been identified. This makes the association relevant in the university's realisation of its objects.

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<sup>310</sup> NO Adedipe 26.

## 4.2 Internal management of university education

In this section, I consider the internal management of the university and I examine an internal organogram, having the visitor at the apex.<sup>312</sup> In doing this, I look at how well the officers are positioned to assert university autonomy. I also examine the relevance of internal management in the realisation of the objects of the university.

### 4.2.1 Composition and powers of the Governing Council

In this section, I consider the manner of appointment and qualification of members of council and link the same to the council's effectiveness in directing the university's activities.

The Act establishing every university identifies a pro-chancellor and a council as a principal officer and committee respectively, in the institution.<sup>313</sup> The council is charged with the administrative functions in the areas of goal setting, policy formulation, staff development, general discipline, budget approval and liaison activities with the government.<sup>314</sup> For instance, Section 7 of the Act establishing University of Lagos<sup>315</sup> provides that 'the Council shall be the governing body of the University and shall be charged with the general control and superintendence of the policy, finances and property of the university, including its public relations.'

The Act establishing every university provides for composition of its council. Section 5 of the Act establishing the University of Lagos provides:

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<sup>311</sup>Tunde Babayemi speaking on a topic 'The travails of higher education: Role of alumni association.' See Abiodun Fanoro 'Babawale charges alumni associations to challenge impunity, corruption in schools' The Guardian 17 April 2014 54.

<sup>312</sup>I consider this office under external control, earlier in this chapter.

<sup>313</sup> See for instance section 3 of the University of Lagos Act, Cap U9 Laws of the Federation of Nigeria, 2004.

<sup>314</sup>Ajayi &Ekundayo 225.

<sup>315</sup>University of Lagos Act, Cap U9 Laws of the Federation of Nigeria, 2004. See also section 6(1) of the University of Maiduguri Act, Cap U10 LFN, 2004.

- a) The Pro-Chancellor;
- b) The Vice-Chancellor;
- c) The Deputy Vice-Chancellors;
- d) one person from the Federal Ministry responsible for education;
- e) nine persons representing a variety of interests and broadly representative of the whole Federation to be appointed by the President;
- f) Four persons appointed by the Senate from among its members;
- g) Two persons appointed by the Congregation from among its members; and
- h) One person appointed by Convocation from among its members

Under the Universities Autonomy Act, 2007<sup>316</sup> a new Section 2(e) provides for a reduction in community representatives to four as follows: ‘Four persons representing a variety of interests and broadly representative of the whole Federation to be appointed by the National Council of Ministers.’

Section 2(2) of the University Autonomy Act contains a provision of qualifications of Council members. The subsection provides: ‘Persons to be appointed to the Council shall be of proven integrity, knowledgeable and familiar with the affairs and tradition of the University.’

Thus, to qualify as a member of the Governing Council the person must:

- (a) be of proven integrity and
- (b) be knowledgeable and familiar with the affairs and tradition of the University.

Eligibility for appointment as a council member has now been zeroed to academic qualification and moral qualification. I address issue of academic qualification first.

Oshio considers academic qualification in (b) and reasons on educational qualification that for a person to be knowledgeable and familiar with the affairs and tradition of the University, he must be a degree holder.<sup>317</sup>

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<sup>316</sup>The Universities (Miscellaneous Provisions) (Amendment) Act 2003 (otherwise called the Universities Autonomy Act No. 1, 2007) was enacted by the National Assembly and signed into law on 10th July 2003. It was later gazetted by the Federal Republic of Nigerian Official Gazette No. 10, Volume 94 of 12 January 2007. See Ehi Oshio, 2.

<sup>317</sup>Oshio 2.

In the words of Johnson Barovbe, Nigeria needs well educated experts and leaders across many disciplines, including business, economics, science and policy, to propose big and refined ideas for its big problems. He concludes that the Nigerian problem is beyond the political class.<sup>318</sup>

Adeniyi Tihamiyu contends that for the governing council of a tertiary institution to achieve the institution's set goals and objectives effectively and efficiently, at least one of council's members should be a financial expert.<sup>319</sup> With respect to such functions of the Council as goal setting, policy formulation, and budget approval, I submit that at least a member with financial background should be appointed to the council.

Against the view that familiarity with academic tradition may be on account of having children as undergraduates, Olugbemiro Jegede submits thus:<sup>320</sup>

(t)he fact that you have children in school or you come from a family of teachers does not make you an expert in education. We need people who are trained in planning, management, administration and strategizing within education. We either don't have them or we don't allow them to do the job and unless we put round pegs in round holes, we will still be having some of these problems.

I consider the provisions of Section 2(2) of the University Autonomy Act, which prescribes knowledge and familiarity with the tradition of a university as academic qualification. I contend that the provision has been made so flexible as to accommodate variety of interests in a heterogeneous country. It is important to stress that the community representatives in the council represent variety of interests<sup>321</sup> in which a section of the country would be sidelined if it is unable to produce suitably qualified

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<sup>318</sup>Barovbe, Managing Director of Westminster College, Lagos. See 'Barovbe wants Higher School Certificate re-introduced' *The Guardian* Thursday 22 August 2013 55.

<sup>319</sup>Adeniyi Tihamiyu opts for the Bursar of the institution, because of his vantage position on the institution's finances. Tihamiyu, RA 'Questioning the claim of inadequate funding of tertiary education in Oyo State, Nigeria' *International Journal of Governmental Financial Management* 47.

<sup>320</sup>Olugbemiro Jegede, former Vice Chancellor of National Open University of Nigeria. See Rotimi L. Oyekanmi 'How national open varsity can create more access' *The Guardian* 16 January 2014 36.

<sup>321</sup> See section 5(e) University of Lagos Act.

candidates.<sup>322</sup> This explains the liberal interpretation which Jegede<sup>323</sup> now opposes, that familiarity with the tradition of the university can be on account of having children in the university or coming from a family of teachers.

On the requirement of integrity and moral qualification for Council membership, Afe Babalola advises that Government should desist from appointing politicians to serve on the councils. To him, politicians seek to make money from such appointment while the education sector in turn requires a lot of seriousness, commitment and funding. He admonishes Council members to come to terms with the fact that they were appointed to serve and lend their experience to the growth and development of their institutions safe which problems shall persist.<sup>324</sup>

Arguing in the same vein, Okorosaye-Orubite considers the Asbby Commission Report on Post School Certificate and Higher Education in Nigeria, which supports the insulation of council from politics:<sup>325</sup>

A university has to be insulated from the hot and cold winds of politics. Responsibility for its management must be vested in an autonomous council. The council must include representatives of the public, but these representatives must attend as individuals and not as agents for some sectional interest or party line.

Buttressing the above, Mathew Hassan Kukah, Catholic Bishop of Sokoto Diocese also dwells on integrity requirement and re-affirms the need to bring back nobility into the university system. To him, it is men and women of ideas, not politicians who will change Nigeria. He states further:<sup>326</sup>

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<sup>322</sup> If possession of a university degree is prescribed, this may not be feasible where 'the preferred candidate' does not have the qualification.

<sup>323</sup> Olugbemi Jegede, former Vice Chancellor of National Open University of Nigeria. See Rotimi L. Oyekanmi 'How national open varsity can create more access' The Guardian 16 January 2014 36.

<sup>324</sup> Muiyiwa Adegemi 'Babalola blames polytechnic councils on strikes, advises against appointment of politicians' The Guardian Thursday 17 April 2014 51.

<sup>325</sup> FME 1960 31; Okorosaye-Orubite *et al* 266.

<sup>326</sup> Eno-Abasi Sunday 'Academia has surrendered moral high ground to political class. The Guardian 24 April 2014 49.

Today, our universities, which should be the centre of ideas and intellectual curiosity, have become in many respects incubators of ethnic jingoism where professors are competing not for excellence in research in their areas of endeavour, but to get the attention of politicians and secure political appointments.<sup>327</sup>

I examine the provisions above and submit that most appointments to the Councils in Nigeria are made as reward for political patronage.<sup>328</sup> Appointments also create room for financial succour for candidates who lost elections. Loyalty of appointees is to the political party that nominates them for appointment. The call to insulate the university from politics in the circumstances may not be well received by the political class.

The prescribed requirement of integrity is very essential. Where graduates that are produced have to be worthy in learning and character, I submit that the good character requirement has to flow from members of the council.

I have considered the responsibility on a council. From the council flows the exercise of autonomy on learning and administration. That function as shown above can be discharged if the appointees are above board morally, if they have what Oshio regards as basic education, and the council so constituted is non-partisan. Given the above requirements, I submit that the council can discharge salient responsibilities among which is the appointment of a vice-chancellor. The objects of the university are better realised in the circumstances.

### ***Appointment and removal of vice-chancellor***

My interest in this sub-section is in the possible effect of mode of appointment and or removal of the vice-chancellor over the realisation of the objects of a university.

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<sup>327</sup> As above.

<sup>328</sup> See also Friday Olokor 'ANCOPSS condemns politicization of education' The Punch 22 May 2015 46.

Institutional autonomy entails that the appointment of the vice-chancellor should be a domestic affair. Ekundayo and Adedokun confirm this was the position prior to the Decree No 23, of 1975 when the Federal Government took over the regional universities.<sup>329</sup> The power to appoint and remove vice-chancellors was then vested in the Head of State or the Federal Military Government. Since that time, the appointment of the vice-chancellor has become a political affair and the visitor has been having the final say.<sup>330</sup>

As such, the President as the visitor exercises final authority in respect of appointment of the vice-chancellor in (the case of) Federal Universities. A Governor is the Visitor and last authority on appointment of vice-chancellor in (the case of) state universities, and the proprietor is the visitor in (the case of) private universities.<sup>331</sup>

Where a council is not constituted, the visitor appoints an acting vice-chancellor whose appointment is consequently confirmed without due process.<sup>332</sup> This manner of appointment is political and it robs an office holder of the desired objectivity over academic issues. In fact, an appointee becomes accountable not to the council, but to the visitor.

There is now a turn-around in the manner of appointment of a vice-chancellor and the council plays a decisive role. A vice-chancellor by law is now appointed by a council, which is under obligation to merely inform the visitor of the appointment. A vice-

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<sup>329</sup>University of Ibadan (UI) became a full-fledged university in 1962. Other universities were established between 1960 and 1975. Eastern Region Government established the University of Nigeria, Nsukka; the Western Region Government established the University of Ife, Ile-Ife, now Obafemi Awolowo University; the Mid-West Region Government established the University of Benin and the Northern Region established the Ahmadu Bello University, Zaria. The Federal Government took over these universities and constituted them into First Generation Universities, See also, NO Adedipe 'Strains and stresses in the Nigerian University system: sustainable quality assurance prospects by private universities' <http://saharareporters.com/article/strains-and-stresses-nigerian-university-system-sustainable-quality-assurance-prospects-priv> accessed 28 February 2014 Posted: Oct 24 2013, 3:10PM.

<sup>330</sup>Ekundayo & Adedokun 63.

<sup>331</sup>As above.

<sup>332</sup>As above.



chancellor is appointed under section 4 of the Universities Autonomy Act, 2007 for a single term of five years but may equally be removed by governing council.<sup>333</sup>

The removal from office must however follow due process.<sup>334</sup> He may be removed on grounds of gross misconduct or inability to discharge the functions of his office as a result of infirmity of body or mind.

I contend that where the appointment of a vice-chancellor does not pass through the visitor, nor have political undertone, the appointee is able to discharge his duties objectively and without fear or favour. This I claim facilitates the realisation of the objects of the university. Equally, the provision that the appointee may only be removed following due process<sup>335</sup> is made possible on account of non-political consideration on his appointment. Removal from office on mere publicity in the news media is then a deviation from security of tenure.<sup>336</sup>

Further demonstration of institutional autonomy is in the area of appointment of acting vice-chancellor. Section 5(13) of the Act provides that where there is a vacancy in the office of the vice-chancellor, the council shall appoint an acting vice-chancellor on recommendation of the senate. Oshio considers the provisions of law and contends thus:<sup>337</sup>

Under this provision the Governing Council cannot appoint an Acting Vice-Chancellor unilaterally without the recommendation of Senate. The recommendation of Senate is thus a condition precedent for the appointment of an Acting Vice-Chancellor by the Council. However, the Council is not obliged to appoint any person recommended by Senate if such a person is not fully qualified for the post or where he is subject to any legal disability.

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<sup>333</sup> See section 3 of the Universities Autonomy Act, 2007.

<sup>334</sup> Section 5 of the Amendment Act contains a new provision of section 3(9)-(11) specifying the procedure for the removal to ensure fair hearing for the Vice-Chancellor. Where there is a proposal to remove an office holder on allegation of misconduct, a five man Council and Senate Committee shall be set up. The Committee shall investigate the allegation and make appropriate recommendation to Council. The Council makes its pronouncement accordingly.

<sup>335</sup> See security of tenure in section 3 of chapter three and rules of natural justice in section 3 of chapter four.

<sup>336</sup> See section 3.4, chapter three.

In the rare event that the senate recommends a person who is not qualified or who does not meet the requirements of the law, the council is not obliged to appoint such a person. The observed lacuna however, is whether the council in the circumstances will make its independent appointment or shall direct that the senate should make another recommendation.<sup>338</sup>

In exercise of the appointment power of the council, the Governing Council of the Federal University of Technology, Akure (FUTA), appointed a vice chancellor without relying on the Federal Government in respect of the exercise. Adebisi Daramola, Professor of Agricultural Economics was appointed by the Governing Council, in exercise of its powers under the University Autonomy Act, 2007. Under the Act, the Visitor is only notified of the appointment made.<sup>339</sup>

In the same vein, the Council of the University of Maiduguri at its meeting of May 2014 appointed the most successful applicant, Prof Jordi. The appointment was made without the approval of Visitor.

Presently, there should not be recourse to the Visitor for appointment as a Governing Council is now empowered by the law to select one candidate from among the three candidates recommended to it. The Council just forwards the name to the President, Commander-in-Chief of the Armed Forces.<sup>340</sup> I submit that the name, which is sent to the visitor, is only for his information.

Notwithstanding the provisions of the University Autonomy Act, most universities are yet to amend their laws accordingly and they still bother government on appointment

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<sup>337</sup>Oshio reiterates that to fully enforce or implement the provision of Section 5(12) of this Act, which is against Sole Administration in the Universities, appointment of a new council before dissolution prevents having to fill a gap by sole administrator.

<sup>338</sup> To my mind, the latter option appears more feasible.

<sup>339</sup> Information Nigeria posted on 30 May 2012. Varsity exercises autonomy, picks VC <http://www.informationng.com/2012/05/varsity-exercises-autonomy-picks-vc.html> accessed 27 February 2014.

<sup>340</sup> University Miscellaneous Act of 2003. See also Okojie 9.

issues. This disposition of council may be due to status and competence of members and the lacking courage to assert rights of the university.

I consider the precedent laid by FUTA and University of Maiduguri, I submit that other councils constituted having prescribed credentials above would exercise appointment powers in a way that detaches appointment issues from political influences. This I point out is a step towards fulfilment of objects of a university.

#### **4.2.2 The senate and academic autonomy**

In this section, I examine the senate of a university with a view of highlighting how its academic regulatory responsibilities are lost to the NUC and the JAMB. I consider whether the objects of the universities are better realised with the universities sharing certain academic responsibilities with the NUC and JAMB.

The law of every university establishes a senate as its supreme academic authority. The senate is the main organ regulating the internal academic activities of the university. Section 7 of the University of Maiduguri Act<sup>341</sup> for instance, vests in the Senate the power to organise and control the teaching, admissions and discipline of students and to promote research. The law specifically mandates the Senate to handle the establishment and organisation of faculties, departments, schools, other teaching and research units and to allocate responsibilities for different branches of learning.<sup>342</sup>

Section 7(2)(b) provides:<sup>343</sup>

The organisation and control of courses of study at the university and of the examinations held in conjunction with those courses, including the appointment of examiners, both internal and external

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<sup>341</sup> University of Maiduguri Act, Cap U 10, LFN 2004.

<sup>342</sup> See section 7(2)(a) of University of Maiduguri Act, Cap U10, LFN,2004.

<sup>343</sup> See section 7(2)(b) of University of Maiduguri Act, Cap U10, LFN,2004.

The senate deals with all academic decisions and their execution, the power of the senate extend to assessment of the academic merit of the university teachers and the content of academic programmes.<sup>344</sup>

The senate consists of the vice-chancellor, all professors, all heads of departments and faculty representatives and the registrar as secretary. University Autonomous Act, 2007 introduces a new composition of senate as Section 7A of the Principal Act consisting of –

- a) Vice-Chancellor;
- b) The Deputy Vice-Chancellor;
- c) All Professors of the University;
- d) All Deans, Provosts and Directors of academic units of the University;
- e) All Heads of Academic Departments, units and research institutes of the University;
- f) The University Librarian; and
- g) Academic members of the Congregation who are not professors as specified in the Laws of each University.

To Oshio, this has amended the existing composition of senate in the enabling law of each university by sweeping away the power of the vice-chancellor to appoint some members of academic staff to senate as ‘vice-chancellor’s representatives’ in the senate. Oshio observes the abuse in the appointment, wherein cronies and sycophants appointed were never objective in their contributions, they believed the vice-chancellor was always right.<sup>345</sup>

The university operates by committee-system. In the various committees, issues are arrived at on the strength of argument. The damage hitherto done by the vice-chancellors’ nominees whose mission was to protect their appointors and benefactors is better imagined.

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<sup>344</sup> SJA Mgbekem ‘Management of university education in Nigeria’ Calabar: Unical Press 2004. OY Oyeneye ‘Current issues in the administration of university education in Nigeria’ Being a Lecture delivered at the 15th Convocation ceremony of the University of Ado-Ekiti, on 29 March 2006. See also Hastrup, Ekundayo & Adedokun 63.

The main organ regulating the internal academic activities of the universities is the Senate. The teaching and research for nation's development is a substantive object of every university. The senate determines the curriculum, syllabus; courses content and research focus for the university.<sup>346</sup>

In terms of what development a university should bring to the nation, I submit that the senate by its findings has to establish the areas of need of a nation and is obliged to take necessary steps to accomplish it.<sup>347</sup> I submit that the senate has not been forthcoming in discharging the above functions on account of loss of academic autonomy to the NUC. This schedule of duty is vital to the development of the nation. Nigeria misses the positive contributions, which the universities are expected to make in solving the problems facing it.

The objects of Usmanu Dan Fodio University, Sokoto Act<sup>348</sup> in section 1(3)(c) and (d) provide for the conduct of research in all fields of learning,<sup>349</sup> and mandates the university to relate its activities to the social, cultural and economic needs of the people of Nigeria. Obasanjo then observes the increasing violence and crime in Nigeria and Africa and he charges universities in Nigeria and Africa to develop curriculum and research methodologies that will engender peace and human security in Africa and the world.<sup>350</sup> There are other challenges facing Nigeria as a nation and to which the Nigerian universities are expected to find solutions to.<sup>351</sup>

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<sup>345</sup>Oshio 6.

<sup>346</sup> See University of Sokoto, Memorandum submitted by Senate to the Presidential Commission on Salary and Conditions of Service of University Staff, February 1981, 20. See also the Preamble of Higher Education Act, 1997, Republic of South Africa.

<sup>347</sup>The Senate is expected to develop curriculum and research methodologies to meet the identified needs of the nation. 'Buhari wants varsities to be agents of change' The Guardian 26 November 2015 47.

<sup>348</sup>Usmanu Dan Fodio University, Sokoto Act Cap U14, Laws of the Federation 2004; see also section 1(3)(c) and (d) of the University of Port Harcourt Act, cap U13, Section 1(3)(c) and (d) of the University of Maiduguri Act, cap U10.

<sup>349</sup> The University of Lagos provides in Section 1 (3) (c) on promotion of research.

<sup>350</sup> See Kanayo Umeh 'Obasanjo charges varsities on solutions to terrorism' The Guardian 24 November 2015, 5.

<sup>351</sup> In sections 2 and 3 of chapter two, I identify challenges of youth un-employment, power generation, and the like.

In the process of meeting the needs of the nation, the senate may not do it by itself as it may decide to collaborate with other bodies. The senate in the circumstances determines which external bodies it may work with. I point out earlier in this chapter<sup>352</sup> that collaboration complements teaching and research of the university where the senate considers and approve the terms of such relationship.

Section 16(1) of the Technical University, Ibadan<sup>353</sup> establishes the Senate of the University as the supreme academic authority. Section 16 (2) provides for the function of the Senate thus:

The Senate shall be the supreme academic authority of the university and shall organize, control and direct the academic work of the university, both in teaching and research, and shall take such measures and act in such a manner as it thinks proper for the advancement of the university as place of education, learning and research.

I submit that the schedule of duties of the senate is demanding and technical. Based on this, I point out in chapter four<sup>354</sup> that the law courts defer to the university's decision on academic violations. I argue however that in practice, with the involvement of the NUC, the regulation of academic activities by the NUC has not made the universities to be more competitive because of identified corrupt practices of field officers of the NUC.<sup>355</sup> The essence of having the NUC to regulate the Nigerian University System would have been justified if this relationship produces solutions to the challenges of the nation and if it leads to the development of the country.

Academic autonomy under which academic activities are performed has been examined by Richard Peltz and he prescribes the contents thus:<sup>356</sup>

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<sup>352</sup> See section 2 of chapter two.

<sup>353</sup> Technical University, Ibadan Oyo State Law, 2012(21)(37).

<sup>354</sup> See section 4.

<sup>355</sup> See section 4 above. The regulation of academic activities by the NUC has not made the universities to be more competitive because of identified corrupt practices of field officers of the NUC.

<sup>356</sup> Richard J Peltz 'Penumbra academic freedom: interpreting the tenure contract in a time of constitutional impotence' 37 *Journal of College and University Law* 2010 - 2011 174.

(f) freedom to teach without outside interference. It includes the content, process and methods of teaching, as well as the evaluation (assessment) of those taught. Admission requirements, standards and criteria for awarding qualifications are logical corollaries of this right; freedom to do research without outside interference.

In section 3 above, I regard teaching as a substantive object of the university and argue that a course curriculum may accommodate external input, to meet the challenges of the nation and to effect positive development of the country. The senate however has to decide on what level of relationship and terms of such collaboration with external bodies.

In addition to the scope of academic autonomy prescribed by Peltz, there is the assessment of the teachers and content of programmes. These academic functions are however jointly exercised by the senate and the NUC as the later by law is expected to:<sup>357</sup>

undertake periodic reviews of the terms and conditions of service of personnel engaged in the universities and to make recommendations thereon to the Federal Government where appropriate;

The senate regulates the academic activities of the university following the general guidelines provided by the NUC.<sup>358</sup> Senate's regulatory powers on academic matters now become qualified.

Further, on the discharge of academic authority, the Senate is empowered to determine the academic requirements of all students seeking admission for its respective programmes. For instance, section 18(3) of The Technical University Law mandates the University's Senate thus:<sup>359</sup>

- (d) to regulate all University examinations, and after considering the recommendations of the Boards of the Colleges, Schools, Institutions and Faculties concerned, to appoint internal and external examiners;
- (e) to regulate the admission of persons to the University and to courses of study in the University and their continuance or discontinuance in such courses and the conditions

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<sup>357</sup> Section 4(i) of National Universities Commission Act (Cap N81), LFN, 2004. See also <http://www.nuc.edu.ng/pages/pages.asp?id=31B> accessed 28 February 2014.

<sup>358</sup> WO Ibukun *Educational Management: Theory and practice* (1997) Green-line publishers. Ado-Ekiti 225.

qualifying for matriculation and for admission to the various titles, degrees, distinctions and other awards offered by the University.

Admission as an academic exercise is jointly carried out by the senate and the JAMB. In terms of the JAMB Act, the body has the sole responsibility to set the admission standard and to determine the number of students each university is to admit and when to admit.<sup>360</sup> With the apparent power overlap as above, I submit that the university's right to conduct examinations and to admit students by its standards is no longer absolute.

The expectations from the JAMB's regulation of admission processes is to conduct examinations which are true test of candidates' ability. This is not the case on account of irregularities in JAMB's operations and on account of application of government policy of quota system.<sup>361</sup>

On the violation of academic functions of the senate by the NUC and JAMB as above, I make a case later in this chapter<sup>362</sup> for a review of law establishing the university to reflect what obtains in practice.

I consider the provision of law and do submit that the senate is vested with the power to lead in the realisation of objects of the university. I point out that collaboration in the realisation of objects of a university where such is properly monitored does not violate academic autonomy. The overbearing influence of the NUC and the JAMB on the Senate on academic matters violates academic autonomy. I submit that with the array of stars assembled in the senate, its decisions should be respected by the NUC.

I established that academic authority vested in the senate has been curtailed by the NUC by way of programmes moderation and by the JAMB by way of regulation of admission of students. I pointed out that the academic regulatory responsibilities of the NUC and the JAMB have not positively influenced the productivity of the universities.

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<sup>359</sup> See also Section 7(2)(b) of University of Maiduguri Act, LFN 2004.

<sup>360</sup> See section 5 of the JAMB Act Cap J1, LFN 2004. See also Taiwo (Codesria) 9.

<sup>361</sup> See section 4 above on the establishment and programmes of the JAMB.



## 5 Financial autonomy

In this section, I address the issue of funding source as it relates to regulation of the university. I investigate university autonomy and financial autonomy as they relate to the ability to provide an environment, which is conducive to learning. I then proceed to examine the issue of funding as it relates to the quality of teaching and impartation of knowledge. I finally consider tuition and access to education.

The funding of a university is as crucial as the functions expected to be performed by the university.<sup>363</sup> The importance of funding then raises the issue of how and in what manner a university may generate its funds. Julius Okojie however contends that a university should generate its own resources, without making recourse wholly to Government as funding agent.<sup>364</sup>

Okojie considers such academic activities as inquiry, examination and the advancement of knowledge, which are agreed to be for the benefit of the society. He challenges the same society to recognize its part in providing means appropriate for the achievement of that end. To him, resources should be commensurate with expectations.<sup>365</sup>

I submit that the efforts expended in coaching objects of a university would be a waste if financial resources will not be deployed for its realization. In the circumstances, the objectives of teaching, learning and research will not be performed at all or may be performed with poor quality output.

On Okojie's charge on the society to contribute to the sustenance of the universities, I contend that the public universities are substantially funded from the taxpayers' fund. Okojie however seem to be inviting wealthy individuals, organisations and the private

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<sup>362</sup> See section 6.

<sup>363</sup> Afe Babalola 19.

<sup>364</sup> Okojie 12.

<sup>365</sup> Okojie 15.

sector to complement the efforts of the government in funding the public universities. The private sector is expected to fund the universities in conducting researches,<sup>366</sup> which particularly focuses on the business projections of such companies. In other words, there is a positive link between research focus and funding.<sup>367</sup>

Still on funding of the universities, Michael Oseni argues that availability of adequate funds from the proprietors is a *sine qua non* for the good running of educational establishment.<sup>368</sup> Funding of education in Nigeria involves the Federal, States and Local Governments' Appropriation and Releases as Capital and Recurrent Expenditure for the education sector. It also includes the Education Trust Fund, Donor Agencies, Interventions, as well as Scholarship awards by Federal, States and Local Governments. The bulk of financing of all federal universities are received from the Federal Government through the National Universities Commission.<sup>369</sup> Julius Okojie however categorises the funding streams of the universities into three, proprietary funding, students' fees and other forms of donor, non-governmental support and consultancy.<sup>370</sup>

Government's funding of universities has consequently introduced regulations. I submit that the government will be conscious of the need to implement its educational policies. It becomes difficult for the government to then stand aloof of what goes on in the university.

I observe that the Government of Nigeria is conscious of attaining national development by placing emphasis on Science and Technology in the university programmes. The

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<sup>366</sup> John Ogiji 'Babangida calls for more private investments in education' The Guardian Thursday 5 November 2015, 53.

<sup>367</sup> See my discussion of objects of a university in section 2 of chapter two and for academic autonomy of the senate, see section 4 of chapter two.

<sup>368</sup> Oseni 145-148. See also Ajayi & Ayodele who argue that the proportion of total expenditure devoted to education, viz-a-viz the increase in student enrolment and increasing cost on account of inflation to be rather grossly inadequate. Ajayi & Ekundayo, 226.

<sup>369</sup> Oseni 145, 148. See also National Bureau of Statistics, 2011. The Committee on Social Sector in the 2014 National Conference has recommended that the two per cent Education Tax Fund remitted to the Tertiary Education Trust Fund should be increased to four per cent, adding that this is in recognition of the importance of education to national development and the need to ensure proper funding of the sector. Friday Olorok 'Committee seeks 26% budgetary allocation for education' Punch edition of 17 June 2014.

<sup>370</sup> Okojie 12.

Government through the Tertiary Education Trust Fund gives priority attention to the sponsorship of the Sciences by not less than 70 per cent of annual vote. Allocations for studies of the Arts and Humanities come much behind.<sup>371</sup>

The Government's funding of researches is expected to produce new products. This can only be feasible where funds disbursed are spent as appropriate. The role of government is to disburse and to monitor the academic activities.<sup>372</sup> The process of accountability applies here, as the government will want to confirm that the university in spite of its autonomy discharges its duties as appropriate.

It is the nexus between source of funding and request for accountability that informs JF Ade Ajayi's doubt on an absolute autonomy.<sup>373</sup> Okojie considers an institution that is subsidized by the government and simultaneously claiming to be autonomous from the same government. As a way out of the funding and control imbroglio, Okojie proposes diverse autonomies or degrees of autonomy.<sup>374</sup>

To him, academic autonomy operate to the extent prescribed by the NUC accreditation team; financial autonomy is observed to the level that the university gives an account of financial resources obtained, while institutional autonomy in respect of appointment of vice chancellor is already provided for by law.<sup>375</sup>

Building on the foundation laid by Okojie, Afe Babalola sees financial autonomy as being not feasible. To him if the government withdraws its financial commitments to university education, the university would resort to charging exorbitant fees. This to him will be burdensome to the already over-burdened populace.<sup>376</sup>

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<sup>371</sup> Saint *et al* 17.

<sup>372</sup> Okojie in the circumstances contends that he who pays the piper calls the tune. See Okojie 7.

<sup>373</sup> See Ajayi 11. An absolute autonomy may however not be feasible, as a financier deserves to be given an account. The process of doing this will surely interfere with day-to-day administration of a university.

<sup>374</sup> Okojie 6.

<sup>375</sup> Okojie 8. See the Universities Autonomy Act, 2007 and generally section 3, chapter two on institutional autonomy.

<sup>376</sup> Afe Babalola 53.

Autonomy refers to the freedom granted each university to manage its internal affairs without undue interference from outside bodies, persons, most especially, from the government that sustains it financially.<sup>377</sup> I contend that it takes a university, which is autonomous and generates its own fund that can procure desired facilities for its programmes. This is an incidental object of which Section 1(2)(a) of the University of Ibadan Act<sup>378</sup> mandates the university to provide such facilities for the pursuit of learning and acquisition of liberal education as are appropriate for a university of the highest standing.<sup>379</sup>

Further on autonomy and provision of facilities, Okojie submits that autonomous institutions can establish their own programmes of study, recruit their own staff, have control over their own finances (once received) subject to normal auditing procedures, and grant their own degrees.<sup>380</sup> Okojie as such buttresses the fact that an autonomous university is free to disburse its financial resources towards the realisation of its objects.

Afe Babalola's idea of financial autonomy is such that gives to the government a total relief on its financial commitments to the universities.<sup>381</sup> He thus requests for management autonomy. Autonomy is being able to undertake activities without seeking permission from a controlling body.

The definition above as it touches on financial autonomy has indicated the degree of autonomy, which is conceded to the university. Autonomy here allows for application of normal auditing procedures. I align with the position of Okojie as I concede that the university must account for financial support it enjoys.

For the purposes of this discourse, I adopt the definition of Okojie as it is unthinkable to fully excuse the government, which currently bears not less than 80 per cent of a public

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<sup>377</sup>Ojo 67.

<sup>378</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004. See also section 2 of chapter two for incidental objects of universities.

<sup>379</sup> See also Section 1(3)(b) of University of Lagos Act, Cap U9, Laws of the Federation, 2004.

<sup>380</sup> Okojie 6.

<sup>381</sup> Afe Babalola 53.

university's expenses. I consider the obligation on the university to account for the financial support received from government as financier of public universities. As such, I consider the act of rendering of financial account not as an external interference.

Taiwo<sup>382</sup> concedes on the need for a degree of financial autonomy in respect of allocation of subventions among the departments and institutes. This to him is essential for the effective operation of the universities. He however condemns most African governments, which use financial control to direct their universities on the rate of growth in terms of capital development and student intake, the staffing of universities and the remuneration payable to academic staff.

On the degree of financial autonomy, an absolute autonomy may not be feasible, as a financier deserves an account. Okojie's view on financial autonomy allows for normal auditing procedures. I subscribe to the view and however condemn the extremism by some government as captured by Taiwo.<sup>383</sup> I argue that if law courts defer to universities on academic decisions, government should admit that it is ill-equipped to make educational decisions crucial for the advancement of teaching and research for the nation's development.

In this section, I addressed the importance of funding by which without it, no object of a university can be achieved and that inadequate funding will result in poor quality university education. The private sector can fund the universities to conduct research in areas of investment interest of the sector. I establish that it is only an autonomous university that may achieve the object of providing relevant facilities for its academic activities. I pointed out that accountability by the university is essential and that it does not as such deviate from the autonomy status of the university. I then proceeded to examine the issue of funding as it relates to the quality of teaching and impartation of knowledge.

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<sup>382</sup>Taiwo (Codestria) 7. See also J F Ade Ajayi 'Academic freedom and university autonomy in Nigeria today: A historical survey and a search for new strategies' A Lecture delivered at the Academic Staff Union of Universities Conference in Kano, 1980, 171.

## 5.1 Funding, access and quality of education

I investigate the dwindling budgetary allocation whether the inability of the university to increase fees can destroy the survival of universities. I consider whether free university education, which produces half-baked graduates, is good enough as dividends of democracy. I finally investigate the incident of raising school fees and quality of education on access to such universities.

I regard funding of a university as being of equal importance as the functions expected to be performed by the university.

Generally, inadequate or limited funding has been the biggest bane of the university in Nigeria. This is attributable to the dwindling budgetary allocations from government as well as the university's inability to improve internally generated revenue due to environmental factors.<sup>384</sup>

Nigeria's 2014 budget proposal for education was N493 billion, representing 10.7 per cent of the total national budget proposal of N4.6 trillion. It also amounts to a 15 per cent increase over the 2013 budget. In 2013 the sector gulped 8.7 per cent of the national budget.<sup>385</sup> The State is at the forefront of tertiary education provisioning. It is thus answerable on the state of funding of education.<sup>386</sup> Though there appears to be an improvement in the budgetary allocation to education, I submit that 10.7 per cent is a far cry from the 26 per cent prescribed by UNESCO.

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<sup>383</sup> Taiwo (Codestria) 7.

<sup>384</sup> Peters, 26. These funding constraints have been mainly the result of government remaining the largest source of financial support for institutions of higher learning. Federal Government accounts for almost 93% of university funding; Hartnett *et al*; Oseni 153.

<sup>385</sup> Kanayo Umeh 'Stakeholders canvass increased budgetary allocation for education' The Guardian 27 March 2014 43.

<sup>386</sup> Sylvester Akhaine *et al* 'ASUU strike and national ignorance' The Guardian Wednesday 30 October 2013 13.

Federal Government of Nigeria's allocation to the education sector 2000-2014 is as follows.<sup>387</sup>

Year 2000- 8.3; 2001 -7.0; 2002 -5.09; 2003 -11.83; 2004 – 7.8; 2005 – 8.3; 2006 -8.7; 2007 – 6.07; 2008 - 13; 2009 – 13; 2010 – 6.4; 2011 – 1.5; 2012 – 8.43; 2013 – 8.7; 2014 – 10.7.

The budget allocation to the education sector in 2012 in 11 African Countries was:<sup>388</sup>

Ghana – 31.0; Cote d'Ivoire – 30.0; Uganda – 27.0; South – Africa – 25.8; Swaziland -24.6; Kenya - 23.0; Botswana – 19.0; Morocco – 17.7; Tunisia - 17.0; Burkina Faso 16.6; Nigeria 8.43.

Odiaka considers inadequate budgetary allocation to education in Nigeria and explains very clearly why the nation's universities will continue to suffer the frustration and indignity of very low rating in the world ranking of universities.<sup>389</sup> Federal, State Governments, the NUC, the universities and every other stakeholder all know the inadequate budgetary allocation to education.<sup>390</sup> I consider the not too buoyant government and its desire to spread dividends of democracy by way of free education to every student at every level of education. Government insists on free tuition for political considerations. The result remains the production of half-baked students, which is of no benefit to any of the students, the university and the nation.

Nigeria presents a classical study in over dependence on government for the provision of virtually everything imaginable. Time has come when Nigeria must face the reality of its economic and financial circumstances and do what others elsewhere do to propel their

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<sup>387</sup> Federal Ministry of Finance, see also Peters 35. The States of the Federation are not equally magnanimous. Lagos State in 2013 had budget allocation of 13 per cent to education; in 2014 it increased to 15 per cent. Eno– Abasi & Akinwotu 'Triumph of students' will at LASU' Thursday 14 August 2014 54.

<sup>388</sup> US Department for International Development Official Bulletin 2012, 14. See also Peters 36.

<sup>389</sup> Timothy Isioma Odiaka '2013 budget and Nigerian universities' Punch 31 October 2012. Odiaka is a Professor of Organometallics and Coordination Chemistry and a former Dean of Science, University of Ibadan. See also Friday Olorokor 'Committee seeks 26% budgetary allocation for education' 17 June 2014 Punch; Aina (2007) considers government omission to meet UNESCO'S 26 per cent prescription and concludes the default makes government a contributing factor to the financial imbroglio of the university system. Ajayi and Ekundayo 226.

<sup>390</sup> Oseni considers inadequate funding of Nigeria's educational system and agrees that it is bedevilled by a myriad of problems, which keeps worsening by the day. Oseni 152.

universities to institutions of national relevance, capable of fulfilling their national aspirations.<sup>391</sup>

Joseph Ajiienka<sup>392</sup> calls for the introduction of some form of school fees (or charges) as a drastic step to revive Nigerian's hope of attaining the indices of true national development. In the face of falling oil prices, he contends that statutory federal allocations alone can no longer be relied upon to run the universities as little or nothing is left to embark on meaningful research and the development infrastructure after payment of salaries.

Adeniran sums up on funding:<sup>393</sup>

If Nigerian government is very desirous of being among the first 20 largest economies in the year 2020 as its vision, it has to complement it with high investment in education for development in science and technology.

The nation's aspiration to make the vision 20-2020, I submit aligns with object of the university to champion nation's development. In realising that, I submit alliances with other stakeholders is essential.

The concern of Ajiienka,<sup>394</sup> a vice-chancellor on meaningful research and infrastructure development is borne out of the consciousness to realise these objects of his university. In another way, a university has mandate to provide teaching and research facilities, and I do contend that institutional autonomy has both positive and negative impacts on individual academic freedom of the students.<sup>395</sup>

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<sup>391</sup>Afe Babalola 20.

<sup>392</sup>Kelvin Ebiri 'VC of Uniport hinges varsities' survival on increased fees' <http://www.ngrguardiannews> accessed 29 June 2015.

<sup>393</sup>Adeniran 16.

<sup>394</sup>Kelvin Ebiri 'VC of Uniport hinges varsities' survival on increased fees' <http://www.ngrguardiannews> accessed 29 June 2015.

<sup>395</sup> See Section 4 of chapter three.



Afe Babalola<sup>396</sup> considers a United Kingdom government paper titled ‘Higher Education Funding: International Comparison,’ which is an overview of tuition fees. The paper summarizes the position in 13 Organization for Economic Cooperation and Development (OECD) Countries. Some of the States include Netherlands, Canada, Australia and Japan and Germany. To Babalola, the Countries have not just introduced payment of tuition fees but such is reviewed upwards as occasion demands.

Tuition fees were abolished in Nigerian universities in 1978, because of oil windfall.<sup>397</sup> I consider the tuition fees regime of the OECD and apply for caution in introducing exorbitant tuition. I concede however, that parents should complement the financial commitments of the government. In the introduction of tuition fee, affordable fee to an average Nigerian family should be fixed.

The Committee of Registrars of Nigerian Universities had sent a memo to government on this matter in 1996 on the following principles:<sup>398</sup>

- i. Parents who can pay fees should be allowed to pay instead of preventing them by declaring a free education that we do not match with commensurate financial backing;
- ii. No student who qualifies for admission should be denied higher education merely because of his or her inability to pay fees;
- iii. All tiers of government from Local Council to Federal Government should be allowed to be part of the fee-paying process;
- iv. The private sector should be allowed to be part of the scheme.

The position adopted by the Registrars is an extensive approach, which encourages payment of tuition fee while government continues to subsidise university education. The submissions of the Registrars also provide for accelerated access to university education.

Omole confirms the inadequacy of state funding and canvasses a resort to use of the internally generated funds which is believed can keep these educational institutions

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<sup>396</sup>Afe Babalola 20 21.

<sup>397</sup>See also Saint *et al* 18.

moving.<sup>399</sup> Adedipe contends that the funding of universities should be from a wide variety of sources.<sup>400</sup> I argue that one of the ways out of precarious state of the university is to revisit the issue of tuition fee. Lackadaisical attitude, cases of truancy amongst students and outright abandonment of programmes will be reduced if not stamped out where reasonable tuition is re-introduced in the public universities.

I consider the nexus between affordable tuition, service charges and enrolment and submit that what matters is quality of education that is provided. I argue that where a standard is set, prospective students would seek for resources to attend. Government may however float bursaries and scholarships for brilliant but indigent students.

Saint *et al* submit that Federal universities receive revenue mainly from three sources: the federal government (84%); income generation activities (7%); and various student fees (9%)-even though no undergraduate tuition fees are charged.<sup>401</sup> El-Khawas argues that responsive financing of higher education should address three broad areas of public interests:<sup>402</sup>

- (i) the need to provide hope and educational opportunity to ever larger segments of a country's population, i.e., increase access;
- (ii) the need to encourage (and possibly subsidize) study in certain fields important to a country's economic development; and
- (iii) the need to ensure a steady flow of talent into careers-such as medicine or teaching – where dramatic shifts in supply and demand can negatively affect the quality of life for a country's people

The Nigerian experience on the above is a partial fulfilment. For instance, towards increased access, political considerations have taken the place of merit. Governments in most states of the federation take steps to boost the number of secondary school graduates

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<sup>398</sup>Afe Babalola 21.

<sup>399</sup>Omole 2012: Towards enhanced internally generated revenue, Oseni considers the mandate of federal universities to generate 10 percent of their total yearly funds internally and seeks that the same should be reviewed upwards to 15 per cent. Oseni 152.

<sup>400</sup>Adedipe 26.

<sup>401</sup>Saint *et al* 8.

<sup>402</sup>El-Khawas (2001) 244. See also Saint *et al* 17.

who in return seek admission to tertiary institution. Among such steps is payment of registration fee for school certificate examination, the West African Examination Council (WAEC) for all final year students.

I argue that the government has failed to address the issue of merit in determining the recipients of the educational opportunities it offers. The build-up to the sponsored WAEC examination for all the students has been automatic promotion. Most of the students were absentees and ordinarily not eligible to sit for the examinations.<sup>403</sup> Adeniran advises government to pursue educational policy that will reduce the wastage of scarce financial resources available to the country.<sup>404</sup>

For me, it amounts to a waste of taxpayers' fund for the government to sponsor examination of candidates who are not prepared for such. I contend that it will rather be productive, if government undertakes to reimburse candidates who pass the examination.

I concede that funding source has the right to monitor the essence of funding, even if it entails regulation of the university. I argue that if the university would realise its object of nation's development, it must relate with other stakeholders. The government as the main financier of university system must provide quality education. It may attain this state of either of two options or a combination of both.

To establish self-sustaining universities which relies on its internally generated revenue or to limit its ownership to the few universities it can adequately fund or to operate a subsidised university system. The government should however consult widely before drawing its policy.

In this section, I examined the paltry budgetary allocation to education and the fact that payment of school fees by the undergraduates does not receive the approval of the government. I equally established that in the event of increasing school fees and attendant

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<sup>403</sup> See the 2014 WAEC result where a third of student populace passed. See Eno-Abasi Sunday 'WAEC deplores presentation of ill-prepared students for exams' The Guardian 19 November 2015 49.

improvement in quality of education, the system cannot collapse, students will source for the desired fund.

## 6 Review of relevant legal provisions

### 6.1 University autonomy

I consider here the desirability or otherwise of the Universities Autonomy Act in view of the fact that the government retains powers of dissolution of council, visitation and appeal by removed vice-chancellor. I enquire whether this development can be of any assistance in the enjoyment of academic freedom and the realisation of the objects of the university.

The Universities Autonomy Act<sup>405</sup> was promulgated when education experts identified political and external control as the obstacle to the universities in the realisation of their objects. The poor performances were seen in the area of poor quality education, dearth of research exercises and inability to identify and proffer solutions to the nation's challenges.<sup>406</sup>

Oshio<sup>407</sup> considers the provisions of The Universities (Miscellaneous Provisions) (Amendment) Act 2003<sup>408</sup> especially Section 2 AA and 2AAA and submits they are to insulate the universities from external influences or control.<sup>409</sup> He however observed further:

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<sup>404</sup> Adeniran 19.

<sup>405</sup> The Universities Autonomy Act, No 1, 2007.

<sup>406</sup> See section 2 on objects of the university and section 4 on academic autonomy.

<sup>407</sup> Oshio 1.

<sup>408</sup> Otherwise called the Universities Autonomy Act No. 1, 2007.

<sup>409</sup> 2AA-The powers of the Council shall be exercised, as in the Law and Statutes of each University and to this extent establishment circulars that are inconsistent with the Laws and Statutes of the University shall not apply to the Universities. And 2AAA -The Governing Council of a University shall be free in the discharge of its functions and exercise of its responsibilities for the good management, growth and development of the university.

Government retains the ultimate power of control over the Universities through dissolution of Council, Visitation, the final appeal to the Visitor by a removed Vice- Chancellor and the power of legislation. Thus, it may be argued that autonomy under this Act is not absolute but qualified.

The government's limited control over the universities as above is laudable and should not be altered because absolute institutional autonomy has been considered unrealistic or desirable.<sup>410</sup> I make submission in chapter four<sup>411</sup> that the disciplinary authority of the university is not beyond abuses. I submit that where such abuses perpetrated in-house are rectified by visitation or through appeal to the visitor, the legal provision is in the interest of justice. The provision also enhances individual academic freedom of the vice-chancellor and other members of the university by way of security of tenure.<sup>412</sup>

To the extent that members of the university are assured of security of tenure, I argue in chapter three that the members put in their best and the institution as such is able to realise its objects.<sup>413</sup>

I examine the Universities Autonomy Act in the context of qualified autonomy, as I argue that the universities should not operate outside government educational policies. I point out that the limited control over the universities in the provisions of the Act is desirable. I conclude that the final appeal of a removed vice-chancellor to the visitor boosts the enjoyment of academic freedom and productivity of members of the university.

### **6.2.1 Disciplinary autonomy**

I investigate whether disciplinary autonomy as it is, has any link with the university's realisation of its objects.

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<sup>410</sup>It is apposite that he who finances a university deserves to have an account of handler's stewardship. A university, even when self-sustaining has to be regulated by the state. See also section 3 on institutional autonomy.

<sup>411</sup> See section 4.

<sup>412</sup> See in detail section 3 of chapter three.

<sup>413</sup> I refer to section 6 of chapter 3.

University autonomy entails that misconduct is tried in-house. The Constitution provides otherwise.<sup>414</sup> Constitution provides for a long list of human rights and the creation of law courts and vests in them the jurisdiction to adjudicate on civil and criminal cases. Law Courts by the provisions of the Constitution have exclusive preserve to try misconduct, which has criminal elements in it.

Section 36 (4) of the 1999, Constitution of the Federal Republic of Nigeria provides:<sup>415</sup>

Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal

The Constitution provides for a long list of human rights and the creation of law courts and vests in them the jurisdiction to adjudicate on civil and criminal cases. It is submitted that most of allegations made against staff and students fall under crime. Sections 16-20 of the University of Lagos Act,<sup>416</sup> provides for discipline before the disciplinary tribunal of the institution.

In practice, I submit that what applies is that on allegation of crime, the suspect is tried in the law court. Where he is convicted, he is subsequently tried before the domestic disciplinary tribunal.<sup>417</sup> I contend in chapter four that the proceeding is a clear demonstration that the universities do not have power to discipline in the circumstances that they enjoy residual jurisdiction.<sup>418</sup>

The apparent lack of disciplinary autonomy does not assist the universities in enforcing discipline on their campuses and this makes the realisation of their objects very difficult.

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<sup>414</sup> See Section 35(3)(c) of the Bill of Rights, Constitution of the Republic of South Africa, 1996, see also Section 36 (4) of the 1999 Constitution of the Federal Republic of Nigeria. Judicial authorities are equally vested in the courts. See 165(1) of the South African Constitution as well as Section 6(1) of the 1999 Nigerian Constitution.

<sup>415</sup> Judicial authorities are equally vested in the courts. See 165(1) of the South African Constitution as well as Section 6(1) of the 1999 Nigerian Constitution.

<sup>416</sup> The University of Lagos Act, Cap U9 Laws of the Federation of Nigeria, 2004.

<sup>417</sup> See Section 4.

<sup>418</sup> See section 4.

This is because there cannot be academic productivity in an environment devoid of discipline.<sup>419</sup>

The sections on discipline under University of Lagos Act<sup>420</sup> and those of other universities should be amended to refer to the law court on discipline and to reflect the sequence in disciplinary proceedings.<sup>421</sup> I however make case for disciplinary autonomy for the universities in my discussion of principles of interpretation of the law.<sup>422</sup>

I examine the position of law on enforcement of discipline and point out that residual jurisdiction on control of discipline is as good as having no jurisdiction at all. I conclude that the universities' inability to control discipline is a barrier to the realisation of their objects.

### **6.3 The JAMB Act**

I consider here, the powers conferred on the Joint Admissions and Matriculations Board (JAMB) under the JAMB Act.<sup>423</sup> I also consider areas, which need to be amended to make the JAMB align with the objectives of the universities and other tertiary institutions.

The JAMB is the sole body charged with the power to conduct matriculation examination though in collaboration with tertiary institutions.<sup>424</sup> This it does, for the purpose of placing qualified candidates into such institutions regard being had to some parameters set out in section 5(1)(c)(i)-(iv) thereof. The JAMB has the mandate to observe 'the guidelines approved for each institution by its proprietor or other competent authority.

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<sup>419</sup> See section 4 of chapter four.

<sup>420</sup> The University of Lagos Act, Cap U9 Laws of the Federation of Nigeria, 2004.

<sup>421</sup> This will provide the true picture of what obtains in practice.

<sup>422</sup> See section 4 of chapter four.

<sup>423</sup> The JAMB Act Cap J1, LFN 2004 .

<sup>424</sup> See Section 5(1)(a) &(c) of the JAMB Act Cap J1, LFN 2004 .

Section 5(1)(c)(iv) prescribes that the direction of Minister of Education to the JAMB shall also be met.<sup>425</sup>

The 1989 JAMB Decree (which repealed the 1978 decree) as amended by 1993 Decree provides in Section 5(1) that:

Notwithstanding the provision of any other enactment, the Board shall be responsible for the general control of the conduct of matriculation examinations for and admissions into all Universities, Polytechnic (by whatever name called) and Colleges of Education (by whatever name called) in Nigeria...and for the placement of suitable candidates in tertiary institutions<sup>426</sup>

Thus, to Onyechere cancelling the rights of Senates of State Tertiary institutions (established by State Houses of Assembly) to fully conduct their own admission processes, the JAMB Decree is inconsistent with the Constitution of the Country. JAMB, at best should restrict itself to federal institutions. This anomaly raises issues regarding the theory and practice of federalism in Nigeria.<sup>427</sup> The JAMB Decree according to Onyechere was a product of an era when the military had central control of education. To him;<sup>428</sup>

it is time for the education sector to be fully deregulated by scrapping JAMB. It is a policy and legislative wonder that a country will license her universities to conduct first, second, Ph.D. and post-doctoral degree examinations while at the same time preventing them from conducting matriculation exams for fresh students. It defies reasoning.

Edoba Omoregie considers the provisions of the JAMB Act as well as statutes establishing each university.<sup>429</sup> He concludes that the Post-UTME test is an exercise provided for by law.<sup>430</sup> In section 4, I contend that the Post-UTME is a product of

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<sup>425</sup> Section 6 of the JAMB Act precisely allows the Minister to give directives of general nature in the way the Board shall carry out its functions under section 5.

<sup>426</sup> See also section 5(1)(a) and (c) of the JAMB Act, Cap JI, LFN, 2004.

<sup>427</sup> Ike Onyechere 'Still on need to scrap JAMB (2)' The Guardian, Tuesday 9 April 2013 68. I treat issues on Nigeria's federalism in the next section.

<sup>428</sup> Ike Onyechere 'Still on the need to scrap JAMB (1)' The Guardian Monday 8 April 2013 67.

<sup>429</sup> See also Section 7A(2)(b) of the Universities (Miscellaneous Provisions) Amendment Act to the effect that Senate shall take charge of academic matters, including admission.

<sup>430</sup> It is on this note that the JAMB instituted the Post UTME test in 2005. Edoba Omoregie 'Legality or otherwise of the post-UTME' The Guardian 13 December 2011 88.



necessity to arrest the incidences of examination malpractices, which affects the potency of JAMB.<sup>431</sup> I argue that the JAMB will only assist in realising the objectives of the universities if it admits the right calibre of candidates for the institutions. This is yet to be achieved on account of examination malpractices and identified contradictory legal provisions.<sup>432</sup>

I consider the various submissions and argue that what is now in contest is the fact that the Acts establishing Universities should be amended to refer to the leading role of JAMB on admission of students.

I consider the provisions of the JAMB Act<sup>433</sup> as it contravenes the provisions of the Constitution in respect of power sharing between the central government and the federating units. I point out that the Act should be amended to make the JAMB contribute its quota to the realisation of the objectives of the universities and other tertiary institutions.

## **6.4 The Nigerian federation**

I consider here, the best that a university system may produce where the system of government, which has control over it, operates not by the provisions of the Constitution.

The matter of the university comes under the concurrent legislative list in the Constitution. Section 29 of the Second Schedule of the Constitution, under the concurrent legislative list provides:

Subject as herein provided, a House of Assembly shall have power to make laws for the state with respect to establishment of an institution for purposes of university, technology or professional education.

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<sup>431</sup> See section 4 of chapter two.

<sup>432</sup> Ike Onyechere ‘Still on need to scrap JAMB (2)’ The Guardian, Tuesday 9 April 2013 68

<sup>433</sup> The JAMB Act Cap J1, LFN 2004 .

The sections place university education under the concurrent legislative list. The federal government has however distorted the provisions of law as it introduced the NUC and the JAMB to regulate the Nigerian universities in the areas of administration and admissions respectively. The contravention prevents the State Governments from enforcing states' education policies in respect of universities established by them. I submit this is bad for the Nigerian University System.

The nation's federalism operates in concentration of power to the central government. Adedipe considers this position and identifies the danger it poses to realisation of objects of the universities:<sup>434</sup> 'The obvious weaknesses of, and in, the system are over-centralization, lack of commitment and transparency, which are a reflection of a Nigerian society at large, hyper-bureaucracy...'

The damage, which the concentration of power in the central government does to the Nigerian University System (NUS) is enormous. The NUS consists of 141 universities, which consists of 40 Federal, 40 State, and 61 Private.<sup>435</sup> On account of the central regulation by the NUC in terms of administration and by the JAMB in terms of admissions, none of the universities in the three categories has been able to excel in a chosen field of study in the global realm.

I contend that federalism entails diversity and by implication, diverse regulations of the university system. Going by the federal, state and private classifications, diversity would have led to a state of academic excellence in some of the state and private owned universities.

Over-centralization has been identified by Adamolekun as one cause of the crises in the Nigeria's education sector. He recommends that all laws contrary to the constitutional provision on federalism should be amended to be in conformity with it.<sup>436</sup>

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<sup>434</sup>Adedipe 16.

<sup>435</sup><http://www.nuc.edu.ng> accessed 8 September 2015.

<sup>436</sup>Interview with London's *Financial Times* 20 May 2008. See also Adamolekun.

Further on issues on Nigeria's federalism, Elder Statesman and a member of 2014 National Conference, Tunji Braithwaite canvasses for reconstruction of Nigeria under a confederal constitution contending that it shall bring blessings, peace and prosperity, rightly deserved by the peoples of this country. He says further:<sup>437</sup>

The existing six geopolitical zones have uniquely different developmental problems for which a single "one-size-fits-all" solution can never work. It is our firm conviction that only a Confederal Constitution or a very loose federation is best suited for Nigeria.

Most of the federating states as presently constituted, I argue are not viable entities and are not sufficiently endowed to own state universities.<sup>438</sup> I reason that Nigeria has to be regrouped into federating states as in the First Republic. It is under this circumstance that every region will work to harness all natural resources available to it, using the human resource available to it to improve on its own income.<sup>439</sup>

Charles Soludo considers the federal character and quota system, which do not allow merit to determine who secures admission. It does not also allow the most qualified person to take up appointment:<sup>440</sup>

While we agreed that over 60 per cent of university graduates are unemployable the current nature of Nigerian Constitution does not give room for the emergence of the best minds that could change the country's destiny...The country's various constitutions and laws have so far pursued contradictory objectives, some aspects of which create and perpetuate allegiance primarily to

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<sup>437</sup>Tunji Braithwaite 'Only a Confederal Constitution, loose federation best suited for Nigeria' The Guardian Thursday 17 April 2014 12.

<sup>438</sup> Most of State owned tertiary institutions are sustained by the Federal Government's Tertiary Education Trust Fund's (Tetfund) sponsorship. Capital projects are now executed in those institution through normal intervention of the fund. Most of State proprietors have as such limited their contributions to payment of staff salaries. See Ujunwa Atueyi 'Higher education critical to national development'- Osinbajo' The Guardian Thursday 5 November 2015 52.

<sup>439</sup> Adeniran 28. To Mr Ayo Afolabi , Secretary General of the Afenifere Renewal Group: the advent of the Europeans brought together different nationalities who do hereby wish to be governed along their socio-political and cultural past and aspiration. Abiodun Fanoro 'Regionalism: Yoruba say no retreat no surrender' The Guardian Thursday 19 June 2014 19.

<sup>440</sup> Charles Soludo, former Governor of Central Bank of Nigeria speaking at the American University of Nigeria (AUN) on theme 'The University, citizenship and national development.' See Rotimi Oyekanmi 'How 1999 Constitution retards growth of varsities' The Guardian Monday 10 December 2012 8.

ethnic nationalities and states of origin. The constitution can as such only produce tribal and sectional citizens instead of Nigerian Citizens.

Establishment and running of universities depend largely on what premium a government puts on its programmes. I reason that a government's educational policy is found not to be better than the suitability or otherwise of political structure. The federal character and quota system<sup>441</sup> I submit are discriminatory to members of the university, who lose places of benefit to other persons.<sup>442</sup> I submit that the federal character and quota system are anti-merit and should be stopped.

In this section, I considered the concentration of power in the central government as a barrier to the excellent performances of the universities. I submitted that the peculiar and diverse regulations which federalism envisages are missing in operation in the university system. I pointed out that Nigeria has to regroup as it was under the First Republic so as to enjoy the benefits of having a university system.

## **7 Conclusion**

In this chapter, I examined the objects of a university and of which I identified teaching and research towards nation's development as substantive objects. I submitted that the university could not realise its objects without the requisite status of corporate being, perpetual succession, and ability to sue and to be sued. I pointed out that the essence of institutional autonomy is to bring about competitiveness and efficiency in the university.

I submitted that absolute autonomy is not feasible as I considered diverse autonomy and degree of control on each. I contended that institutional autonomy is the right of the university to appoint its staff and to be administered by the law made by it. I pointed out that by the provisions of Universities Autonomy Act, 2007, the Governing Council now

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<sup>441</sup> Afe Babalola condemns as immoral and sinful act, having to refuse admission to a person with 270 and proceeding to offer to another with 200 in the same country. Afe Babalola 57.

<sup>442</sup> Who are less qualified. See for instance, Akinpelu Oluwatobi 'National development : Legal equality and federal character principle' The Guardian Tuesday 10 November 2015 51.

makes appointment of vice chancellors. I referred to the Federal University of Technology, Akure and the University of Maiduguri who have appointed Vice-Chancellors without the input of the Visitor. I however considered absolute institutional autonomy unrealistic and not desirable. I pointed out that a self-sustaining university still has to be regulated by the state.<sup>443</sup>

I also discussed academic autonomy in which the senate receives input from the NUC and the JAMB, as well as from donor and research agencies, industries and employers of labour. I established that external collaboration does not amount to violation of academic autonomy where the terms of the agreement are approved in the Senate.

I examined financial autonomy and contended that it should be enjoyed subject to routine audit by external auditors. I condemned the undeserved intervention of government in internal administration on account of financial accountability.

I considered qualification for appointment as a Council member to be the possession of cognate experience in corporate administration; integrity and credibility, life of service to humanity. I equally condemn the situation where Council members are tied to apron string of government that appoints them. I pointed out that the best from such Council cannot be assured.<sup>444</sup>

I further pointed out that the Government's regulatory agencies such as the NUC and the JAMB have not been at their best. The NUC has not prevented standards from falling in most institutions.<sup>445</sup> The JAMB and admission exercise has been conducted in a way that makes issue of merit secondary. The effect of this I submit hampers the realisation of teaching and research in the Nigerian universities.

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<sup>443</sup> Standard and yardstick for establishment, operation and target have to be prescribed by the State.

<sup>444</sup> FME 1960 31; Okorosaye-Orubite *et al* 266.

<sup>445</sup> The Guardian Editorial 'The bills on varsity standards' The Guardian Friday 19 August 2011 14.

I examined the position of law on enforcement of discipline and point out that residual jurisdiction robs the universities of power to enforce discipline. I concluded that the universities' inability to control discipline is a barrier to the realisation of their objects.

I considered the concentration of power in the central government as a barrier to the excellent performances of the universities. I pointed out that Nigeria has to allow the federating states to regulate their universities, in line with their educational policies.

## CHAPTER THREE

### INSTITUTIONAL AUTONOMY AND ACADEMIC FREEDOM

#### 1. Introduction

In this chapter, I consider academic freedom as the individual academic freedom of staff and students of the university. I enquire whether such freedom is essential for staff and students to contribute their quota in the realisation of objects of a university. I examine academic freedom as the right of the individual scholar to teach and research without interference.

Academic freedom for individual scholars at colleges and universities rests in great part on professional standards designed to promote and protect scholarly inquiry.<sup>1</sup> I examine such academic rights as the freedom of association, freedom of expression, security of tenure for the academic staff and secured studentship for the students. The students and academics as well enjoy the right to unfettered inquiry.

I revisit institutional autonomy and confirm that it is the freedom, which is granted to a University to manage its internal affairs without undue external control.<sup>2</sup> I contend that institutional autonomy and individual academic freedom are related. Academic freedom and university autonomy are regarded in this chapter as preconditions for a healthy university system. They are essential conditions not only for the realisation of objects of a university, but for survival of the university. I then consider the dual impacts of institutional autonomy on academic freedom.

I recognise a positive and beneficial aspect of the relationship as a situation in which the existence of institutional autonomy facilitates the enjoyment of individual academic

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<sup>1</sup> For a discussion of the development of academic freedom based on professional standards in higher education, see J Peter Byrne 'Academic freedom: A special concern of the First Amendment' 99 *Yale Law Journal* (1989) 251, 267 - 288. See Neal H Hutchens 'Preserving the independence of public higher education: An examination of state of constitutional autonomy provisions for public colleges and universities' (2008-2009) 35 *Journal of College and University Law* 271, 279.

<sup>2</sup> See chapter two.

freedom. In that respect, I then consider whether institutional autonomy affords an enabling environment under which the university, staff and students assert rights essential for their status and for their operations.<sup>3</sup>

On the negative side, I consider whether there are abuses in the exercise of institutional autonomy, which in turn negates the enjoyment of individual academic freedom. I consider whether the denial of academic freedom can account for a university's failure to realise its objects.

I analyse the legal framework for academic freedom under international law, regional laws, constitutional provisions, and national legislation. I consider the provisions on academic freedom in jurisdictions other than Nigeria and enquire whether such jurisdictions afford Nigeria precedents and or serve as persuasive authorities.

## **2 Academic freedom**

In this section, I treat academic freedom as the individual academic freedom of staff and students, which is designed to promote and protect scholarly inquiry.<sup>4</sup> I also revisit the concept of institutional autonomy<sup>5</sup> and explore the relationship between it and academic freedom. I argue that institutional autonomy and academic freedom are related. I then proceed to examine the positive and negative impacts of institutional autonomy on academic freedom. I conclude on the note that the rights as they promote scholarly inquiry are essential conditions for the realisation of objects of a university.

The original definition of academic freedom given by the American Association of University Professors (AAUP) is that teachers are entitled to full freedom in research and

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<sup>3</sup>With autonomy a university attains a state of excellence in the discharge of its functions and it protects individual academic freedom.

<sup>4</sup> For a discussion of the development of academic freedom based on professional standards in higher education, see J Peter Byrne '*Academic Freedom: A special concern of the First Amendment*,' (1989) 99 *Yale Law Journal* 251, 267-88. See Neal H Hutchens 'Preserving the independence of public higher education: An examination of state of constitutional autonomy provisions for public colleges and universities' (2008-2009) 35 *Journal of College and University Law* 271, 279.

<sup>5</sup> See section 3, chapter two.



in the publication of the results, subject to the adequate performance of their other academic duties.<sup>6</sup> Richard Peltz prescribes the contents of academic freedom, which cuts across every country, as:<sup>7</sup>

(f) freedom to teach without outside interference. It includes the content, process and methods of teaching, as well as the evaluation (assessment) of those taught. Admission requirements, standards and criteria for awarding qualifications are logical corollaries of this right; freedom to do research without outside interference. Research has been described as a serious and systematic attempt in terms of contents and forms to find the truth, and includes all research.

The above definition of academic freedom by Peltz is in relationship with institutional autonomy of the university to determine admission criteria, examination and course content. Other aspects of the definition touch on the individual academic right.

The Council for the Development of Social Science Research in Africa (CODESRIA) in its Dar-es-Salaam Declaration on Academic Freedom defines academic freedom as the freedom of members of the academic community, individually or collectively, to pursue, develop and transmit knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing.<sup>8</sup>

From the definition here, academics are entitled to immunity from political, social and cultural hindrances in their acquisition and impartation of knowledge. It is now obvious that the observance of academic freedom promotes teaching, research and learning, which are core areas of a university. Academic freedom then enhances the teaching obligation of the lecturer and to the student it facilitates easy comprehension.

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<sup>6</sup>AAUP (1940) 6. This definition is narrow to the extent that students as role-players in the university are conspicuously left out. The definition is however commendable as it cautions on abdication of other academic duties on the excuse of pre-occupation on research exercise. Arko-Cobbah 77 78.

<sup>7</sup> Richard J Peltz 'Penumbral academic freedom: Interpreting the tenure contract in a time of constitutional impotence' (2010-2011) 37 *Journal of College and University Law* 174.

<sup>8</sup> (CODESRIA 1990) in its *Dar es Salaam Declaration on Academic Freedom*; AR Bibtana 'Academic freedom: the context, in Proceedings: Academic freedom conference: Problems and challenges in Arab and African Countries' 10-11 September, 2005, Alexandria, Egypt. Paris: UNESCO 6. See also Albert Arko-Cobbah 'Intellectual freedom and academic freedom: Some challenges and opportunities for academic libraries in Africa' 78.

This position aligns with the definition of academic freedom by Lovejoy:<sup>9</sup>

Academic freedom is the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics.

This definition acknowledges that the institution in its operation may impair the enjoyment of academic freedom.<sup>10</sup> The definition further indicates that enjoyment of academic freedom is not an absolute right. There is no room for abuse, as it must align with professional ethics and demands.<sup>11</sup> The definition by Lovejoy transcends theory and touches on what obtains in practice. As such, I adopt this definition for use in this thesis.

Having given a broad description of academic freedom, I now discuss the various rights that make up individual academic freedom.

### **3 Academic freedom and related rights**

In this section, I examine academic freedom as a compendium of rights. Such rights make up individual academic freedom. A breach of any of the rights is a contravention of academic freedom. It becomes easy to then know at what point and how academic freedom has been violated.

Lovejoy gives a definition of academic freedom as:<sup>12</sup>

The freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or

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<sup>9</sup> Lovejoy, Academic Freedom, in *Encyclopedia of The Social Sciences* 384, 384 (1930). See also David M. Rabban 'Does academic freedom limit faculty autonomy?' 66 *Texas Law Review* 1405 1987-1988, 1408.

<sup>10</sup> The relationship between the institutional autonomy and academic freedom is considered subsequently.

<sup>11</sup> This I further discuss under the abuse of academic freedom. See section 7 of chapter three.

in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics.

From this definition, I examine elements of human rights as they facilitate the enjoyment of the individual academic freedom.

The Universal Declaration of Human Rights (UDHR) in its preamble defines human rights to mean the inherent dignity and the equal and unalienable rights of all members of the human family.<sup>13</sup> It is important to emphasise that an academic, other members of staff and students are in the first place human being, with all rights attached, before being whatever status the university confers on them. Their fundamental human rights should then not be toyed with if they are to act in their new capacities in the universities.

Academic freedom is a compendium of such human rights. Malherbe then considers a symbiotic relationship of academic freedom and other rights:<sup>14</sup>

Academic freedom forms part of the key freedom rights such as privacy, belief, opinion and conscience, expression, freedom and security of person, and freedom of assembly, association and movement, all of which protect individual freedom, the cornerstone and founding value of any civilized and democratic state. As sure as freedom of movement allows the individual physically to move about freely, academic or intellectual freedom, together with the freedom of thought, conscience, opinion and expression, ensures that we may follow wherever the explorations of the mind may lead us.

Sections 33 to 44 of the 1999 Nigerian Constitution<sup>15</sup> provide for, among other rights, the right to freedom of thought, conscience and religion, freedom of expression and the press

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<sup>12</sup> Lovejoy 'Academic Freedom, in *Encyclopedia of The Social Sciences*' 384 (1930). See also David M Rabban 'Does academic freedom limit faculty autonomy?' 66 *Texas Law Review* 1405 (1987-1988) 1408.

<sup>13</sup>The Universal Declaration of Human Rights was adopted on 10 December 1948.

<sup>14</sup> R Malherbe 'A constitutional perspective on higher education.' (1999) (10) *Stellenbosch Law Review* 8. See also EA Taiwo 'The regulatory bodies, academic freedom and institutional autonomy in Africa: Issues and challenges - Nigerian example' (Codesria) A conference paper presented at the CODESRIA Conference 'Academic freedom and the social responsibility of academic and researcher in Africa: What are the new challenges?' Oran, Algeria, 09 11 March 2010 17.

and freedom of movement; and the right to peaceful assembly and association. Academic freedom then embodies the broader conception that every member of the academic community has the right to life, liberty, and freedom of thought, conscience, religion, expression, assembly, association, and movement. Article 19 of the Universal Declaration on Human Rights provides:<sup>16</sup>

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Adar considers Article 19 and submits that the provision clearly stipulates that academic freedom is a form of human right.<sup>17</sup> Pauken gives an inventory of related rights to academic freedom as the freedom of speech, freedom of association or assembly, and freedom of religious worship.<sup>18</sup> Academic freedom therefore encompasses the following rights:<sup>19</sup>

(t)he right of the academic community to participate in the running of such institutions; the right to a depoliticized and autonomous institution; the right to form and join trade unions; and the right to have security of tenure.'

Adar considers the set of rights given above, which he contends fall under the banner of academic freedom and submits that they are fundamental not only for academic institutions, but also for any country in general, particularly with respect to development.<sup>20</sup>

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<sup>15</sup>Chapter IV Constitution of the Federal Republic of Nigeria, 1999.

<sup>16</sup>Universal Declaration on Human Rights Article 19, UN Doc A/810 (1948),

<sup>17</sup>.Korwa G Adar 'Human rights and academic freedom in Kenya's public universities: The case of the universities academic staff union' *Human Rights Quarterly*, (21)(1) (Feb 1999), 179 183.

<sup>18</sup>Patrick Pauken 8 9.

<sup>19</sup>See The Kampala Declaration on Intellectual Freedom and Social Responsibility (29 Nov 1990) [hereinafter Kampala Declaration]; Kenya Human Rights Commission: A report on the University of Nairobi and academic freedom in Kenya (1992). See also Adar 185.

<sup>20</sup>Adar 185.

Adar further considers the UDHR, other various international instruments, and their provisions on human rights and then concludes that human rights and academic freedom are not only accepted as universal concepts but that they are conceptually intertwined.<sup>21</sup>

For my purposes, I accept that academic freedom entails recognition of the following bundle of rights for academics and students: freedom of association; freedom of expression; secured studentship; security of tenure; and free inquiry. I discuss the rights in turn.

### **3.1 Freedom of association**

I examine freedom of association of members of the university and consider whether enjoyment of that right (which I submit forms part of academic freedom) has any link with the realisation of the objects of a university.

The university is an institution that operates based on relationships between its members in various capacities and even with external bodies and persons. I contend in the circumstances that freedom of association is a precondition for the realisation of the mission of the university and for the enjoyment of academic freedom.

The Act establishing a Nigerian University contains no specific provisions permitting the formation of student union.<sup>22</sup> Universities however rely on provisions of Section 40 of the 1999 Constitution of Nigeria to provide for the right to peaceful assembly and association under students unions thus:

Every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interests.

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<sup>21</sup>Adar 185. Other instruments include the African Charter on Human and Peoples' Rights, International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

<sup>22</sup>Afe Babalola 48.

Freedom of association of members of the university as an academic freedom has direct and positive link with the realisation of the objects of a university. I restate that of the various objects of the university, the teaching and impartation of knowledge is the main activity and a substantive object. Section 1(2) of the University of Ibadan Act<sup>23</sup> provides that the general function of the University shall be to encourage the advancement of learning.<sup>24</sup>

Teaching, research and impartation of knowledge, are the most important of the objects of a university. The academic exercises are popularly organised by the convergence of the tutor, laboratory assistants and the students in a particular classroom or laboratory. I submit that through such formal meetings in classrooms and laboratories, the boundaries of knowledge are extended. The meetings are able to hold on account of enjoyment of freedom of association of the tutors, laboratory assistants and the students.

Polayi cites the racial exclusion of black students from university in South Africa, as a violation of academic freedom of the black students.<sup>25</sup> This is a practical example which establishes that when the freedom of association is violated, the university will not be able to realise its teaching and research functions.

Taiwo<sup>26</sup> considers the free association of staff and students, and he charges members of the university to explore university autonomy and academic freedom to make positive contributions to the development of Nigeria in particular and the world in general.

Further, on the freedom of association of members of the university, students are eligible to form an umbrella body for the procurement of welfare packages for members of the

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<sup>23</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

<sup>24</sup>Section 1 (3) (a) of the University of Lagos, Act, Cap U9, 2004. See generally section 2 of chapter two.

<sup>25</sup> See M Polayi, *et al*, *Apartheid and the World's Universities: Report on a Meeting held in London, November 1957*, Committee on Science and Freedom, Congress for Cultural Freedom, Manchester, 1958 11. This is a practical example that when the freedom of association is violated, the university will not be able to realise its teaching and research functions.

union. The formation of a student union is thus an aspect of students' freedom of association. To Olatunde Fawole:<sup>27</sup>

Students Unionism is the link between the students' populace and authorities of the institution. It is an avenue to articulate the interests and views of the students on academic and welfare matters. The union is expected to organize programmes that would assist its members socially and academically. It is expected to engage in tangible and productive activities, to organize activities that would promote academic and discipline in the institution.

The enjoyment of freedom of association according to Fawole brings with it the duty to explore the freedom to promote welfare of members, and for academic enhancement and discipline on the campus. An additional obligation on the enjoyment of the right is for the *bona fide* students to fish out criminals who disguise as students from their fold. The Rector cautions thus:<sup>28</sup>

Your union should not allow your rank and file to be infiltrated by criminals, cultists and hoodlums and other bad elements. Your Union should therefore be on guard to fish out these bad elements among your genuine members. This is imperative because the nefarious activities of these few criminals had tremendous devastating effect on the general student populace.

Fawole as such relates the enjoyment of a right to a responsibility or obligation.<sup>29</sup> Afe Babalola<sup>30</sup> also stresses on the duty attaching to right of association in students union. He contends that students objective under the union is to help in the smooth administration of the university and to ultimately help in achieving the purpose for which the university is established. He concludes that the union's activities must conform and be subject to the provisions of the University Act.

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<sup>26</sup>Taiwo (Codesria) 17. See *The Open Universities in South Africa* 5.

<sup>27</sup> An address delivered by the Rector, Prof Olatunde Fawole during the swearing in ceremony of the student union executives and students representative council on Friday 3 October 2014 in the North Campus Assembly Hall of The Polytechnic Ibadan, Nigeria.

<sup>28</sup>Olatunde Fawole (as above)

<sup>29</sup>Some persons having no business in the universities disguise as students and they are the brains behind crises and violence in the institutions.

<sup>30</sup>Afe Babalola 47.

Students' right to freedom of association is beyond discharging duties to the institution. Advantages abound towards the students individually and collectively. Afe Babalola<sup>31</sup> considers Ordinance 19 of the University of London, which provides guidelines, right and duties for the students union. The aims and objects of the university consist of:

- 2.1 The aims and objects of the Union shall be:
- (a) to promote the welfare and representation of the Students of the University of London;
  - (b) to provide a channel of communication between its students, student officers across the university, and with the university;
  - (c) to provide a range of educational, cultural, commercial, social and sporting facilities which advance the interests of the students of the University;
  - (d) to promote the social and civic educational opportunities available to its members;
  - (e) to promote sporting and social activities and a degree of excellence in the areas of society and sporting life for, the enhancement of the University of London Union.”

The benefits of association are here inferred from the objects of the Union. The University of London's experience is of persuasive influence to universities in Nigeria. Notwithstanding that the Act establishing universities are silent on subject of students' unionism; there are however provisions in the students' handbooks. The handbooks also task unions on making dividends of association available to all students.

It is in the light of benefits accruable in unionism that Section 7AAA of Universities Autonomy Act, 2007 provides for students' participation in university administration to the effect that students shall: <sup>32</sup>

- a) Be represented in the University's Students Welfare Board and other Committees that deal with the affairs of students;
- b) Participate in various aspects of curriculum development;
- c) Participate in the process of assessing academic staff in respect of teaching; and
- d) Be encouraged to be more self-assured as part of the national development process.

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<sup>31</sup>Afe Babalola 48.

<sup>32</sup> See also Oshio 6.



Further to the above, at The Polytechnic Ibadan, like some other tertiary institutions in Nigeria, the Students' Union President and the Welfare Officer sit as members of the Students Disciplinary Committee of the institution.<sup>33</sup> Oshio considers the recognition, which is accorded to the students' body under the Universities Autonomous Act, and he argues:<sup>34</sup>

A proper implementation of the provision will enhance students' welfare, boost their morale and ensure fair hearing for students, which will lead to greater cooperation from them with the attendant harmony in the Universities.

On account of the mutual benefits of having students' unionism, Afe Babalola advocates for a more decentralized students association thus;<sup>35</sup>

there should be other levels of students' representatives like class, departmental and faculty. This will bring university administration to the 'grassroots' as all interests and persons will be represented. The University will encounter less problems in identifying students' feelings on issues, meeting their needs and disseminating information to them for the good of all stakeholders.

Taiwo<sup>36</sup> considers the free association of staff and students, and he argues that members of the university should not see university autonomy and academic freedom as justification to be secluded from the rest of the world. He concludes that staff and students should be able to assemble peacefully and even to protest, where necessary.

The freedom to associate in the form of assembly and protest has most often been violated in Nigerian universities, as the following examples show.

The enjoyment of right to associate did not go without its repercussion for Professor Segun Awonusi, the then Vice Chancellor of the Tai Solarin University of Education (TASUED). His appointment was terminated by the Visitor for alleged presence in a

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<sup>33</sup> See Section F, Regulations governing student conduct and discipline, The Polytechnic Ibadan, Information Handbook for HND Students 2013/2014 Session, 29.

<sup>34</sup>Oshio 6.

<sup>35</sup>Afe Babalola 50.

meeting of traditional rulers and leaders of university host community.<sup>37</sup> The pressure group was not well disposed to the Government's plan to scrap the University. The sack notice was placed in the news media and a successor was immediately named.

I argue here that freedom of association is enjoyed by members of the university with a view of enjoying individual academic freedom. This, to the academic is a secured tenure and to the students, secured studentship. The TASUED case is a flagrant violation of job security and a good case of which hearing in court is capable of giving a better understanding of this principle. The ultimate benefit of freedom of association to the university is to facilitate the realisation of its teaching and research object. I point out later in this chapter that when a university is scrapped it leads to job loss and it affects academic career of students.

The meeting of the Vice-Chancellor and the host community is an acknowledgement of the community as an external stakeholder in the realisation of objects of the university.<sup>38</sup> There is a symbiotic relationship of the university and host communities as the basis for the establishment in universities of a committee, which is known as 'Town and Gown.' The committee consists of representatives of the university and community leaders. I submit that to have terminated the appointment of the Vice-Chancellor for meeting with host community on the pros and cons of proposed scraping of a university is a violation of individual academic freedom.

Under the Nigerian Military Government, academic freedom was equally violated and the Academic Staff Union of Universities (ASUU) was relentless in its clamour for academic freedom, university autonomy and civil rule in the Nigerian Nation.<sup>39</sup> In most cases, ASUU was the last opposition voice when others had been suppressed. The academic staff Union was however not spared of military brutality. The union was proscribed on several

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<sup>36</sup>Taiwo (Codesria) 17. See *The Open Universities in South Africa* 5.

<sup>37</sup>'Ogun sacks TASUED VC, appoints Obilade' *The Nigerian Tribune*, Thursday 10 January 2013 47.

<sup>38</sup> I discuss in detail on external stakeholders in section 3 of chapter two.

<sup>39</sup> ASUU and its forebears were foremost pressure groups under the military. ASUU equally championed the cause of the enthronement of the rule of law under civil rule between 1999 and now.

occasions, prominent members had their appointments terminated, some were detained without trial, some maimed and some others were killed.

Festus Iyayi was ASUU president. He participated in a seminar on an alternative to the Structural Adjustment Programme (SAP), which was the Federal Military Government's choice of economic recovery policy. The Military Government prevailed on the University of Benin, (Iyayi's employer) to bring allegation of engagement in activities, which violated university laws against Iyayi. The university summarily terminated his appointment in May 1987.<sup>40</sup>

Academic freedom of the academic staff, which is to extend the boundary of knowledge, has been violated as it relates with Festus Iyayi. On this submission, I rely on the views expressed by Albert Arko-Cobbah on academic freedom thus:<sup>41</sup>

The university is regarded as a special institution because it is involved in the quest for an independent and systematic search for truth. Its functions can be seen as the expansion of frontiers of knowledge through research, the dissemination of knowledge through teaching and publications, as well as the provision of public services by critically questioning ideas and practices that society carries forward.

The termination of appointment of Festus Iyayi to my mind discourages other academic staff coming together with others to gather information and data with which to question ideas and practices that society carries forward.

Andrew Efemini lost his office as a Head of Department at the University of Port Harcourt on the allegation that he joined students of the institution to protest the killing of four undergraduate students.<sup>42</sup> The Vice-Chancellor explained that he removed him

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<sup>40</sup> A K Okorosaye-Orubite *et al* 271.

<sup>41</sup> Albert Arko-Cobbah 'Intellectual freedom and academic freedom: Some challenges and opportunities for academic libraries in Africa' *Mousaion* 28 (2) 2011 77.

<sup>42</sup> Prof Joseph Ajenka remarks "The position of the HOD is a position of responsibility that students and junior academics ought to look up to as role-model. Having appointed Efemini as an Acting HOD, he statutorily represents the VC. In the Department and outside the university and whatever he does in that position. See 'Uniport VC Insists on HOD's removal' *The Guardian* 23 October 2012 55.

because of inciting public statements that Efemini made which inflamed an already tense situation.<sup>43</sup>

The protest embarked upon was to condemn the unjust killing of students as they enjoy secured studentship. Learning by students, as I submit later in this chapter,<sup>44</sup> must be had in a conducive and secured atmosphere. This aligns with students' individual academic freedom.

Apartheid educational policy and segregation in South Africa presents a particularly good example of violation of academic freedom through prohibition of free assembly. Under the regime, it was unlawful for the blacks to associate with their white counterparts. Taiwo<sup>45</sup> argues that academic freedom suffered greatly under the regime because of excessive encroachment of the state into the area of university education.

The apartheid education system of racial separation in the university is a violation of academic freedom. Polanyi considers the system and submits thus:<sup>46</sup>

To exclude black students from a university is an insult to their human dignity, it is inhuman. To force them into native reserves under the supervision of white authorities is oppressive. To pretend that this is done in order to preserve their native culture is intellectually dishonest. To demand the participation of universities in a programme of inhumanity, oppression and intellectual dishonesty is a violation of academic freedom.

Taiwo concludes that it was in order to make up for the years of violation of academic rights that the 1996 South African Constitution expressly provided for right to academic freedom.<sup>47</sup>

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<sup>43</sup> To the Vice-Chancellor the incitement was to the extent that the mob threatened the lives of lecturers and non-teaching staff.

<sup>44</sup> See section 4.

<sup>45</sup> Taiwo (Codesria) 12.

<sup>46</sup> See M Polayi, *et al*, *Apartheid and the World's Universities: Report on a Meeting held in London, November 1957*, Committee on Science and Freedom, Congress for Cultural Freedom, Manchester, 1958 11. See also Taiwo (Codesria) 12 13. Under the Suppression of Communism Act some persons were prohibited from attending certain gathering and restrictions were placed on the work of well-known South African scholars. Their works could not be distributed, discussed in the lecture rooms or used as source of academic research. *The Open Universities in South Africa* 29 30. Taiwo (Codesria)14.

In conclusion, I investigate the freedom of association of members of the university and provide a direct positive link with a very vital object of teaching, research and impartation of knowledge. I establish that through the formal meetings in classrooms and laboratories, the boundaries of knowledge are extended.

I now turn to the question of what opinion academics and students may lawfully express at their meetings and beyond.

### **3.2 Freedom of expression**

I discuss freedom of expression in the context of university education and do consider whether messages that the lecturer passes in his lecture materials and question papers constitute expression, which has a link with impartation of knowledge. On the other hand, I enquire whether messages, which the student passes in his answer script, constitute an expression and do consider the relevance to teaching and impartation of knowledge.

Freedom of expression is a consequential right to freedom of association as the latter would be irrelevant if a member in an association or group will be hindered in expressing what he thinks, feels and believes no matter how stupid. Freedom of expression is more relevant in teaching and in the mode that is adopted.

As such, a dominant argument for free speech developed out of the conviction that truth was an inherent good and would prevail in an open fight with falsity or evil.<sup>48</sup> The freedom of expression of scholars, by way of exchange of ideas with colleagues is essential for the operation of universities and for maintaining the high quality of academic research.<sup>49</sup>

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<sup>47</sup>Taiwo (Codesria) 12

<sup>48</sup> Amy H Candido 'A right to talk dirty?': academic freedom values and sexual harassment in the university classroom 4 University of Chicargo Law School Roundtable 85 1997, 89.

I confirm here the positive links of freedom of expression to academic freedom and the realisation of the teaching and research object of a university. I refer to the messages that the lecturer passes in his lecture materials and question papers and hold that they are processes of expression.<sup>50</sup>

I argue on account of the above that there is a positive link between freedom of expression and impartation of knowledge. I submit that an unhindered expression of ideas, clears all doubts, ambiguities in an issue. The students should not be restricted on what they can hear from their lecturer or what the lecturer must tell the students.<sup>51</sup>

The Visitor stresses the relevance of freedom of expression to academics and students in a university in *Riggs v University of Waikato* as follows:<sup>52</sup>

The only justification which we can see for a special right to freedom of expression in a university environment is the need for academics, whether teachers or students, to feel free to pursue the search for knowledge and learning and truth without fear of institutional disciplinary action being used to divert them from these purposes in order to force conformity with views held by the university authority.

The 1940 Statement of Principles on Academic Freedom and Tenure, jointly issued by the American Association of University Professors (AAUP) and the Association of American Colleges (AAC), refers to justification of freedom of expression to research and teaching. The 1940 Statement provides that academic freedom has three aspects:<sup>53</sup>

- (1) the teachers' 'full freedom in research and in the publication of the results';
- (2) their 'freedom in the classroom in discussing their subject'; and

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<sup>49</sup>John Shattuck 'Federal restrictions on the free flow of academic information and ideas, in freedom at risk: Secrecy, censorship, and repression in the 1980s' 45 (Richard O. Curry ed 1988). Adar 183 184.

<sup>50</sup>The same argument holds for messages, which the student passes in his answer script,

<sup>51</sup>This is subject however to the fact that a lecturer may only take assigned course and use the approved syllabus.

<sup>52</sup>*Rigg v University of Waikato* [1984] NZLR 149. See also Michael J Beloff QC 'Academic freedom - rhetoric or reality?' *Denning Law Journal* 22 (2010) 117, 137 141.

<sup>53</sup>Reprinted in AAUP, Policy Documents and Reports 3 (AAUP, 1990), and in 76 *Academe* 37 (May-June 1990) (1940 Statement). See also Michael W McConnell 'Academic freedom in religious colleges and universities' *Law and Contemporary Problems* (1990) (53)(3) 307.

- (3) their freedom ‘from institutional censorship and discipline’ when they ‘speak or write as citizens.’

Following from the AAUP and AAC statements, I submit that academic freedom prevails where the teacher is not restricted in the choice of topic to investigate. The deciding factor should be what contribution to be made to knowledge. Freedom of expression in the classroom set up enables the lecturer to impart knowledge on his students in a relaxed atmosphere, which is devoid of fear or intimidation. Finally, the university should not unduly restrict freedom of expression of its members.<sup>54</sup>

The Report of the UNESCO sponsored Conference on ‘the Development of Higher Education in Africa,’ Tananarive, 1962,<sup>55</sup> sees academic freedom as ‘the freedom of academics to teach, to advance the frontiers of knowledge through research and to disseminate as widely as possible the results of their research.’

I compare freedom of expression with the right to unfettered inquiry as I discuss later in this section. Freedom of expression is more relevant in teaching and mode adopted, though it covers communication of research findings. In contrast to the above position, the right to unfettered inquiry is essential requirement of research works.

I submit that the teaching and research duties of the academic cannot be discharged if in his teachings and research works he is hindered by way of intimidation, fear and coercion on how to convey his messages. The individual academic right to inquire by the academic and students cannot equally be enjoyed where freedom of expression is not assured.

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<sup>54</sup> I point out in section 4, the negative impact of institutional autonomy on the enjoyment of academic freedom.

<sup>55</sup>United Nations Educational, Scientific, and Cultural Organization (UNESCO). The development of higher education in Africa: Report of the conference on the development of higher education in Africa. Paris: UNESCO. 1963; 12. See also A K Okorosaye-Orubite, F Godgift Paulley & Nath M Abraham ‘University autonomy, academic freedom and Academic Staff Union of Universities’ (ASUU) struggles in Nigeria: A historical perspective’ *Asian Social Science*; (8)(12) 2012 266.

In the US context, in *Silva v University of New Hampshire*,<sup>56</sup> six female students complained about the teacher's frequent use of sexual imagery and recounted several sexually suggestive comments made to them outside the class. The appointment of the teacher was subsequently sacked by the institution. The Court upheld Silva's freedom of expression and which to it was an advancement of Silva's valid educational objectives and were made in a 'professionally appropriate manner.'

The extent to which a student can exercise his right to freedom of expression as it relates to research and academic works was also considered in the US considered in *Brown v Li*.<sup>57</sup> Brown's Master's thesis in Material Science was approved by his thesis committee. He subsequently added an offensive 'disacknowledgements' section offering 'special *Fuck You's*' to the dean and staff of the university's graduate school, the staff at the university library, and a former California governor who he considered as obstacles during his graduate career. To Brown, the 'disacknowledgements' section was his own way of expression under academic freedom.

The University's Academic Freedom Committee rejected Brown's thesis, which they claimed failed to follow reasonable rules for thesis approval. The university considered withholding the award of degree but rather opted not to place the thesis in the library. Brown contested the exclusion of his thesis from the library at the District Court and lost. He appealed to the Ninth Circuit Court of Appeals and judgment of lower court was affirmed.<sup>58</sup>

Byrne considers the case and submits that the complaining student should carry the burden of proving that the exclusion of his thesis was not based on academic grounds. The steps taken before an appropriately constituted body would suffice in the circumstances.<sup>59</sup>

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<sup>56</sup>*Silva v University of New Hampshire* N.H., 888 F. Supp. 293 (D.N.H. 1994).

<sup>57</sup>*Brown v Li* 308 F.3d 939 (9th Cir. 2002), 538 U.S. 908 (2003).

<sup>58</sup>Pauken 11.

<sup>59</sup>J Peter Byrne 104 105.



The scholarly standards and professional ethics upon which students' right to freedom of expression was determined in *Brown v Li*<sup>60</sup> also apply to the academic. Classic discussions of academic freedom stress the freedom of the professor to investigate, teach, and publish, subject only to scholarly standards and professional ethics.<sup>61</sup>

Emphasis is placed on professional standards and official provisions, in carrying out of academic duties. In the case of *Brown v Li*<sup>62</sup> rules for thesis approval was followed. I submit that academic freedom may not be tolerated to cause disorderliness and lawlessness in the university. Given the fact that student Brown was heard before appropriate committee of the university, the law court in the circumstances defers to the university on academic decisions as I explain in chapter four.

Abt however contends that other restrictions on the choice of research or on the expression of scholarly views, whatever their source, violate academic freedom and should not hold.<sup>63</sup> The US courts however held in *Edwards v California University of Pennsylvania*<sup>64</sup> that a teacher has no right to teach a subject not assigned to him in a particular class. He is employed to teach a particular subject going by the syllabus that is prescribed.

This holding of the court is an assertion that enjoyment of academic freedom, freedom of expression is not absolute. It is qualified and is enjoyed subject to the laid down rules and regulations of the university and by professional demands.

Traditionally, academic freedom and freedom of expression can only be relied on where the communication, in relation to which the claim is brought, is made as citizen and on a

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<sup>60</sup>*Brown v Li* 308 F.3d 939 (9th Cir. 2002), 538 U.S. 908 (2003).

<sup>61</sup> Uri Abt 'Constitutional academic freedom and anti-affirmative action laws' (2010 - 2011) (137)(3) *Journal of College and University Law* 628.

<sup>62</sup>*Brown v Li* 538 .

<sup>63</sup> Uri Abt 628.

<sup>64</sup>In *Edwards v California University of Pennsylvania* 156, F 30 488, 491 (3rd Circuit 1998). Michael J Beloff QC 'Academic freedom - rhetoric or reality?' *Denning Law Journal* 2010 (22) 117 - 141, 127.

matter of public concern.<sup>65</sup> Faculty members are now entitled to freedom of expression both within and outside the institution. A guarantee of free expression for faculty, both internally and externally, in part overlaps with protections for other activities, such as faculty governance.<sup>66</sup> In faculty governance, staff and students must not be compelled to view issues in the same manner as presented by the authorities. Diverse opinions has to be appreciated. Thus, I submit that constructive criticisms given in course of official duties should not be met with sanctions.

Kehinde Samuel accused the University of Benin of financial and administrative misconduct. The institution however terminated his appointment. He contested the termination of his appointment by the University of Benin in court. A gang of heavily armed men suspected to have been sponsored by some management staff attacked his residence. Valuable properties were destroyed in the attack.<sup>67</sup>

Professor Lindsay, an Irishman who was appointed to an Nsukka professorial position in 1961 had his job terminated in 1964. Lindsay criticized the admission of students by the university to study Archaeology, which was part of History Department, which he headed. He gave reasons why the programme should not start when the university proposed it. His argument had been premised on a dearth of competent teaching staff. Lindsay's appointment was subsequently terminated.<sup>68</sup>

Lindsay gave a professional advice, which his employers took to be an act of sabotage. By the intent and scope of freedom of expression, I submit that if Lindsay had contested his termination in court, his appointment could have been restored. Ojo<sup>69</sup> then concludes that in faculty governance the freedom of expression and academic freedom cannot take root in a society where constructive criticisms are driven underground.

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<sup>65</sup> *Pickering v Board of Education of Township High School District 205, Will City* 91 US 563 (Supreme Court, 1968) 566-574). See also Beloff 133.

<sup>66</sup> Peltz 182.

<sup>67</sup> Bertram Nwannekanma 'Ex-Uniben staff member alleges threat to life' *The Guardian* Thursday 27 March 2014 42.

<sup>68</sup> A K Okorosaye-Orubite *et al* 269. See also Okafor N *The development of universities in Nigeria*. London: Longman Group Ltd. (1971)141.

<sup>69</sup>Ojo (1990) 64, See also A K Okorosaye - Orubite *et al* 269.

Rabban argues that academic freedom of the individual professor to pursue teaching and research extends to expression of professional opinion.<sup>70</sup> Sir David Beattie in *Rigg v University of Waikato*<sup>71</sup> expressed the view that university authorities ought not to use their legal powers to discipline a member of academic staff for conduct, which truly falls within the scope of academic freedom of thought and expression. Rabban however argues that where the expressed thought is a departure from professional standards of judgment, such shall be subjected to disciplinary action.<sup>72</sup>

In the expression of professional opinion, like the enjoyment of other individual academic freedom, I argue later in this chapter that such rights must align with professional standards and goals of the university.

Freedom of expression as a right derives in the first place from international law. The Universal Declaration of Human Rights provides in Article 19 thus:<sup>73</sup>

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek and impart information and ideas through any media and regardless of frontiers.

Academics and students live and operate within a national community and should show concern and air their views on the operations of social, economic and political milieu. Voices from the universities should be heard regularly on how to have it right in the country. Taiwo then submits thus:<sup>74</sup>

Academic freedom includes the right of both staff and students to express their views either publicly or within the confines of the university not solely on matters affecting the university but also on matters of general public interest.

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<sup>70</sup> David M Rabban12.

<sup>71</sup> *Rigg v University of Waikato* (1984) 1 NZLR 149, 181–182. See also Pauken 9.

<sup>72</sup> David M Rabban 1412.

<sup>73</sup> The Universal Declaration of Human Rights, 1948.

<sup>74</sup> Taiwo (Codesria) 17. See also *The Open Universities in South Africa*, 5.

Jobs are lost on account of political and other external pressures. University professors and lecturers who under the enjoyment of their academic freedom have been critical of government educational policies and other national issues have been shown the way out of the university system. Teferra and Altbach submit:<sup>75</sup>

Those who courageously speak their mind and express their views often find themselves facing dictators capable of using terror, kidnapping, imprisonment, expulsion, torture, and even death to silence dissident voices. In such a hostile environment, the academic community is often careful not to overtly offend those in power. This contributes to the perpetuation of a culture of self-censorship.

One of the earliest cases that examine the tension between an educator's constitutional interests and the employer's interest in conduct of public schools is the United State's case of *Pickering v Board of Education*.<sup>76</sup> Pickering was a teacher whose appointment was terminated for publicly criticising certain financial decisions of the local school's board. The US Supreme Court concluded that the interests of the school administrators did not outweigh the teacher's interest in contributing to the public forum.<sup>77</sup>

In 1996, the University of Cape Town appointed Mahmood Mamdani. In handling his allocated course 'Problematizing Africa,' Mamdani took the opportunity to condemn racism. In a community, which was white dominated, he met with stiff opposition and the course was eventually withdrawn from him.<sup>78</sup>

In a similar vein, William Makgoba, a renowned medical scholar was appointed as African Deputy Vice-Chancellor at the University of Witwatersrand, Johannesburg, on 1 October 1994. He embarked on internal and external campaign against racial politics and

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<sup>75</sup> See D Teferra & P G Altbach, *African Higher Education*, Indiana University Press: Bloomington & Indianapolis, 2003, 11. Taiwo (Cordestria) 8.

<sup>76</sup> *Pickering v Board of Education* 391 U.S. 563, 88 S. Ct 1731 (1968).

<sup>77</sup> David M Dumas et al 'Parate v Isibor: Resolving the conflict between the academic freedom of the university and the academic freedom of university professors' (16)( 4) *Journal of College And University Law* 723 -724 (1989-1990)

<sup>78</sup> Taylor & Taylor 906.

the concentration of power in a white minority. Reprisal attack and assault were made on his academic credentials. He bowed out of office on the strength of the falsehood.<sup>79</sup>

Without freedom of expression and academic freedom in its full swing, a university may not be able to realize its teaching and research object. On that basis, I consider which of government and the university should regulate fruitful speech.

Byrne endorses the First Amendment, which prohibits ‘governmental intrusion into the intellectual life of a university’ and protect academic decision-making. The selection of teachers and students, the organization of the curriculum, and the setting of intellectual standards for discourse exist to enhance the overall quality of speech in order to promote a search for truth and to facilitate education. Both faculty and students are required to meet scholarly and educational standards. Byrne concludes that the process requires both knowledge about the larger world and discipline on how to express ideas.<sup>80</sup>

In this section, I point out that impartation of knowledge comes by way of messages the teacher puts across to his students, in the classroom, lecture material and question paper. The enjoyment of freedom of expression here makes for realisation of the teaching, research and impartation of knowledge objects. I now proceed in the next section to consider the right of the student to a hitch free academic career.

### 3.3 Secured studentship

I consider here, whether the right of a student to have his student registration protected in the course of his academic programme has any link with the university’s realisation of its objects.

An aspect of individual academic freedom of a student is secured studentship: the right of a student to have his student registration protected. The student commences and graduates

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<sup>79</sup>Taylor & Taylor 904.

in his chosen programme of study without any let or hitch, except for a sanction on misconduct, or academic deficiencies, and to which sanction must however be a product of due process.<sup>81</sup>

The protection of the right of enrolment of students until completion of their courses is essential for the realisation of teaching and research object of the university. I argue that if students do not have the confidence in the system, that they can only be suspended or expelled on due cause, no student will enrol for a programme. A situation where students' programmes are terminated at will, where the learning process is truncated irrationally, attracts no student to enrol and eventually the university fails in discharging its duties.<sup>82</sup> Secured studentship as such is a right to education, which emphasises on gaining admission and graduating from the university timeously.

I contend that a student's right to university education should not be violated except as provided for by the law.<sup>83</sup> While the studentship is on, the learning environment most times, remain not conducive. Incidences of sexual harassment, industrial actions, delay in computation and issuance of results, non-release of academic transcripts or delayed verification of results from universities are prevalent. I submit these are ways in which academic freedom of the tutor conflict with that of his student. Issues as above constitute violation of individual academic freedom of secured studentship.

The concept 'academic freedom' is an important aspect of the right to education. Secured studentship implies that a student maintains a good academic standing throughout his programme. I explain later in this chapter<sup>84</sup> corresponding obligation of the student is to maintain at least a pass grade. The right of the students to secured studentship is thus

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<sup>80</sup>J Peter Byrne 'The threat to constitutional academic freedom' (2004 - 2005) 31 *Journal of College and University Law* 79, 104.

<sup>81</sup> I treat this in details in section 3 of chapter four.

<sup>82</sup> Teaching and impartation of knowledge as objects of a university presumes the availability of students to pursue available programmes.

<sup>83</sup> I refer to my submission in chapter four on natural justice principles, which are meant to protect students right to education except for a sanction in which due process has been observed.

<sup>84</sup> See section 6.

expected to be protected from political and other pressures, which undermine their academic freedom.<sup>85</sup>

Individual academic freedom is a provision, which ensures that a student does not lose his studentship except in line with reasons and procedure known to law. Academic freedom to determine students that are taught entails that a student's right to university education should not be denied except as provided by the law, and in line with the natural justice principles. In chapter four,<sup>86</sup> I argue that no member of the university should lose his place or be punished for any misconduct except due process has been observed.

This, to Picozzi, is the:<sup>87</sup>

[f]reedom to determine who may be permitted to remain a student and necessarily implies the freedom to dismiss students who have failed to measure up in a relevant fashion. Once a student has matriculated, the university's freedom to dismiss him is subject to his property and liberty interests in remaining at the school.

I restate that except for assurances on secured studentship, learning in the university may remain a myth. The student can only learn where he is assured that he may not be expelled except on a misconduct upon which he has been tried and found culpable in the university.

Section 7AAA of the Universities Autonomy Act 2007, provides enhanced status of students and recognition as stakeholders in nation's development. The section provides concerning students in sub-section (d) that students should be encouraged to be more self-assured that they are part of the national development process. I then infer from the provision of law that students are expected not only to graduate, but should maintain clean academic and moral records<sup>88</sup> relevant in the attainment of nation's development.

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<sup>85</sup> CESCR, The Right to Education (Art. 13): General Comment No.13 (E/C. 12/199/10 of 8 December 1999), par 38. See Taiwo (Codesria) 2.

<sup>86</sup> See section 3.

<sup>87</sup> Picozzi 'University disciplinary process: What's fair, what's due, and what you don't get' (1987) 96 *Yale Law Journal*, 2136-40.

<sup>88</sup> A student who has a blemished reputation may not be able to participate in nation's building after graduation.

Oshio considers the provisions of section 7AAA (d) and submits as follows:<sup>89</sup>

This provision is an express enactment of the recognition of students as major stakeholders in the University system. A proper implementation of the provision will enhance students' welfare, boost their morale and ensure fair hearing for students, which will lead to greater cooperation from them with the attendant harmony in the Universities.

As above captured, students occupy a very vital position in the university project. This is on account of the fact that other members of the university take their positions in the university because the students are on course.

Oshio in his submission captures all that secured studentship entails. I submit that where students are granted fair hearing, unjust violation of their studentship cannot take place. Where studentship is then assured, conducive learning environment is guaranteed and the students and the university are better for it.

In *University of Ilorin v Stephen Olanrewaju Akinola*,<sup>90</sup> where the appellant for a couple of years had withheld a degree certificate on 'administrative grounds,' the Supreme Court per Okoro JSC held thus:<sup>91</sup>

where the student/ respondent has exhausted all avenues and entreaties, and the university is adamant, intransigent, as in neither releasing the result of the student, nor giving good, substantial and verifiable reasons for withholding the result, even after the intervention by the visitor of the university, the student is entitled to approach the court for redress. In such circumstance, the court should not shy away from ensuring that the university authority abides by the law setting up the institution.

In the same vein, *University of Ilorin v Rasheedat Adesina*,<sup>92</sup> the plaintiff / respondent was indicted for participating in students' unrest. She was recalled from suspension after she wrote a letter of apology and paid damages. Her results were however not released and

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<sup>89</sup>Oshio 'Universities Autonomy Act, 2007' 6.

<sup>90</sup>*University of Ilorin v Stephen Olanrewaju Akinola* (2014) 7 *Supreme Court Monthly* 174, 199 200

<sup>91</sup>Akinola, (as above), 199 200



she could not graduate since 2001. The plaintiff contended that withholding her academic records and degree despite her having completed her BSc Course in Chemistry was capricious, vindictive, oppressive, illegal, and unlawful and constitutes a gross abuse of defendant's statutory powers. The trial court gave judgment to the plaintiff. The appeal by the defendant to the Court of Appeal failed and the Supreme Court confirmed judgment to the plaintiff / respondent.

In dismissing the appeal, the Supreme Court per Rhodes-Vivour held thus:<sup>93</sup>

A student who takes part in an examination is entitled to see his results. Refusal to release result with no reason for the refusal raises issues of breach of civil rights and obligation, denial of fair hearing which are all justiciable. Such a refusal is no longer within the confines of domestic affairs of the university.

The judgments in the two cases established that where a group's autonomous capacities are less developed or less worthy of respect, the same threatens the autonomy of everyone.<sup>94</sup> This explains the fact that if the universities had fairly handled the two cases, the university's disciplinary autonomy would not have been lost to the law court as an external body.

On the right of students to graduate without any delay, former students of the Michael Otedola College of Primary Education (MOCPED) have accused the institution and the Ekiti State University (EKSU) to which it is affiliated on the non-release of their degree certificates. The school started in 2006 and the four sets that have passed out were never issued their results and certificates.<sup>95</sup>

Secured studentship is thus not restricted to due graduation of the student, it covers the due computation of results and issuing of certificate upon graduation from the university.

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<sup>92</sup>*University of Ilorin v Rasheedat Adesina* (2014) 6 SCM 222

<sup>93</sup>*University of Ilorin v Rasheedat Adesina*, (as above) 236

<sup>94</sup> Amy H Candido 'A right to talk dirty: Academic freedom values and sexual harassment in the university classroom 4 U Chi L Sch Roundtable (85) (1997) 123.

I however infer from the concept of secured studentship that violation of the right to education arises where a student who has graduated does not have his certificate and transcript.

Students of the Imo State University Teaching Hospital recently protested in Owerri over the long delay in their graduation. The students regretted that they had spent 10 years and had paid school fees for that long instead of six years. They expressed the fear that even as it was, they had no hope of graduating in time because of dearth of lecturers, classrooms, poor library facility, and incessant strikes in the hospital. The situation had made students to be depressed and psychotic.<sup>96</sup>

I consider section 7AAA (d) of Universities Autonomy Act 2007 which states that students shall be encouraged to be more self-assured as part of the national development process.<sup>97</sup> I enquire whether depressed and psychotic students can collaborate in a nation's development.

One of the threats to a secured studentship and academic freedom is sexual harassment. It is an impediment to learning. It does not bring out the best from the affected student. Still on elements of secured studentship, I submit that sexual harassment threatens the comportment of students and sometimes lead to abandonment of academic programmes by the victims. AAUP submits that speech which may qualify as sexual harassment to include speech which;<sup>98</sup>

(offensive and substantially impairs the academic opportunity of students ... If it takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter. The

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<sup>95</sup> Ex-students of MOCPEd decry non-release of results, certificates four years after graduation' The Guardian, Friday 19 September 2014 5. The former students complain they do menial jobs to survive, as they have no certificate to access proper jobs.

<sup>96</sup> Charles Ogugbuaja 'IMSUTH medical students protest delay in graduation' The Guardian Thursday 17 January 2013 44.

<sup>97</sup> Oshio 'Universities Autonomy Act 2007' 6.

<sup>98</sup> AAUP, *Sexual Harassment: Suggested Policy and Procedures for Handling Complaints*, available at <http://www.aaup.org/statements/Redbook/rbsexha.htm> (last visited Oct. 12, 2004). Although this statement appropriately provides more protection to academic freedom than do the standards in either *Silva* or *Cohen*,

academic setting is distinct from the workplace in that wide latitude is recognized for professional judgment in determining the appropriate content and presentation of academic material.

Most victims of sexual harassment are female students, and the violation comes from the male tutors and male counterparts. Although many are disposed to dismiss the allegations of sexual assault based on female indecent dressings, Amy Candido cautions thus:<sup>99</sup>

When we tolerate the abridgment of women's autonomy caused by sexual harassment, neither men nor the unaffected women can rest assured that their autonomy will not be similarly abridged. A culture that tolerates disrespect for anyone's autonomy is more likely to tolerate the disrespect of everyone's autonomy. Inequality, representing a judgment that one group's autonomous capacities are less developed or less worthy of respect, threatens the autonomy of everyone.

Every allegation deserves to be properly investigated and an act of misconduct should not be condoned. If desired attention is received, and punishments are meted out, it serves as deterrence.

In the United States case of *Cohen v San Bernardino Valley College*,<sup>100</sup> Dean Cohen was a tenured professor at a community college in California. A student complained about his frequent use of profanity and sexually vulgar speech in a remedial writing class. The College's Grievance Committee held that Cohen had violated the school's new sexual harassment policy, and ordered him to attend a sexual harassment seminar. Cohen sued, and the district court denied him relief. The Ninth Circuit, however, held that the policy was unconstitutional. The College was saddled with the responsibility of providing sufficient education to faculty about when unusual teaching techniques invade the rights of students.

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either of those professors might have been successfully prosecuted under the AAUP standard. See also Peter Byrne 98.

<sup>99</sup> Amy H Candido 'A right to talk dirty?: Academic freedom values and sexual harassment in the university classroom' 4 University of Chicago Law School Roundtable 85 1997, 123.

<sup>100</sup> *Cohen v San Bernardino Valley College* 92 F.3d 968 (9th Cir. 1996). See also Byrne 97 98.

The public universities have so many students that it is impossible for them to monitor the kind of treatment lecturers meet out to them. Yemi Sotade observes on an environment conducive to learning thus:<sup>101</sup>

(W)e see in our tertiary institutions where a lecturer would curse his students and often times deliberately fail them for whatever reason known to him unlike his counterparts in other climes where the success and advancement of the student is uppermost and paramount in their hearts.

Further to the call for an environment conducive to learning is the need for teaching staff to accord recognition and respect to their students. This is more necessary because of the symbiotic relationship between them. To Olusegun Odunola, lecturers and administrators in schools should exhibit a level of civility when dealing with students. Being civil to him does not connote a compromise of the schools regulations and discipline.<sup>102</sup>

To Oshio,<sup>103</sup> Section 7AAA is a new and encouraging provision on making room for students to participate in managing the university. Under the provisions of 7AAA (c) students participate in the process of assessing academic staff in respect of teaching.

I submit that with the indecent treatment meted out to students by other members of the university, particularly the academics, the time is now for students to occupy their pride of place. Students are expected to enjoy desired courtesies as they participate in assessing academic staff in their teachings.

Academic freedom to a student includes his right of access and right to education.<sup>104</sup> Nurudeen Temilola refers to Section 3 of the law establishing Lagos State University (LASU). The law provides that the objective of the university shall be to provide ready access to higher education regardless of social status or economic classification of citizens

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<sup>101</sup>YemiSotade ‘University admission: Matters arising’ [www.guardianngr.com](http://www.guardianngr.com). Accessed 30 October 2014.

<sup>102</sup>Olusegun Odunola, Rector of the Polytechnic Ibadan spoke at a retreat organized for the institution’s administrators. Rekia Sanni ‘Rector tasks lecturers, administrators on civility to students’ The Guardian Tuesday 22 February 2011 63.

<sup>103</sup>Oshio 6.

<sup>104</sup> CESCR, The Right to Education (Art. 13): General Comment No.13 (E/C. 12/199/10 of 8 December 1999), par 38. See Taiwo (Codesria) 2.

of the state. He claims students do not subscribe to the claim by the Visitor to LASU that quality of education is influenced by what fee is paid. He proceeds to cite the example of the University of Helsinki, Finland which ranked seventh in the world but which is tuition free.

Secured studentship as applicable to the above example is that, where students enrol for a programme, they should have the assurances that their tuition fee and other charges will not increase or that where it increases it shall be affordable to every existing student. A situation where a student has to pull out of a programme in the circumstances breaches the right to secured studentship.

Provision of facilities and environment conducive to learning are conditions precedent to enjoyment of secured studentship. As such, non-availability of a teaching hospital was an issue at the University of Osun. The medical students of the University were stagnated for about two years because of non-availability of a teaching hospital for the university. The university authorities made unsuccessful efforts to have them absorbed by sister institutions, to no avail.<sup>105</sup>

To protect the right of enrolment of the students, the Osun State Government approved an overseas clinical course, for completion of their courses. Consequently, the Government approved that all 300 to 500 level medical students should proceed on scholarship to complete their medical study at VN KarazinKharkiv National University, Ukraine.

Under the academic freedom of students, it does not suffice that they do not forfeit their studentship - it is also important that they graduate without any undue delay. This appears to be a myth in Nigeria public universities because of incessant industrial actions. Strike actions destroy the academic calendar and no prediction can be made on graduation date. It also leads to compromised standard of education as attempts are made sometimes to make up for lost time.

Not so grave denial as above, but equally a violation of student academic right is the cumbersome process for the issue of transcripts or verification of results from universities. Administrative bottleneck makes the issuance of transcripts to students tedious. Deadlines for the submission of academic transcripts for local and foreign admissions and even for job prospects are usually missed.<sup>106</sup> This is an irregularity which violates student's right to academic freedom and which should not be condoned.

An area of conflict in the exercise of academic freedom of the academic staff and that of the students is in the areas of lecturers' unavailability to take classes, selling of hand-outs as lecture material, assessment of students by proxy, and delayed assessment. I consider all these later in this chapter as abuses of academic freedom.<sup>107</sup> Similar to the above is non-release of examination results or delay in doing so. Some students proceed to the next class before becoming aware of failed courses. Some students become aware of outstanding courses after their supposed graduation. I submit that these irregularities violate right to secured studentship.

Afe Babalola<sup>108</sup> submits that academic and administrative machineries in the universities should be made to release results of examinations within a specified time. He argues that default should be treated as misconduct and strict penalty should be meted out to defaulters.

With the right to a secured studentship, graduation is assured, learning takes place in a conducive environment and members of staff treat students as the essence of their jobs. I investigate the right of a student to have his student registration protected in the course of his academic programme. The assurances that a student may not lose his studentship except for disciplinary and or academic violations makes students to enrol for

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<sup>105</sup>Oluremi Omowaye 'What makes a standard university' The Guardian, Wednesday 24 October 2012 68. It took the pioneer medical students of Ladoko Akintola University of Technology (LAUTECH) 10 years to graduate, owing to accreditation challenges.

<sup>106</sup>EXT-NG introduces electronic ordering, receipt of academics' the Guardian 24 April 2014.

<sup>107</sup> See section 7.

<sup>108</sup>Afe Babalola 47.

programmes. I point out that a university system does not run neither is the object of teaching and impartation of knowledge realised, where there are no students to enrol for the programmes. I now consider how a staff may not lose his job.

### **3.4 Security of tenure**

In this section, I enquire whether security of tenure constitute the necessary assurances of job continuity that a professor needs before he can be encouraged to generate new knowledge via research and before he imparts the same on his students.

Earlier in chapter two,<sup>109</sup> I point out teaching, research and nation's development as main objects of the university. The academic staff is a principal factor in the conduct of research. This he does to create new knowledge with which he teaches his students. His research works also focuses on finding solutions to the nation's problems. Therefore, without job security, he has no motivation to facilitate the realisation of this important object of the university.

Security of tenure is an individual academic freedom of the professor to teach and to do research on what he teaches and on what stands to benefit the nation. Security of tenure enhances productivity of staff as the professor is conscious of the fact that he may only lose his job upon culpability on a case of misconduct.

To Arko Cobbah,<sup>110</sup> a faculty member that enjoys security of tenure is able to express ideas or opinions, free from both internal and external pressures. He is able to conduct research on controversial issues and to teach disputed theories without fear of retribution by the employer. A faculty member who is granted tenure, has secured employment, and enjoys the full extent of academic freedom.

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<sup>109</sup> See section 2.

<sup>110</sup> Arko-Cobbah 78.

Tenure to Richard Peltz is a means to certain ends; specifically:<sup>111</sup>

(1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

After tenure is awarded, the professor can still be dismissed only for cause shown in a hearing in which the college or university bears some burden of proof. Thus, tenure effectively protects the academic freedom of the tenured staff, by creating barriers to dismissal and exposing the reasons behind dismissal to ensure that they are not improper. Security of tenure relates positively to the preconditions for the exercise of disciplinary autonomy. I discuss in chapter four that the university must observe the natural justice principles before a member of the university may lose his job on a misconduct.

Byrne<sup>112</sup> traces the history of job security for university professors in the United States of America. According to him, professors in the early twentieth century were typically employed either at-will or on short-term contracts, thus subject to dismissal or non-renewal for no reason at all. He submits further that by 1940, employment contracts could either expressly guarantee a professor academic freedom or incorporate the protection of tenure, making these principles legally enforceable as contract rights in individual cases.<sup>113</sup>

Job security is disrupted most times in Nigerian universities because of external and or political influences.<sup>114</sup> In *Olaniyan & others v University of Lagos*,<sup>115</sup> the appointments of

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<sup>111</sup> Richard J Peltz 'Penumbra academic freedom: Interpreting the tenure contract in a time of constitutional impotence' 37 *Journal of College and University Law* 2010 – 2011, 174.

<sup>112</sup> J. Peter Byrne 'The threat to constitutional academic freedom' 31 *Journal of College and University Law* 79 2004-2005 86.

<sup>113</sup> See William A Kaplin & Barbara A Lee *The law of higher education* 150 - 154 (discussing the enforceability of academic freedom norms incorporated into faculty contracts). See also J Peter Byrne, 86.

<sup>114</sup> The Supreme Court per Obaseki JSC in *Garba & others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 413, 432 emphasizes human resource as a great asset of the Nigerian Nation, and, of which the country could not afford to destroy academic career or job security except in conformity with the rule of law.



plaintiffs were terminated without affording them fair hearing. The Supreme Court per Aniagolu JSC condemns the termination thus:<sup>116</sup>

(T)o remove a public servant in flagrant contravention of the rules governing him, whether under contract or under provisions of a statute or regulations made there under, is to act capriciously to destabilise the security of tenure of the public servant, frustrate his hopes and aspirations, and thereby act in a manner inimical to order, good government and the well-being of society.

Okany expatiates on the destructive trend in unlawful job termination as follows:<sup>117</sup>

One may say that for the individual to lose his means of livelihood is for him to suffer an economic death sentence, whose consequences may be even more severe than those resulting from most of the penalties imposed by the criminal law. To condemn him to those consequences unheard is wholly contrary to the spirit of Anglo-Nigerian administrative law.

Rabban contends that extending tenure to all faculty members upon appointment would further safeguard their academic freedom.<sup>118</sup> The practice in Nigerian universities is that a new staff is under a two-year probation.<sup>119</sup> The appointment is then confirmed after satisfactory performances and it becomes permanent. From the ‘satisfactory performances’ requirement for tenure, I submit then that tenure provides the faculty who have earned it the presumption of professional competence.<sup>120</sup> Further benefit accruing to job security is the professor’s right to due process before his job may be terminated for an act of misconduct.

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<sup>115</sup> *Olaniyan & others v University of Lagos* (1985) 2 NWLR (Pt 9) 599. See also cases of *Eperokun & others v University of Lagos*, SC/152/85 of 4/7/85 and *Odukale v University of Ife* (Unreported suit No MBSC/8/78 of 14/4/78).

<sup>116</sup> *Olaniyan & others v University of Lagos* (1985) 2 NWLR (Pt 9) 599, 604.

<sup>117</sup> MC Okany *Nigerian administrative law* (2007) 222. See also Schwarts *Introduction to American administrative law* (1962) 117.

<sup>118</sup> David M Rabban ‘Does academic freedom limit faculty autonomy?’ 66 *Texas Law Review* 1405 1987-1988, 1427.

<sup>119</sup> An appointment may be extended beyond two years before it is confirmed for lack of satisfactory performances and the appointment may be terminated at that stage.

<sup>120</sup> See also J Peter Byrne ‘Academic freedom without tenure?’ (American Association for Higher Education, New Pathways Working Paper No 5, 1997 See also J Peter Byrne ‘The threat to constitutional academic freedom’ 31 *Journal of College & University Law* 79 2004-2005 84.

Tenure cannot be withheld except for cogent reasons. In *University of Jos v MC Ikegwuoha*,<sup>121</sup> the plaintiff was appointed as a Lecturer II in the Department of Political Science of the University of Jos on a temporary basis. He became due for confirmation of appointment in January 1995 and he so applied. His Head of Department and Dean recommended him for confirmation.

The institution however opted to rely on an instigated protest letter written by some students to deny confirmation. The institution set up a three-man panel with a grand design to refuse confirmation. The institution relied on some extraneous matters and terminated the appointment. The plaintiff filed action at the Federal High Court seeking a court order to have appointment confirmed. He lost at the trial court. His appeal to the Court of Appeal was upheld and the Supreme Court upheld the same.

The Court took cognisance of the un-contradicted recommendations of the Head of Department and Dean and gave judgement in favour of the plaintiff (respondent). This case establishes that a staff may not only take advantage of job security when his appointment is confirmed but that confirmation of appointment may only be refused for a just cause.

Tenure provides the faculty who have earned it the presumption of professional competence and continued employment.<sup>122</sup> In the United State's case of *Silva v University of New Hampshire*,<sup>123</sup> Professor Silva was a tenured instructor in a two-year certificate program in applied science at the University of New Hampshire. He was teaching a class in technical writing. Six female students complained about the teacher's frequent use of sexual imagery and recounted several sexually suggestive comments made to them outside the class. The school reprimanded Silva and then suspended him without pay. He was sanctioned without precise charges being filed and without clear burdens of proof allocated.

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<sup>121</sup>*University of Jos v MC Ikegwuoha* (2013) 7 SCM 126.

<sup>122</sup>See J Peter Byrne 'Academic freedom without tenure?' (American Association for Higher Education, New Pathways Working Paper No 5, 1997) See also J Peter Byrne 'The threat to constitutional academic freedom' 31 *Journal of College & University Law* 79 2004-2005, 84.

Silva filed suit claiming that his First Amendment and due process rights had been violated. Judge Devine granted Silva's motion for a preliminary injunction, finding that the university had violated his First Amendment rights. I consider the judgement of the court and submit that Silva retained his job because of security of tenure as an academic freedom.

Tenure may sometimes be bad for tertiary education and for the applicable institution. At periods of economic downturn or situation calling for reorganisation, an institution may find itself in a fix.<sup>124</sup>

In *EA Abe v University of Ilorin*,<sup>125</sup> the appellant was a professor and was on 17 August 1994 appointed the Director of the Institute of Education of the University of Ilorin, the 1st respondent for an initial period of three years. The appointment was extended on 5 August 1997 for a further three year term. The Senate of the University at its meeting of 10 December 1997 decided to set up a committee to investigate all the results of the 1995 and 1996 graduating students of the institute. The appellant was therefore suspended and directed to hand over affairs of the Institute to the Dean of Education. The appellant was issued with a letter relieving him of his appointment because of reorganisation of the administrative structure. The appellant had approached the Federal High Court to seek an injunction and ten million Naira damages for libel. The trial court gave him judgment. The defendant appealed to the Court of Appeal which reversed judgment of trial court. Further appeal of the plaintiff was made to the Supreme Court.

The Supreme Court held that since the appellant had retired from service, having reached mandatory retirement age, events had overtaken the issues the appeal raised. The court per

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<sup>123</sup>*Silva v University of New Hampshire*, 888 F. Supp. 293 (D.N.H. 1994). See also Byrne 96.

<sup>124</sup>Byrne 84.

<sup>125</sup>*EA Abe v University of Ilorin* (Abe) (2013) 12 SCM 27. Byrne, 84, also attests to tenure and a times, attendant discomfort to the university system.

Muhammed JSC held that<sup>126</sup> courts do not act in vain. A person who has retired with full benefits cannot bring an action challenging his dismissal.

The identified fix and inconveniences of tenure to the academic system here are the distraction by way of litigation which lasted between 1997 and 2013. The consequential loss of human and financial resources is enormous to the system. I consider the cost implication of pursuing litigation for 16 years and submit that such financial and human resources are better deployed to research works or other academic activities of the university.

Tenure however does not imply that an appointment may not be lost. A member of staff may however lose his job where the principles of natural justice have been observed. Byrne explains further as follows:<sup>127</sup>

After tenure is awarded, the professor can be dismissed only for cause shown in a hearing in which the college or university bears some burden of proof. Thus, tenure effectively protects the academic freedom of the tenured by creating barriers to dismissal and exposing the reasons behind dismissal to ensure that they are not improper.

The government's violation of institutional autonomy of universities can also have an impact on security of tenure of academics. The Ogun State Government, for example merged Tai Solarin University of Education (TASUED) with the Faculty of Education of the Olabisi Onabanjo University (OOU), Ago Iwoye.<sup>128</sup> The OOU has been described as 'convalescing on account of recent purge of staff to trim down recurrent expenditure.'<sup>129</sup>

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<sup>126</sup>*Abe* 41 42. See also *Oyeneye v Odugbesan* (1972) 4 SC 244, *Bakare v ACB Ltd* (1986) 3 NWLR (Pt 26) 47 and *Fawehinmi v Akilu* (1987) 12 SC 136, 213.

<sup>127</sup>J Peter Byrne 'The threat to constitutional academic freedom' 31 JC & UL 79 2004 - 2005 84.

<sup>128</sup> Secretary to State Government Taiwo Adeoluwa commenting on the mandate of the State Committee on merger as that of ensuring that none of the 272 academic staff and 10 212 students of TASUED are affected by the merger. To him, TASUED is not scrapped but restructured to conform with the statute that established it. Ernest Nwokolo and Wale Ajetonmobi 'Controversy trails planned varsities' merger' *The Nation* Thursday 16 February 2012, 25.

<sup>129</sup>Kofoworola Belo-Osagie 'OOU/TASUED fusion: Matters arising' *The Nation* Thursday, 16 February 2012 40.

The Chairman of the Academic Staff Union of Universities (ASUU) TASUED Anthony Oyenuga faulted the merger, which he claims was a plan to retrench staff:<sup>130</sup>

It is unheard of that a university which is relatively doing well and has started turning out graduates is scrapped. The measure would not only destroy both institutions but send many lecturers into the labour market. When you submerge a university under a faculty in the name of an institute, the implications are predictable. An institute is just a research centre, which cannot accommodate more than 20 teaching staff as against TASUEDs' 272.

From the above, a job may not only be lost on account of disciplinary issues, but may be lost under re-organisation in an institution.

Records have shown that a person's ability to work with others in a civil and positive manner is a factor in determining who retains his job. Every manner of job requires a significant amount of contact with others. A basic level of civility and cooperation in the workplace is essential. The college or university campus is no exception.<sup>131</sup> This team spirit is regarded as collegiality.

The legitimacy of using collegiality as a criterion for tenure was an issue in *McGill v Regents of University of California*.<sup>132</sup> McGill, a professor of Mathematics, was denied tenure because he had not interacted well with graduate students, and had not worked in a collegial fashion with some of his departmental colleagues. McGill argues collegiality as a criterion for tenure was alien to his contract. The Court of Appeal held that although not expressly listed as one of the tenure criteria, it is inescapable that collegiality is an appropriate consideration.

*Schalow v Loyola University of New Orleans*<sup>133</sup> is a case which falls on all fours with McGill. Schalow argued that consideration of collegiality was not a valid basis for his dismissal, because it was not one of the specifically enumerated tenure criteria of

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<sup>130</sup> See Nwokolo & Ajetunmobi 26.

<sup>131</sup> Mary Ann Connell & Frederick Savage 'The role of collegiality in higher education tenure, promotion, and termination decisions' 27 *Journal of College and University Law* 833 (2000-2001) 838.

<sup>132</sup> Mary Ann Connell & Frederick Savage 843.

<sup>133</sup> 646 So. 2d 502 (La. Ct. App. 1994).

teaching, research, and service, set forth in the faculty handbook. The appellate court upheld judgment for the university and affirmed the non-renewal of Schalow's contract for lack of collegiality. Construing wording in the handbook regarding evaluating the suitability of a faculty member as a professional colleague, the court stated that the language was 'certainly broad enough to include collegiality.'<sup>134</sup>

Also, in the Arizona case of *Ogunleye v State of Arizona*<sup>135</sup> the plaintiff, a non-tenured professor, was denied reappointment in the Africana Studies Program at the University of Arizona on the ground that she was 'a disruptive force within her department.' She engaged in activities calculated to frustrate the acting director's management of the program and she refused to participate in mediation. Her appointment was not renewed and she contested it in court. The court however affirmed the school's stand.

It is however worthwhile to see how well the academic works towards the goal's realisation in view of observed un-ethical practices. Impartation of knowledge in the words of Adukwu-Bolujoko has in many cases become a secondary affair to the teaching staff:<sup>136</sup>

These days, many lecturers double as consultants or contractors in the mornings and lecturers in the evenings. They hardly make time to study in order to produce quality lectures. These ones recycle obsolete ideas and resources year after year.

It is here observed that some lecturers take the job while the search for preferred job continues. In another regard, in institutions where part-time programmes are available, the academics for the additional revenue burn their energy at the expense of the primary assignment.

The Nigerian Government recently approved an extension of tenure to its academic staff. For those on the professorial cadre, the retirement age has been increased from 65 years to

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<sup>134</sup>Mary Ann Connell & Frederick .Savage, 845.

<sup>135</sup>*Ogunleye v State of Arizona*, 66 F. Supp. 2d 1104 (D. Ariz. 1999). See also Cornell & Savage 853 854.

<sup>136</sup>Adukwu was President of the Nigerian Institute of Management (NIM). See Chukwuma Muanya 'NIM decries unethical practices in Nigeria varsities' The Guardian Thursday 28 April 2011 48.

70. To other staffers, in the teaching and non-teaching sectors, the same has been increased from 60 to 65 years. There are however arguments for and against the viability of such extension. The age extension was to enhance the capability of Nigerian Universities to attain the quantity and quality of PhDs required to sustain and develop the fast expanding university system. Holders of PhDs' minimum teaching requirement in Nigerian universities are below average.<sup>137</sup>

In the discourse on retirement age in America, which is relevant to the Nigerian situation, the following has been said:<sup>138</sup>

[a] large group of minimally active, but highly compensated, older faculty may strain institutional resources, inhibit the prospects of women and minorities for employment and advancement, and even threaten academic quality if incompetent or nonperforming faculty members become too difficult to remove ...

Craver observes that academic administrators often harbour negative attitudes about the physical and mental capabilities of older professors. To him, these attitudes include the belief that:<sup>139</sup>

1. Older professors often are afflicted with physical and mental infirmities.
2. Older professors are less adaptable to new situations and less receptive to educational enhancement than their younger counterparts are.
3. Teaching effectiveness declines with age.
4. Scholarly productivity normally decreases as professors age.

Craver then concludes that although physical capabilities do decline with age, it is important to acknowledge that the overall performance of older workers, particularly when strenuous physical labour is not involved, compares favourably with that of the younger workers.

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<sup>137</sup> See communiqué of the meeting of the National Executive Council (NEC) of the Academic Staff Union of Universities (ASUU) held at the Federal University of Technology, Owerri 5 - 6 February 2011, *The Guardian*, Thursday, 24 February 2011 64.

<sup>138</sup> Charles B Craver 'Implications of the elimination of mandatory retirement for professors' 16 *Journal of College and University Law* 343 1989-1990.

<sup>139</sup>Craver, 344 345.

The relevance of tenure extension in Nigeria is in the area of production of adequate number of PhD holders, which is presently below average. The older professors are expected to complement the efforts of their younger colleagues towards attainment of this goal. I submit that a situation where up to 25 percent of teaching staff in the university are visiting staff, this may not give the minimum student and lecturer interaction essential for teaching and learning. Inadequate student and lecturer interaction violates the individual academic freedom of the students.

With the comportment of staff consequent on tenure,<sup>140</sup> attitude to teaching of students and to research work becomes better.

I establish that security of tenure constitute the necessary assurances of job continuity that a professor needs before he can be encouraged to generate new knowledge. He as such conduct research to extend the frontier of knowledge which is relevant to the teaching and impartation of knowledge, and object of the university.

I now examine how job security enhances academic staff and students' unhindered inquiry.

### **3.5 Unfettered inquiry**

I consider whether the un-curtailed urge to discover new truths on the part of academic staff and students has any link with the realisation of the object of teaching, research and impartation of knowledge. I enquire into whether the right to unfettered inquiry is more relevant in the conduct of research than in teaching and learning.

Academic staff need to discover new truths with which to teach their students. Likewise, a student needs to have doubts and possible ambiguities in the lecture he receives cleared

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<sup>140</sup> In section 3 of chapter four, I treat in detail how tenure of teaching and non-teaching staff, and student's academic career may not be violated.



by the tutor. Notwithstanding, the right to unfettered inquiry is more relevant in the conduct of research than in teaching and learning. In contrast to the above position, I restate that freedom of expression is more relevant in teaching and mode adopted, though it covers communication of research findings.

Albert Arko-Cobbah opines on unfettered inquiry as an academic freedom thus:<sup>141</sup>

The university is regarded as a special institution because it is involved in the quest for an independent and systematic search for truth... by critically questioning ideas and practices that society carries forward.

I consider the submission of Arko-Cobbar on academic freedom and do argue that unfettered inquiry is freedom of expression at an advance level. The US Court in *Zemel v Rusk*<sup>142</sup> distinguishes between the two concepts when it held that ‘the right to speech and publish does not carry with it the unrestrained right to gather information.’

From the above, I conclude that unfettered inquiry is in the next level to freedom of expression and that unfettered inquiry is more relevant in the conduct of research.

Essential to the atmosphere of a University is academic freedom, the full freedom of speech, freedom to teach, to learn, and to conduct inquiry in a spirit of openness necessary to the acceptance of criticism, the expression of differing opinions, and the pursuit of truth.<sup>143</sup> Critical inquiry and dissemination of research by university professors is essential to the advancement of knowledge. Professors cannot perform these vital roles if others intimidate or punish them for expressing their scholarly judgments, which may often challenge or enrage those who hold prevailing conventional views.<sup>144</sup>

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<sup>141</sup> Albert Arko-Cobbah ‘Intellectual freedom and academic freedom: Some challenges and opportunities for academic libraries in Africa’ *Mousaion* 28 (2) 2011 77.

<sup>142</sup> *Zemel v Rusk* (1965) 381 US 1 17, see also Ademola O Popoola ‘A doctrinal and comparative perspective of the enhancement of citizens' participation in democratic governance’ in FOIA (Freedom of Information Act) and civil society Lanre Arogundade (ed) (2003) Published by International Press Centre (IPC) with the support of IFJ and LO/TCO, 32.

<sup>143</sup> Article IA, Bowling Green State University Academic Charter 13. See also Pauken 9.

<sup>144</sup> David M Rabban ‘Does academic freedom limit faculty autonomy?’ 66 *Texas Law Review* 1405 1987-1988, 1409.

The Freedom of Information Act (FOIA)<sup>145</sup> seeks to increase availability of public records and information to citizens of the country. For efficiency, a body needs information.<sup>146</sup> To Kwoka, the Act gives a statutory right to any person to request and receive government's records, any record in the possession and control of a federal agency, government corporation, or other federal entity.<sup>147</sup>

Unfettered inquiry thrives where the provisions of the FOIA are observed, and to Arogundade, where there is transparency and accountability in governance.<sup>148</sup> Unfettered inquiry suffers set back on account of statutory provisions. One of such is the Penal Code, which makes it an offence for any public office or civil servant to give out official information. It provides that:<sup>149</sup>

Any person who being employed in the public service, publishes or communicates any fact which comes to his knowledge by virtue of his office and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanor.

Section 39(3)(a)(b) of the 1999 Nigerian Constitution is another obstacle to unfettered inquiry. It provides for a qualified freedom of expression that may only be enjoyed subject to public interest. The futility in relying on the constitutional provisions was acknowledged by Ademola Popoola as follows:<sup>150</sup>

There is accordingly neither a constitutional right to have access to particular government information or to require openness from the bureaucracy nor a constitutional duty on the part

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<sup>145</sup> Laws of the Federation of Nigeria, 2011.

<sup>146</sup> Lanre Arogundade 'FOI and the society: The imperatives of FOI' in Lanre Arogundade (ed)(2003)*FOIA (Freedom of Information Act) and civil society* Published by International Press Centre (IPC) with the support of IFJ and LO/TCO 4.

<sup>147</sup> Margaret B Kwoka 'The freedom of information act trial' 61 *American University Law Review* 217 2011-2012 221.

<sup>148</sup> Lanre Arogundade 10.

<sup>149</sup> Lanre Arogundade 4.

<sup>150</sup> Ademola O Popoola 'A doctrinal and comparative perspective of the enhancement of citizens' participation in democratic governance' in Lanre Arogundade (ed) *FOIA (Freedom of Information Act) and civil society* Published by International Press Centre (IPC) with the support of IFJ and LO/TCO,(2003) 32.

of the government to furnish to newsmen information that is not available to the members of the general public.

As for the right to gather information, Popoola refers to the position in the United States in the case of *Bromsburg v Hayes*.<sup>151</sup> The Supreme Court held that no ‘constitutional right of special access to information not available to the public generally is guaranteed to the press.’ I see this as authority to the effect that an academic staff member or a student may not on account of his research enjoy any preferential treatment to have access to information, which is ordinarily not available to members of the public.

Section 1 of the Official Secrets Act, 1962 makes it an offence for a person to transmit any classified matter to a person to whom he is not authorized on behalf of the government or to reproduce, retain or obtain any classified matter.<sup>152</sup>

Consequently, I submit that the provisions of the law are anti-inquiry. The trend in government offices treating request for information as if it is a request for an account of their stewardship both constitute obstacles to the enjoyment of unfettered inquiry.

The American Supreme Court in *Sweezy v New Hampshire* held thus:<sup>153</sup>

(n)o field of education is so thoroughly comprehended by man that new discovery cannot yet be made. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

The recital to Freedom of Information Act<sup>154</sup> provides:

An Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent

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<sup>151</sup>*Bromsburg v Hayes* (1972) 408 US 665 at 684. See Popoola 32. The case is of persuasive influence in Nigeria.

<sup>152</sup>Lanre Arogundade 10. The Official Secrets Act, 1962 ceased to have any effect with the promulgation of the FOIA, Laws of the Federation of Nigeria, 2011.

<sup>153</sup>*Sweezy v New Hampshire* 354 US 234, 250 (1957). Patrick D Pauken ‘Academic freedom and institutional autonomy in American and Australian Universities: A twenty-first century dialogue and a call to leaders’ 12 *Australian & New Zealand Journal of Law & Education* 7 2007 8.

<sup>154</sup>Laws of the Federation of Nigeria, 2011.

consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.

Section 1(1) provides for the right of any person to access or request information. Section 4 of the Act provides that the public institution to which the application is made shall, within 7 days after the application is received-

- (a) make the information available to the applicant ;
- (b) refuse access to all or part of the application for any of the reasons recognized by the Act. Written notice of the denial and reason for it shall be communicated to the applicant.

One of the grounds for refusing an application is contained in section 17 that: ‘A public institution may deny an application for information which contains course or research materials prepared by faculty members.’

I submit that the provision of section 17 is laudable as it protects copyright of the faculty members and even of the student.

I then submit that the promulgation of the Freedom of Information Act has now paved way for unfettered inquiry to the extent that the Act permits. There is now a turn around on the statutory limitations above identified. My reservation however is that most of the States in Nigeria are yet to domesticate the Act, as such the Act does not apply in those state owned public institutions and offices.

Laprade, in defence of academic freedom and university autonomy tasks his fellow university professors on inquiry:<sup>155</sup>

The best hope of approaching truth, of arriving at an understanding of ourselves and of the world...rests in unfettered, honest, intelligent inquiry. This is our mission. If we do not prepare for it and keep ourselves free to perform it, we betray our trust.

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<sup>155</sup>Laprade (1953)105 (See it quoted in Okorosaye 267)

To Niyi Osundare, complacency and ready surrender to defeat is condemnable: Our students should know that asking the right (and at times wrong) questions and insisting on being answered is a very important part of their education.<sup>156</sup> Similarly, students have to learn and in the process, they may ask questions or express certain views. Academic freedom, therefore, entails that they should not be punished for asking those questions or expressing those views.<sup>157</sup> Ketchum advises university students who might need help in understanding a subject, to seek lecturers' support in suggesting materials to use and in organising extra lessons.<sup>158</sup>

Academic freedom is not a personal privilege of professorial autonomy, but a means for society to benefit from the products of critical inquiry.<sup>159</sup> In consideration of objects of teaching, research and nation's development, I submit that it is when the academic is at his best that he can contribute to the nation's development. This he does by way of quality teaching and through the conduct of research, which break walls of limitation.

Further on right to unrestricted inquiry proscribing of certain literature is a barrier. Taiwo<sup>160</sup> considers the Security Law, which he claims impacted negatively on academic freedom in South Africa during apartheid days. To him, the Publications and Entertainments Act 26 of 1963 and the Suppression of Communism Act 44 of 1950 were the two foremost statutes proscribing literature in South Africa during apartheid. When academic freedom and right to unrestricted inquiry is involved, the essence of the Publications and Entertainments Act and the Publications Control Board was to outlaw

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<sup>156</sup>Prof at University of New Orleans US. See also Mary Ogar 'Students list reasons for poor quality of Master's, PhD theses' *The Guardian* Thursday 27 June 2013 49.

<sup>157</sup>CRM Dlamini 'University autonomy and academic freedom in transition: The British experience' *SAPR/PL*, 2001(16) 343, 356. See also Taiwo (Codesria) 4.

<sup>158</sup>Daniel Ketchum 'A student's duties & obligations' [http://www.ehow.com/list\\_6805249\\_student\\_s-duties-amp-amp-obligations.html](http://www.ehow.com/list_6805249_student_s-duties-amp-amp-obligations.html) accessed 9 September 2014.

<sup>159</sup>David M Rabban 'Does academic freedom limit faculty autonomy?' 66 *Texas Law Review* 1405 1987-1988 1409.

<sup>160</sup>The Publications Control Board may only permit the use of books that are not of a 'communistic' nature and provided the books are kept under lock and key in the reference section and that they are used only for bona fide study and research purposes. It is submitted that restrictive access to publications allowed by the Publications Control Board is not in any way conducive for free inquiry. See *The Open Universities in South Africa*, 28. See also Taiwo (Codesria) 14.

literary works, which by set standards were seen as ‘undesirable.’ Not less than 26 000 works of international standard were as such banned in South Africa.

I established that the un-curtailed urge to discover new truths on the part of academic staff and students has positive link with the realisation of the object of teaching, research and impartation of knowledge. I identified the statutory limitations as they present qualified access to information and records. I pointed out that unfettered inquiry operates as an advance stage of freedom of expression though it is more relevant in the conduct of research than in teaching and learning.

#### **4 Relationship and impact of institutional autonomy on academic freedom.**

In this section, I enquire into institutional autonomy and academic freedom to ascertain whether or not the two have any link, and that if they do, whether they are related on the positive or negative dimension.

The twin concepts of academic freedom and institutional autonomy are among the most important issues concerning the existence, mission and role of the university throughout the world.<sup>161</sup> The enjoyment of academic freedom requires the autonomy of institutions of higher education.<sup>162</sup>

A definition of institutional autonomy that does not refer to issues of internal threats to academic freedom is not acceptable. Defects in the quality of intellectual life will arise where internal control is sacrificed for external influences.<sup>163</sup> In essence, I reason that

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<sup>161</sup>See J F Ade Ajayi, L. K. H. Goma & G A Johnson, *The African experience with higher education*, The Association of African Universities, Ghana, 1996, 167. See also Taiwo (Codesria) 2.

<sup>162</sup>(CESCR, The Right to Education (Art. 13): General Comment No.13 (E/C. 12/199/10 of 8 December 1999), par 38.

<sup>163</sup>To Du Toit (2000; 2001) the four-fold definition of institutional autonomy given by TB Davie. See Y Taylor & R Taylor ‘Academic freedom and racial injustice: South Africa’s former ‘open universities’ *South African Journal of Higher Education* 24(6)(2010) 897–899.

where there is undue external control on the university it will ultimately negatively affect the chances of the university realising its objects.

On the one hand, institutional autonomy promotes and protects the individual academic freedom of members of a university. On account of this, David M Dumas *et al* submit that academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also on the autonomous decision making of the academy itself.<sup>164</sup>

The writers further identify external bodies that interfere in the internal administration of the university as follows: ‘The term academic freedom encompasses the right of universities to act free from judicial, governmental or corporate interference with academic decisions.’<sup>165</sup>

Going by the German perspective and teachings, freedom for those within the institution cannot be achieved without also insulating the institution *qua* institution from external constraints.<sup>166</sup> Ekundayo and Adedokun<sup>167</sup> consider the essence of university autonomy and academic freedom and submit that they relate to the protection of the university from interference by government officials in the day-to-day running of the institution.<sup>168</sup>

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<sup>164</sup>David M Dumas *et al* ‘*Parate v Isibor: resolving the conflict between the academic freedom of the university and the academic freedom of university professors*’ (16) (4) *Journal of College and University Law* 718 1989-1990. See also the US Supreme Court in *Regents of the University of Michigan v Ewing* 474 US 214, 226 (1985). See also Byrne 89.

<sup>165</sup>David M. Dumas *et al* ‘*Parate v Isibor: resolving the conflict between the academic freedom of the university and the academic freedom of university professors*’ (16)(4) *Journal of College and University Law* 718 1989-1990.

<sup>166</sup>Finkin 829.

<sup>167</sup>Ekundayo & Adedokun 62.

<sup>168</sup>The day-to-day schedule is what the duo gave as: the selection of students; the appointment and removal of academic staff (vice-chancellors); the determination of the content of university education and the control of degree standards; the determination of size and the rate of growth; the establishment of the balance between teaching, research and advanced study, the selection of research projects and freedom of publication; and the allocation of recurrent income among the various categories of expenditure. Ekundayo & Adedokun 62. See also I Onyeonoru ‘University autonomy and cost recovery policies: union contestation and sustainable university system’ Retrieved on line from [portal.unesco.org/education/en/files/36322](http://portal.unesco.org/education/en/files/36322).

The writers<sup>169</sup> further contend that for universities in Nigeria to play a meaningful role and discharge their responsibilities effectively, the system must enjoy a high degree of autonomy in addition to the academic freedom of its academic staff. To them, the best universities according to recent rankings are autonomous.

Faculty members are entitled to freedom from university overseers in the course of service.<sup>170</sup> Where there is no such independence, there would be no point in having structures of faculty governance apart from the university administration.<sup>171</sup>

Patrick Pauken considers assertion of individual rights vis-à-vis the institution, which engages the individual as a staff member or accommodates him as a student thus:<sup>172</sup>

The resolution of legal conflict in free speech and expression cases in institutions of higher education typically involves the interplay of individual and institutional voices. On one hand, there is the individual right to exercise important freedoms such as the freedom of speech, freedom of association or assembly, and freedom of religious worship. In the heart of educational settings, the asserted right is to academic freedom - the procedural and substantive freedom of both faculty and students to teach and engage in scholarship free of unreasonable institutional intrusion.

To Pauken, enjoyment of human right and academic freedom by a member of the university must be towards the advancement of objects of the university, and to be precise, teaching.

I examine further, the relationship between institutional autonomy and academic freedom.

The institutional right of a university to form its own voice as an institution, to share with

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<sup>169</sup>Ekundayo & MO Adedokun 'The unresolved issue of university autonomy and academic freedom in Nigerian universities' *Humanity & Social Science Journal* 4 (1)(2009) 61 - 67, 62. See also Luc Weber 'University autonomy, a necessary, but not sufficient condition for excellence' paper presented at IAU / IAUP Presidents' symposium. Chiang Mai, Thailand 8 - 9 December 2006.

<sup>170</sup>It is however obligatory for every higher institution to afford its staff and student academic freedom. This duty does not preclude church-related institution. They must afford the same academic freedom that all other accredited degree-granting institutions observe. Michael W McConnell 'Academic freedom in religious colleges and universities' 53 *Law & Contemporary Problems* 303 1990, 311.

<sup>171</sup>Peltz 182.

<sup>172</sup>Patrick Pauken 'Academic freedom and institutional autonomy in American and Australian universities: a twenty-first century dialogue and a call to leaders' 12 *Australia & New Zealand Journal of Law & Education* 7 (2007) 8, 9.



its community its own message and its own mission and vision is useful in guiding, directing the teaching and scholarship of its students and faculty. Individual academic freedom is what an institution affords the academic and students in line with professed status. I submit that a university may only fulfil its training mission where a balance of the institutional autonomy and academic freedom is struck.<sup>173</sup>

The thin boundary of academic freedom, the interwoven blend to adopt and the absence of straightjacket delineation is what Rabban regards as ‘the contours of academic freedom.’<sup>174</sup> On what way institutional autonomy may co-exist with academic freedom of association, as it relates to students unionism, Fawole gives an insight:<sup>175</sup>

The students union is not an alternative body to the Governing Council or the Board of Studies. The Board of Studies are the statutory bodies set up for the policy formulation on the administration and finances as well as the academic matters of the institution. Whilst the Board of Studies shall within the rules, welcome suggestion from students, it will not in any way condone the idea of the students dictation to it on how it should carry out its functions and responsibilities... We do not pretend to have monopoly of wisdom. It is therefore better to deliberate, negotiate, consult, dialogue and resolve issues through round table discussions. No matter the intensity of protests and violent demonstrations, the final resolution shall only be through dialogue. I implore you to always embrace dialogue in dealing with critical issues with the Management.

The acknowledgement by Fawole that the institution does not have monopoly of wisdom also goes to show that the law, rules and regulations of the institution cannot be said to be suitable for every occasion. The institution in certain cases may have to adopt an interpretation of the regulations or law that suit each occasion. I submit that flexibility on the application of law is what the solicited dialogue between the institution and its students may bring.

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<sup>173</sup> Pauken (as above)

<sup>174</sup> Rabban 1409.

<sup>175</sup> An address delivered by the Rector, Prof Olatunde Fawole during the swearing-in-ceremony of the Student Union Executives and Students Representative Council on Friday 3 October 2014 in the North Campus Assembly Hall, The Polytechnic, Ibadan, Nigeria.

Relationship of institutional autonomy and that of individual academic freedom is one of co-existence on the basis that the latter may only be enjoyed within set limit as earlier explained. At the same time, the institution in exercise of its autonomy may interfere with individual academic freedom. In the two sub - sections below I consider support and the tension.

#### **4.1 Relationship on positive note**

I consider whether institutional autonomy affords a conducive environment for members of the university to enjoy academic freedom and to operate at their optimum capacities.

The two concepts of institutional autonomy and academic freedom are complementary. Institutional autonomy affords a conducive environment for members of the university to enjoy academic freedom and to operate at the optimum. It is by the interplay of the two concepts that the mission of a university is accomplished.

On the positive note, institutional autonomy protects the university from political tribulations and safeguards the requisite serenity, objectivity and scientific nature of education and research. It enables universities to fulfil their noble mission. However, when institutional autonomy is denied, academics decline woefully.<sup>176</sup> It is my submission that without the simultaneous adoption of institutional autonomy and academic freedom, a university will not be able to accomplish its set objectives.

Institutional autonomy is a prerequisite for individual academic freedom. As a result, the United States' Supreme Court in *Regents of the University of Michigan v Ewing*<sup>177</sup> held that independent and uninhibited exchange of ideas among teachers and students is an

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<sup>176</sup>From the definition above, Rene Degni-Segui uses academic freedom interchangeably with institutional autonomy, the concept that is actually intended is institutional autonomy. Rene Degni-Segui 'Academic freedom and university autonomy in C6te d'Ivoire, in *The State of Academic Freedom In Africa 1995*, at 57. Korwa G Adar 'Human rights and academic freedom in Kenya's public universities: The case of the universities academic staff union' *Human Rights Quarterly*, Vol. 21, No. 1 (Feb., 1999), 179 206 185. It is here submitted that without academic freedom in its full swing, a university shall default in discharging its responsibility to the nation.

<sup>177</sup>*Regents of the University of Michigan v Ewing* 474 U.S. 214, 226 (1985). See also Byrne 89.

academic freedom, which thrives on the autonomous decision-making by the academy itself.

The Supreme Court acknowledged that it takes an autonomous university to allow its members to enjoy free and unhindered individual academic freedom.<sup>178</sup> In other words, a university may not guarantee enjoyment of academic freedom if it does not enjoy autonomy to control what Ekundayo and Adedokun<sup>179</sup> regard as the ‘day-to-day schedules.’

Abt explains the essence of having autonomy as follows:<sup>180</sup>

By training students in their respective disciplines, as well as in such general truth-seeking skills as critical thinking, the college or university is providing society with better-equipped truth-seekers.

For me, institutional autonomy is not for the fun of it, but for the attainment of the teaching, research and nation’s development. The students are prepared to collaborate in the nation’s development only in an autonomous institution. Academic freedom on the other hand affords the academic and student the opportunity to display the best in them in those capacities and for them to operate at optimum capacity.

AK Okorosaye-Orubite *et al* affiliate with Harman,<sup>181</sup> McConnel<sup>182</sup> and Okwor<sup>183</sup> who all argue that university autonomy and academic freedom are indispensable for the proper functioning of the universities. They have thus come up with a six-point benefit of observing the two concepts:<sup>184</sup>

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<sup>178</sup> *Regents of the University of Michigan v Ewing*, 474 U.S. 214, 226 n 12 (1985)

<sup>179</sup> Ekundayo & Adedokun 62.

<sup>180</sup> Uri Abt ‘Constitutional academic freedom and anti-affirmative action laws’ (2010–2011) 37 *Journal of College & University Law* 609–615.

<sup>181</sup> Harman (1983) 504–506.

<sup>182</sup> McConnel (1981) 36.

<sup>183</sup> Okwor (2001) 63

<sup>184</sup> G Harman ‘The erosion of university independence: Recent Australian experience (1983) *Journal of Education* (12) 501–518. See also D McConnel ‘Autonomy and accountability, some fundamental issues’ in P Altbach & RO Berdahi (eds) *Higher education in American society*, Buffalo Prometheus Books (1981) 30, 49. See also RE Okwor ‘Constraints to university autonomy: The Nigerian perspective’ in AU Akubue & D Enyi (eds) (2001) *Crises and challenges in higher education in developing countries: A book of readings* Ibadan: Wisdom Publishers Ltd 61–70. See also AK Okorosaye-Orubite *et al* 267.

- (i) that it is a traditional right which has worked well over the years.
- (ii) that the responsibilities of creating new knowledge through scholarship and research, transmitting and preserving culture; developing the capacity in students for critical and independent judgment; and cultivating aesthetic sensitivities are carried out best in environment free from direct external control and domination.
- (iii) that the complexity of academic work requires a fair measure of independence.
- (iv) that autonomy provides for both staff and students checks and balances in a democratic society.
- (iv) that the intricacy and unpredictability of learning and investigation requires a high degree of freedom from external intervention and control if the university is to perform effectively; and
- (vi) that it is necessary to ensure greater efficiency, economy and better morale among their staff and students.

AK Okorosaye-Orubite *et al* by their submissions confirm that the application of the concepts of institutional autonomy and academic freedom have applied beneficially over the years. They have been found to be desirable for the generation of new knowledge and competitiveness and excellence among the members of faculty.

Ultimately, the university autonomy and academic freedom are indispensable for the proper functioning of the universities. They work towards accomplishment of the objects of the university.

The above position has prompted JF Ade Ajayi *et al* to argue that no one who is familiar with the operations of the university in the discharge of its mission and role in society should doubt the value of academic freedom and university autonomy.<sup>185</sup>

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<sup>185</sup> See J F Ade Ajayi, L K H Goma & G A Johnson, *The African Experience with Higher Education*, The Association of African Universities, Ghana, 1996 167. See J F Ade Ajayi, L K H Goma & G. A. Johnson, *The African Experience with Higher Education*, The Association of African Universities, Ghana, 1996, 167. See also Taiwo (Codesria) 2.

In striking a balance between the enjoyment of academic freedom and institutional autonomy, each tier asserts its right from the upper tier. US Circuit Court Judge William Posner makes the picture clearer with his submission that academic freedom denotes;<sup>186</sup>

(b)oth the freedom of the academy to pursue its ends without interference from the government... and the freedom of the individual teacher . . . to pursue his ends without interference from the academy.

Consequently, institutional autonomy affords the desired enabling environment for the thriving of academic activities and the enforcement of academic freedom. The scope of autonomy has been given thus:<sup>187</sup>

Institutional autonomy implies: (a) the freedom of universities to select their students and staff by criteria chosen by the universities themselves; (b) autonomy to shape their curriculum and syllabus, and (c) the freedom to decide how to allocate among their various activities, such funds as are made available to them.

In effect, therefore, academic freedom and university autonomy according to the Nigerian Academic Staff Union of Universities (ASUU)<sup>188</sup> is necessary to safeguard ‘the highest standard of intellectual, social, moral and political performance of scholars.’

The ASUU reasons that the universities will suffer from the following dangers in their inherent lack or deficiency of autonomy and academic freedom:<sup>189</sup>

- (i) inability of universities to pursue their sacred functions,
- (ii) Scholars being forced to owe loyalty to the party in power with the consequence of political consideration rather than concern for truth being the decisive factor in determining intellectual issues.

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<sup>186</sup>William Posner *The origins and nature of the distinction between individual and institutional academic freedom* 65. See for example Mark Yudof ‘Three faces of academic freedom’ 32 *Loyola Law Review* 831 (1987); Walter Metzger ‘Profession and constitution: Two definitions of academic freedom in America, 66 *Texas Law Review* 1265 (1988) See also J Peter Byrne 89.

<sup>187</sup> See University of Sokoto (now Uthmanu Dan Fodio University, Sokoto) *Memorandum submitted by Senate to the Presidential Commission on Salary and Conditions of Service of University Staff* (February, 1981) 20. See Taiwo (Codesria) 4.

<sup>188</sup> ASUU (1981) 23 24. See also AK Okorosaye-Orubite *et al* 267 268.

- (iii) loss of job security
- (iv) University councils, becoming rubber stamps for government decisions; and
- (v) Inevitable fall of standards.

The contentions of the ASUU indicate to me that institutional autonomy is the state where the university operates not as an extension of the ruling political party but as a creation of law to realize its set objectives. Academic freedom and institutional autonomy in the circumstances constitute the oil and grease which lubricate the academic wheel on the mission of universities. With particular reference to paragraphs (ii) and (iv), appointment to Councils of public universities in Nigeria, as it operates as rewards for political patronage, desired competitiveness and academic excellence in the university may not be realized.

Further to the appointment power is the fact that the work force has to be motivated under institutional autonomy for the staff to operate at their best. To Ibrahim Shekarau, former Minister of Education, apart from providing facilities, learning and teaching environment, teachers who are executors of educational policies should be well motivated before they could give their best.<sup>190</sup>

Given the positive links of institutional autonomy on academic freedom, I submit that institutional autonomy enables the university to position its members to give their best. Institutional autonomy and academic freedom operate to realise the objects of the university. In that direction, members of a university who are stakeholders in realising the objects of the university have to be trained and retrained. Organising and sponsorship to staff development programmes is desirable.

Thus, The Polytechnic, Ibadan organized a retreat for its administrators to brainstorm and chart a course for further effort geared to strengthen the fulfilment of the institution's

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<sup>189</sup>ASUU (1981) 23–24, Okorosaye 267–268.

<sup>190</sup> At a meeting with Chairmen of Council of the nation's Federal Polytechnics held in Abuja See KanayoUmeh 'Shekarau blames exams' failure on poor motivation of teachers' The Guardian Thursday 4 September 2014 4.

mandate to produce qualified graduates that would fit into any system, anywhere in the world.<sup>191</sup>

Training received by members of staff amounts to enjoyment of academic freedom. To Rabban, it is not a personal privilege of professorial autonomy, but a means for society to benefit from the products of critical inquiry.<sup>192</sup>

For the university and academic project to be conducive to democracy, votes must be the product of rational judgment. The university, by teaching students to think and weigh arguments, supports this process by creating voters capable of exercising independent judgment.<sup>193</sup>

Members of staff of a university might not be competitive or give excellent performances if they remain conservative in the way they handle academic demands. Individual academic freedom, which members of the university enjoy, makes them to contribute their quota to the running of the university and to the attainment of nation's development.

It takes a university that has financial autonomy<sup>194</sup> to set aside its financial resources to encourage its students on academic excellence.

The Vice-Chancellor of the University of Lagos, Rahamon Bello<sup>195</sup> challenged matriculating students to work hard and take advantage of motivational package for distinguished students on Cumulative Grade Point Average (CGPA) of 4.50 and above. The package included a scholarship of N50,000.00, provision of accommodation in a choice hall, 50 per cent discount on bed space and nomination to participate in seminars and conferences nationally and internationally, participation in recruitment tests in the

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<sup>191</sup> Professor Olusegun Odunola, Rector of the Polytechnic Ibadan spoke at a retreat organized for the institution's administrators. Rekia Sanni 'Rector tasks lecturers, administrators on civility to students' The Guardian Tuesday 22 February 2011 63.

<sup>192</sup> See Rabban 1409. The university and academic project enhances democratic ideals, voters who pass through the university are able to think and weigh arguments so as to exercise independent judgment on votes cast. See also Amy H Candido 92.

<sup>193</sup> Candido 92.

<sup>194</sup> See Section 5 of cap two.

<sup>195</sup> Eno-Abasi Sunday 'Distinguish yourselves in academics, enjoy motivational package for scholars' The Guardian Thursday 17 April 2014 54.

final year, nomination for scholarship from external bodies on request from organisations as well as selection as guest speaker at orientation programmes to motivate fresh students.

I restate that individual academic freedom of the student is not limited to protection of his registration as a student. It extends to enjoyment of a rewarding academic career. Universities have thus been tasked to engage students positively and to create an environment conducive to learning as a means of mitigating social vices in the university campuses.<sup>196</sup> Such a learning environment is regarded as a condition precedent to students' enjoyment of academic freedom.

To achieve academic freedom of staff and students, a right to a degree of institutional autonomy is therefore essential. This attracts competitiveness of members of the university and their contribution to realisation of objects of the university is as such assured.

Individual academic freedom is the freedom of the individual academic to do research on what he wants and teach as he pleases. Professor Lovejoy affiliates with above submission when he submitted that the distinctive social function of the scholar's trade cannot be fulfilled if those who pay the piper are permitted to call the tune.<sup>197</sup> In essence, where the proprietor of a university is able to dictate what he wants from the university, and possibly how he wants it, academic standard is compromised.

A landmark United States decision is *Sweezy v New Hampshire*<sup>198</sup> where the court held that the Attorney General of New Hampshire could not question a guest lecturer about the political content of remarks given in a political science class at the University of New Hampshire.

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<sup>196</sup> Mohammed Abubakar 'VCs seek secure varsities, ban frivolities' The Guardian Tuesday 16 October 2012 19.

<sup>197</sup> See Lovejoy (1938) 409, 414. See also Patrick Pauken 'Academic freedom and institutional autonomy in American and Australian universities: a twenty-first century dialogue and a call to leaders ' 12 *Australian & New Zealand Journal of Law & Education* (7) (2007) 10.

<sup>198</sup> *Sweezy v New Hampshire* 354 U.S. 234 (1957). See also Byrne 86.



This external control still operates in some Nigerian Universities. The government in some cases, through the Councils consider the pedigree of guest lecturers to the public universities. People who have criticised government policies at one time or the other are seldom appointed. For those that are appointed, assurances are received that government policies would not be assessed unfairly.

I establish that institutional autonomy affords a conducive environment for members of the university to enjoy academic freedom and to operate at their optimum capacities. I investigate relationship of institutional autonomy and academic freedom on the positive note. I establish that for the institution to concede freedom to the academic, the proprietor of public universities in the circumstances initially concedes to the university to enjoy institutional autonomy. This state of affairs I conclude works for attainment of goals of the university and for nation's development.

#### **4.2 Institutional autonomy as it retards academic freedom**

In this sub-section, I consider whether there are ways by which individual academic freedom is curtailed directly by the institution because of abuse of power and whether there can be loss of individual academic freedom because of direct external or political control.

Lovejoy has given a definition of academic freedom, which recognises that internal administration, and bottlenecks can equally hinder academic freedom, just as external control.<sup>199</sup>

Academic freedom is the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed,

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<sup>199</sup>See Lovejoy 384. See also Rabban 1408.

Adar<sup>200</sup> then submits that academic freedom entails the right of the academic community<sup>201</sup> to disseminate knowledge without limitations from the university administrative wing and the state.

Rabban considers how the university runs on a committee system thus:<sup>202</sup>

A faculty committee regulates individual academic freedom and ensures it conforms to professional standards. But when faculty committees themselves act unprofessionally, in ways that may even violate the academic freedom of individual colleagues, university administrators and trustees should intervene.

By implication however, where a university committee that is vested with powers to enforce discipline violates the human right of a member of the university, a higher authority is approached for redress.

This situation where a committee of the university by its conduct violates individual academic freedom, makes exhaustion of internal remedy before an aggrieved member embarks on court action desirable.<sup>203</sup> In the circumstances, I submit that the hope of getting redress at the internal level is high, and it is unlike when the institution is involved in the abuse.

In the event that conflict of interest cannot be resolved in-house, David M Dumas *et al* propose that the judicial system should be saddled with the task of striking a balance between the two opposing interests.<sup>204</sup>

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<sup>200</sup> See The Dar-es-Salaam Declaration on Academic Freedom and Social Responsibility of Academics, Pt. II, ch. 1, I 17 (19 Apr 1990), reprinted in Mamdani & M Diouf *Academic freedom in Africa* (1994) 354 363. See also Adar 182.

<sup>201</sup> The term academic community can be defined to consist of persons teaching, studying, researching, and working or administering at an institution of higher learning.

<sup>202</sup> David M. Rabban 'Does academic freedom limit faculty autonomy?' 66 *Texas Law Review* 1405 1987-1988 1412

<sup>203</sup> See Tchawouo Mbiada 'The exhaustion of internal remedies in administrative law: A comparative analysis of the South African and the Cameroonian requirements and procedure' *African Journal of International and Comparative Law* (20)(1) (2012) 119 – 131. See generally section 6.2 of chapter three.

<sup>204</sup> David M Dumas *et al* 'Parate v Isibor: resolving the conflict between the academic freedom of the university and the academic freedom of university professors (16)(4) *Journal of College and University Law* 718 1989-1990.

Thus, in *University of Ilorin v Rasheedat Adesina*,<sup>205</sup> the plaintiff (respondent) was recalled from suspension, she completed her degree course but was neither issued her result nor awarded the earned degree. Kumai Aka'ahs JSC held thus:<sup>206</sup>

It is the practice the world over that where a student sits for an examination or completes a course he or she is entitled to know the outcome of that examination. It therefore beats my imagination why the appellant refused to release the respondent's result on flimsy excuse that she failed a core course and so the appellant had no obligation to release a non-existent result. It was an unnecessary show of power for the university to turn a deaf ear to the respondent's entreaties to release the results... If she was not notified about her performance in the course, the appellant cannot turn round to blame her for not remedying the deficiency.<sup>207</sup>

Violation of academic freedom as above was hatched and executed in-house. It is now obvious that what a member of a university enjoys as his individual academic freedom is what internal administration of the university concedes to him. In the event of default by the university, academic freedom is what external body such as law court orders.

Further, on prejudicial dispositions to individual academic freedom, Rabban,<sup>208</sup> remarks that the professor desires an unhindered enjoyment of academic freedom, to do his academic work by his standards. For me, the professor desires to discharge his duties at his convenience; this I contend may be detrimental to the interest of his students. The unregulated activities of the academic may violate the individual academic right of the students to quality teaching. There should be a set standard by which the activities of the academic staff can be assessed.

Lovejoy<sup>209</sup> however realises this as the writer hinges the professor's unhindered enjoyment of academic freedom on methods that are allowed by professional ethics. One

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<sup>205</sup> *University of Ilorin v Rasheedat Adesina* (2014) 6 SCM 222

<sup>206</sup> *University of Ilorin v Rasheedat Adesina* (2014) 6 SCM 234.

<sup>207</sup> The plaintiff was alleged to have scored 36 in course ICH 209 but was not notified as to remedy the deficiency.

<sup>208</sup> David M. Rabban 'Does academic freedom limit faculty autonomy?' 66 *Texas Law Review* 1405 1987-1988 1412

<sup>209</sup> See Lovejoy 384. See also Rabban 1408.

of the cases in which freedom of speech of academia vis-à-vis the institution that employs him was an issue is the United States matter of *Pickering v Board of Education*.<sup>210</sup> The case examines the tension between an educator's constitutional interests and the employer's interest in uniformity and orderly conduct of public schools. The appointment of Pickering as a teacher was terminated for publicly criticizing certain financial decisions of the local school's board. The Supreme Court concluded that the interests of the school administrators did not outweigh the teacher's interest in contributing to the public forum, notwithstanding the claim that certain statements in the publication were not true.<sup>211</sup>

*Pickering v Board of Education*<sup>212</sup> is also authority to the effect that where individual academic freedom is denied a member of a university, the law court is the last hope for the aggrieved party.

I submit that the cases above have features of compromised standards of justice. I submit that where a member of a university is unjustly punished in the circumstances, it retards the academic freedom of that member of the university. In chapter four, I discuss extensively the various procedural safeguards to protect individual academic freedom of members of the university.

The ASUU, River State University of Science and Technology Chapter embarked on a strike over the re-appointment of Prof Barineme Faka. To the Union, the appointment did not follow due process.<sup>213</sup> The students however contended that they bear the brunt of the tussle between ASUU and the Visitor. The students complained they were forced to write examinations on courses they neither received lectures on nor prepared for. They did not cover 90 per cent of the syllabus; they received lectures only for five weeks and did not have any revision. They were not comfortable at the examinations and could not do justice to the question papers.

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<sup>210</sup>*Pickering v Board of Education* 391 U.S. 563, 88 S. Ct. 1731 (1968)

<sup>211</sup>David M. Dumas *et al* 723-724.

<sup>212</sup>*Pickering v Board of Education* 391 U.S. 563, 88 S. Ct. 1731 (1968).

The students' right to a quality and unhindered learning was disturbed on account of external interference and the university's reactions to it. This case re-affirms that a university that lacks autonomy cannot protect individual academic freedom of its members. The omission of the university to appoint its vice-chancellor without involving the Visitor violated students' right to quality teaching.

Academic institutions also violate academic freedom of students when they delay commencement of lectures after resumption. Such institutions only rush to teach few of the topics. This practice may produce half-baked and non-employable graduates.<sup>214</sup> Protests against external control of universities result in strike actions of staff unions and students unrest. Strike actions of staff and frequent closure of universities truncate the academic calendar and thus make graduation on academic programmes unpredictable.<sup>215</sup> I contend that strike action brings academic instability. This adversely affects the right to quality education of university students.<sup>216</sup>

I establish there are ways by which individual academic freedom is curtailed directly by the institution on account of procedural abuses. I also establish that a university that lacks autonomy fails to protect individual academic freedom of the members of the university. I also point out loss of individual academic freedom because of direct external or political control.

#### **4.2.1 Impact of infrastructure on students' training**

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<sup>213</sup> Ann Godwin 'Students suffer as ASUU, Amaechi lock horns over appointment of Vice Chancellor' The Guardian Thursday December 2012 49.

<sup>214</sup> See Chukwuma Muanya 'NIM decries unethical practices in Nigeria varsities' The Guardian Thursday 28 April 2011 48.

<sup>215</sup> See C Ogugbuaja 'IMSUTH Medical Students protests delay in graduation' The Guardian 17 January 2013 44.

<sup>216</sup> Dabalen *et al* capture a fruitless mission of a university when they re-echo the argument of employers of labour; that university graduates are poorly trained and unproductive on the job...and shortcomings are particularly severe in oral and written communication, and in applied technical skills. See A Dabalen *et al* 'Labour market prospects for university graduates in Nigeria' Higher Education Policy November 2000 22 [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/09/14/000090341\\_20040914113724/Rendered/PDF/299420UNIOLaborImarket0graduates.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/09/14/000090341_20040914113724/Rendered/PDF/299420UNIOLaborImarket0graduates.pdf) (accessed 29 July 2013).

In this section, I consider whether the objects of teaching and learning can be realised where the requisite facilities are not on ground. I also examine whether provision of infrastructure has any link with the students individual academic freedom.

On teaching and learning as objects of a university, I refer to section 1(2) of the University of Ibadan Act<sup>217</sup> which mandates the University thus:

- c. To provide such facilities for the pursuit of learning and acquisition of liberal education as are appropriate for a university of the highest standing.
- d. To make the facilities available on proper terms to such persons as are equipped to benefit from them.<sup>218</sup>

Every university has similar mandate, to provide environment conducive to learning. Some universities have failed in this regard and the students have suffered because of it. To Mas'ud Elewu, Rector of Kwara State Polytechnic,<sup>219</sup> the non-provision of modern equipment denies the students opportunity of putting to practice the theories they learn in the academic institution. The students are thus ill-prepared for the labour market.

Consequently, at the Lagos State University (LASU) construction of a seven-storey senate building, the four-storey central library and other construction works also make learning more rewarding and enjoyable as obtainable in other world-class institutions.<sup>220</sup> This presents a case of state of infrastructure as it enhances the enjoyment of learning process by the students.

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<sup>217</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

<sup>218</sup> See also Section 1(3)(b) of University of Lagos Act, Cap U9, Laws of the Federation, 2004. I discuss more on objects of universities in chapter two.

<sup>219</sup>Saxone Akhaine 'Rectors pledge improved academic training with new equipment' The Guardian Thursday 15 December 2011 47.

<sup>220</sup>Ujunwa Atueyi 'How LASU projects support learning' The Guardian 2 April 2014 18. LASU and other state owned universities of its generation transformed from secondary schools to their present state. The lowly rated architectural staff has held sway for more than three decades. The engineering students have been benefitting from the construction work at the campus which doubles as practical knowledge transfer programme...we involve students in the construction works to effect knowledge transfer.

Poor state of infrastructure is injurious to the academic interest and the right to secured studentship.<sup>221</sup> For instance, the National Association of Academic Technologists (NAAT) has condemned the obsolete state of teaching laboratories across tertiary institutions in the country. To the NAAT, this development threatens the quality of teaching and learning.<sup>222</sup>

Furthermore, Abdulazeez Lawal<sup>223</sup> condemns the use of obsolete equipments in training students, and asserts that it has a negative impact on them. Employers reject them and in some cases have to retrain them in line with modern facilities.

For the inability to have a permanent site, there has not been accreditation for any of the College of Health Technology Pankshin's courses. The College commenced operation in 1976 but the National Board for Technical Education (NBTE) has withheld accreditation of the courses. To the Provost, Dr Jonathan Daboer, the non-accreditation has been on account of operation on temporary site of the College.<sup>224</sup>

In this case, students and their right to graduate as at when due was truncated, on account of the inability of their institution to establish an approved academic environment to operate.

In conclusion, where learning facilities are put in place and the environment is made conducive to learning, the students enjoy secured studentship. In the absence of the right infrastructure, I establish that the students learning process is jeopardised.

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<sup>221</sup> See section 3 above.

<sup>222</sup> National President of NAAT, Suleiman Sani at the foundation laying ceremony of National secretariat of the body. Collins Olayinka 'NAAT decries laboratory decay in tertiary institutions' The Guardian 1 April 2014.

<sup>223</sup> Lawal was Rector of Lagos State Polytechnic. See Saxone Akhaine 'Rectors pledge improved academic training with new equipment' The Guardian Thursday 15 December 2011, 47.

<sup>224</sup> Isa Abdulsalami 'Provost laments non-accreditation of courses 38 years after school's establishment' The Guardian Thursday 3 April 2014 48. The college has permanent site where no form of physical development has taken place. The natives have resisted any development on the parcels of land government acquired as no compensation was paid to them.

#### 4.2.2 Impact of decent accommodation on students' training

In this subsection, I consider whether proper accommodation enhances impartation and reception of knowledge and whether it as such boosts the enjoyment of individual academic freedom of staff and students.

The Education (National Minimum Standards and Establishment of Institutions) Act,<sup>225</sup> in section 24(1) mandates the National Universities Commission to issue guidelines to universities in Nigeria to provide:

- (e) the accommodation to be maintained by the institution by reference to the total number of persons under instruction in the institution concerned and the optimum space to be reserved to each pupil or student, inclusive of teaching space in every classroom or lecture hall;
- (i) the staff quarters and other living accommodation to be maintained for teaching, administrative, technical and other staff on the school grounds or campus;

On the need for required facilities for learning, section 1(2) of the University of Ibadan Act<sup>226</sup> is instructive. It is now manifest that the provision of decent accommodation for staff and students make teaching and learning more fruitful.

The prevailing situation is such that up to 50 per cent of students' population in Nigerian universities are not provided with hostel accommodation. For the available hostels, the lavatories in most of them are inadequate and unfit for human use. The average number of toilet to users is 1 to 20.<sup>227</sup> Students who conduct research, and those studying may have to stay through the night to carry out their academic schedules. Accommodation has to be provided and should be in the university campus or within a reasonable distance. For the

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<sup>225</sup>The Education (National Minimum Standards and Establishment of Institutions) Act, Cap E3, LFN 2004.

<sup>226</sup>University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.



academic staff, accommodation should be so close that he may decide to go to and leave his office at any time of the day with ease.

At the Michael Okpara University of Agriculture Umudike,<sup>228</sup> female students take their bath in the open because the bathrooms are in poor condition. On account of inadequate hostel facilities, there is a lot of pressure on the available accommodation facilities. This brings with it rapid deterioration of hostel facilities, overcrowding and undue congestion in rooms, overstretched lavatory and laundry facilities and poor sanitation. These conditions coupled with general condition of the universities, produce graduates that lack confidence and sometimes-even self-worth.

I submit that members of a university need decent accommodation in order to face their academic schedules squarely. This is the way for the students to enjoy their academic careers in an atmosphere conducive to learning. The university is under an obligation to fix issues of accommodation directly through students' hostel or in collaboration with building developers or host communities. The distraction which lack of decent accommodation brings violates the academic freedom of staff and students. This does not allow members of the university to excel in their academic callings. It is in appreciation of the positive impact of hostel accommodation to the enjoyment of individual academic freedom that the Federal Government has now resolved to make it compulsory.<sup>229</sup>

In conclusion, I establish that decent accommodation boosts the comfort of members of the university and enhances teaching, research, impartation, and reception of knowledge. Decent accommodation also enhances the enjoyment of individual academic freedom of staff and students.

### **4.2.3 Security for staff and students**

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<sup>227</sup> See Rotimi Lawrence Oyekanmi 'Report exposes rot in public varsities, proposes 189 recommendations The Guardian Thursday 15 November 2012 52.

<sup>228</sup> See Oyekanmi (as above)

I consider here, whether the government's default in providing adequate security in the country affects the university's mandate to provide security at its campuses. I investigate whether security issues has any link with the enjoyment of individual academic freedom of members of the university.

Section 14(1) (b) of Chapter 2 of the 1999 Nigerian Constitution provides that security and welfare of the people shall be the primary purpose of government.

In this section, I examine the obligation of the government to provide for security of lives and properties. The university in the circumstances is a microcosm of the Nigerian society, and I submit that the security provided has a positive impact on the academic activities of the universities. I then refer to cases of security breaches and the violation of academic freedom.

An essential environment to impart knowledge is one where peace reigns supreme. Nigerian university campuses are presently targets of attacks by the Islamic fundamentalists-Boko Haram.<sup>230</sup> The body believes that Western education is a taboo and will stop at nothing in stopping it. The sect makes easy use of bombs to destroy lives and properties. Kidnapping is another vital instrument in the hands of the sect. Other threats to university's peace come from cult activities, kidnap gang operations, armed robbery and the like.

On account of the primary responsibility of the government and the obligation of the university to ensure that individual academic freedom of its members are not violated, I make references to security breaches and the loss of individual academic freedom.

The Association of Vice-Chancellors has observed that there was no better place for peace to reign than on the campuses, which are the training grounds for nation's leaders. The

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<sup>229</sup> Inemesit Akpan-Nsoh 'FG plans to make hostel accommodation compulsory in varsities' The Guardian Monday 2 November 2015, 5.

body thus conceded that the nation's prevailing insecurity has had negative impact on the university system.<sup>231</sup>

It has been observed that:<sup>232</sup>

Crime and criminality had led to the proliferation of arms and ammunitions, which are freely used by unpatriotic elements who are bent on destabilizing the nation, the cumulative effect of which is the economic hardship visited on innocent Nigerians and the mortgaging of the educational prospects of the nation's children.

The security breaches as above are not peculiar to the campuses, but are prominent outside the four corners of the universities. Increasing cases of abduction of lecturers occur,<sup>233</sup> wherein not less than ten lecturers, their wives and family members had been abducted for ransom within one month. This development forced a stay-at-home protest of the academic staff of the Abraka Campus of the Delta State University. The protest was organised to intimate stakeholder of the plight of the academic staff. They also suspected some local dwellers connive with outsiders in the organised crime.<sup>234</sup>

The gruesome murder of four students of the University of Port Harcourt was supervised by community leaders of Aluu, Ikwerre Local Council Area of Rivers State.<sup>235</sup> The

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<sup>230</sup> Insurgency and other humanitarian situation in the State of Emergency of Borno, Yobe and Adamawa have been devastating. See Saxone Akhaine and others '1000 die, 250,000 displaced by insurgency in three months' The Guardian Wednesday 26 March 2014 1.

<sup>231</sup> See Mohammed Abubakar 'VCs seek secure varsities, ban frivolities' The Guardian Tuesday 16 October 2012 19.

<sup>232</sup> See Abubakar (as above)

<sup>233</sup> Heavily armed men on Tuesday 14 October kidnapped the Deputy Vice Chancellor of the Tai Solarin University of Education (TASUED) Prof Joseph Olusoga Olusanya. On his way from Abeokuta to Ijebu, his abductors forced his vehicle to stop at gun point, they ordered him into their vehicle and drove into an unknown destination. See Charles Gyamfi 'Deputy VC of TASUED abducted' The Guardian Wednesday 15 October 2014 75 available also at [www.ngrguardiannews.com](http://www.ngrguardiannews.com).

<sup>234</sup> Chido Okafor 'Delta varsity teachers protest rising abduction cases' The Guardian Tuesday 4 December 2012 6.

<sup>235</sup> Steve Elijah 'Uniport Four: Respecting right to inviolability of life' The Guardian Tuesday 23 October 2012 73. The Association of Vice-Chancellors of Nigerian Universities and the Committee of Pro-Chancellors of Nigerian Universities reviewed the Mubi massacre in Adamawa State as well as the Aluu four of the University of Port-Harcourt and resolved that the situation cast a very dark shadow on the integrity of Nigerian university campuses. The bodies called on Federal Government to take urgent steps to guarantee safety of lives and property in tertiary institutions. See Muhammed Abubakar and Wole Oyebade 'Varsity chiefs, alumni worried over insecurity, others' The Guardian Friday 19 October 2012 7.

villagers claimed the students were armed robbers caught in the very act and had to face the wrath of the law. They were lynched in front of jubilant villagers.

The case here link with my submission that the institution should provide requisite facilities, in this case, accommodation for its members.<sup>236</sup> The students in above case lived in the university neighbourhood. I reaffirm that a university that enjoys financial autonomy will generate its resources and would be in position to discharge its obligation of accommodation for members.<sup>237</sup> This autonomy and attendant obligation would have saved the lives and academic career of the four students.

I consider the gruesome murder of the four students and submit that they were denied of right to live without due process.<sup>238</sup> Steve Elijah considers the legality of a community to lynch a so-called notorious criminal in the neighbourhood. He submits that there is the legal presumption of innocence for the ‘notorious criminal’ until he is found guilty of specific criminal charges by the court.<sup>239</sup>

Given the loss of lives, violence and security breaches, I submit that the university’s academic programmes has been hampered. Government has defaulted in providing security and as such, the university fails in its obligation to protect individual academic freedom of its members.<sup>240</sup>

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<sup>236</sup> See section 4 of chapter three.

<sup>237</sup> See provisions on financial autonomy in section 5 of chapter two.

<sup>238</sup> See Section 33(1) of 1999 Constitution of Nigeria.

<sup>239</sup> Section 36(5) of 1999 Constitution. He further refers to section 135(1) of Evidence Act 2011 which mandates the accusers to prove the case against the ‘notorious criminal’ beyond every reasonable doubt.

<sup>240</sup> William Posner *The origins and nature of the distinction between individual and institutional academic freedom* 65. See also Mark Yudof ‘Three faces of academic freedom’ *Loyola Law Review* (32) (1987) 831. See Adar 182: See also The Dar-es-Salaam Declaration on Academic freedom and social responsibility of academics’ Pt. II, ch. 1, I 17 (19 Apr 1990), reprinted in Mamdani & M Diouf, *Academic freedom in Africa* 354 - 63 (1994)

The above scenario explains that each tier of government, university and its members asserts its right from the upper tier. United States Circuit Court Judge William Posner makes the picture clearer when he submits that academic freedom denotes:<sup>241</sup>

(b)oth the freedom of the academy to pursue its ends without interference from the government... and the freedom of the individual teacher . . . to pursue his ends without interference from the academy.

I consider the disruption of the mission of the university on account of default of government to provide adequate security for lives and properties. I submit that by implication the teaching and research of the academic staff, and the learning process of the university student is not guaranteed in the circumstances where there is no peace.

As such, Adar<sup>242</sup> submits that academic freedom entails the right of the academic community to disseminate knowledge without limitations from the university administrative wing and the state.

I consider the above criminal records and submit that the apprehension of attack on innocent staff and students is sufficient distraction in the discharge of their academic duties. The government has thus limited the teaching and learning activities of the university as the individual academic right of university members have been violated.

In conclusion, I establish that each tier of government, university and its members asserts its right from the upper tier. I confirm the government's default in providing adequate security in the country, this leads to failure of the university to provide security at its campuses. I point out, this situation, violates the enjoyment of individual academic

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<sup>241</sup>William Posner *The origins and nature of the distinction between individual and institutional academic freedom* 65. See for example Mark Yudof 'Three faces of academic freedom' *Loyola Law Review*. (32)(1987) 831; Walter Metzger 'Profession and constitution: Two definitions of academic freedom in America, 66 *Texas Law Review* 1265 (1988) See also J Peter Byrne 89.

<sup>242</sup>See The Dar-es-Salaam Declaration on Academic Freedom and Social Responsibility of Academics, Pt. II, ch. 1, I 17 (19 Apr 1990), reprinted in Mamdani & M Diouf, *Academic freedom in Africa* 354-63 (1994). Adar 182.

freedom of members of the university to teach, research and learn as those academic activities do not take place where there is no peace.

## 5 Legal framework of academic freedom

In this section, I describe the current legal framework in Nigeria and enquire whether academic freedom can be enforced or enjoyed beyond the provisions of the law. I then investigate the respective levels of legal protection of the right: that is, under international law relevant to Nigeria; regional law; and in the Nigerian legislation. My purpose is to lay a foundation for legal protection of academic freedom in chapter four.

Nigeria's provision on academic freedom has been one of inferences from the right to education. There is no law that makes any direct reference to academic freedom. Academic freedom is thus inferred from related rights to the concept. Earlier in this chapter, I refer to related rights such as freedom of association, freedom of expression, unfettered inquiry, security of tenure and secured studentship.<sup>243</sup> These are believed to be components of the concept academic freedom. There are statutory provisions and judicial interpretation of the elements in the Nigerian Legal System. The only omission is the fact that they are not collated as a law and this makes enforcement difficult sometimes.

Nigeria has a lot to gain from the codification of the concept of academic freedom in New Zealand, which I believe may serve as a precedent.<sup>244</sup> Section 161 of the Education Act 1989.83 in New Zealand provides for academic freedom as follows:<sup>245</sup>

- (1) It is declared to be the intention of Parliament in enacting the provisions of this Act relating to institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced.
- (2) For the purposes of this section, academic freedom, in relation to an institution, means -
  - (a) The freedom of academic staff and students, within the law, to questions and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions:

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<sup>243</sup> See section 3.

<sup>244</sup>S 160 Education Act 1989, See also Beloff 135.

- (b) The freedom of academic staff and students to engage in research:
- (c) The freedom of the institution and its staff to regulate the subject matter of courses taught at the institution:
- (d) The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning:
- (e) The freedom of the institution through its chief executive to appoint its own staff.
- (3) In exercising their academic freedom and autonomy, institutions shall act in a manner that is consistent with -
  - (a) The need for the maintenance by institutions of the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
  - (b) The need for accountability by institutions and the proper use by institutions of resources allocated to them.
- (4) In the performance of their functions the Councils and chief executives of institutions, Ministers, and authorities and agencies of the Crown shall act in all respects so as to give effect to the intention of Parliament as expressed in this section.

I consider the above foreign legal provisions as the normal provisions in the objects clause of Act establishing a Nigerian University. Items like teaching, research, learning, and flow of communication between lecturer and students are explicit. I now consider the legal instruments in respect of the concept.

## 5.1 **International law**

In this section, I proceed on the assumption that international law is the basis on which domestic legal provisions flow. I describe the international law relating to academic freedom as the foundation for the Nigerian domestic legal provisions on this topic.

Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 provides that no treaty between the Federation and any other country shall have the force of law except if the treaty has been incorporated into domestic law by the National Assembly. Taiwo

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<sup>245</sup>The Education Act 1989.83 in New Zealand. See also Beloff 135.

argues on the authority of *General Sani Abacha v Chief Gani Fawehinmi*<sup>246</sup> to the effect that once Nigeria ratifies a treaty, it becomes effective in the Country.

Article 19 of the Universal Declaration of Human Rights provides:<sup>247</sup>

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Adar considers Article 19 as an international provision, which clearly stipulates that academic freedom is a form of human right. The writer argues that the right extends to everyone, irrespective of socio-economic and political differences.<sup>248</sup>

The concept 'academic freedom' is an important aspect of the right to education. This is based on the argument that staff and students in higher institution are especially vulnerable to political and other pressures, which undermine their academic freedom.<sup>249</sup>

Academic freedom is not given any express provision under the International Covenant on Civil and Political Rights (ICCPR) 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 or the Universal Declaration of Human Rights (UDHR) 1948.<sup>250</sup> However, these international instruments provide for the right to education at global level.

The International Covenant on Economic, Social and Cultural Rights in its Article 13, with special reference to education, emphasizes that every contracting party to the Covenant shall be directed to the full development of the human personality and the sense

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<sup>246</sup>Taiwo (Codesria) 8. See also *General Sani Abacha v Chief Gani Fawehinmi* (2001) 1 CHR 20. See also AA Oba 'The African Charter on Human and Peoples' Rights and ouster clauses under the military regimes in Nigeria: Before and after September 11' (2004) 4 *AHRLJ* 275.

<sup>247</sup>Article 19, UN Doc A/810 (1948). The UDHR was adopted by the UN General Assembly as a resolution having no force of law. See van Wyk, Dugard, de Villiers & Davis (eds) *Rights and Constitutionalism* 173. Taiwo nonetheless sees it as a step towards having instrument with a force of law. Taiwo (Thesis) 43, 44.

<sup>248</sup>Adar 183.

<sup>249</sup>CESCR, The Right to Education (Art. 13): General Comment No.13 (E/C. 12/199/10 of 8 December 1999), par 38. See Taiwo (Codesria) 2.



of dignity, and shall strengthen the respect for human rights and fundamental freedoms. The obligation to respect means that states must ‘refrain from actions or conduct that contravene or are capable of impeding the enjoyment of right to education and other economic, social and cultural rights.’<sup>251</sup>

The ICESCR did not originally provide access to remedies at the international level for victims of violations of economic, social and cultural rights. As such, victims had to resort to domestic or regional provisions, if any. The Optional Protocol to ICESCR, adopted on 10 December 2008, rectified this omission. The ICCPR came as an improvement on the ICESCR as it adopted at the onset, in 1966, provision for the consideration of complaints and enforcement of individual rights through the Optional Protocol.<sup>252</sup>

It has been argued that academic freedom is inherent in the very concept of the right to education, which the instruments have provided.<sup>253</sup> In addition, article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, provides for freedom of expression and to hold opinion from which the concept of academic freedom can also be inferred. The article states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in form of art, or through any other media of his choice.

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<sup>250</sup> Art 19(2) ICCPR, 1966; arts 13 & 14, ICESCR, 1966 and art 26, UDHR, 1948.

<sup>251</sup> F Morka ‘Economic, social and cultural rights and democracy: Establishing causality and mutuality’ in HURILAWS *Enforcing economic, social and cultural rights in Nigeria – Rhetoric or reality?* (2005) 85, 88. See also Stanley Ibe ‘Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities’ (2010) 10 *African Human Rights Law Journal* 199.

<sup>252</sup> See also L Chenwi ‘Correcting the historical asymmetry between rights: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights’ (2009) 9 *African Human Rights Law Journal* 23-51. See also Stanley Ibe (2010) 199.

<sup>253</sup> See the United Nations Committee on Economic, Social and Cultural Rights in UN Committee on ESCR cited by Beloff 138.

Taiwo submits on the legal effect of the ICCPR and ICESCR in Nigerian Legal System that since the treaties have been ratified,<sup>254</sup> their provisions on academic freedom apply in the country as a matter of obligations under international human rights law and rules of customary international law.<sup>255</sup> Nigeria ratified the ICESCR and ICCPR on 29 July 1993.<sup>256</sup> By ratifying the above international instruments, nation-states bind themselves to their provisions.<sup>257</sup>

The various robust efforts on right to education and academic freedom in the international realm constitute a very positive impact on the national legislation on these topics in Nigeria.

I establish that international law is the basis on which domestic legal provisions flow. I point out that the international law relating to academic freedom is the foundation for the Nigerian domestic legal provisions on this topic.

## 5.2 African Regional Law

I consider the provisions of various African regional instruments on academic freedom and examine their impact on the enforcement of academic freedom in Nigeria.

There are various African regional instruments and monitoring mechanisms, which include the African Commission on Human and Peoples' Rights (African Commission),

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<sup>254</sup> Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 provides for the incorporation of a treaty into domestic law by the National Assembly before such can have the force of law.

<sup>255</sup> Taiwo contends that the combined provisions of section 39 of the 1999 Nigerian Constitution, articles 19 and 26 of the UDHR, article 15 of the ICESCR and article 19 of the ICCPR collectively guarantee academic freedom in Nigeria. See Taiwo (Codesria) 8. See also M. Dixon & R McCorquodale *Cases and materials on international law*, New York: Oxford, 2003, 28.

<sup>256</sup> Bukola Ruth Akinbola 'The right to inclusive education in Nigeria: Meeting the needs and challenges of children with disabilities' (2010) 10 *African Human Rights Law Journal* 463: See also EA Taiwo 'The implementation of the right to education in South Africa and Nigeria' seminar presented at the Faculty of Law, University of Ibadan, Nigeria, 15 February 2010 1-2.

<sup>257</sup> Universal Declaration of Human Rights (UDHR), 1948; International Covenant on Civil and Political Rights (ICCPR), 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

the African Committee of Experts on the Rights and Welfare of the Child and the African Court on Human and Peoples.<sup>258</sup>

The African Charter on the Rights and Welfare of the Child, 1990 (The ACRWC) guarantees the right to education and further sets out the purpose of education and the duties of States parties with regard to achieving the full realisation of the child's right to education.<sup>259</sup>

The African Charter on Human and Peoples' Rights (African Charter) represents what Odinkalu calls 'a significantly new and challenging normative framework for the implementation of economic, social and cultural rights.'<sup>260</sup> State parties are under the obligation to respect, protect and fulfil all the rights in the Charter. They must 'refrain from actions or conduct that contravene or are capable of impeding the enjoyment of economic, social and cultural rights.'<sup>261</sup>

Article 9(2) of the African Charter declares the right to express and to disseminate opinions within the law. Article 45 of the African Charter makes all rights justiciable before the African Commission.

In the *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & Universal Basic Education Commission*,<sup>262</sup> the SERAP filed suit on denial of the right to education for the people of Nigeria. SERAP relied on Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights of which Nigeria is a signatory. The court held that it was empowered to apply the

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<sup>258</sup>Bukola Ruth Akinbola (2010) 466.

<sup>259</sup>Taiwo (Thesis) 62.

<sup>260</sup>CA Odinkalu 'Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights' in M Evans & R Murray (eds) *The African Charter on Human and Peoples' Rights – The system in practice 1986-2000* (2002) 178-218 186.

<sup>261</sup>F Morka 'Economic, social and cultural rights and democracy: Establishing causality and mutuality' in *HURILAWS Enforcing economic, social and cultural rights in Nigeria – Rhetoric or reality?* (2005) 85 88. See Ibe 199.

<sup>262</sup>*Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & Universal Basic Education Commission* (Suit ECW/CCJ/ App/0808) delivered on 27 October 2009. SERAP's suit [No ECW/CCJ/APP/0808] ECOWAS Court to FG: Nigerians have a legal right to education <http://ccs.infospace.com/ClickHandler.ashx?id=20150424&app=1&c=qtypehosted&s=qt=C13A2CFFFDC20E04AE4B85367177C462> accessed 24 April 2015.

provisions of the African Charter on Human and Peoples' Rights and article 17 thereof guarantees the right to education. The Economic Community of West African States (ECOWAS) Court of Justice confirmed that the 'rights guaranteed by the African Charter on Human and Peoples' Rights are well established and justiciable before it.<sup>263</sup> The Court overruled government's submission that education was merely a directive principle of policy of the government and not a legal entitlement of the citizens. To the Court, all Nigerians are entitled to education as a legal and human right.

Oba submits that Nigeria ratified and domesticated the African Charter<sup>264</sup> and Stanley Ibe contends<sup>265</sup> that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act<sup>266</sup> domesticates the Charter in accordance with section 12 of the 1999 Constitution. Section 1 of the Act provides that:<sup>267</sup>

[t]he provisions of the Charter shall have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

All the 53 member states of the AU are parties to the African Charter.<sup>268</sup>

In conclusion, I establish that the various regional provisions establish the scope of academic freedom and Nigeria as a member of the AU domesticated the African Charter.

### **5.3 Academic freedom as a constitutional provision:**

I consider whether academic freedom may apply in Nigeria outside the provisions of the Constitution. I also examine how well the Constitution provides for academic freedom.

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<sup>263</sup>See para 19 of the judgment. See also Stanley Ibe (2010) 200.

<sup>264</sup>The African Charter was incorporated into the domestic legislation of Nigeria in 1983 This Act came into effect on 17 March 1983. See AA Oba 'The African Charter on Human and Peoples' Rights and ouster clauses under the military regimes in Nigeria: Before and after September 11' (2004) 4 *AHRLJ* 277.

<sup>265</sup>See S Ibe 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria' (2007) 7 *African Human Rights Law Journal* 225 228. See also Stanley Ibe (2010) 200.

<sup>266</sup>African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004

<sup>267</sup>See also the decision in *Fawehinmi v Abacha*(2000) 6 NWLR Part 660, 228 confirming that the Charter is part of Nigerian law.

<sup>268</sup>Nigeria ratified the African Charter on 22 June 1983; see Bukola Ruth Akinbola (2010) 463.

The Constitution is the fundamental organic law by which a state or a nation is governed. It is the law from which all other laws trace their existence.<sup>269</sup> The Constitution of the Federal Republic of Nigeria, 1999 (the Constitution) provides for fundamental human rights in chapter IV and fundamental objectives and directive principles of State Policy in Chapter II.

Section 18 of Chapter II provides for educational objectives. Section 18(1) provides that Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

Section 6(6)(c) of the Constitution provides that the judicial powers shall not (except as otherwise provided by the Constitution) extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution.

The provision of section 6(6)(c) operates to oust the jurisdiction of the law courts to entertain cases bordering on constitutional responsibilities vested under the directive principles. In the above situation, the educational objective under section 18 of the Constitution may not be a subject of litigation.

Thus, in *Archbishop Anthony Okogie and Others v The Attorney-General of Lagos State*<sup>270</sup> the Court was invited to examine a circular dated 26 March 1980, in which the Lagos State Government purported to abolish private primary education in the state. The plaintiffs challenged the circular on the basis that it violated the right to education and as such was unconstitutional under the 1979 Constitution. Mamman Nasir J held that no court had 'jurisdiction to pronounce any decision as to whether any organ of government

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<sup>269</sup>*Attorney General 36 States v Attorney General of the Federation* (2002) 5 SCM 1 per UA Kalgo JSC 112.

<sup>270</sup>*Archbishop Anthony Okogie and Others v The Attorney-General of Lagos State* (1981) 2 NCLR 350. See also Stanley Ibe(2010) 201.

has acted or is acting in conformity with the Fundamental Objectives and Directive Principles.’

In *Olafisoye v Federal Republic of Nigeria*<sup>271</sup> the Supreme Court however held that the non-justiciability of section 6(6)(c) of the Constitution is not sacrosanct, as the section provides a headway by the use of the words ‘except as otherwise provided by the Constitution.’ The Supreme Court considered the pronouncement on jurisdiction of the courts as inconclusive on account of other provisions in the same Constitution that may be invoked to confer jurisdiction on the courts.

The hope of restoring justiciability was raised by Niki Tobi (J) in *Federal Republic of Nigeria v Alhaji Mika Anache & Others*,<sup>272</sup> According to the law Lord ‘the non-justiciability’ of section 6(6)(c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words ‘except as otherwise provided by this Constitution.’ This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the courts.

Stanley Ibe<sup>273</sup> considers the clause ‘except as otherwise provided by this Constitution’ and claims the requirement is met in the provision of the item 60(a) of the Exclusive Legislative List of the Constitution. The item provides for the promotion and enforcement of the observance of the Fundamental Objectives and Directive Principles contained in the Constitution.

In *Attorney-General of Ondo State v Attorney-General of the Federation*,<sup>274</sup> the Court endorsed the power of the legislature to attain justiciability on certain provisions of the Directive Principle. The court considered provisions of section 15(5) under the Directive

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<sup>271</sup>*Olafisoye v Federal Republic of Nigeria*, [2004] 4 NWLR (pt 864) 580 659. See also *Bukola Ruth Akinbola* (2010) 468.

<sup>272</sup>*Federal Republic of Nigeria v Alhaji Mika Anache & Others* (2004) 14 WRN 1-90 61. See Ibe (2010) 202.

<sup>273</sup>Stanley Ibe (2010) 202.

<sup>274</sup>*Attorney-General, Ondo State v Attorney-General, Federation of Nigeria* (2002) 27 WRN 1-231, See also Ibe (2010) 203.

Principles to the effect that the State shall abolish all corrupt practices and abuse of power. Going by the provisions of item 60(a) of the Exclusive Legislative List, the National Assembly may by section 4 of the Constitution make laws, which are directed towards putting an end to corruption. The Nigeria's anti-corruption crusade received a boost as the legislature promulgated the Economic and Financial Crimes Commission and the Independent Corrupt Practices and Other Related Offences Commission (ICPC).<sup>275</sup>

Taiwo<sup>276</sup> equally considers *Attorney-General, Ondo State v Attorney-General, Federation of Nigeria*,<sup>277</sup> as the Court held that the directive principles can be made justiciable by legislation. To him, the authority gives a ray of hope for the enforcement of the provisions of the Fundamental Objectives and Directive Principles of the State policy under the Nigerian Constitution.

The Constitution recognises two sets of 'rights' namely; fundamental human rights on the one hand and fundamental objectives and directive principles of state policy on the other. There is significant difference between the two sets of rights as provided for in the Nigerian Constitution.<sup>278</sup> Taiwo affiliates with the holding in *Comyn v Attorney General IR* on the effect of the directive principles:<sup>279</sup>

(p)uts the State under certain duties, but they are duties of imperfect obligation since they cannot be enforced or regarded by any court of law, and are only directions for the guidance of Parliament.

Notwithstanding that, academic freedom involves constitutional rights important to university professors, the Constitution is silent on the concept. Academic freedom can however be inferred from the freedom of expression and of the press, which is provided for in section 39(1) of the Constitution as follows:

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<sup>275</sup>Stanley Ibe (2010) 203.

<sup>276</sup>See also Taiwo (Thesis) 79.

<sup>277</sup>*Attorney-General, Ondo State v Attorney-General, Federation of Nigeria* (2002) 9 SCM 1, 98.

<sup>278</sup>Taiwo (Thesis) 76.

<sup>279</sup>*Comyn v Attorney General IR* (1950) 142. See also Taiwo (Thesis) 32.

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

However, the current Nigerian situation notwithstanding, some foreign jurisdictions throw more light on what Nigerian situation could have been. There is an express provision of academic freedom under the German Constitution. This is guaranteed by a separate clause under the freedom of expression:<sup>280</sup>

Article 5 of the Basic Law for the Federal Republic of Germany<sup>281</sup> as such provides:

- (1) Everyone has the right freely to express and to disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by radio and motion pictures are guaranteed. There shall be no censorship.
- (2) These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth and by the right to inviolability of personal honor.
- (3) Art and science, research and teaching are free. Freedom of teaching does not absolve from loyalty to the constitution.

The South African Constitution expressly provides in section 16(d) for academic freedom, as follows:<sup>282</sup> Everyone has the right to freedom of expression, which includes academic freedom and freedom of scientific research.

Govindjee<sup>283</sup> submits that the concept of ‘expression’ should encompass, amongst other things, the display of paraphernalia, the publication of photographs, dancing, dress, the propagation of controversial academic and other opinions.

I establish that section 39 of the Constitution provides for freedom of expression, which is relevant to academic freedom. I distinguish this human right from the Directive Principles, which are not ordinarily justiciable. I refer to express provisions of the Constitution of Germany, New Zealand and South Africa on this subject. The codification

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<sup>280</sup>Beloff 134.

<sup>281</sup>(Promulgated by the Parliamentary Council on 23 May 1949) Amended by the Unification Treaty of 31 August 1990 and Federal Statute of 23 September 1990).

<sup>282</sup>The Constitution of the Republic of South Africa, 1996.



of the law on academic freedom and academic rights are of persuasive influence to Nigeria because it makes for easy comprehension and enforcement of right, and it is user friendly.

## **5.4 Academic freedom and national or federal legislation**

### **5.4.1 Education (National Minimum Standards and Establishment of Institutions) Act**

In this section, I investigate the impact of provisions of the Education (National Minimum Standards and Establishment of Institutions) Act<sup>284</sup> on the realisation of teaching and learning and the prescription of minimum standards for all universities on the realisation of academic freedom in the universities.

The Education (National Minimum Standards and Establishment of Institutions) Act<sup>285</sup> specifies the various authorities empowered to prescribe minimum standards of education in Nigeria; and gives the authority to impose penalties for any contravention of set regulations.<sup>286</sup>

The Act provide for the regulation of pre-primary and primary institutions; secondary and teacher education; technical education, special and adult education and higher education. My interest here is the higher education as it concerns in particular the university. Section 11 provides for purpose of higher education as follows:<sup>287</sup>

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<sup>283</sup> A Govindjee 'Freedom of expression' in A Govindjee & P Vrancken (eds) *Introduction to human rights law*, LexisNexis: Durban, Johannesburg and Cape Town (2009) 119 120. See also Taiwo (Codesria) 8.

<sup>284</sup> See the Preamble to the Education (National Minimum Standards and Establishment of Institutions) Act, Cap E3, LFN 2004.

<sup>285</sup> See the Preamble to the Education (National Minimum Standards and Establishment of Institutions) Act, Cap E3, LFN 2004.

<sup>286</sup> See the preamble to the Act.

<sup>287</sup> Interpretation section presents 'higher education' to mean education which is given at the tertiary stage which covers the post-secondary section of the national education system and which is given at institutions such as universities, polytechnics, colleges of technology, colleges of education, advanced teachers colleges, professional institutions and such other institutions as may be allied to any of the foregoing.

- (a) the acquisition, development and inculcation of the proper value-orientation for the survival of individuals and society;
- (c) the acquisition of both physical and intellectual skills to enable individuals to develop into useful members of the community;
- (e) the making of optimum contributions to national development through the training of higher level manpower;
- (f) the promotion of national unity by ensuring that admission of students and recruitment of staff into universities and other institutions of higher learning shall, as far as possible, be on a broad national basis;
- (g) the promotion and encouragement of scholarship and research.

The paragraphs (a) and (c) emphasizes teaching and learning as main object of the tertiary education. Paragraphs (a) and (e) provides for attainment of national development through research. Paragraph (f) is a foundation for the observation of quota system in employment at the tertiary education level. It is also the basis of what I describe in chapter two as discriminatory admission policies.<sup>288</sup>

There are regulatory bodies such as the National Universities Commission (for the universities), the National Board for Technical Education (for the polytechnics and colleges of technology) and the National Commission for Colleges of Education (for the colleges of education).<sup>289</sup>

Section 10 of the Act provides for minimum standards in universities as follows:

- (1) The power to lay down minimum standards for all universities and other institutions of higher learning in the Federation and the accreditation of their degrees and other academic awards is hereby vested in the National Universities Commission in formal consultation with the universities for that purpose, after obtaining prior approval therefore through the Minister, from the President.

Education (National Minimum Standards and Establishment of Institutions) Act, 2004 in section 24(1)(e)(i) mandates the NUC to direct universities to provide halls of residence

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<sup>288</sup> See The JAMB and quality education in section 4.

<sup>289</sup> See section 2(2) of the schedule.

for students and staff quarters for members of staff.<sup>290</sup> This laudable provision meets the needs of members of the university and they comport themselves the more in that regard. The provision of accommodation facilitates the enjoyment of academic freedom of the members of the university.<sup>291</sup>

The Act prescribes minimum academic and non-academic standards on which each tier of education operates. It has also named regulatory bodies vested with appropriate responsibilities.

I examine the provisions of the Act and establish that academic freedom of members of the university receives a boost on account of the minimum standard prescribed for the universities. I point out the prescription of accommodation as one of the benefits accruing to members of the university.

#### **5.4.2 The National Universities Commission Act**

My purpose here is to consider the provisions of the NUC Act in the context of academic freedom of members of the university.

The National Universities Commission Act (NUCA)<sup>292</sup> in section 1(1) establishes the National Universities Commission as a body corporate, with perpetual succession and a common seal, which may sue and be sued in its corporate name. The Commission consists of a chairman, a representative from federal ministries of education and youth development; health and human services; finance and economic development and establishment and management services, national commission for women. Six persons with wide knowledge and experience representing both private and public sector interests.<sup>293</sup> A representative of each of eight disciplines such as Agriculture and Veterinary Sciences, Education, Health Sciences, Law and others. Executive Secretary is

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<sup>290</sup> I provide in details the essence of accommodation in the exercise of academic freedom in section 4 of this chapter.

<sup>291</sup> See section 4 of chapter three.

<sup>292</sup> The National Universities Commission Act (NUCA) Cap N81, Laws of the Federation of Nigeria, 2004.

<sup>293</sup> Section 2(1)(c) NUCA.

also appointed. All the members, excluding the Executive Secretary are appointed by the President for a term of three years, which is renewable.

Section 5(2) of the Act provides that the Executive Secretary shall be the chief executive officer and shall be responsible for the execution of the policy of the Commission and the day-to-day running of the affairs of the Commission. Subsection three provides that he holds office for the first term of five years, and is eligible for appointment for another five years.

Functions of the Commission are provided for in section 4 of the Act. The Commission advises the President and State Governors on creation of new universities;<sup>294</sup> prepares periodic master plans for the balanced and coordinated development of all universities in Nigeria.<sup>295</sup> The master plan must contain programmes which the universities must run so as to meet national needs and objectives. The master plan also covers recommendations for establishment of new academic units.<sup>296</sup>

The Commission determines the financial needs to run programmes and advises government to meet the capital and recurrent expenditure,<sup>297</sup> receives block grants from federal government and allocates them to federal universities.<sup>298</sup> The Commission undertakes periodic reviews of the terms and conditions of service of personnel engaged in the universities and to take recommendations thereon to the Federal Government, where appropriate.<sup>299</sup> It recommends to the visitor of a university that a visitation should be made to a university as and when it considers it necessary.<sup>300</sup> It acts as the agency for channelling all external aid to the universities in Nigeria.<sup>301</sup>

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<sup>294</sup> Section 4(1)(a) NUCA

<sup>295</sup> Section 4(1)(b) NUCA

<sup>296</sup> Section 4(1)(b)(iii) NUCA

<sup>297</sup> Section 4(e) NUCA

<sup>298</sup> Section 4 (f) NUCA

<sup>299</sup> NUCA Section 4(i).

<sup>300</sup> NUCA Section 4(j)

<sup>301</sup> NUCA Section 4(k)

The Act under section 4 prescribes standards relevant to university education which the students are to receive. I submit that the impartation of sound education is enjoyment of secured studentship, and academic freedom.

The Act establishes the Commission and vests so much powers belonging to the universities into it. The Committee by its composition appears as one to offer financial succour to political party supporters who appear to be contemplated in the provisions.<sup>302</sup> Whereas membership should include stakeholders in the universities and secondary schools, employers of labour, the room was just created for the President to put his men.<sup>303</sup> To have also vested the magnitude of functions on the Executive Secretary all go to explain the deplorable state of Nigerian Universities.

I examine the provisions of the NUC Act in the context of academic freedom of members of the university. I establish that the Act in section 4 provides solid foundation for university education, which the students receive as enjoyment of their academic freedom.

### **5.4.3 The Joint Admission and Matriculation Board Act, 2004.**

I consider the mandate of the JAMB on the placement of suitably qualified candidates in tertiary institutions and enquire on what the link is with academic freedom.

Section 1 of the Joint Admissions and Matriculation Board Act, 2004<sup>304</sup> establishes the Board as a body corporate with perpetual succession and a common seal that may sue and be sued in its corporate name.

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<sup>302</sup> The Act makes the appointments open when it should tie such to the nominations by professional bodies to which the six persons representing both private and public sector interests belong. The same condition should apply to the appointment of representative of each of eight disciplines. See Section 2(1)(c) NUCA. The omission makes the way for political considerations on such appointments.

<sup>303</sup> Composition of JAMB includes stakeholders that gives the assurances of performance.

<sup>304</sup> The Joint Admission and Matriculation Board Act (Cap J1), LFN 2004.

Section 2 provides for members appointed by the President on the advice of the Minister responsible for higher education. A chairman, representatives of Nigerian universities, Colleges of Education, Polytechnics, Nigerian Conference of Principals, Registrar of the West African Examination Council, Executive Secretary of National Board for Technical Education, Executive Secretary of the National Commission for Colleges of Education, the Registrar as an ex-officio member.

The tenure of office, for the chairman and members is three years and he is eligible for reappointment. Section 7 provides for the appointment of the Registrar. He is the chief executive and is responsible for the day-to-day running of the affairs of the Board. He holds office for the first term of five years and is eligible for reappointment for another term of 5 years.

Section 5 provides for the functions of the Board. Subsection two emphasizes that the board shall be responsible for determining matriculation requirements and conducting examinations leading to undergraduate admissions and also for admissions to National Diploma and Nigerian Certificate in Education courses.

Section 5(1)(c) the placement of suitably qualified candidates in collaboration with the tertiary institutions after taking into account-

- i) the vacancies available in each tertiary institution;
- ii) the guidelines approved for each tertiary institution by its proprietor or other competent authority;
- iii) the preferences expressed or otherwise indicated by candidates for certain tertiary institutions and courses; and
- iv) such other matters as the Board may be directed by the Minister to consider, or the Board itself may consider appropriate in the circumstances.

In this section, I considered the mandate of the JAMB on the placement of suitably qualified candidates in the tertiary institutions. The step is in the right direction to the extent that the right calibre of students are placed in the institutions. An obligation of

student consequent on enjoyment of secured studentship is to maintain at least a pass grade in course of the programme. Experience has shown that many students who JAMB places in the universities drop out on account of academic deficiencies. I submit that the JAMB contributes to the teaching and impartation of knowledge to the extent that it places qualified students in the institutions.

I consider the mandate of the JAMB on the placement of suitably qualified candidates in tertiary institutions and establish that placing suitable candidates in the universities is the foundation for secured studentship<sup>305</sup> as academic freedom.

### **5.5 Academic freedom in the light of legislation establishing universities**

In this section, I examine what legal provision has been made in the laws establishing Nigerian Universities for individual academic freedom.

It is expected that express provision is made for the enjoyment of individual academic freedom in line with the corporate university goals and objectives.<sup>306</sup> The Acts and statutes of universities in Nigeria are however silent on academic freedom. However, related rights to the concept are provided for.

Individual academic freedom as it relates to the student is secured studentship of which I examine earlier in this chapter<sup>307</sup> as the right to have a student's registration protected, safe for sanction on an act of misconduct or for academic deficiencies.<sup>308</sup> The law establishing each university in Nigeria prescribes that there must be compliance with due process before applying a sanction.<sup>309</sup> Security of tenure is the equivalent right attaching

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<sup>305</sup> See section 3.3.

<sup>306</sup> See also Article IA Bowling 'Green State University Academic Charter' Patrick Pauken 'Academic freedom and institutional autonomy in American and Australian universities: A twenty-first century dialogue and a call to leaders' 12 *Australian & New Zealand Journal of Law & Education* 7 2007 9.

<sup>307</sup> See section 3.

<sup>308</sup> In section 6, I submit that a student is not obliged to commit act of misconduct, or to be deficient in academic works.

<sup>309</sup> I discuss extensively on this principle of law in section 3 of chapter four.

to a member of staff. The same principles of law on discipline apply to the students and members of staff.

Section 18 of the University of Maiduguri Act<sup>310</sup> provides for discipline of students. It makes provision for an expelled student to appeal against a directive to the Council. This affords an aggrieved student opportunity to remedy any identified irregularity in trial proceedings. This provision operates to protect the right to a secured studentship.

Section 20(1) of the University of Lagos Act provides for discipline of students thus:<sup>311</sup>

Where it appears to the Vice-Chancellor that any student of the university has been guilty of misconduct, the Vice-Chancellor may suspend, rusticate or expel such student from the university.

Sub-section 4 allows the Vice-Chancellor to delegate his disciplinary power to a disciplinary board whose members he nominates.

An aggrieved student may make an appeal to the Council. The Council shall make his findings and may set aside the punishment.<sup>312</sup> Similar provisions are found in section 17(1)(d) of the University of Port Harcourt Act, 2004.

Sections 6 and 7 of the University of Ilorin Act<sup>313</sup> subject the discharge of functions of the Council and Senate to that of the Visitor. The court in *University of Ilorin v Stephen Olanrewaju Akinola*<sup>314</sup> held that provisions of the Act have subjected the powers of

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<sup>310</sup> Cap U10, LFN 2004. The same provision on discipline of students is contained in section 20, the University of Lagos Act Cap U9 Law of the Federation of Nigeria, 2004.

<sup>311</sup> Cap U9 University of Lagos Act. See also 18 of the University of Maiduguri Act, Cap U10, Section 31 of the Technical University, Ibadan, Oyo State Law, 2012.

<sup>312</sup> Section 20(2)

<sup>313</sup> Cap U7 University of Ilorin Act, Law of the Federation, Vol. 15, 2004. Section 6(1) provides on function of the Council thus: Subject to the provisions of this Act relating to the Visitor, the Council shall be the governing body of the University and shall be charged with the general control and superintendence of the policy, finances and property of the University, including the public relations. Section 7(1) provides on function of the Senate thus: Subject to Section 6 of this Act...and to the provisions of this Act relating to the Visitor, it shall be the general function of the Senate to organize and control the teaching of the University, the admission (where no other enactment provides to the contrary) of students and the discipline of students, and to promote research at the University.

<sup>314</sup>(2014) 7 *Supreme Court Monthly* 174, per Odili JSC in lead judgment pages 193, 195.



domestic bodies to that of the Visitor. Consequently, ‘a pardon,’ which the Visitor granted to the respondent, becomes obligatory on the university.

It is my contention here that, but for the court as compliant authority, student Akinola and many other students of which I consider in chapter four would be denied the enjoyment of academic freedom to study and complete their academic programmes. The same principles apply to protect security of tenure of members of staff.

Section 18 of the University of Lagos Act provides for removal of academic and administrative officers and staff. It makes sufficient provision for the staff alleged of misconduct to be given fair hearing. This provision enhances the enjoyment of tenure in that no member of staff loses his job except he has been given fair hearing.

I refer to chapter four<sup>315</sup> on procedural safeguards on academic freedom of members of the university. Though academic freedom of the university encompasses the right of universities to act free from judicial interference with academic decisions,<sup>316</sup> the university should not indulge in sentiment or bias in handling cases before it.<sup>317</sup> This informs the submission of Paul Horwitz that those who believe that universities are entitled to a substantial scope of judicial deference in the exercise of academic judgments must work to justify the call.<sup>318</sup>

The various statutory provisions above have been examined in respect of protection of individual academic freedom for university staff and students. Incorporation of individual academic freedom at this level, I argue is essential. The beneficiaries may not show enthusiasm on historical background, but on what law is at their disposal to protect them.

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<sup>315</sup> See section 3.

<sup>316</sup>David M Dumas *et al* ‘Parate v Isibor: resolving the conflict between the academic freedom of the university and the academic freedom of university professors (1989 – 1990)(16) (4)*Journal of College and University Law* 718.

<sup>317</sup> Disciplinary autonomy is treated in details in chapter four.

<sup>318</sup>Paul Horwitz ‘*Three Faces of Deference*’ 83 *Notre Dame Law Review* 1061 (2008) 1102. Paul Horwitz ‘Fisher, academic freedom, and distrust’ (2013) 59 *Loyola Law Review* 489, 533. The justification shall be by way of educating the university to know and observe procedural safeguards to natural justice.

## 6 Scope and limits of academic freedom

In this section, I consider academic freedom as a right with limits, as there are preconditions to its enjoyment. I examine the scope of individual academic rights, as there are attaching obligations.

Davison Nicol<sup>319</sup> writes on the voyage to the discovery of new truths. To him, law has set a limit to the extent to which a right may be enjoyed:

Academic freedom cannot be regarded as implying exemption from the laws of the land as far as libel, slander, keeping of the peace and sedition are concerned. But a wise government will overlook the apparent transgressions of scholars if it is obvious that their intent is objectively critical and not maliciously subversive – a distinction sometimes difficult to recognize by dictatorships, one party states or military governments.

I argue that in a person's enjoyment of his right, he should be conscious of others so as not to infringe on their corresponding rights. Precisely, freedom of expression and that of unfettered inquiry should be exercised in a way that it does not damage the reputation of another person. Academic freedom may not justifiably be relied upon where an assertion does not have any justification and has damaged another person's reputation.

It can also be deduced from Davison Nicol's submission that the political dispensation under which a right is to be enjoyed determines the elasticity, range or extent of the enjoyment. I refer to the military governance in Nigeria, which resisted to a great extent the enjoyment of human right and academic freedom. The military administration by practice do suspend the application of the nation's constitution, particularly, chapter four which provides for human rights.<sup>320</sup> Under a democratic dispensation however, the level

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<sup>319</sup>Davison Nicol 'Academic freedom and social responsibility' in Stephen D Kertesz (ed) (1972) *The task of universities in a changing world* Notre Dame Press 406. See also JD Ojo *Law and university administration in Nigeria* 1990 49.

<sup>320</sup> See Smith, IO 'Enforcement of human rights treaties in a military regime: Effect of ouster clauses on the application of African Charter on Human and Peoples' Rights in Nigeria' (2000) 9(2) *Review of the African Commission on Human and Peoples' Rights* 192, See also *Fawehinmi & Others v Babangida & Others* the jurisdiction of the courts to question the validity of Decrees was considered (2001) 1 *Constitutional Law Classicus* 597, 612.

of enjoyment of human right and academic freedom is greater but not limitless. As such, academic freedom may not justifiably be relied upon where an assertion is baseless.

Rabban<sup>321</sup> contends that academic freedom of the individual professor is tailored to teaching and research, and this is limited to ethics and professional demands. This should not be a departure from professional standards of judgment; otherwise such shall be subjected to disciplinary action.

In *Rigg v University of Waikato*,<sup>322</sup> Mr Rigg was a Senior Lecturer at the University of Waikato who had co-authored an article in a student's newspaper. His assertion made in student's magazine was to the effect that on account of institution's inadequate supervision of the University's Biology isotope laboratory, students were being lost to cancer. It was established that the allegation was baseless, just as his assertion of academic freedom of expression was rejected. His contract was terminated.

Sir David Beattie, Visitor of the University of Waikato affirmed the termination. He claimed that academic freedom which is granted to the individual does not carry with it the right to publish unfounded accusations, which have not been properly investigated. He affirmed that 'Freedom' should not be construed as 'uninhibited licence,' and concluded that the letter written by Mr Rigg in the circumstances was gross irresponsibility.<sup>323</sup>

Patrick Pauken<sup>324</sup> as such submits that restriction or suppression of an individual's exercise of freedom is justified; where this exercise may hamper the efficient, effective, well guided, and well-defined operation of a government-supported university.

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<sup>321</sup> David M Rabban 'Does academic freedom limit faculty autonomy?' 66 *Texas Law Review* (1987-1988) 1405 1412.

<sup>322</sup> *Rigg v University of Waikato* (1984) NZLR 149.

<sup>323</sup> As above. See also Pauken 9.

<sup>324</sup> Patrick Pauken 'Academic freedom and institutional autonomy in American and Australian universities: A twenty-first century dialogue and a call to leaders ' 12 *Australian & New Zealand Journal of Law & Education* 2007 8 9.

I consider the case law and submissions of writers and establish that there cannot be an absolute enjoyment of academic freedom on account of rights of other people. I then examine the scope of individual academic rights and attaching obligations.

## **6.1 Obligations on staff that enjoy academic freedom**

In this section, I discuss individual academic freedom which has to be asserted with a view of enhancing the realisation of objects of the university and then enquire whether it has attendant obligations on academic staff.

An academic staff enjoys academic freedom in the areas of security of tenure,<sup>325</sup> unfettered inquiry which links to the academic's right to freedom of association and freedom of expression. The other aspects are the suitability of working environment by way of what facilities are put in place for his teaching and research works. A conducive working environment entails having security for life and that of the family, and security of properties. I discuss the above earlier in this chapter,<sup>326</sup> and I submit they are the challenges to the enjoyment of academic freedom of academic staff.

The limits that are justifiably placed on the academic freedom are on the basis that the enjoyment of the freedom should be tailored to the realisation of the goals of the university. The goals I state to be teaching, research and national development. In that regard, the academic must conduct his academic activities in line with the laws of Nigeria, including the law establishing his university. The academic staff must comply with the rules and regulations of the university. He is justifiably restrained to work under constituted authority. He must observe faculty regulations in the discharge of academic duties. In this wise, I submit earlier that academic staff may not on account of freedom of expression teach an un-assigned course, nor will he be teaching assigned course outside

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<sup>325</sup> I exhaust this subject earlier in this chapter and in section 3 of chapter four, I discuss natural justice principles that protect security of tenure.

<sup>326</sup> See section 3 on freedom of association and freedom of expression.

given syllabus.<sup>327</sup> I refer to professional demands and ethics, which the academic staff must comply with in the discharge of his duties. This I explain earlier as qualified enjoyment of academic freedom.<sup>328</sup>

Academic freedom entails correlative obligations. Professors must use the methods and spirit of a scholar.<sup>329</sup> There is a ‘professional standard of care,’ which is the price for the exceptional freedom to investigate, teach, and publish without interference.<sup>330</sup> The exercise of academic freedom by faculty and students carries with it responsibilities for the good of the academic community and society.<sup>331</sup>

It is essential to note that while the system of academic freedom protects the professional autonomy of the individual professor, it does so primarily within the conventions of the scholarly community.<sup>332</sup> Academic staff is not allowed to act below professional standards-such conduct is not protected by academic freedom. Professors may not invoke protections of academic freedom to cover incompetence, lack of productivity or neglect of legitimately assigned duties.<sup>333</sup> Personal failings, falling short of professional standards are outside what academic freedom aims to foster and protect. To invoke protection of academic freedom to justify freedom from restraints in the circumstances is baseless.<sup>334</sup>

Faculty members are entitled to freedom in advising students. Student advising is a form of service closely related to teaching. Independence is essential in an important faculty

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<sup>327</sup> *Edwards v California University of Pennsylvania* 156, F 30 488, 491 (3rd Circuit 1998). See also Michael J Beloff QC ‘Academic freedom - rhetoric or reality?’ *Denning Law Journal* 2010 (22) 117-141, 127.

<sup>328</sup> See section 6.

<sup>329</sup> American Ass’n of Univ. Professors, Declaration of Principles (1915), *reprinted in* ‘Academic freedom and tenure’ 177, 178 (L. Joughin ed. 1969); See also D Rabban 1409.

<sup>330</sup> See Van Alstyne ‘The specific theory of academic freedom and the general issue of civil liberty’ in E. Pincoffs (ed)(1972) *The concept of academic freedom* 59, 71 - 76. See also D Rabban 1409.

<sup>331</sup> (Article I.A., Bowling Green State University Academic Charter) 13. See also Pauken 9.

<sup>332</sup> J Peter Byrne ‘The threat to constitutional academic freedom’ 31 *Journal of College & University Law* 79 2004-2005 85.

<sup>333</sup> See Van Alstyne ‘Tenure: A summary, explanation, and ‘defense’’ 57 AAUP BULL. 328, 328 (1971); American Ass’n of Univ. Professors, Declaration of Principles (1915) at 169 173. See also Rabban 1410.

<sup>334</sup> David M Rabban ‘Does academic freedom limit faculty autonomy?’ 66 *Texas Law Review* 1405 1987-1988 1409 – 1410.

function. Students depend on faculty for full and frank advice, and what is a student's best interests is not necessarily the institution's best interests, at least in the short term.<sup>335</sup>

University graduates do apply for academic transcripts to pursue further studies. Delay in processing and issuing on account of administrative bottleneck, may make it ideal for a student to engage a lawyer to make a formal request. It should not be out of place for a member of staff that has knowledge of internal workings to so advise.

In *Gorum v Sessoms*<sup>336</sup> a professor advised a student to sue the university after the student was suspended for possessing a firearm on campus under a no-tolerance policy. Peltz considers the enjoyment of academic freedom which he claims go with attendant obligations of professor.<sup>337</sup>

- (1) Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- (2) Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter, which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
- (3) College and university teachers are citizens, members of a learned profession, and officers of an educational institution.

In the light of the above, Lovejoy sums up and charges professors to base scholarly conclusions on thorough study as they set forth divergent opinions. They should train students to think for themselves.<sup>338</sup>

In this section, I examine the staff enjoyment of individual academic freedom, which I establish is for the enhancement of the realisation of objects of the university. I point out

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<sup>335</sup>Peltz 180 181.

<sup>336</sup>*Gorum v Sessoms* 561 F.3d 179, 185 (3d Cir. 2009)

<sup>337</sup>Peltz 175.

<sup>338</sup>Lovejoy 'Academic freedom' in *Encyclopaedia of the Social Sciences* (1) (1930) 384. See also Dabban 1410.

that the Professor's obligation while he enjoys the right is to observe faculty regulations, law of the university and laws of the Federation.

## 6.2 Students' obligations on the enjoyment of academic freedom

I consider here students' right to have a hitch free academic sojourn as one which has to be asserted with every sense of responsibility. It must be enjoyed within the ambit of the law. Secured studentship, is what I explain earlier in this chapter to be the student's right to have his enrolment protected.<sup>339</sup> He may only lose his place in the university because of academic deficiency or for misconduct. I explain in chapter four<sup>340</sup> that the student may be removed from the university on the observation of due process.

Unfettered inquiry is another right, which a student needs to enjoy in his learning process. The student should not be hindered as he enjoys freedom of association and freedom of expression.

The enjoyment of the academic right of the student must however align with the goals of the university in the area of teaching, research, learning, all for nation's development. The student as such must adhere to the rules and regulations of the university. The student as a citizen of Nigeria must not violate the laws of the country. These are the limits to the enjoyment of individual academic freedom of the university student.

An essential element of institutional autonomy is the right to determine who may be admitted to study.<sup>341</sup> However, Picozzi stresses that a student who has matriculated may not be dismissed, except where due process has been observed.<sup>342</sup> It is however, the obligation of a student who is alleged of misconduct to avail himself of procedural

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<sup>339</sup> Section 3 of chapter three.

<sup>340</sup> See section 3.

<sup>341</sup> The Sixth Circuit has held that the contractual relationship between a school and its student which brings with it property interest (that a student admitted to a school shall not be dismissed without conforming with due process) gives rise to constitutional protection. *Ewing v Board of Regents of the Univ. of Mich.*, 742 F.2d 913 (6th Cir 1984)

<sup>342</sup> Picozzi, 2136 - 40.

safeguards. A student who is being tried for misconduct has the obligation to be available to defend himself.

Experience at The Polytechnic Ibadan, is that not less than 20 percent of students invited to the Students Disciplinary Committee jettison the trial and abandon their academic programmes.<sup>343</sup> Sanction, if found guilty in most cases is not more than one semester suspension.

This brings the issue of students' ignorance of rules and regulations that apply to them. It is students' responsibility to familiarise themselves with the provisions which their institutions do provide. For students who summon the courage to stand trial for misconduct, where the sanction is not acceptable to them,<sup>344</sup> they have the right to approach a court of law for review of their cases. The caveat however is the students' obligation to exhaust internal remedies.<sup>345</sup> Internal remedies to Tchawouo Mbiada is a rapid mechanism to resolve administrative disputes.<sup>346</sup>

Exhaustion of internal remedies was considered in *Esiaga v University of Calabar and others* (Esiaga).<sup>347</sup> The appellant, a final year Political Science student was suspended pending the constitution of a committee to try him for being in possession of items used by secret cult members. He sought the order of court to vacate the suspension and for the release of result of a yet to be taken examination. The Supreme Court held that the appellant's action was premature, as the domestic disciplinary proceedings initiated by the suspension had not been exhausted.

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<sup>343</sup> I have been on this Committee for almost two decades.

<sup>344</sup> Section 20(2) of the University of Lagos Act provides that an aggrieved student may appeal to the Council.

<sup>345</sup> An internal remedy in respect of discipline of students is the right to appeal to the Council in respect of a sanction by a disciplinary committee of the University. See for instance, section 20(2) of University of Lagos Act, 2004.

<sup>346</sup> CJ Tchawouo Mbiada 'The exhaustion of internal remedies in administrative law: A comparative analysis of the South Africa and the Cameroonian requirements and procedure' *African Journal of International and Comparative Law* 20(1) (2012)119, 130.

<sup>347</sup> *Esiaga v University of Calabar and others* (2004) 3 SCM 61.



Pats Acholonu JSC in the lead judgment of the court condemned appellant's inability to exhaust internal remedy thus:<sup>348</sup>

The aim of suspending the student is to abort any likelihood of the threatened disturbing atmosphere snowballing into an uncontrollable situation. The University envisaged that they would set up a body exercising administrative power where the appellant would be given opportunity to clear himself by offering his own defence. He jumped the gun by going to the Court. I believe that he was trying to be clever by half.

Exhaustion of internal remedy is beneficial to the members of the university and the university itself. I submit that it is cheaper and faster than litigation.

Daniel Ketchum submits on duties and obligations of students.<sup>349</sup> He contends that as long as Colleges treat students as adults, the students must take responsibility for attaining their degree objective.<sup>350</sup> Academic integrity is a part of an honour code to which students in colleges and universities are expected to observe. Ketchum charges students to do their academic work to the best of their ability and to participate in class discussions. If students need help in understanding a subject, they need to seek instructor's assistance in getting more resources or in arranging extra classes.

Students are expected to be good ambassadors of their faculties, alma maters and university. They are expected to shun cultism, indecent and immoral behaviour and other vices.<sup>351</sup> Vice-Chancellor of the University of Ilorin, Abdulganiyu Ambali at the 2012/2013 matriculation ceremony challenged the students to familiarise themselves with the university's handbook on rules and regulations. He contends that the university was

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<sup>348</sup>Esiaga 77.

<sup>349</sup>Daniel Ketchum 'A student's duties & obligations' [http://www.ehow.com/list\\_6805249\\_student\\_s-duties-amp-amp-obligations.html](http://www.ehow.com/list_6805249_student_s-duties-amp-amp-obligations.html) accessed 9 September 2014.

<sup>350</sup>Students also aid in assuring that the college or university is serving its research function well. Uri Abt 'Constitutional academic freedom and anti-affirmative action laws' *Journal of College & University Law* (37) 2010 – 2011 609, 615.

<sup>351</sup>The Vice-Chancellor of the University of Lagos, Rahamon Bello charges matriculating students on obligations. Eno-Abasi Sunday 'Distinguish yourselves in academics, enjoy motivational package for scholars' *The Guardian* Thursday 17 April 2014 54.

established by law and is operated on law. He charges students to be law abiding and not to take the law into their hands for any reason.<sup>352</sup>

I establish that for the students to enjoy individual academic freedom to the fullest, they should be abreast of the law guiding them as well as obligations they are to perform. I point out that such obligations include being abreast of provisions of the students' handbook, law establishing the university, and being available to defend himself before the disciplinary committee.

## 7 Abuses of academic freedom

I argue here that the enjoyment of individual academic freedom is expected to aid the university in realising its objects. Abuse of the freedom jeopardises the same, and affects other members of the university adversely.

Academic freedom is primarily exercised within the sphere of expertise of academic staff, it involves a corresponding responsibility, and is not to be interpreted as equivalent to an uninhibited licence. No one is expected to hide behind academic freedom by using the lecture theatre to preach racial incitement, or to defame his political colleagues.<sup>353</sup>

In *Lally v The Vice Chancellor Victoria University of Wellington*,<sup>354</sup> Denis Asher of the Employment Relations Authority adopted the Respondent's contention that academic freedom should not be abused. It was then held that broadcasting to outsiders of concerns about the University's disciplinary process was unjustified.<sup>355</sup>

Professors violate the norms of academic freedom when they falsify or plagiarise material, indoctrinate students, follow blindly the dictates of political or religious authority, or

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<sup>352</sup>Abiodun Fagbemi 'UNILORIN admits 8 093 out of 64 121 applicants, Igbinedion varsity matriculates 900' *The Guardian* Thursday 17 January 2013 50.

<sup>353</sup>Michael J Beloff QC 'Academic freedom-rhetoric or reality?' *Denning Law Journal* 2010(2) 117 – 141, 129.

<sup>354</sup>*Lally v The Vice Chancellor Victoria University of Wellington* WA 140/06 5030767 (18 October 2006).

<sup>355</sup>Beloff 136.

allow grants from government or industry to distort their research and conclusions.<sup>356</sup> In the light of this, Ayuba Mohammed condemns lecturers who hand over the examination papers to their students in higher levels to mark, while the professors hand over their examination papers to graduate assistants. This rot is responsible for the decadence in the system. He also condemns the sale of hand-outs or extremely misplaced monographs. The issue of plagiarising works of foreign authors and older generation lecturers should no longer be tolerated.<sup>357</sup>

Ayuba Mohammed prescribes that answer scripts should be marked on time and that results should be released at least two weeks after the semester examination. He lamented on the university system where a 200 level student gets to see his first semester 100 level examination results when he is about to start his 200 level examination.<sup>358</sup>

Abuse of academic freedom is not limited to the academic staff, vice-chancellors are not left out. Toyé Olorode observes on the vice in vice-chancellors. To him, the government in power will appoint people of like minds. A dictator in government will appoint and prevail on an appointed vice-chancellor to act in like manner.<sup>359</sup>

Iyayi also refers to the Nnamdi Azikiwe University, Awka, where the academic staff whose appointments were terminated obtained a ruling of a court in their favour. The Governing Council of the University accepted the decision of the court and directed the Vice-Chancellor to recall the dismissed staff. The Vice-Chancellor however declined to re-instate them, opting however to clarify on a position paper from government.

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<sup>356</sup>See Fuchs 'Academic freedom-its basic philosophy, function, and history' 28 *Law &Contemp. Probs.* 431, 431 (1963), at 433; Dabban 1409.

<sup>357</sup>Ayuba Mohammed 'Nigerians, hold these lecturers accountable' *The Guardian* 10 January 2014 14.

<sup>358</sup>Ayuba (as above)

<sup>359</sup>Toyé Olorode, a celebrated and dedicated professor of plants and fauna at the Obafemi Awolowo University. See Prof Festus Iyayi 'Of monsters and demons in the Nigerian University (2)' *The Guardian* Wednesday 3 September 2014 5. To Iyayi, some Vice chancellors personally detest unlawful dismissal of staff but would be party to the rights violation on alleged dictation from seat of government-Abuja.

I submit that it is an abuse of power for a vice-chancellor to disobey the lawful instruction of the council. It will not be a tenable excuse for the vice-chancellor to whittle down institutional autonomy under the guise of seeking clarification.

In *Kay v Board of Higher Education*,<sup>360</sup> upon the petition of a parent, a New York judge in 1940 ordered City College not to employ Bertrand Russell as a professor, because of his bad moral character, evidenced by his writings on sex. The judge handed down the order against the College's claim that the order violated its academic freedom:<sup>361</sup>

Academic freedom does not mean academic license. It is the freedom to do good and not to teach evil...Academic freedom cannot teach that abduction is lawful nor that adultery is attractive and good for the community. There are norms and criteria of truth, which have been recognized by the founding fathers.

Corrupt practices may not be condoned in the enjoyment of individual academic freedom. Festus Iyayi recalls that at the University of Abuja, trailer loads of cement and other building materials often registered as supplied to the central stores of the university were constantly diverted to the Vice-Chancellor's private sites at the Maitama and Asokoro areas of Abuja. The Vice-Chancellor in defence was said to have justified his action as his due reward. He justifies his action on the basis of his contributions to the development of the University.<sup>362</sup>

Misappropriation of funds and resources leads to outright lack or inadequate facilities in the universities. The students union and the academic staff union by way of students' unrest or industrial actions of staff usually resist this. The effect of this is disruption of academic calendar. Most vice chancellors, principal officers as well as governing councils are individually and collectively responsible.

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<sup>360</sup>*Kay v Board of Higher Education* (Kay) 18 N.Y.S.2d 821, 831 (N.Y. Sup. Ct, 1940). Cited in J Peter Byrne 'The threat to constitutional academic freedom' 31 *Journal of College & University Law* 79 2004-2005 87.

<sup>361</sup>Kay 829.

<sup>362</sup> Isa Mohammed compares prevalent corrupt practices in other institutions, such as contract variation, embezzlement of security vote. Festus Iyayi (2014) 5.

Professor Ruqayyatu Ahmed Rufai,<sup>363</sup> erstwhile Minister of Education considers the White Paper on the 2010 Visitation Exercise into some 26 federal universities and alleges abuse of office by vice-chancellors thus:

Vice-Chancellor create bogus political portfolios and un-necessary directorates to find duties for their aides or friends in the administration. The creation of Directorate of Personnel Management distorts the statutory organogram of the Registry Department; it undermines the Registrar and all other members of staff who are primarily employed for that purpose.

Insincerity and issue of integrity of academic, individually and collectively make universities come up with doubtful grading criteria. Yemi Idowu considers the non - competence of university graduates in chosen field of studies. He queries thus:<sup>364</sup> ‘Is this the problem of infrastructure or the lecturers themselves? If our dons insist it’s the problem of infrastructure, how come such students graduate with outstanding grades?’<sup>365</sup>

The University of Ilorin, Kwara State of Nigeria in its 2014 Convocation was turning out 48 first class materials from its 5 421 graduands. 1 190 were graduating with the second-class upper degree; 2 814 graduands will be awarded the second-class lower degree while 1 068 will bag the third class degree and 84 will get the pass grade.<sup>366</sup>

The grading as above is a pointer to the fact that all is well in the university system. The argument is that inadequate infrastructure should limit the powers of the universities to grade its students. Otherwise, such grading should be taken with a pinch of salt.

In conclusion, I consider issues of exploitation of students by the academic staff, non-performance or performance of academic duties by proxy, corruption and abuse of office by the management staff. I establish these bother on integrity of academic, and which

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<sup>363</sup> ‘Government indicts Vice –Chancellors, begins reforms in universities’ The Guardian Monday 13 February 2012 4.

<sup>364</sup> Yemi Idowu ‘ASUU: The log and the speck’ The Guardian 30 October 2013 13.

<sup>365</sup> (He suggests either brown envelopes or sex-for-marks as possible cause)

<sup>366</sup> Press statement signed by University of Ilorin, Deputy Director, Corporate Affairs, Mr Kunle Akogun. See Abiodun Fagbemi ‘48 UNILORIN students get first class degrees’ The Guardian Monday 13 October 2014 89, also available at [www.ngrguardiannews.com](http://www.ngrguardiannews.com)

individually and collectively make universities come up with doubtful grading criteria. The abuse of academic freedom is counter-productive and makes the realisation of objects unrealistic.

## 8 Conclusion

In this chapter, I examined institutional autonomy and academic freedom as related concepts and point out that institutional autonomy is the enabling environment within which academic freedom is enjoyed. I pointed out the support the former gives the latter, and then identified external threats and internal administration as they hamper the enjoyment of academic freedom.

I acknowledged the abuse of academic freedom and confirm it results in strike actions of staff unions and students unrest. I established that strike action brings academic instability which adversely affects the academic right to quality education of university students.<sup>367</sup> I pointed out that external interferences hold at the expense of academic standards and traditions.<sup>368</sup>

I pointed out that academic freedom thrives on the independent and uninhibited exchange of ideas among teachers and students, and on the autonomous decision making of the academy itself.<sup>369</sup> I established that individual academic freedom is essential for academic survival and for the realisation of the objects of the university.

I examined the conglomeration of legal provisions such as instruments at the international level, the regional legislation and the national legal provisions on academic freedom. I

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<sup>367</sup> See A Dabalen et al 'Labour market prospects for university graduates in Nigeria' Higher Education Policy November 2000 22 [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSContentServer/IB/2004/09/14/000090341\\_20040914113724/Rendered/PDF/299420UNI0Labor1market0graduates.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSContentServer/IB/2004/09/14/000090341_20040914113724/Rendered/PDF/299420UNI0Labor1market0graduates.pdf) (accessed 29 July 2013).

<sup>368</sup> Director General, the Nigerian Institute of Advanced Legal Studies in his foreword to the 1996 Annual Lecture of the Institute titled, 'Discipline, Nigerian Universities and the law' delivered by CO Okonkwo (SAN).

<sup>369</sup> David M Dumas *et al* 'Parate v Isibor: resolving the conflict between the academic freedom of the university and the academic freedom of university professors' *Journal of College and University Law* (16)(4) 1989-1990 718.

pointed out that provisions on academic freedom should be codified as it obtains in Germany, New Zealand and South Africa for easy reference.

I established that academic freedom should be enjoyed in tune with professional standards and for the realisation of the teaching, research, and impartation of knowledge and development of the nation.

## CHAPTER FOUR

### UNIVERSITY DISCIPLINARY AUTONOMY

#### **1 Introduction**

Institutional autonomy allows the university to realise its objects of teaching, research and learning towards the nation's development. I consider in this chapter the disciplinary powers of universities in Nigeria and the seeming limits placed on them. I then consider how apparent limitations on the domestic tribunals of the university should not limit the university in accomplishing its mission.

I further explore the link between disciplinary autonomy on the one hand and the individual academic freedom of staff and students on the other. I then discuss disciplinary organs and the legal regulations of domestic tribunals of universities.

I proceed to discuss the legal provisions on internal discipline. I argue that the rules of natural justice have to be complied with. I posit that a person who is alleged of misconduct must be afforded fair hearing in all its ramifications. I further explain the impartiality requirements of disciplinary committee of the university as part of natural justice requirements.

I will furthermore consider whether the Constitution prohibits the domestic tribunals from exercising criminal jurisdiction.

I do this in line with the disciplinary powers, which the law establishing each university provides. I will examine what clarity judicial interpretation has brought to a seeming conflict in legal provisions. I acknowledge the courts as they seek to harmonise provisions of the Constitution and disciplinary autonomy of the university. The courts develop the academic and disciplinary classification, civil and criminal violations to be properly guided on issues of jurisdiction.



On the seeming conflict in certain provisions of the law, I particularly consider section 6(1)(2) of the Nigerian Constitution where civil and criminal jurisdiction are vested in the courts in Nigeria. I then look at the extent to which the rules, regulations, and provisions of the Act of the university can be accommodated under the clear provisions of the Constitution.

I discuss the benefits of external control on the exercise of disciplinary autonomy. The various limits of judicial review are also examined.

I conclude the chapter by discussing the concept of university disciplinary autonomy in line with the supposed beneficiaries thereof. I consider three prospective beneficiaries: the institution, staff and students. I consider possible benefits of domestic disciplinary autonomy and disadvantages of the domestic enforcement of discipline.

In this chapter, I rely on foreign authorities and writings, which analyse principles of law as applicable in the foreign jurisdictions and as in Nigeria. They make the understanding of what operates in Nigeria clearer. I make such references because of the relative recent emergence of university education in the country<sup>1</sup> and for the dearth of materials to cover certain aspects of this thesis. I contend that the volume of cases and writings on university administration in Nigeria do not cover adequately every aspect of this thesis. Recourse to foreign authorities and writings in such circumstances, I find un-avoidable.

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<sup>1</sup>The University of Ibadan started as a campus of the University of London in 1948. It only became a full-fledged university in 1962 vide the University of Ibadan Act of 27 December 1962. This does not compare favourably with ancestral foreign generation of Universities at Constantinople, which was founded in 2 BC, and the University of Alexandria, Antioch and Athens. Other notable universities include Montpellier (1220) and Aix-en-Provence (1409) in France, at Padua (1222), Rome (1303), and Florence (1321) in Italy, at Salamanca (1218) in Spain, at Prague (1348) and Vienna (1365) in Central Europe, at Heidelberg (1386), Leipzig (1409), Freiburg (1457), and Tübingen (1477) in what is now Germany, at Louvain (1425) in present-day Belgium, and at Saint Andrews (1411) and Glasgow (1451) in Scotland. See Afe Babalola, 3 & 6.

## 2 The disciplinary structure of Nigerian Universities

In this section, I describe the structure of university disciplinary organs in Nigeria, which has the university visitor at the apex. The structure extends to the council, vice-chancellor and the disciplinary committees. This structure operates under delegation of functions and is vested with the responsibility to enforce discipline in the university. I also explain the basic requirements for the enforcement of discipline in the university.

### 2.1 The visitor

In chapter two, I consider the visitor as the head of government and as an external influence and control on a university.<sup>2</sup> Public universities have government of the federation or government of a state in the federation as proprietors. The President or Head of the Government of Nigeria is the Visitor in case of federal universities. The Governor or Head of Government is the Visitor in the case of a State university. The proprietor of a private university is the the Visitor to his university.

I further submit in chapter two that the dual offices of head of government and visitor to university have been given judicial recognition in the case of *Okaru v Ndili*.<sup>3</sup> The visitor to every university derives his power from the law establishing each university.<sup>4</sup> For example, Section 13(1) of the University of Ilorin Act provides that the President of Nigeria shall be the Visitor of the University. The tradition that has received endorsement of the law is that private and public universities shall have their proprietors to hold the office of the visitor. In the circumstances, it is unlawful to have a person who is not a proprietor to hold the office of a visitor.

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<sup>2</sup> The Visitor is seen here, not merely as head of the executive, but rather, head of government. I argue that he has influence over other organs of government through his power of incumbency. See section four of chapter two.

<sup>3</sup> *Okaru v Ndili* (1989) 4 NWLR (Pt. 118) 700. In *David Osuagwu v AG Anambra* (1983) 4 NWLR (Pt.285) 13: Uwaifo, JCA (as he then was) in his dissenting opinion, states that (a)Visitor is part of the university community but at the apex of it and in that capacity he acts completely outside the officialdom of government (when he is at the same time a governor of a State or the President of the Country). See also Afe Babalola 32 33.

<sup>4</sup> The office of a visitor is thus a creation of statute.

The powers of the visitor have been categorised by Nwauche and Nwobike<sup>5</sup> into three. Firstly, he interprets the meaning of any provision of a statute, which might be referred to him.<sup>6</sup> Whatever decision he arrives at becomes binding on the institution. To the writers, the visitor also has inquisitorial powers as he is empowered to conduct a visitation of the university.<sup>7</sup> Lastly, he has disciplinary powers.<sup>8</sup>

The Supreme Court of Nigeria in the case of *Olaofe v University of Ibadan*<sup>9</sup> examines the meaning of, and powers of the visitor. The Court held<sup>10</sup> that a visitor is a person appointed to visit, inspect, inquire into and correct irregularities of a corporation.

There is a link in the three powers in that they all assist in having peace and tranquillity on the university campus. A crises free and disciplined university can be had where the visitor clears doubts and ambiguities on regulations of the university. The visitor clarifies the rights and obligations of members of a university. On the other hand, he conducts a visit where there is a crisis or there are unresolved conflicts in the management of a university. Disciplinary powers he exercises to ensure that every member of the university plays by the rules of the game.

Generally, the visitor's disciplinary powers enable him to remove the chancellor and other members of the governing council on grounds of misconduct or inability to perform the functions of their offices.<sup>11</sup> The disciplinary powers of the visitor include giving of approval to the removal of a member of Council, its Chairman or a member of the Court of Governors. The visitor however gives approval based on the recommendation of the

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<sup>5</sup>Nwauche & Nwobike 315. See also Section 12(1) & (2) of the University of Jos Act.

<sup>6</sup>See for instance, section 15 of the University of Lagos Act, Cap U9 LFN, 2004; Section 13 of the University of Nigeria Act, Cap U11 LFN, 2004; Section 13 of University of Port Harcourt Act, Cap U13 LFN, 2004.

<sup>7</sup> I discuss the conduct of visitation in section four of chapter 2.

<sup>8</sup>Nwauche & Nwobike 316.

<sup>9</sup>*Olaofe v University of Ibadan* (2001) 10 NWLR (Pt.720) 126.

<sup>10</sup>*Olaofe v University of Ibadan* (2001) 10 NWLR (Pt.720) 126, see also Afe Babalola 34.

<sup>11</sup>Nwauche & Nwobike 316.

Council or the Court of Governors. The University of Lagos Act further provides on the role of the visitor on enforcement of discipline:<sup>12</sup>

It shall be the duty of the Visitor, on signing an instrument of removal in pursuance of this section, to use his best endeavours to cause a copy of the instrument to be served as soon as reasonably practicable on the person to whom it relates.

He is however limited in the exercise of his powers by provisions of the law. He must act by the provisions of the law. In chapter two, I contend that the Visitor in the discharge of his duties is bound by the rules, regulations and the law of the university.<sup>13</sup> In *David Osuagwu v AG Anambra*,<sup>14</sup> the Court considered the working relationship, and delegation of functions between the visitor and the council in respect of enforcement of discipline. The court per Uwaifo, JCA held thus:<sup>15</sup>

Where a visitation panel of a University has indicted a member of staff of the University, the Visitor in his comment on the panel's report would be going too far if he directs that the university council should terminate the appointment of that member of staff with immediate effect. What the visitor ought to do in the circumstance is merely to direct the Council to take appropriate action and the council would then have to comply with the laid-down procedure for relieving the member of staff of his appointment.

In respect of the above, the working relationship between the visitor and the council is one of delegation of duties. The visitor is constrained by law to partake in the day-to-day activities of the universities. He as such delegates his duties as in the above case. I restate that the visitor has the power to overrule the decisions of the university.<sup>16</sup>

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<sup>12</sup>Section 17(3) of the University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004.

<sup>13</sup>*Okeke v AG Anambra State* (1992) 1NWLR (Pt.215) 60 See also *Okaru v Ndili* (1989) 4 NWLR (Pt.118) and *Olaofe v University of Ibadan* (2001) 10 NWLR (Pt.726) P.126.

<sup>14</sup>*David Osuagwu v AG Anambra* (1983) 4 NWLR (Pt.285) 13.

<sup>15</sup>Uwaifo, JCA, at page 58 considered the scope of the Visitor's powers under the Anambra State University Edict No 20 of 1985. See also Afe Babalola 33.

<sup>16</sup> See section 4 of chapter two. *University of Ilorin v Stephen Olanrewaju Akinola* (2014) 7 *Supreme Court Monthly* 174.

In *University of Ilorin v Stephen Olanrewaju Akinola*,<sup>17</sup> the Visitor pardoned a university student on alleged misconduct. The overriding power of the Visitor was invoked when the university defaulted to graduate the student. The Supreme Court relied on statutory provisions of the visitorial powers of the Visitor to overrule the decision of the Council and Senate of the University.

On the way the visitor performs his duties, I consider the case above and submit that the visitor is not expected to act beyond the provision of law. The officers of the university represent the visitor and their acts must be within the conception of the law establishing the university. Where their acts exceed the law, they are said to have acted *ultra vires* the law. Such action will not be binding on the university. I discuss *ultra vires* later in this chapter.<sup>18</sup>

The natural justice principles provide that no job may be lost on account of misconduct without the observance of due process.<sup>19</sup> On account of this, cases are referred to council and committees of council on discipline, for purposes of hearing cases.<sup>20</sup>

In interpreting the powers of the Visitors under sections 15 and 16 of the University of Lagos Act, the Court observed in *Okara v Ndili*,<sup>21</sup> that the Visitor of a University acts by delegation of duties and relies on recommendations which are made consequent to observance of due process:

To take decisions in his capacity as the Visitor, the statutes, rules and regulations of the University guide such Head of Government. If he needs any deliberations before he deals with the affairs of the University, they are with the Senate or Council as the case may be.

The Supreme Court in *Olaofe v University of Ibadan*<sup>22</sup> confirmed the power of the law court to review actions of the visitor. I contend here that the visitor in his relations with

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<sup>17</sup> As above.

<sup>18</sup> See section 6.

<sup>19</sup> Section 3 of chapter four.

<sup>20</sup> Afe Babalola 56.

<sup>21</sup> *Okara v Ndili* (1989) 4 NWLR (Pt118) 700. See also Afe Babalola 32 33.

<sup>22</sup> *Olaofe v University of Ibadan* (2001) 10 NWLR (Pt.720) 126.

the university is bound to observe the rules and regulations of the university. The courts will review acts of the visitor, which are taken contrary to regulations.

In *Garba v University of Maiduguri*<sup>23</sup> the court held as follows:

(t)he trial of erring students for criminal offences or breaches of the Criminal Code or Penal Code laws are not within the jurisdiction conferred on the Visitor, the purported investigation by the Investigating Panel and Disciplinary Board into allegations of arson, looting, wilful destruction of property and indecent assault (all serious criminal offences) and the subsequent expulsion of the appellant as a result cannot stand and are therefore a nullity.

This forms the basis upon which Nwauche and Nwobike equate a visitor's jurisdiction to that of the domestic jurisdiction of a university.<sup>24</sup>

However, Nwauche and Nwobike<sup>25</sup> concede that the courts have a supervisory jurisdiction over the visitor on the grounds of procedural fairness. This explains why I focus in this chapter on the legal requirements for the exercise of internal discipline and judicial review. The natural justice requirements, which prescribe that the university shall hear the other side and that the university should not be a judge in its own case, i discuss later in this chapter.<sup>26</sup> The court in its supervision of the visitor's disciplinary power ensures that there is substantial compliance with the procedural safeguards. Where there is no compliance, the court by way of judicial review sets aside the domestic proceedings and sanctions of the institution.

## 2.2 The council

At the apex of the management structure within each university is the governing council, headed by the chairman (pro-chancellor). The council is charged with the administrative

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<sup>23</sup>*Garba v University of Maiduguri* (1986) 1NWLR (Pt.18) 550. See Afe Babalola 36.

<sup>24</sup>The visitor has power to decide the meaning to be ascribed to any provision of a statute in the event of any doubt or dispute. Section 12(1) & (2) of the Act establishing the University of Port Harcourt [Cap 461, LFN 1990] and University of Calabar [Cap 453] LFN 1990. Nwauche & Nwobike 314, 316.

<sup>25</sup>ES Nwauche & JC Nwobike 'The exclusive jurisdiction of Nigerian universities in comparative perspective' 13 *African Journal of International & Comparative Law* (2005) 314, 318. PM Smith 'The exclusive jurisdiction of the visitor' 97 *Law Quarterly Review* (1981) 53; JW Bridge 'Keeping peace in the universities: The role of the university visitor,' 86 *Law Quarterly Review* (1970) 531.

functions in the areas of goal setting, policy formulation, staff development, general discipline, budget approval and liaison activities with the government.<sup>27</sup>

The composition of each Governing Council of Federal Universities under section 2 of the Principal Act,<sup>28</sup> consists of:

- a) The Pro-Chancellor;
- b) The Vice-Chancellor;
- c) The Deputy Vice-Chancellors;
- d) One person from the Federal Ministry responsible for Education;
- e) Four persons representing a variety of interests and broadly representative of the whole Federation to be appointed by the National Council of Ministers;
- f) Four persons appointed by the Senate from among its members;
- g) Two persons appointed by the Congregation from among its members; and
- h) One person appointed by Convocation from among its members

The role of the council in the enforcement of discipline cannot be overemphasized. Consequent on a visitation to a university, indicted members of staff are referred by the visitor to the council for a trial. The Act of the University of Lagos for instance provides on steps the council must then take to ascertain the guilt or innocence of the culprit:<sup>29</sup>

- 17(1) If it appears to the Council that there are reasons for believing that the Deputy Vice-chancellor, the Provost of a College or any other person employed as a member of the academic or administrative staff of the University or a College should be removed from his office or employment on the ground of misconduct or of inability to perform the functions of his office or employment the council shall-
- (a) give notice of those reasons to the person in question;
  - (b) make arrangements –

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<sup>26</sup> See section three.

<sup>27</sup> Ajayi & Ekundayo 225.

<sup>28</sup> No 11 of 1993.

<sup>29</sup> See section 17, University of Lagos Act, 2004 Laws of the Federation of Nigeria. See also Afe Babalola 36 and 37.

- (i) for a joint committee of the Council and the Senate to investigate the matter, where it relates to the duty of Vice Chancellor, the Provost of a College, or the Registrar, and to report on it to the Council; or
- (ii.) for a Committee of the Senate to investigate the matter, where it relates to any other member of the staff of the University, and to report on it to the Senate and to the Council; and
- (c) make arrangements for the person in question or his representative to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter.

And if the Council, after considering the report of the Investigating Committee, is satisfied that the person in question should be removed as aforesaid, the Council may so remove him by an instrument in writing signed on the directions of the Council.

Every university and even tertiary institutions have similar provisions. I submit that the Common Law principles of natural justice have been incorporated into the law establishing each university.

The principal Act of the University of Lagos in section 18(1) makes provision for the discipline or removal of the Deputy Vice-Chancellor and the Provost of a College. Provisions for the removal of the Chancellor, the Pro-Chancellor and the Vice-Chancellor by the Visitor are made under the First Schedule.<sup>30</sup>

From the provisions above, there is a symbiotic relationship between the visitor and the council on the enforcement of discipline in the university. The visitor initiates the arraignment in appropriate cases, gives his approval, and by an instrument in writing signed by him communicates the sanction to the culprit.

The University of Maiduguri Act<sup>31</sup> excludes the pro-chancellor and the vice-chancellor from removal or discipline under section 15(1). It also prescribes a role for Minister of Education thus:

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<sup>30</sup>Section 2(2), 3(1) and 4(8) of First Schedule University of Lagos Act, Cap U9 LFN, 2004.



If it appears to the Council that a member of the Council (other than the Pro-Chancellor or the Vice Chancellor) should be removed from office on the ground of misconduct or inability to perform the functions of his office or employment, the Council shall make a recommendation to that effect through the Minister to the President, after making such enquiries (if any) as may be considered appropriate, approves the recommendation it may direct the removal of the person in question from office.

The Vice-Chancellor may however be removed from office by the Visitor after due consultation with the Council and the Senate acting through the Minister of Education.<sup>32</sup>

In summary, in this section, I examined the role of the council in disciplinary process. The relationship of the visitor and the council in the enforcement of discipline I considered as one having a symbiotic relationship. The council enforces discipline on members of staff in full compliance with the rules of natural justice. I now proceed in the next section to consider the role of the vice-chancellor in the dispensation of justice in the university.

### **2.3 The Vice Chancellor and disciplinary committees**

In this section, I consider the disciplinary authority of a university as it also flows from the visitor, this time, to the vice-chancellor. The visitor is not expected to participate in the day-to-day activities of the university and thus delegates his disciplinary powers to the council and the vice-chancellor. The vice-chancellor assumes the disciplinary powers as a tribunal established by law acting in a quasi-judicial capacity.<sup>33</sup>

Every university has provisions in its Act, which provide for discipline of students. Section 19 of the University of Lagos Act, for instance provides for the discipline of students. That section provides *in extenso* as follows:<sup>34</sup>

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<sup>31</sup>University of Maiduguri Act, Cap U 10, Laws of the Federation of Nigeria, 2004.

<sup>32</sup> The vice-chancellor may be removed from office by the visitor after due consultation with the council and the senate acting through the Minister of Education. See Section 4(8) of First Schedule University of Maiduguri Act, Cap U10 LFN, 2004.

<sup>33</sup>See section 17 of University of Maiduguri Act, Cap U10 LFN, 2004.

<sup>34</sup> See also Afe Babalola 39.

- 19 (1) subject to the provisions of this section, where it appears to the Vice Chancellor that any student of the University has been guilty of misconduct, the Vice Chancellor may, without prejudice to any other disciplinary powers conferred on him by statute or regulations, direct-
- (a) that the student shall not, during such period as may be specified in the direction, participate in such activities of the University, or make use of such facilities of the University, as may be so specified; or
  - (b) that the activities of the student shall, during such period as may be specified in the direction, be restricted in such manner as may be so specified; or
  - (c) that the student be rusticated for such period as may be specified in the direction; or
  - (d) that the student be expelled from the University.

The ‘where it appears to the Vice-Chancellor’ in Section 19(1) is not arbitrary and must be founded on good reasons. The Court of Appeal in *Adekunle v University of Port Harcourt*<sup>35</sup> held that the manner by which the Vice-Chancellor becomes satisfied, or by which it appears to him that a student is guilty of misconduct has to be determined. Consequently, the manner by which he has come to his conclusion would be examined objectively according to the rules of natural justice and no longer left to subjectivity.

The court considered the nature of words ‘where it appears to the Vice-Chancellor’ contained in section 19. The court held that though it imported an element of discretion, the Vice-Chancellor had to be satisfied on the guilt or innocence before he could order that a student should be suspended.

The Vice-Chancellor and his disciplinary committee exercise disciplinary functions on students. However, a student who is dissatisfied with the sanction there-from has the right to petition the Council. The Council shall make his findings and may set aside the punishment.<sup>36</sup>

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<sup>35</sup>*Adekunle v University of Port Harcourt* (1999) 3 NWLR (Pt181) 534. See also Afe Babalola 39.

<sup>36</sup> Section 20(2) University of Lagos Act, Cap U9, LFN 2004.

I then contend that the way by which the vice-chancellor becomes satisfied of the culpability of the student is through the hearing before a disciplinary board on which he delegates his disciplinary powers.<sup>37</sup> The disciplinary board becomes a tribunal bound to observe the rules of natural justice.

The council and the vice-chancellor rely on the findings of disciplinary committees set up by them. The visitor approves council's recommendation in respect of a member of staff, while the vice-chancellor approves the recommendations from disciplinary committee in respect of a student. The disciplinary committees in their hearings must however comply with natural justice principles.

### **3 Legal provisions on internal discipline**

In this section, I describe the legal requirements and standards that a disciplinary body must meet as it sits on a matter. Ordinarily, law courts should dispense justice.<sup>38</sup> On account of institutional autonomy, which I argue in chapter two as essential,<sup>39</sup> a university must be able to maintain discipline on its campus. Disciplinary proceedings take place in line with the rules and regulations guiding the conduct of members of the academic community; the law establishing such institutions; and the Constitution of the country.<sup>40</sup>

I discuss the link between disciplinary autonomy on the one hand and the individual academic freedom of staff and students on the other. I argue that where because of disciplinary autonomy or for the lack of it, the individual academic freedom of members of the university is violated, the university stands the risk of not realising its objects. This in turn disturbs the supposed state of institutional autonomy of the university.

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<sup>37</sup>Section 18(4) allows the Vice-Chancellor to delegate his disciplinary power to a disciplinary board whose members he nominates. The University of Lagos Cap U9 University of Lagos Act Cap U9, 2004.

<sup>38</sup> See section 6 of the 1999 Constitution on judicial powers vested in law courts in respect of civil and criminal cases.

<sup>39</sup> See section three.

<sup>40</sup> Section 15(1) to (6) of the University of Maiduguri Act, 2004 (which accords with Acts establishing other Federal Universities in Nigeria) provides for the removal of and discipline of academic, administrative and professional staff. Section 17 (1) to (6) of the Act provides for discipline of students.

Fair hearing is a judicial administrative hearing conducted in accordance with due process.<sup>41</sup> Section 36 of the 1999 Constitution of Nigeria provides for a right to fair hearing. Subsection (1) provides:<sup>42</sup>

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

In *Judicial Service Commission of Cross River State & Other v Dr (Mrs) Asari Young*,<sup>43</sup> Peter-Odili JSC considered the provisions of section 36(1) of the 1999 Constitution and its forebears on fair hearing. To her, the courts as well as the other adjudicating bodies like tribunals must act in good faith. They are expected to act fairly by giving the parties before them the opportunity to cross-examine, controvert, correct or contradict any relevant statement prejudicial to their view.

These requirements as explicitly stated, appear to most universities as over indulgence. To a legal officer at such disciplinary proceedings, it usually takes an effort to convince the members on the need to meet the requirements of the law.

Further, in *Judicial Service Commission of Cross River State & Other v Dr (Mrs) Asari Young*,<sup>44</sup> the Court per Fabiyi JSC held as follows:

- (a) body, whether judicial, quasi-judicial, administrative or executive in inception aiming to determine the civil rights and obligations of a person or to find him guilty of a fault must act in good faith and should fairly listen to both sides before deciding. They should not act arbitrarily or capriciously.

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<sup>41</sup> The Black's Law Dictionary, Ninth edition at page 789; *Dangote General Textile Products Ltd & Others v Hascon Associates Nigeria Ltd* (2013) SCM 212 per Ogunbiyi JSC 228.

<sup>42</sup> See also Article 7 of African Charter and Section 35(3)(d) of 1996 Constitution of South Africa.

<sup>43</sup> *Judicial Service Commission of Cross River State & Other v Dr (Mrs) Asari Young* (Young) (2013) 12 SCM 98.

<sup>44</sup> Young (As above)

When administrative or domestic tribunal opts to determine the guilt of an officer on allegation of misconduct, it acts judicially and shall have to apply principles of fair hearing binding on judicial bodies.<sup>45</sup>

In *Haruna Gyang & Another v Commissioner of Police, Lagos State & Others*,<sup>46</sup> the Supreme Court charged administrative bodies or tribunals to act judicially when they determine or impose decisions that are likely to affect the civil rights and obligations of a person. They are thus bound to observe the principles of fair hearing strictly.<sup>47</sup>

When administrative bodies set out to ascertain facts, such bodies are on duty to act judicially. The Supreme Court here recognizes a modern concept that prescribes the duty to act fairly in such cases.<sup>48</sup>

Section 33(1) of the 1979 Constitution provides for a fair hearing in the determination of a person's civil right and obligation within a reasonable time by a court or a tribunal so constituted as to maintain its independence and impartiality. Sub-section 4 provides that on a charge of criminal offence, a person shall be entitled to a fair hearing within a reasonable time by a court or a tribunal.

The appearance of guilt that can satisfy this section is measured by the quantum of proof as laid down by law. It is for this reason that guilt in criminal matters is left for the ascertainment of courts of law or other tribunals before it is accepted and acted upon by administrative tribunals.<sup>49</sup>

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<sup>45</sup>Young (as above) Per Peter-Odili JSC 111 - 112. See also *District Officer v Queen* (1961) SCNLR; *District Officer v Queen* (1971) 11 SC 211; *Hart v Military Governor of Rivers State* (1971) 11 SC 211; *Legal Practitioners Disciplinary Tribunal v Chief Gani Fawehinmi*(1985) 2 NWLR (pt 7 300, 347; *Baba v NCATC* (1991) 5 NWLR (Pt 192) 388, 414.

<sup>46</sup>*Haruna Gyang & Another v Commissioner of Police, Lagos State & Others* (2013) 12 SCM (PT 2) 258.

<sup>47</sup>Galadima JSC, 266 - 267.

<sup>48</sup>Kekere-Ekun JSC in *Haruna Gyang & Another v Commissioner of Police, Lagos State & Others* (2013) 12 SCM (PT 2) 258, 273-274.

<sup>49</sup>Obaseki JSC in Garba's case 438.

The Supreme Court in *Dare Jimoh v The State*<sup>50</sup> held that ascertainment of guilt could only be accomplished via a trial. The Court described trial as the general term for proceedings, civil or criminal, in a court of first instance, frequently involving the hearing of evidence, leading to the court's determination of the matter in issue. In respect of the above, culpability of a member of the university in respect of misconduct is established in a trial before the university's disciplinary board.

Oputa JSC<sup>51</sup> held that a trial seeks to find out, by due examination of witnesses or documents or both, the truth of a point in issue or a question in dispute, whereupon, a finding is made or judgment is given. It is a judicial proceeding by which the questions or fact in issue are decided. Ascertainment of guilt may only be accomplished via trial before the law court or tribunal.

On the exercise of domestic jurisdiction of the vice-chancellor, Section 18 (1) of the University of Maiduguri Act provides:

(w)here it appears to the Vice Chancellor that any student of the University has been guilty of misconduct, the Vice Chancellor may without prejudice to any other disciplinary powers conferred on him by statute or regulations direct;

The Act further provides in Section 18(1)(c) and (d):

- c. that the student be rusticated for such period as may be specified in the direction; or
- d. that the student be expelled from the University.

With the construction of section 17, the law court may decide on what rule of interpretation to adopt, which shall not cause injustice or disrupt the individual academic freedom of the staff or student.

In the case of *Adegbenro v Akintola*,<sup>52</sup> the Governor directed the removal of the Premier as the law provided that such could be done where it appeared to the Governor that the Premier no longer commanded the respect of the House. The Court affirmed the removal

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<sup>50</sup>*Dare Jimoh v The State* (2014) 11 SCM 216, 231.

<sup>51</sup>*Oputa JSC in Garba & others v University of Maiduguri* (1987) Law Reports of the Commonwealth 413, 473.

of the Premier as it held that the Governor needed not to make any consultation or conduct any findings before removing the Premier. In that case, the court adopted the literal rule of interpretation, which to me did not meet the interest of justice. Otherwise, it would be unjust for an appointed Governor, to order the removal of a democratically elected Premier because of a dream he had.

The above case illustrates that the clause ‘where it appears to the Governor’ is a discretionary power of the Governor. I submit that if the decision met the political expediency of the time, it wreaks injustice.

The Court of Appeal in *Adekunle v University of Port Harcourt*,<sup>53</sup> reversed the discretionary trend when it held that once the manner by which it appears to the Vice-Chancellor became known, compliance with due process should be confirmed. The court held that the words ‘where it appears to the Vice-Chancellor’ contained in Section 19 appears to be discretionary. The court however mandated compliance with due process.

This reasoning and the urge to protect individual academic freedom of the student informed the position of Obaseki JSC thus:<sup>54</sup> ‘The discretionary power given under the legal provision ‘where it appears to the vice chancellor’ may however not be adequate to dispense with the natural justice principle.’

Eso JSC in *Garba and others v University of Maiduguri*<sup>55</sup> held that after the data of his satisfaction are known, the Vice-Chancellor is under obligation to observe the rules of natural justice and the Common Law. He is obliged to obey the elementary rules of fairness and fair play before he finds against any such student. To Eso JSC, the Vice-Chancellor as such lacks exclusive jurisdiction to expel a student without recourse to principles of natural justice.

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<sup>52</sup> See *Adegbenro v Akintola* (1963 AC 614).

<sup>53</sup> *Adekunle v University of Port Harcourt* (1999) 3 NWLR (Pt.181) 534.

<sup>54</sup> Section 17(1) of the University of Maiduguri Act. Cap U10 LFN, 2004.

<sup>55</sup> *Garba & others v University of Maiduguri* (1987) Law Reports of the Commonwealth 413, 446.

Oputa JSC built on the foundation laid by the duo of Obaseki and Eso. He held that it could appear to the Vice-Chancellor in any of the following ways:<sup>56</sup>

- i. From what he has personal knowledge of.
- ii. From the report of an investigation panel.
- iii. From the record of a court of competent jurisdiction, that has convicted the student.

From (ii) above, ‘the report of an investigation panel’ is suggestive of the demonstration of disciplinary autonomy of the institution. The report usually goes from the disciplinary committee to the Vice-Chancellor upon which it may ‘appear to him’ to punish or to set free.

From (iii) above, the Constitutional provision is such that upon the allegation of crime, the staff or student is first arraigned in court. If the court has convicted the accused member of the university, it becomes ripe for the pronouncement of the domestic sanction. I later in this chapter<sup>57</sup> build on the analysis in treating the contentious criminal jurisdiction of the visitor.

Pretorius in respect of the above, drawing from experience of South Africa contends that unless the relevant statute of a public body provides otherwise, the exercise of statutory powers must, in the circumstances described above, be preceded by a hearing.<sup>58</sup> The position adopted by Pretorius aligns very much with the position in Nigeria.

I then submit that the constitutional provisions on fair hearing are mandatory and supersede any other statutes that are inconsistent with that provision. Thus, whether a university provides by its rules for application of rules of natural justice or not, the courts because of the Constitutional requirement must ensure the observance of the natural justice rules.

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<sup>56</sup>Oputa JSC in Garba 469.

<sup>57</sup> See section 4.

<sup>58</sup>DM Pretorius ‘The defence of the realm: Contract and natural justice’ (2002) (119) *South African Law Journal* 363, 375.



Protection of student's right to fair trial has two dimensions. The first is the substantive aspect, which provides that no one may be punished except for a breach of an established law. This is provided for in section 36(12) of the 1999 Constitution. The law finds judicial approval in the case of *Aoko v Fagbemi*.<sup>59</sup>

The second aspect is steps to take to enjoy fair hearing. I rely on provisions of chapter four of the Nigerian 1999 Constitution on the substantive and procedural guidelines. I discuss in detail, the Nigerian situation concerning fair hearing.

Berger and Berger<sup>60</sup> explain the substantive aspect of this duty, by which a school may suspend or dismiss a student for disciplinary reasons, only if she has violated some clearly stated rule, whose breach warrants so serious a sanction.

The second aspect to the writers is procedural and it borders on the evidentiary issues: how, when, and before who is the school required to prove the violation, and what help may the student obtain to defend the charges against him. I submit that the observance of due process aligns with the principles of natural justice.<sup>61</sup> The Common Law principle of natural justice applies in Nigeria. The principle has explicit provisions in the Constitution of the Country and courts apply them from time to time. Natural justice has twin requirements expressed in Latin Maxim, *audi alteram partem* and *nemo iudex in causa sua*.

### **3.1 The *audi alteram partem* rule**

I consider here, the denial of fair hearing as a way by which the university in the exercise of its autonomy, precisely disciplinary autonomy violate the individual academic freedom of job security and secured studentship.

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<sup>59</sup>*Aoko v Fagbemi* (1961) All NLR 400.

<sup>60</sup>CJ Berger & V Berger 'Academic discipline: A guide to fair process for the university student' (1999) *Columbia Law Review* 289, 290. This is a principle from a foreign jurisdiction, which however aligns with what operates in Nigeria.

The rule of natural justice and its twin requirements expressed in the Latin maxims ‘*audi alteram partem*’ and ‘*nemo iudex in causa sua*’ has assumed a very complex dimension that universities in seeming arrogance<sup>62</sup> do not want to appreciate. The first requirement is to hear the other side.<sup>63</sup> It is usually violated by universities based on sentiments and bias.<sup>64</sup>

The universities most times jump to decisions without hearing the other party.<sup>65</sup> The King’s Bench decided one of the earliest of cases on the *audi alteram partem* rule in the United Kingdom. In *R v Chancellor of the University of Cambridge*,<sup>66</sup> one Dr Bentley (who had already graduated) was alleged of misconduct. Without having heard him, the University cancelled his degree certificate. The Court however considered the violation of *audi alteram partem* rule and declared the cancellation of the certificate as a nullity.

I consider here the fact that the laws on fair hearing extends to universities in Nigeria.<sup>67</sup> Section 36 of the 1999 Constitution of Nigeria provides for a right to fair hearing. Subsection (1) provides:<sup>68</sup>

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

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<sup>61</sup> This is now known in South Africa as procedural fairness.

<sup>62</sup> Universities with its acclaimed power to ‘hire and fire’ or to ‘admit or send out’ do not want to appreciate that such powers should be exercised on certain conditions.

<sup>63</sup> Right to fair hearing is provided for in section 36(1) of 1999 Constitution of Nigeria: Article 7 of African Charter. Courts are generally hesitant to dabble into domestic academic affairs of universities, when they do however they ensure compliance with natural justice principles. See also *Thorne v University of London* (1966) 2 QB 237.

<sup>64</sup> The task of ruling out sentiment and or bias in institutions may remain an illusion in view of existing social, cultural, economic and political relationship or divergences that exist among members of the community. These become more noticeable because of relatively small sizes of institutions, everyone is related to one another, one-way or the other, this reflects on decisions on issues.

<sup>65</sup> In *Egwu v University of Port Harcourt* (1995) 8 NWLR (Pt 414) 419.

<sup>66</sup> *R v Chancellor of the University of Cambridge* (1923) 1 Str.557. This UK authority was decided on principles, which is also applicable in Nigeria.

<sup>67</sup> I submit that natural justice principles apply before informal set ups, such as rural communities, religious groups and interest groups. Even within the rural Yoruba Community of Nigeria, an adage says ‘it is only a wicked elder that hears one side of a case and proceeds to judge.’ I submit that fair hearing is a norm even in the local communities.

On account of the supremacy and binding force of the Nigerian Constitution over all persons and authorities,<sup>69</sup> the universities become obliged to enforce provisions of the Constitution on fair hearing. The universities further consider the volume of civil rights and obligations of their members, which come for consideration, and have found it expedient to incorporate the natural justice principles in their laws. Members of the university whose individual academic rights have been violated have relied upon such laws on fair hearing.

In *Egwu v University of Port Harcourt*,<sup>70</sup> the very relevant section on fair hearing was section 17(1)(d) of the University of Port Harcourt Act. Other relevant statutory provisions which provide procedural safeguards include the University of Ibadan Act,<sup>71</sup> which provides in Section 10(1)-(7) for discipline of staff and section 11 provides for discipline of students.<sup>72</sup>

The statutory provisions on fair hearing have been considered in many cases. The Supreme Court in *Garba v University of Maiduguri*<sup>73</sup> explained further on natural justice principles. Obaseki JSC considered the provisions of section 33(1)(4) of the 1979 Constitution on fair hearing and held thus:<sup>74</sup>

Fair hearing is not only a common law requirement in Nigeria, but also a statutory and a constitutional requirement. The rules of natural justice must be observed in any adjudication process by any court or tribunal established by law.

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<sup>68</sup> See also Article 7 of African Charter and Section 35(3)(d) of 1996 Constitution of South Africa.

<sup>69</sup>Section 1(1) of the 1999 Constitution of Nigeria.

<sup>70</sup>*Egwu v University of Port Harcourt* (1995) 8 NWLR (Pt 414) 419.

<sup>71</sup> Cap U6, Laws of the Federation of Nigeria, 2004. The University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004, makes similar provisions on discipline of staff in section 18 (1) - (5) and discipline of students in section 20(1) - (8). University of Maiduguri Act, Cap U10 Laws of the Federation of Nigeria, 2004, in section 18 vests students' disciplinary powers on the Vice Chancellor.

<sup>72</sup>The University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004, makes similar provisions on discipline of staff in section 18 (1) - (5) and discipline of students in section 20(1) - (8). University of Maiduguri Act, Cap U10 Laws of the Federation of Nigeria, 2004, in section 18 vests students' disciplinary powers on the Vice Chancellor.

<sup>73</sup>*Garba & others v University of Maiduguri* (1987) Law Reports of the Commonwealth 413.

The vice-chancellor has the power to delegate his disciplinary power to a disciplinary board whose members he nominates.<sup>75</sup> The board is however obliged to observe the natural justice principles in its operations.

In *Garba & others v University of Maiduguri*,<sup>76</sup> learned Counsel to the appellants contended that on the allegation of crime against the appellants, the Investigation Panel had to identify the persons who participated and apportion blame; it was bound to observe the rules of natural justice. The Disciplinary Board did not call on the appellants to establish their innocence on the investigation report that indicted them. Counsel conceded that his clients appeared before the Investigation Panel but no charges were preferred against them. Nnamani JSC in his condemnation of procedure, which violated fair hearing, held thus:<sup>77</sup>

The *audi alteram partem* rule stipulates that each party must be given an opportunity of stating his case and answering if he can any arguments put forward against him. The rule requires that a person liable to be directly affected by proposed administrative acts, decisions or proceedings should be given adequate notice of what is proposed, so as to give him an opportunity to make representations, and effectively prepare his own case and to answer the case he has to meet. It is therefore essential that the person involved be given prior notice of the case against him so that he can prepare to meet that case

The Court in *Garba & others v University of Maiduguri*<sup>78</sup> stressed further on natural justice principles thus:<sup>79</sup>

Without subjecting any criminal allegation against any student to the machinery provided by the state for ascertaining the truth of the allegation, a very painful denial of a fundamental right is inflicted on the student...the pronouncement of guilt from the current of unsifted, untested and

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<sup>74</sup>Obaseki JSC in *Garba & others v University of Maiduguri* (1987) Law Reports of the Commonwealth 413, 439.

<sup>75</sup> See section 18(4) of the University of Lagos Act, 2004. There are equivalent provisions in all the Acts establishing universities in Nigeria.

<sup>76</sup>*Garba & others v University of Maiduguri* (1987) Law Reports of the Commonwealth 413.

<sup>77</sup>*Garba* (as above) 457. See also *Durayappah v Fernando* (1967) 2 AC 337 (PC); *Schmidt v Secretary of State for Home Affairs* (1969) 2 Ch 1149.

<sup>78</sup>*Garba* (as above) 413, 432.

<sup>79</sup>*Garba* (as above)

undistilled mass of evidence which did not pass through well informed professional minds will do more harm than good to the integrity of the student.

Obaseki JSC held further:<sup>80</sup>

Our human resources are our greatest asset and, unless we use them to advantage, the Nigerian nation will be the loser. We cannot afford to lag behind while other nations march forward and enjoy the full benefit of their developed human resources. A university student is a priceless asset and as he is on the threshold of a world of useful service to the nation, we cannot afford to destroy him by stigmatizing him with guilt of offences unless proved guilty before a court.

The holding of Obaseki JSC accords and emphasises on the individual academic freedom of university students. The Law Lord sees the student beyond successful graduation from the university. He held that a student's reputation should not be tarnished to make him fit and competent to contribute his quota to nation's development subsequently. I submit that the attainment of this goal is the essence of disciplinary autonomy in an autonomous university.

In *Egwu v University of Port Harcourt*,<sup>81</sup> the appellant was a fourth year student and was expelled for examination malpractice without hearing. He was only asked to see two lecturers separately on the matter before he received letter of expulsion. The Court of Appeal set aside his expulsion, which violated his right to a fair hearing as contained in section 17(1)(d) of the University of Port Harcourt Act and Section 33 of the 1979 Constitution.

I submit that two lecturers sitting separately do not constitute a disciplinary body envisaged by the law. The lecturers could not have provided the necessary legal protection to a student who was to be expelled.

The first requirement, which is to hear the other side, is provided for in the Constitution of Nigeria and statutes of every university. Section 18 of the University of Lagos

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<sup>80</sup>Obaseki JSC in Garba, 432.

provides for the removal of academic and administrative officers and staff of the University of Lagos.<sup>82</sup> Where it appears to the Council that there is allegation of misconduct or inability of any of above staff to perform functions of his office, it shall take the following steps:<sup>83</sup>

- a) give notice of those reasons to the person in question,
- b) make arrangements-
  - i) for a joint committee of the Council and the Senate to investigate the matter where it involves the deputy vice chancellor, provost or the registrar and to report back to council.
  - ii) for a committee of the Senate, to investigate the matter, where it relates to any other member of staff and to report on it to the senate and the council: and
- c) make arrangement for the person in question or his representative to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter.

The Council shall consider the report of investigating committee and may direct the removal of the officer. Section 20(1) provides for discipline of students thus:<sup>84</sup>

Where it appears to the Vice-Chancellor that any student of the university has been guilty of misconduct, the Vice-Chancellor may suspend, rusticate or expel such student from the university.

An aggrieved student may make an appeal to the Council. The Council shall make its findings and may set aside the punishment.<sup>85</sup> This procedural safeguard of appeal protects a student's individual academic freedom. The appeal to the Council paves way for a higher authority to review whatever prejudicial dispositions of the disciplinary body.

There is no equivalent provision on appeal, which applies to members of staff of the University. I submit that the provisions of the 1999 Constitution, which provide for fair hearing in Chapter IV shall be deemed to apply.

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<sup>81</sup> *Egwu v University of Port Harcourt* (1995) 8 NWLR (Pt 414) 419.

<sup>82</sup> Cap U9 University of Lagos Act, 2004.

<sup>83</sup> Section 18 University of Lagos Act, 2004.

<sup>84</sup> Cap U9 University of Lagos Act. See also 18 of the University of Maiduguri Act, Cap U10, Section 31 of the Technical University, Ibadan, Oyo State Law, 2012.

<sup>85</sup> Section 20(2) University of Lagos Act, Cap U9, LFN 2004.

Protection of student's right to fair trial has two dimensions. Berger and Berger<sup>86</sup> explain the substantive aspect by which a school may suspend or dismiss a student for disciplinary reasons, only if she has violated some clearly stated rule with consequent sanction. The second aspect, which is procedural, borders on the evidentiary issues: How, when, and before whom should the school be required to prove the violation, and what help may the student obtain to defend the charges against her?

I submit that the procedural dimension in respect of fair hearing is known as the principles of natural justice.<sup>87</sup> It has twin requirements expressed in Latin Maxim, *audi alteram partem* and *nemo judex in causa sua*. The first requirement, which is to hear the other side, is provided for in provisions of the Constitution of Nigeria and statutes of applicable universities.<sup>88</sup>

*Audi alteram partem* which Daniel Pretorius adopts,<sup>89</sup> applies whenever a statute empowers a public body or official to perform an act or to give a decision prejudicially affecting a person in his liberty or property or existing rights, or whenever he has a legitimate expectation that he will be heard before that act is performed or that decision is given.

On the failure to follow the rules of natural justice, I refer to, by way of example, the American authority of *Silva v University of New Hampshire*.<sup>90</sup> Six female students alleged the appellant (their teacher) of sexual harassment. The appellant was tried before

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<sup>86</sup>CJ Berger and V Berger, 289, 290.

<sup>87</sup> This is now known in South Africa as procedural fairness.

<sup>88</sup> Section 36 of the 1999 Constitution of Nigeria provides for a right to fair hearing. Unless the relevant statute provides otherwise, the exercise of statutory powers must, in the circumstances described above, be preceded followed by a hearing. Subsection (1) provides for fair hearing within a reasonable time. See also Article 7 of African Charter and Section 35(3)(d) of 1996 Constitution of South Africa provides for application of rules of natural justice.

<sup>89</sup> I refer to the position of law applicable in South Africa and America to illustrate what apply as well under the Nigeria Legal System. See for instance DM Pretorius 'The defence of the realm: Contract and natural justice' (2002) *South Africa Law Journal* 374. See also *Du Preez v Truth and Reconciliation Commission* 1997 (3) SA 204 (A) at 231C-E. In America, the right to be heard is regarded as due process rights, and it requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct. See *Dixon v Alabama State Board of Education*, 294 F.2d 150, 158 (5th Cir. 1961). See also Byrne, 166, Schweitzer, 275.

<sup>90</sup>*Silva v University of New Hampshire* N.H., 888 F. Supp. 293 (D.N.H. 1994).

the domestic tribunal and his appointment was terminated. He filed suit claiming that his First Amendment and due process rights had been violated. He argued that he was sanctioned without precise charges made against him. He argued further that the university failed to follow the grievance procedures detailed in the faculty handbook, and in his contract. The court ordered that Silva should be reinstated and his arrears of salaries should be paid.<sup>91</sup>

The decided cases have shown how disciplinary autonomy had been lost because of procedural abuses. The external involvement of the courts has restored individual academic freedom of staff and students. There is positive involvement of the courts; it will then be absurd to canvass for a disciplinary autonomy that excludes judicial review. I then consider the elements of fair hearing.

Thus far, in this section, I pointed out irregular and unjust application of disciplinary autonomy by the applicable universities. I submit that disciplinary autonomy should not be a licence to violate individual academic freedom of members of the university. I argue that the identified inadequacies in the application of law in the circumstances affect institutional autonomy of the university. I posit that a university's autonomy to realise its objectives is threatened when its members who are change agents are punished unjustly. I now proceed to provide guidelines for the universities to do it right.

### **3.1.1 Explicit provision on misconduct**

This aspect is essential, as ignorance of the law is not an excuse.

Part of the requirements of hearing the other side is for a member of the university to have knowledge of objectionable conduct upon which he may be punished. This is essentially important, as ignorance of the law is no excuse. To Hayek, government in all its actions is bound by rules fixed and announced before hand-rules which make it

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<sup>91</sup>J Peter Byrne 'The threat to constitutional academic freedom' 31 *Journal of College & University Law* 79 (2004-2005) 96. See also Pauken129, 136.



possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs on the basis of this knowledge.<sup>92</sup>

Section 36(12) of the 1999 Constitution provides:

Subject as otherwise provided by this constitution a person shall not be convicted of a criminal offence unless that offence is defined and the penalty there is prescribed in a written law, and in this subsection a written law, and in this subsection a written law refers to an Act of the National Assembly or a law of State, any subsidiary legislation or instrument under the provisions of a law.

What apply in some institutions are sanctions for misconduct or alleged misconduct which is determined not in any written instrument but by the disposition or interpretation of the accusers or disciplinary committees.<sup>93</sup>

Mark Lewis observes on the overbearing powers of the institution as a superior party to staff and students. To him, institutions are usually empowered to punish any breach of their rules, which, be it stated, are rules which they impose and which the individual concerned has no real opportunity of accepting or rejecting.<sup>94</sup> It is my submission that no one should be punished for not acting by the un-expressed prescription of the other party.

The inadequacy in the legal provisions becomes manifest on account of inconsistency and lack of precision. A particular act, which is punished with an oral or written warning, may thus, in another similar case warrant an expulsion from the university. An extensive

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<sup>92</sup> FA Hayek *The road to serfdom*, London Routledge & sons Limited, 1944, 54. See also Inaugural lecture 'Freedom, justice and due process of law' delivered by Folarin Shyllon at the University of Ibadan, Nigeria on Thursday 15 May 1986 6.

<sup>93</sup> Where some members of a university are branded as being disloyal to the authorities, trial of such people before disciplinary committees are usually without compliance with rules of natural justice.

<sup>94</sup> M Lewis 'An Alsatian in England' 47 *Modern Law Review* 171 (1984), where he discusses *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329, 343. See also Pretorius, 377.

code of conduct for students, which prescribes what particular act is punished, and in what way, is therefore desirable.<sup>95</sup>

Many of the laws and regulations have not been helpful on what amounts to misconduct. Schweitzer however believes that the terms of relationship between student and university, and under which an act of misconduct is punished, are spelt out in black and white.<sup>96</sup> An act that is capable of truncating an academic career should be well defined, explicit, clear and ascertainable, leaving no room for manipulation by the accusers.<sup>97</sup>

To Baxter, fair trial of students may only be attained where there is developed what he calls appropriate rules and principles to govern the contractual relations of public bodies.<sup>98</sup> The terms of the relationship are spelt in black and white and are regulated by private law.<sup>99</sup> Section 36(12) of the 1999 Constitution provides:

Subject as otherwise provided by this constitution a person shall not be convicted of a criminal offence unless that offence is defined and the penalty there is prescribed in a written law, and in

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<sup>95</sup> The regulatory agencies shall develop, publicise and enforce clear regulations... Recommendations of the Committee on Needs Assessment of Nigerian Public Universities (3), *The Guardian* Thursday 13 December 2012 55. The Committee prescribes earlier on, that staff roles and responsibilities should be documented. Explicit individual staff and students codes of obligations and rights be developed and advertised. See report captioned 'Committee on Needs Assessment submits recommendations' *The Guardian*, Thursday 22 November 2012 54.

<sup>96</sup> Schweitzer, 344.

<sup>97</sup> Schweitzer has thus condemned alteration of existing agreement between university and student at the time of matriculation with a view of imposing further obligations on the student. TA Schweitzer "Academic challenge" cases: Should judicial review extend to academic evaluations of students?' 41 *American University Law Review* 267 (1992) 344. Article 11(2) of Universal Declaration of Human Rights condemns having to impose a heavier penalty than what applied at the time an offensive act was committed. The power to discipline students for 'misconduct' or 'misbehaviour' is vested on the vice-chancellor. This to Nwauche and Nwodike is usually determined at the discretion of the vice-chancellor. Nwauche & Nwobike, 329. The lapses herein does not allow for a rational and structured decision-making, accountability and openness of the administration. Cornelia Glinz 'The right to be given reasons as part of a fair administrative procedure: A comparative study of Namibian, South African and German Law' 4(2) *Namibia Law Journal* 4 (2009) 4.

<sup>98</sup> Lawrence Baxter *Administrative Law* (1984) 65, 305 - 7.

<sup>99</sup> Schweitzer has observed that most of contract claim asserted in academic challenge cases suggest that both university and student are bound by the requirements of the catalogue and other official texts at the time of matriculation, and that the university cannot impose further obligations on the student thereafter. Schweitzer, 344. However, in *Eiland v Wolf*, 764 S.W.2d 827, 838 (Texas Court of Appeal 1989) which held that contract based on school catalogue did not exist between medical school and student because of express disclaimer in school catalogue expressing intent not to be contractually bound.

this subsection a written law refers to an Act of the National Assembly or a law of State, any subsidiary legislation or instrument under the provisions of a law.

No person shall be held guilty of a non-existing criminal offence. Article 11(2) of the Universal Declaration of Human Rights provides:<sup>100</sup>

No one shall be held guilty of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

No person shall be held guilty of a non-existing criminal offence. An offensive conduct must be written and ascertainable. Thus, in *Aoko v Fagbemi*,<sup>101</sup> the applicant was convicted and sentenced to pay a fine or to be imprisoned for a month by an Ilesha Grade “D” Customary Court for an alleged offence of adultery by cohabiting with another man having not divorced her legal husband. The conviction was set aside on appeal on the basis that adultery was not an offence in Southern Nigeria.

Consequent on the above decision, Shyllon and Obasanjo submit that a just law is not a mere contrivance borne in mind and kept secret by the ruler to be promulgated only after a victim has been spotted. The existence of it must be known both to the ruler and ruled.<sup>102</sup>

Roper submits that less disorder is found in schools where learners know and understand the school rules, where these rules are enforced fairly and unambiguously, and where there is a clear reward and recognition system for compliance with the rules.<sup>103</sup>

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<sup>100</sup>See also Article 7(2) of the African Charter on Human and Peoples Rights, which provides that no penalty may be inflicted for an offence for which no provision was made at the time it was committed.

<sup>101</sup>*Aoko v Fagbemi* (1961) All NLR 400.

<sup>102</sup>Shyllon and Obasanjo *The demise of the rule of law in Nigeria under the military: Two points of view* Ibadan University Press (1980) 49. See also Shyllon 1986 6. Laws that are promulgated with retrospective effect violate the principles expressed here.

<sup>103</sup>M Roper ‘Kids first: Approaching school safety, crime preventive partnerships (2000) 68. See Smit 3.

The inadequacy in the legal provisions becomes manifest on account of inconsistency and lack of precision. Marié Smit then concludes that schools where there are clear, written school rules, which are enforced fairly and unambiguously and which are in line with the principles of equity, human rights and democracy, prove to be more successful in combating violence in their schools.<sup>104</sup>

I establish that the best interest of staff and students is protected where there is a published, detailed acts of misconduct with attaching sanctions. I point out that establishing guilt based on non-existing laws amounts to taking a culprit by surprise.

### **3.1.2 Right to legal representation**

Section 36(4)(c) of the 1999 Constitution gives as a requirement of fair hearing the right of a culprit to defend himself in person or by a legal practitioner of his choice. I consider the appearance before a disciplinary committee as an unusual outing to a member of staff or student who has been alleged for the first time. This is usually frightful and it results in some students having to abandon the disciplinary proceedings and the programme of study. However, for a lawyer representing a staff or student, it is a normal outing.

Every individual shall have the right to have his cause heard and this extends amongst other requirements the right to be defended by counsel of one's choice.<sup>105</sup> To Berger and Berger, the work of the lawyer includes:<sup>106</sup>

Presentation of the student's case often begins with fact-finding: Documents may need to be procured and examined, witnesses identified and interviewed, statements or affidavits drafted and signed... is likely to make timely application for access to potential witnesses, for a reasonable interval in which to assemble his client's defence, for a transcript or tape recording of the hearing,

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<sup>104</sup>Marié Elizabeth Smit 'The role of school discipline in combating violence in schools in the East London Region' Submitted in fulfillment of the requirements for the degree of Master of Education at The University of Fort Hare, East London January 2010 2.

<sup>105</sup> See Article 7 (1)(c) of the African Charter on Human & Peoples Rights.

<sup>106</sup>Berger & Berger 341 342.

and for a written statement of the panel's findings and conclusions. He will compel the school to adhere to its own procedures that benefit his client and challenge those procedures that are prejudicial.

Berger and Berger<sup>107</sup> further contend that on a full-blown hearing, counsel should be conscious of the fact that he is appearing before non-professionals. When he advances his clients defence with written submissions, he should prepare such in a language understandable by the panel.

I make reference to the clinical legal education in Hong Kong and do emphasise on more access to legal services thus:<sup>108</sup> 'Increase legal services to unrepresented individuals or groups who lack access to the legal system; and to inculcate a *pro bono* ethos and nurture a long-term commitment to service.'

*Pro bono* service provides access to justice to indigent citizens who cannot engage the services of lawyers. The service rendered prevents injustice to the indigent citizens in the circumstances. Nwannekanma<sup>109</sup> observes rightly, that lawyers in Nigeria rarely offer free legal services except for families and friends they cannot avoid. The Nigerian Bar Association encourages its members to embrace *pro bono* service but has no regulation on this. Access to justice is thus disturbed.<sup>110</sup>

Berger and Berger however observe that schools that extend right to counsel with an active role to play at a hearing have found it entirely feasible to do so. They conclude that the right to counsel has not undermined any school's educational mission, nor will it ever

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<sup>107</sup> Berger & Berger 341 342.

<sup>108</sup> S Caplow 'Clinical legal education in Hong Kong: A time to move forward' (2006) 36 *Hong Kong Law Journal* 231. Nwannekanma explains *Pro bono* public-for the public good; usually shortened to *pro bono* a Latin phrase for professional work undertaken voluntarily and without payment or at a reduced fee as a public service. See Bertram Nwannekanma 'Institutionalising free legal service culture in Nigeria' *The Guardian* Tuesday 15 April 2014 81.

<sup>109</sup> Nwannekanma (as above)

<sup>110</sup> Nwannekanma (as above)

do so.<sup>111</sup> The authors consider students' right to legal counsel when they face disciplinary action thus:<sup>112</sup>

Fewer than 60% of respondents permit the student to hire an outside lawyer, and of the schools that do give students this option, many require that the lawyer remain silent during the hearing except to advise his client. No school offers to find students an attorney, or to pay for one if a student is unable to do so.

Decided authorities have however held that where the school charges the student on criminal conduct, the student is entitled to legal representation.<sup>113</sup> Courts reason that an academic hearing is not a formal trial, certainly not a criminal one, at which a student needs a lawyer's hand at the wheel to navigate the proceedings.<sup>114</sup> I refer to experiences in the universities where students abandon disciplinary proceedings and their academic programmes upon the receipt of invitation to defend themselves.<sup>115</sup> If those students have access to lawyers, they would have access to justice.<sup>116</sup>

In *Clayton v Trustees of Princeton University*,<sup>117</sup> the plaintiff was suspended for one year, having been convicted by a student disciplinary body for cheating during a Biology laboratory exercise. By the College's Regulation, he was entitled to services of an adviser of his choice, from among the resident members of the University community. The adviser's duty was to speak on his behalf and cross-examine the witnesses. The committee however restrained Clayton's advisor, from defending him. He was rather mandated to assist the Committee in having a fair proceeding. Clayton argued that the Committee, by diminishing the role of his advisor, had materially breached the school's

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<sup>111</sup> Berger & Berger 344.

<sup>112</sup> Berger & Berger 334, 339.

<sup>113</sup> See *Gabrilowitz v Newman*, 582F.2d 100 (1st Cir. 1978) (assault with intent to rape, counsel to the student was however, not allowed to cross-examine witnesses); *McLaughlin v Massachusetts Maritime Academy*, 564 F. Supp. 809 (D. Mass. 1983) (drug possession) in Berger & Berger, 340.

<sup>114</sup> Berger & Berger 339, 340.

<sup>115</sup> In section 6 of chapter three, I submit that students' obligation on the enjoyment of academic freedom is to defend themselves before disciplinary committees in the university.

<sup>116</sup> It is suggested that every tertiary institution should establish law clinic where legal advice can be easily accessed by members of such institutions. See also S Caplow 'Clinical legal education in Hong Kong: A time to move forward' (2006) 36 *Hong Kong Law Journal* 231.

<sup>117</sup> *Clayton v Trustees of Princeton University* 519 F. Supp. 802 (D.NJ. 1981). See Berger & Berger 338.

own rules and thus violated his right to fair hearing. The court considered the breach of right to counsel provision and gave judgment to the plaintiff.<sup>118</sup>

Complications and delay to the legal proceedings are however more likely to be introduced where a lawyer is involved, which may increase the demands on the institution and the student. This is why Stephen Ellmann submits that every right is costly, including the right to be represented by a lawyer at one's expense.<sup>119</sup>

I however consider the lifelong reputation and career of the student which shall be destroyed if due trial is not embraced. I submit that attainment of justice in the circumstances should be worth whatever effort.

### 3.1.3 Right to notice

Section 36(6) of the 1999 Constitution provides that in a trial for a criminal offence, a person shall be entitled to;

- a) be informed promptly in the language that he understands and in detail the nature of the offence
- b) be given adequate time and facilities for the preparation of his defence.

I submit that the equivalence of criminal offence is an act of misconduct, which applies in the university. I argue then that for justice to be done before the domestic tribunal of the university, the constitutional provisions as above have to be domesticated in a way convenient to the university.

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<sup>118</sup>*Clayton v Trustees of Princeton University* 608 F. Supp. 413, 439 (D. N.J.1985), the decision was however reversed four years after, it was held that 'substantial compliance' with the University procedure on the advisor was not necessary, as the 'fundamental fairness' in the case had been done.

<sup>119</sup> Stephen Ellmann submits; every right is costly...Even the right to be represented by a lawyer at your own expense is costly. See S Ellmann 'Weighing and implementing the right to counsel' *South African Law Journal* (2004) 318, 321. See also Stephen Holmes & Cass R Sunstein *The Cost of Rights: Why Liberty Depends on Taxes* (1999) The cost and complexity of proceedings with legal representation increases to the detriment of discipline as well as of the university's finances. Berger & Berger 339, 340.

In Nigerian universities, notices and invitation to students to appear before disciplinary boards are dispatched through deans of faculties and such are simultaneously pasted on notice boards. The challenges in circulating the notices are that students vandalize or tear off the copies pasted on the boards. While the dean is still searching for the student's home address, and by the time the student eventually receives his invitation, he is left with little or no time to consult his lawyer. Short notices are given to the students to appear before the disciplinary committee, such notices most times do not disclose the allegation against the student.<sup>120</sup>

Berger and Berger<sup>121</sup> have however advocated not less than five working days to prepare for an informal discussion, about ten days to prepare for a formal hearing, with option of further adjournment at the instance of the student.

Nnamani JSC in *Garba and Others v University of Maiduguri* expatiates on essence of due notice thus:<sup>122</sup>

The rule requires that a person liable to be directly affected by proposed administrative acts, decisions or proceedings should be given adequate notice of what is proposed, so as to give him an opportunity to make representations, and effectively prepare his own case and to answer the case he has to meet. It is therefore essential that the person involved be given prior notice of the case against him so that he can prepare to meet it.

Courts in its review exercise consider the excesses of the institution, just as the court in *Dixon v Alabama State Board of Education* examined the sufficiency of hearing and the preceding notice.<sup>123</sup> The opinion then sets forth the constitutional minimum<sup>124</sup> of process

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<sup>120</sup> I discuss in detail, violation of the rules on notices and other elements of violation of rules of natural justice in sections 3 & 4 of chapter four. See also American authority of *Dixon v Alabama State Board of Education*, 294 F.2d 150, 158 (5th Cir. 1961) on essential ingredients of a notice. See Schweitzer 275.

<sup>121</sup> Berger & Berger, 346.

<sup>122</sup> Garba 457. See also *Durayappah v Fernando* (1967) 2 AC 337 (PC); *Schmidt v Secretary of State for Home Affairs* (1969) 2 Ch 1149.

<sup>123</sup> *Dixon v Alabama State Board of Education*, 294 F.2d 150, 158 (5th Cir. 1961).

<sup>124</sup> Stephen Ellmann thus observes: The truth is that there is no simple formula that determines what access to justice requires. See S Ellmann 'Weighing and implementing the right to counsel' (2004)(2) 121 *South Africa Law Journal* 318.



the court would require prior to a student's dismissal for serious misconduct from a state college or university:<sup>125</sup>

1. The student should receive notice of the specific charges and grounds, which, if proven, would justify expulsion under the school's regulations;
2. The student should be given the names of the witnesses against him and an oral or written report of the facts to which each witness would testify;
3. The student should be afforded the opportunity to present to a school official his defence against the charges, in the form of either oral testimony or written affidavits in his behalf; and
4. The results and findings of the hearing should be presented in a report open to the student's inspection.

I submit that the comprehensive steps as above may appear to be cumbersome to the university. Nonetheless, the university should be conscious of its obligation to save and protect academic careers of its members. In that respect, each university should develop a template convenient to it, but such should at the same time cover the essential ingredients prescribed above.

The pre-trial disclosure shall assist the student standing trial to prepare properly for it. Lord Denning (MR) in *Kanda v Government of Malaya*<sup>126</sup> set fair trial right thus:<sup>127</sup>

(A) right in the accused man to know the case which is made against him. He must know what evidence had been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

Notices that are issued to members of the university in most occasions do not give prior information of allegation against such members. Notices that contain time, date and venue of proceedings and nothing more, do not meet the set standard.<sup>128</sup>

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<sup>125</sup>*Dixon v Alabama State Board of Education*, 294 F.2d 150, 158, 159 (5th Cir. 1961). See also Schweitzer 297.

<sup>126</sup>*Kanda v Government of Malaya* (1962) AC 332. This is a foreign authority relevant to Nigeria.

<sup>127</sup>*Kanda v Government of Malaya*, *ibid* 337. See also the Nigerian Supreme Court per Oputa JSC in *Garba* 473.

After trial proceedings must have taken place, the aggrieved party is entitled to a hearing transcript. Institutions should make available records of disciplinary proceedings. Electronic gadgets are provided at the trial to make audio recording and secretarial staff are on ground to make verbatim report of evidences adduced by the erring university member(s) and witnesses. The records are for administrative purposes and it assists the institution to establish before the court, fairness of the proceedings, in the event of consequent judicial review. A member of the university, in line with his right to fair trial needs a copy of records of proceedings and a copy of decision thereon. It is when he gives copies to his lawyers that prospect of his review application in-house or before the court can be observed.<sup>129</sup>

The equivalent provision to the above is contained in section 36(7) of the 1999 Constitution thus:

When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

Trial proceedings in universities in Nigeria are not always transparent. Sentiments and bias, which have no place at law most times, account for the decisions reached.<sup>130</sup> In a situation as this, records of trial proceedings are not usually available for an aggrieved party to study. Where injustice is perceived however, the next step is to seek for judicial review.<sup>131</sup>

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<sup>128</sup> Experience reveals that institutions presume that its members are expected to know allegations ahead of trial. No regard is given for necessary preparations, which the alleged member should make ahead of the trial.

<sup>129</sup> Thus, in *re Trahms v The Trustees of Columbia University in the City of New York*, the court refused to reckon with scanty and disjointed records produced by the school, holding such could not sustain a review exercise. No. 107796, slip op. at 5 (N.Y. Sup. Ct. June 18, 1996).

<sup>130</sup> I give by way of example some of the decided cases on violation of right to fair hearing of members of the university in section 3 & 4 of chapter four. I submit that greater per centage of rights violation do not get to the courts for redress.

<sup>131</sup> Lack of trial transparency as above explains the plethora of cases against the university in Nigeria coming up for review.

I contend that the situation with the university is to the effect that if one clamour for disciplinary autonomy, the university itself should be transparent and benevolent in its trial proceedings.

Further to fair trial rights is the right to reason, which focuses on helping the citizen to defend his rights. When an aggrieved person knows the reasons for an unfavourable decision, he can be well advised on prospect of a review process before a court or tribunal.<sup>132</sup> The right to reason is a component of a fair administrative procedure towards an administrative decision in a democratic state.<sup>133</sup>

It is unusual in Nigeria for a university undergraduate and even member of staff, to probe into the workings of the university system, except on rare occasions at the level of students union or staff union. Adequacy of legal provisions in this sense can be approached on account of structural imbalances in the student and university relationship. Inability to afford a level playing ground casts a big gap on the adequacy issue. I submit that the consequence of this is the huge volume of cases involving students before courts of law.<sup>134</sup>

The novelty of the Nigeria's 2011 Freedom of Information Act has not been of much assistance in this regard. The provisions of the Act are commended to staff and students on the one hand and the universities on the other to explore. It is expected that salient information, vital for establishment of students' rights shall no longer be kept by universities as ace cards.

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<sup>132</sup> J Ziekow *Verwaltungsverfahrensgesetz*. Stuttgart: Kohlhammer (2006) section 39, para. 1. See also Cornelia Glinz 'The right to be given reasons as part of a fair administrative procedure: A comparative study of Namibian, South African and German law' (2009)( 4)(2) *Namibia Law Journal* 4. See also *Katofa v Administrator-General for South West Africa & Another*, 1985 (4) SA 211 where the court held there was an obligation to give reasons to the detainee as well as to the court. See also *Frank & Another v Chairperson of the Immigration Selection Board*, 1999 NR 257 where Strydom CJ at 174 - 175 held: There can be little hope for transparency if an administrative organ is allowed to keep the reasons for its decision secret. (HC); 2001 NR 107 (SC).

<sup>133</sup> Cornelia Glinz 'The right to be given reasons as part of a fair administrative procedure: A comparative study of Namibian, South African and German law' (2009)( 4)(2) *Namibia Law Journal* 1.

<sup>134</sup> See decided cases in sections 3&4 of chapter four.

I submit that given this thorough approach to justice, a kangaroo trial or frame up charges or accusations shall be difficult to sustain. This however is a contrast to disposition of a typical university in Nigeria, which satisfies itself on the guilt of the staff or student before trial. Such university will be contented to have a casual trial involving mere appearance without all the details here above stated. In-house lawyer who stresses so much on legal requirement in the circumstances is suspected of conniving with the person standing trial. I conclude that the less the transparency in trial proceedings, the more cases are filed on judicial review.

#### **3.1.4 The right to confront and cross-examine the school's witnesses**

Section 36(6)(d) of the 1999 Constitution provides that in a trial for a criminal offence a person shall be entitled to examine prosecution witnesses. In chapter three,<sup>135</sup> I explain what obligations are to be discharged by staff and students as they enjoy individual academic freedom. I present here cross-examination as an obligation by which a member of a university can maintain tenure and security on an academic career.

The truth of a point in issue or a question in dispute, is only established by due examination of witnesses or documents or both, whereupon a finding is then made or judgment is given. It is a judicial proceeding by which the questions of fact in issue are decided.<sup>136</sup> Cross-examination serves the purpose of establishing a witness' credibility. This is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of his testimony.<sup>137</sup>

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<sup>135</sup> See section 6. It is expected that members of the university shall make themselves available to defend themselves in a trial proceedings. Cross-examination is part of the defence processes.

<sup>136</sup> Oputa JSC in Garba, 473.

<sup>137</sup> The Supreme Court in *Davis v Alaska*, 415 U.S. 308, 316 (1974) .

Right to cross-examine witnesses is an essential element of adversarial proceedings. In *Dixon v Alabama State Board of Education*,<sup>138</sup> the court rejected cross-examination as an essential element of fair play. In *Gorman v University of Rhode Island*,<sup>139</sup> a college student was suspended for one year after he had been heard on a case of non-compliance with school's regulations. The panel permitted him to question adverse witnesses as it related to the case. His further request to confront other staff as to their bias was however rejected. On his application for judicial review, the court held that the right to unlimited cross-examination was not an essential requirement of due process in school disciplinary cases.

In *Psychiatric Hospitals Management Board v Mrs Doris Edosa*,<sup>140</sup> the respondent was not afforded the opportunity of cross-examining any of the witnesses that testified before the Board against her. The Supreme Court held that allegation of theft was a serious allegation of which the accused must defend herself and to cross-examine the witnesses who testified against her. The proceedings in the circumstances was held to be unfair, unjust and grossly in contravention of section 13(1) of the Psychiatric Hospitals Management Board Act<sup>141</sup> and section 33(1) of the 1979 Constitution.

In Nigerian Universities, most cases before disciplinary bodies would not go for judicial review if cross-examination were allowed to hold. Most of the cases that go to the disciplinary boards are sustained by unconfirmed assertions. Hearsay evidences are allowed to hold rather than being discountenanced. The anonymous informants are shielded from the alleged staff and student while the unsifted allegations are admitted and relied upon.<sup>142</sup> I argue, if cross-examination would have a pride of place, anonymous

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<sup>138</sup> *Dixon v Alabama State Board of Education*, 294 F.2d 150, 159 (5th Cir. 1961)

<sup>139</sup> *Gorman v University of Rhode Island*, 837 F.2d 7, 9 - 11 (1st Cir. 1988).

<sup>140</sup> *Psychiatric Hospitals Management Board v Mrs Doris Edosa* (2001) 4 SCM 159, 164 165.

<sup>141</sup> Cap 374, Laws of the Federation of Nigeria.

<sup>142</sup> This phenomenon explains why some disciplinary committees do not keep an open mind in certain cases coming before them. See for instance cases where the indicted members of the tertiary institutions were not arraigned before disciplinary committees so as to avoid cross-examination. *Garba & others v University of Maiduguri* Law Reports of the Commonwealth 413. *Comrade Babatunde Dosunmu v Governing Council of The Polytechnic, Ibadan* Suit No NIC/LA/47/2009, National Industrial Court, Lagos Judicial Division, (Unreported)

informants would cease to operate as it becomes mandatory to confront a person who is being incriminated.

### 3.1.5 The right to call one's witnesses

The student's right to be heard should extend beyond speaking to the panel himself. Fact-finders generally are sceptical of self-serving statements. Witnesses with less of an obvious bias than the accused may be more persuasive to the hearing board.<sup>143</sup> I am however apprehensive of likely intimidation of witnesses testifying in support of a student standing trial before an administrative tribunal of an institution. Universities most times are desperate to punish. I submit that except to punish for deterrence to others institution should not aim at convicting a student at all cost, but as it appears just.

The Court of Appeal in *Dr Tunde Bamgboye v University of Ilorin*<sup>144</sup> held that the University Council was not a court of law and its proceedings were not a trial. Therefore, it could decide not to call witnesses. What it was required to do under Section 15 (Section 17 of the University of Lagos Act) was that it must bring the complaints of misconduct to the notice of the officer who was indicted, and such officer must be given an opportunity to answer the complaints. If witnesses who were his accusers were called, he must be present to hear and cross-examine them.

In *Garba & others v University of Maiduguri*,<sup>145</sup> the Investigation Panel was set up to find out the remote and immediate causes of the wanton destruction of property by the students and to recommend appropriate disciplinary measures. To that end, 104 witnesses including the appellants were interviewed. It was part of the recommendation of the panel that the appellants should be dismissed and they were eased out accordingly.

The appellants complained that they were not confronted by the witnesses who identified them as having participated in the rampage. They as such were denied the right to cross-

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<sup>143</sup> Berger & Berger, 352.

<sup>144</sup> *Dr Tunde Bamgboye v University of Ilorin* (1991) 8 NWLR (Pt.207) 1; See also Afe Babalola, 38.

examine the witnesses. The appellants were not called before any other panel to be heard in reply to the serious allegation and recommendation for expulsion. The Supreme Court per Nnamani JSC held there was as such a serious breach of principles of natural justice.<sup>146</sup>

I submit that evidence that is adduced against an indicted member of the university then determines whether he would testify alone or to call any witness.

### **3.2 *Nemo judex in causa sua* rule**

In this subsection, I argue that in disciplinary proceedings, justice must be done, and it must be seen to have been done. Justice in a matter becomes elusive where a person who has an interest in a case played a vital role in its determination. Justice to members of the university translates to protection of their academic freedom.

The second requirement on the natural justice principle prescribes that a person should not be a judge in his own case. In another dimension, a person should not sit on a case in which he is interested. In practical terms, an organ that has been offended or that has investigated a matter should not sit on the same case.

Disciplinary autonomy for the university allows it to maintain discipline on its campus. It exercises quasi-judicial functions as it sits on cases of misconduct by its members. Notwithstanding the institutional and disciplinary autonomies, the university is obliged to observe the rules of natural justice.

Universities in seeming power absolutism<sup>147</sup> do not want to appreciate natural justice requirements. In *Garba v University of Maiduguri*,<sup>148</sup> there was a violent student disturbance in which the appellants were alleged of looting, indecent assault, arson and

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<sup>145</sup> *Garba & others v University of Maiduguri* (1987) Law Reports of the Commonwealth 413.

<sup>146</sup> *Garba* 458, 459.

<sup>147</sup> Universities with its acclaimed power to “hire and fire” or to ‘admit or send away’ do not want to appreciate that such powers are not absolute.

damage to institution's properties including the official quarters of the Deputy Vice-Chancellor. The later was eventually appointed Chairman of Disciplinary Investigating Board. The Board expelled the appellants, but they were only re-instated by the Supreme Court on the ground of violation of *nemo iudex* principle.<sup>149</sup>

I consider the fact that the Chairman of the Disciplinary Board was a victim of the offensive conduct. I submit that the recommendations of his Board would ordinarily be tainted notwithstanding the adoption of all procedural safeguards. He would be deemed by a reasonable man's standard to have influenced the decision reached.

In *Legal Practitioners Disciplinary Committee v Gani Fawehinmi*,<sup>150</sup> the respondent was denied sufficient time to defend himself before the Committee which was chaired by the Attorney General who was also the Complainant. The posture of the Attorney-General was that of a prosecutor and a judge giving an insinuation of bias on his part.

Also, In *Harvey v Palmer College of Chiropractic*,<sup>151</sup> the defendant's College expelled the plaintiff after he distributed offensive newspaper on campus. The Court of Appeal reversed the affirmation of expulsion by the trial court. The Court of Appeal frowned at the selection of members of the council that tried Harvey. The composition was faulted with irregularities, so much so, as to suggest that the school did not comply with its written regulations when dismissing him.

Also, in *Nnamdi Azikiwe University v Nwafor*,<sup>152</sup> the suspension of the respondent for examination malpractices was set aside by the Court of Appeal. The Examination Committee that apprehended and accused the respondent took an active part in the deliberations of the Senate that decided the case.

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<sup>148</sup> *Garba*, 550.

<sup>149</sup> See section 3.2.

<sup>150</sup> In *Legal Practitioners Disciplinary Committee v Gani Fawehinmi* (1983) 2 NWLR 414. See also Justus Sokefun 'Enforcement of human rights' in Justus Sokefun (ed) *Issues in constitutional law and practice in Nigeria* (2002) 314.

<sup>151</sup> The case holds that a school's adopted dismissal procedure, should be safe for a student to rely on while he pursues his studies 363 N.W.2d 443, 446 (Iowa Ct. App. 1984)

<sup>152</sup> *NnamdiAzikiwe University v Nwafor* (1999) 1 NWLR (Pt 585)116.



I argue that the tendency was for the accusers of the respondent to seek to push through what they had started. An accuser would ordinarily feel fulfilled when the culprit is found guilty and sanctioned appropriately. The Court of Appeal's decision as above represents the interest of justice to staff and students of the university. *Nemo judex in causa sua* rule aims to attain impartiality and neutrality in legal proceedings.

### 3.2.1 Impartiality

Impartiality is neutrality of a board or court sitting on a case. Partiality is anything, which tends or may be regarded as tending to cause a judge to decide a case otherwise than on the evidence. The issue of partiality arises where the principle of *nemo judex* is violated. There is bound to be interest of a judge, which manifests by way of sentimental or prejudicial judgment. A disciplinary committee is deemed to be biased in its findings, where the initial disposition, action or in-action of one or all of the members is suggestive of its decision.<sup>153</sup>

When their neutrality cannot be confirmed, the board is said to be biased against the party that lost in a case. To Ademola Popoola,<sup>154</sup> impartiality means an absence of personal bias or prejudice in the judge. It is a view obviously predicated on an assumption of judicial neutrality. The writer contends further that neutrality extends beyond impartiality between the parties. It also requires that the judge should not advert to matters, which go beyond those necessary for decisions in the case before him.

A judge should not allow himself to be guided by personal interest, friendship with one of the parties, hatred for one of the parties, the desire to please one of the parties, the desire to please persons in power or other motive deviating from the commands of the law.<sup>155</sup> I submit that if justice must be done in a way that is transparent, the tribunal or

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<sup>153</sup> *Emmanuel Egwumi v The State* (2013) 5 SCM 109.

<sup>154</sup> Ademola Popoola 'The bench, the bar and the challenges of democratic consolidation in Nigeria: Issues and prospects' paper delivered in honour of the Pro-Chancellor and Chairman of Council of the University of Ibadan, Chief Wole Olanipekun, SAN. 19 July 2011, Trenchard Hall, University of Ibadan, Nigeria, 23.

<sup>155</sup> Ross Alf *Law and justice* London, Stevens & Sons Limited (1958) 284. See also Shyllon (1986) 9.

law court must be neutral. Otherwise, the party that lost a case would not reason that he lost a case because of its weakness.

The President of Kenya ruled out the registration of the University's Academic Staff Union (UASU) and publicly vowed that the leaders would be dealt with. This, to Korwa<sup>156</sup> explains why dismissed university lecturers in Kenya could not get fair hearing before the Council and before the President himself.<sup>157</sup> This is an infringement on the academic freedom of academic staff in Kenya. I submit that given the same facts in Nigeria, the same would equally constitute a procedural breach.

On the determination of likelihood of bias as it relates to natural justice, the court looks at the impression of this on other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that in the circumstances, there was real likelihood of bias on his part, he should not sit. If he does sit, his decision cannot stand.<sup>158</sup>

*Emmanuel Egwumi v The State* is an authority which decides that a judge that is accused of bias or that is alleged of bias is expected to disqualify himself from hearing a case.<sup>159</sup>

Obaseki JSC in Garba's case observed that the complaint against the appellants was basically and essentially an allegation of destruction of university property. The Vice-Chancellor, Deputy Vice-Chancellor, the Registrar and Deputy Registrar and other officers of the university were vital witnesses and should not be judges in their own cause. On that ground, the appeal succeeded.<sup>160</sup> Oputa JSC<sup>161</sup> considered the issue of bias and held:

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<sup>156</sup>Korwa Adar, 196.

<sup>157</sup>Section 22(b) of the Terms of Service provides that a member of staff whose appointment is terminated by the Council can appeal to the Chancellor (the President) within three weeks. University of Nairobi, Terms of Service for academic, Senior librarian and administrative staff? 22(b) (1984). As a result of the politicization of the universities, the services of UASU officials were un-procedurally terminated between late December 1993 and early January 1994 by the disciplinary committees of the Universities' Councils. Korwa Adar, 196.

<sup>158</sup>*Shittu Onigbede & 9 others v Samuel Balogun & Another* (2002) 4 SCM 144, 159.

<sup>159</sup>*Emmanuel Egwumi v The State* (2013) 5 SCM 109, 128.

<sup>160</sup>Obaseki in Garba, 441 442.

<sup>161</sup>Garba, 475.

Justice must be rooted in confidence and that confidence is destroyed when right thinking people go away thinking that the chairman and the vice chairman of the disciplinary investigation panel were biased.

Constitution of committee over criminal allegation on appellants was such that have victims of alleged act as members.<sup>162</sup> Senate at its meeting of 28 and 29 March 1983 was constituted into a Disciplinary Board. They considered the report of Disciplinary Investigation Panel, which investigated those charges. The Senate was not a tribunal or court set up under the Constitution and it was in consequence of their report that the Disciplinary Board of Senate endorsed the expulsion of identified students.

Eso JSC held that fair hearing to the appellants can be assured where on serious criminal charges, a tribunal or court is allowed to try the case. Complaints of the accuser should be publicly ventilated, and the accusers should be available for cross-examination.<sup>163</sup> Some cases against staff and students to which management handle with bias, or a damning 'heaven cannot fall disposition' end up in law courts for judicial review.<sup>164</sup> Management from time to time also show interest in cases they sit upon as judges. Governing Council and Management would act contrary to legal advice contending that an academic programme is first truncated even if an affected staff or student is later restored by court order.

It is in the light of this disposition that I submit that if members of the university shall enjoy optimum right of fair trial, there should be individual responsibility of erring

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<sup>162</sup> Counsel to the appellants submits that the Chairman of Investigating Panel was the Deputy Vice Chancellor and a victim of the rampage It was also pointed out that in view of the damage to the Chairman's property there was the likelihood of bias in his consideration of the appellants' case..Counsel submits it violates section 33(1)(4) of 1979 Constitution. He also relies on *Legal Practitioners Disciplinary Committee v Fawehinmi* (1985) 2 NWLR 300. Garba, 428 429.

<sup>163</sup>Eso JSC in Garba, 453.

<sup>164</sup> Authorities in higher institutions most times would not understand legal indulgence nor comply with the natural justice demands on trial procedure, would however be satisfied that in the unlikely event that disciplinary decisions are contested in court, the institution rather than officers in their personal capacities are made to account. The officer who facilitates a violation of a university member's fair trial rights does not lose any resource of his, neither is his comfort or job security adversely affected.

officers of a university and which should apply simultaneously with collective responsibility to account for administrative excesses.<sup>165</sup>

The judicial role has gained tremendously in importance, as the courts have become the primary protector of citizens' rights.<sup>166</sup> Okechukwu Oko<sup>167</sup> acknowledges the right to a fair trial as a fundamental tenet of constitutional democracy. It is central to a nation's search for social equilibrium and justice. He concludes that without fair trial, all other rights guaranteed by a constitution mean nothing.

Where a judge is accused of bias or there is an allegation of bias, the judge is expected to disqualify himself from hearing the case.<sup>168</sup>

Thus, in United Kingdom case of *R (Persaud) v University of Cambridge*,<sup>169</sup> the appellant's name was removed from the Register of Graduate Students. This followed the Board of Graduate Studies refusal to comply with the University Regulations to act fairly; the Court of Appeal reversed the decision.

In the American case of *Russell v Salve Regina College*,<sup>170</sup> with a weight of between 306 and 315 pounds, Russell, a nursing student, received formal and informal pressure to shed weight to portray a good model of health for her patients. The pressures yielded no result and she was dismissed. Court of Appeal decided that the school's contention that an obese student was not a positive model of health was an afterthought. The Court reasoned that Russell's admission form showed that she weighed 280 pounds, which physique was acceptable to the school, as it gave admission and took her tuition for two years.

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<sup>165</sup>I contend that where an official or body in the performance of their official duties, but in the unauthorized way, is found liable, the employer should not indemnify such officer or body when called upon to account. To the Committee on Needs Assessment, vice-chancellors shall be made accountable for their decisions and actions to Council. See 'Committee on Needs Assessment's recommendations' *The Guardian*, Thursday 22 November 2012 54.

<sup>166</sup>Marius Pieterse 'Coming to terms with the judicial enforcement of socio-economic rights' (2004) 20 *South African Journal of Human Rights* 383, 388.

<sup>167</sup>Okechukwu Oko 'Seeking justice in transitional societies: an analysis of the problems and failures of judiciary in Nigeria' (2005)(31)1 *Brooklyn Journal of International Law* 9, 12.

<sup>168</sup>Rhodes-Vivour JSC in *Emmanuel Egwumi v The State* (2013) 5 SCM 109, 128.

<sup>169</sup>*R (Persaud) v University of Cambridge* [2001] EWCA Civ 534 (10 April 2001).

Pretorius, while affirming the application of rules of natural justice by the punitive or disciplinary proceedings of clubs, ecclesiastical bodies, trade unions, political parties, sport associations and educational institutions as they wield powers as great and at times greater than that of courts of law adopts the position expressed by Mark Lewis thus:<sup>171</sup>

They can deprive a man of his livelihood ... They are usually empowered to do this for any breach of their rules, which, be it stated, are rules which they impose and which [the individual concerned] has no real opportunity of accepting or rejecting. In theory, their powers are based on contract. The [individual concerned] is supposed to have contracted to give them these great powers; but in practice he has no choice in the matter...

In *Asein v University of Ibadan*,<sup>172</sup> the Nigerian Court of Appeal reiterated that a university will lose its disciplinary autonomy on domestic affair where it is established that it has violated the rules of natural justice. I submit that with the clamour for disciplinary autonomy for the university, the universities should be educated on how to dispense justice without fear or favour.

I point out the essence of judicial neutrality in cases being handled. It appears it is more convenient for disciplinary boards to handle cases with dispatch. My observation is that the law is adequate on administration of justice before domestic tribunal of the university. I identify lack of accountability on the part of relevant officers in the university for the deliberate abuse of disciplinary procedure. As there is no sanction for officer's in-action and the fact that it takes an average of ten years to have a judicial review, sentiments and partiality take the place of law. In chapter five, I recommend there should be sanction for wrong application of the law. I also make a case for expeditious hearing of cases.

#### **4 Conditions for external control of discipline**

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<sup>170</sup>See *Salve Regina College v Russell* 111 S. Ct. 1217, 1220 (1991).

<sup>171</sup>M Lewis 'An Alsatian in England' (1984) 47 *Modern Law Review* 171, where he discusses *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329, 343. See also Pretorius 377.

<sup>172</sup>*Asein v University of Ibadan*, Unreported CA/1/63/84.

I consider in this section, the conditions upon which law courts interfere in domestic disciplinary proceedings and decisions reached thereon. In the previous sections, I argue that the control by the law courts, by way of judicial review, has been to protect individual academic freedom of staff and students against the abuses attaching to institutional autonomy.

Cora Hoexter submits that in the determination of conduct that may attract judicial review, courts generally consider certain features such as absence of jurisdiction, bias or corruption on the part of presiding officer, gross irregularity in the proceedings, and admission of inadmissible evidence.<sup>173</sup> This explains why Lord Brightman held that judicial review is concerned, not with the decision, but with the decision-making process.<sup>174</sup>

I submit however that the violation of individual academic freedom is contained in the offensive decisions, which jeopardise career prospects of staff and students of Nigerian Universities.

The law courts also have template for their intervention in university's domestic cases. Some of these include the academic and disciplinary dichotomy, and civil and criminal violations. The considerations here explain what level of involvement a court should maintain in respect of decisions of the university coming before it.

#### **4.1 Standard of judicial review**

Yewande Alatishe considers judicial review as the power of court to check and control the activities and decisions of inferior courts or tribunals. She contends that it is with a view of protecting human right and good administration that such bodies must be kept strictly within their limited legal bounds.<sup>175</sup> I submit that the human rights, which require protection here, include a lecturer's right to a secured tenure, which is necessary for his

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<sup>173</sup>Hoexter (2012) 112.

<sup>174</sup>Lord Brightman in *Chief Constable of the North Wales Police v Evans* (1982) 3 All ER 141 (HL) 154d.

effective functioning in that behalf. On the part of the university students, he is to be assured of a hitch free academic career and for his good reputation to be preserved to fit into the labour market.

Review is a judicial re-examination of the case in certain specified and prescribed circumstances. Review is an examination of something with the intention of changing it if necessary.<sup>176</sup> The purpose of the judicial review is to ensure that an individual is given a fair treatment by a wide range of authorities, whether judicial, quasi-judicial or administrative, to which the individual has been subjected to.<sup>177</sup> An aggrieved person consequent on the exercise of an administrative action<sup>178</sup> may institute proceedings in a court or a tribunal for judicial review.<sup>179</sup>

Judicial review has always been and remains the most significant remedy for mal-administration.<sup>180</sup> In the light of this, I submit that in practical terms, judicial review enhances the quality of administrative acts and decisions that emanate from public and private bodies.

The courts would not hesitate to overrule a domestic decision arrived at in violation of the natural justice principles.

## 4.2 Elements of judicial review

In discussing this topic, I rely extensively on matters relating to university students and courts' protection of their studentship. This is a matter of convenience, and on the basis

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<sup>175</sup>Yewande Alatishe 'The dynamics of judicial review' in Justus A Sofekun (ed) *Issues in Constitutional law and practice in Nigeria Essays in honour of Dr Olu Onagoruwa* (2002) 275, 277.

<sup>176</sup>*Parduman Singh v State of Punjab AIR* (1958) Pun, 63, 68.

<sup>177</sup>Elijah Adewale Taiwo 'Judicial review of the impeachment procedure in Nigeria' (2009)(3)(2) *Malawi Law Journal* 245.

<sup>178</sup> Cora Hoexter *Administrative Law in South Africa*, 2012 JUTA, 108, 168.

<sup>179</sup> See s 36(1) of 1999 Constitution of Nigeria. See also Section 33(1) of the 1996 Constitution of South Africa which stresses on administrative action thus: (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

<sup>180</sup>Cora Hoexter (2012) 108.

that the same principles for review are adopted by the courts in protecting staff's job security.

One of the four essential elements of academic freedom is the power to determine who may be admitted to study.<sup>181</sup> This to Picozzi is:<sup>182</sup>

[f]reedom to determine who may be permitted to remain a student and necessarily implies the freedom to dismiss students who have failed to measure up in a relevant fashion. Once a student has matriculated, the university's freedom to dismiss him is subject to his property and liberty interests in remaining at the school.

It is a matter of interest to a court of law, in its review exercise, to probe into the processes leading to the dismissal or disciplinary measures on a student, with a view of curing any irregularity therein.<sup>183</sup>

In the American case of *Ewing v Board of Regents of the University of Michigan*,<sup>184</sup> the Court held that the contractual relationship between a school and its student which brought with it property interest gave rise to constitutional protection. The protection is to the extent that a student who is admitted to a school should not be dismissed without observing due process.

It is a matter of interest to a court of law, in its review exercise, to probe into the processes leading to the dismissal or disciplinary measures on a student, with a view of curing any irregularity therein.<sup>185</sup> Judicial review of administrative action by a court or a

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<sup>181</sup> The Sixth Circuit has held that the contractual relationship between a school and its student which brings with it property interest (that a student admitted to a school shall not be dismissed without conforming to due process) gives rise to constitutional protection. *Ewing v Board of Regents of the Univ. of Mich.*, 742 F.2d 913 (6th Cir. 1984)

<sup>182</sup> Picozzi, 2136, 2140.

<sup>183</sup> Public institutions established by Acts of Parliament for the public purpose of higher education, the decisions of universities, including those of relevant committees, should be subject to the scrutiny of the courts. See *Harding v University of New South Wales* [2002] NSWSC 113 (1 March 2002) 16, 17.

<sup>184</sup> *Ewing v Board of Regents of the Univ. of Mich.*, 742 F.2d 913 (6th Cir. 1984).

<sup>185</sup> Public institutions established by Acts of Parliament for the public purpose of higher education, the decisions of universities, including those of relevant committees, should be subject to the scrutiny of the courts. *Harding v University of New South Wales* [2002] NSWSC 113 (1 March 2002) [16]-[17]. See also *Norrie v Senate of the University of Auckland* [1984] 1 NZLR 129, 134 - 5 (Woodhouse P). See also P



tribunal is made on account of procedural irregularities,<sup>186</sup> for un-authorized actions, action that reflect bias or taken in bad faith.<sup>187</sup> The provision of law as it applies in South Africa has equivalent provision in Chapter IV of the 1999 Constitution of Nigeria.

A court exercises judicial review on administrative actions having certain criteria in mind. The issue of impartiality was addressed in *Garba & others v University of Maiduguri*.<sup>188</sup> Obaseki JSC in the case observed that the complaint against the appellants was destruction of university property in the care of principal officers. The principal officers of the university were vital witnesses and should not be judges in their own cause.<sup>189</sup>

I cite by way of example relevant to Nigeria, the New South Wales Supreme Court in *Harding v University of New South Wales*:<sup>190</sup>

(t)he Court does not sit as a Court of factual review over decisions of ... [university] committees ... [but] it can ... intervene in accordance with accepted administrative law principles, for example where the Committee has not been properly constituted, where it failed to follow proper procedure, where it acted in a way constituting a denial of natural justice, where it otherwise reached a decision which was contrary to law, or where its decision was such that no reasonable committee, acting with a due appreciation of its responsibility, could have arrived at it.

In addition, the South African case of *Cape Bar Council v Judicial Service Commission and another (Centre for Constitutional Rights and another as amici curiae)* is relevant.<sup>191</sup>

The appointing committee, which is the Judicial Service Commission, was not properly

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Kamvounias and S Varnham 'Legal challenges to university decisions affecting students in Australian Courts and Tribunals' (2010)(34) *Melbourne University Law Review* 140, 145.

<sup>186</sup>In *Albutt v Centre for the Study of Violence and Reconciliation*, the CC revisited the process for pardoning politically motivated offenders and held that it would be wrong of the President to exercise his pardoning power without first hearing the victims of the offences. 2010(3) SA 293 (CC). Hoexter (2012) 123.

<sup>187</sup>See a comprehensive ground for review in Section 6(a)(i) of PAJA. See also The New South Wales Supreme Court in *Harding v University of New South Wales* [2002] NSWSC 113 (1 March 2002) [16]-[17]

<sup>188</sup>*Garba and others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 413.

<sup>189</sup>Obaseki in *Garba*, 441 442.

<sup>190</sup>*Harding v University of New South Wales* [2002] NSWSC 113 (1 March 2002) [17] (Wood CJ at CL).

<sup>191</sup>*Cape Bar Council v Judicial Service Commission and another (Centre for Constitutional Rights and another as amici curiae)* (2012] 2 All SA 143 (WCC).

constituted at the time when decision was taken to appoint one of the three applicants to the bench. Neither the President, nor the Deputy President of the Supreme Court of Appeal was present at the meeting, and neither did they play any part in the deliberations of the meeting of 12 April 2011. The decision on the appointment was set aside on review.

It may look like technical justice; however, the court in judicial review ensures that the proper procedure for doing a thing is followed.

### **4.3 The academic and disciplinary dichotomy**

I consider in this subsection a yardstick for external control on university disciplinary autonomy going by the nature of conduct, which is to be reviewed. The law court recognises the autonomy of university, which I treat in chapter two<sup>192</sup> in the area of academic matters, and will hesitate to review proceedings and decisions of the university. For academic violation, courts mostly defer to technical academic expertise of schools.

With deference, the courts decide which question to engage with at all, or which to drop.<sup>193</sup> This disposition is on account of academic functions that are very technical in nature and which the university is better trained for in comparison to the court.

On the other hand, the courts subject the university's exercise of disciplinary autonomy to a thorough scrutiny. The court verifies compliance with the natural justice principles before a university's decision is allowed to hold. Examples of acts of misconduct are disrespect to constituted authority, indecent dressing, smoking at unauthorised places *et cetera*.

The academic and disciplinary dismissals' divide influences the degree of courts' scrutiny of decisions of academic institutions. The courts maintain flexibility<sup>194</sup> when

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<sup>192</sup> See section two.

they review cases emanating from the universities. The flexibility is meant to adjust standard of review depending on whether a case falls within the academic or the disciplinary divide. The essence of the flexibility is to accord benefit while it corrects abuses in the system.

The benefit, which the academic or disciplinary divide accords is to recognise and uphold institutional autonomy of the university to carry out its objects of teaching, research, learning and development. Carrying out academic activities ideally should be without external control of the court. This is because academic functions are very technical in nature and the university is better equipped for it in comparison to the court.

Notwithstanding, judicial review has been rewarding in curbing abuse in the university system. In chapter three, I discuss abuses in the exercise of university autonomy as it violates the enjoyment of individual academic freedom of staff and students.<sup>195</sup> Abuse in the system is attributed to the impatience or unwillingness of tertiary institutions, to apply the natural justice principles in enforcement of discipline.

The flexibility affords the court the opportunity to beam its probing searchlight to see the areas of abuse and to nullify excesses thereon. This comes by way of a thorough judicial review. Thus, the Supreme Judicial Court of Massachusetts held; ‘while a hearing on disciplinary matters may aid the disciplinary process, hearings would be ‘useless or harmful’ in academic matters.’<sup>196</sup>

I further present the disturbing cases that fall in-between the academic and disciplinary divides. Schweitzer<sup>197</sup> considers the broad scope of academic decisions made by colleges

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<sup>193</sup> McLean *Constitutional deference* 25 26 describes overlap between the concepts of justiciability and deference. To the writer, a matter that is non-justiciable as reflecting ‘a position of extreme deference.’

<sup>194</sup> *Horowitz*, 435 U.S. 86.

<sup>195</sup> See section four.

<sup>196</sup> *Barnard v Inhabitants of Shelburne*, 102 NE 1095, 1097 (Mass 1913). In *Horowitz*, 435 US, 79-80. A medical student was dismissed after the faculty recommended her dismissal for poor academic performance.

<sup>197</sup> TA Schweitzer ‘Academic challenge’ cases: Should judicial review extend to academic evaluations of students?’ 41 *American University Law Review* 267, 295 (1992).

and universities such that students who violate policies and procedures of institutions are subject to academic sanctions, with consequent little or no review by the courts.

Every university has provisions in its Act for interpretation of statutes. The University of Maiduguri Act<sup>198</sup> vests in the Visitor the power to determine whether any matter is academic or non-academic. Institutions however prefer to treat disciplinary violation as academic matter, to deny students full trial and to eventually avoid the court's searchlight and review. Allegations on disciplinary matters should attract comprehensive oral and documentary evidence, particularly, where the student contests the allegation against him.

The treatment of disciplinary matters as academic is injurious to the individual academic freedom of university students. The courts should therefore probe into what category an alleged act of the student falls.

#### **4.3.1 Academic violations**

I consider conduct, which transgress the rules and regulations of the university on academic matters. I align with David M Dumas *et al* that the term academic freedom encompasses the right of universities to act free from judicial interference with academic decisions.<sup>199</sup> My focus here is to consider the protection of institutional autonomy of the university to carry out its academic objects without interference of the court.

Universities are entitled to a substantial scope of judicial deference in the exercise of academic judgments.<sup>200</sup>

The academic and disciplinary dismissals' divide serve as basis on which law courts would defer to decisions of the universities.<sup>201</sup> The method for considering institutional

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<sup>198</sup> See section 13(3) of the University of Maiduguri Act, Cap U10, LFN, 2004. See also section 15(3) of the University of Lagos Act, Cap U9, LFN 2004.

<sup>199</sup> David M Dumas *et al* '*Parate v Isibor*: Resolving the conflict between the academic freedom of the university and the academic freedom of university professors Vol 16 No 4 *Journal of College and University Law* 718 1989-1990.

academic freedom in a constitutional case was set in the American case of *Regents of the University of California v Bakke*.<sup>202</sup> It was held in the case that Court would defer to the university only insofar as it was persuaded that the university was acting on academic, rather than on political ground.

On the visitor's jurisdiction in England, the House of the Lords in *Thomas v University of Bradford*<sup>203</sup> held that the jurisdiction of the visitor on academic matters is exclusive and is not shared with the courts of law.

An insight has been given into what constitute an academic matter, which has equally been regarded as domestic affair of a university. In *Fetuga v University of Ibadan*,<sup>204</sup> the Court of Appeal held thus:<sup>205</sup>

The setting, sitting, marking of examination papers and publishing the results as well as the conferment and award of degrees, diplomas and certificates to deserving students are matters within the domestic forum of a university.

Deference in the circumstances is a strong instrument by which the courts recognise those technical subjects they can handle and those that should be handled by the body well suited for it.

Ordinarily, judicial review will make the courts assume an analysis of a professor's grading decisions, which typically are the result of 'a long process of interaction and

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<sup>200</sup>Paul Horwitz 'Three faces of deference' 83 *Notre Dame Law Review* 1061 (2008) 1102. See also Paul Horwitz 'Fisher, academic freedom, and distrust' 59 *Loyola Law Review* 489 (2013) 533.

<sup>201</sup>The court in *Barnard v Inhabitants of Shelburne*, establishes that hearing is helpful to the ascertainment of misconduct but useless or harmful in finding out the truth as to scholarship. 102 N.E. 1095, 1097 (Mass. 1913). See Schweitzer 299, see also Byrom, 159.

<sup>202</sup>*Regents of the University of California v Bakke* 438 US 265, 312 (1978) J Peter Byrne 'The threat to constitutional academic freedom' 31 *Journal of College & University Law* 79 (2004-2005) 88.

<sup>203</sup>*Thomas v University of Bradford* (1987) 1 All ER 834. See also Nwauche & JC Nwobike 318.

<sup>204</sup>*Fetuga v University of Ibadan* (2000)13 NWLR (pt. 683) 118.

<sup>205</sup> The principle of academic matter being domestic issue of a university had earlier been affirmed in *Akintemi v Onwumechili & ors* (1985) 1 NWLR (pt 1)69. Universities are entitled to a substantial scope of judicial deference in the exercise of academic judgments. Paul Horwitz 'Three faces of deference' 83 *Notre Dame Law Review* 1061 (2008) 1102. Paul Horwitz 'Fisher, academic freedom, and distrust' 59 *Loyola Law Review* 489 (2013) 533.

observation between teacher and student.<sup>206</sup> To Byrom, such intrusion would have judges acting as professors, deans, and administrators all at once.<sup>207</sup>

In *Elizabeth Iyamabo v University of Ife*,<sup>208</sup> Elizabeth was a student of the then University of Ife and was extremely brilliant. She recorded an ‘A’ in almost all her courses. In the final year, she made a First Class. She was however alleged of keeping a relationship with a male lecturer who had leaked a question paper to her and through which she made an undeserved grade. It was as a result that the Senate refused to award her a degree.

The court established that she never attempted the alleged question and that she was never given any undeserved grade. The court however declined jurisdiction in compelling the award of a degree. The court held that the conferment of degrees was an internal affair of the university in which the court will not interfere.

In a similar vein, *Esiaga v University of Calabar and others*,<sup>209</sup> the appellant, a final year Political Science Student was suspended pending the constitution of the committee to investigate allegation of possession of secret cult insignia. He sought the order of court to vacate the suspension and for the release of result of a yet to be taken examination. The Supreme Court held that a university may only be mandated to release the result of one who it considers to be worthy and fit in learning. The Supreme Court endorsed the holding of Tobi (JCA) in the lower court to the effect that an examination, which was considered under a university rules and regulations and approved by the university senate, precluded the jurisdiction of the courts. To Tobi JCA:<sup>210</sup>

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<sup>206</sup>TA Schweitzer 267, 272 .

<sup>207</sup>Byrom, 155. Kirby J explained the inevitability of deferring to academic decisions of universities thus: universities are in many ways peculiar public institutions. They have special responsibilities ... to uphold high academic standards about which members of the academic staff will often be more cognizant than judges. See *Griffith University v Tang* (2005) 221 CLR 99, 156 - 7 [165]. The Court has thus held in *Board of Curators of the Univ of Mo v Horowitz* that, enlarging judicial presence in educational community would impair faculty-student relationship, around which educational process is centered; 435 U.S. 78,90 (1978). See Byrom, 165, see also Kamvounias & Varnham 166,

<sup>208</sup>*Elizabeth Iyamabo v University of Ife* (reported in *Akintemi v Onwumechili* (1982) 1NWLR (Pt. 18) 68. See also Afe Babalola 39 40.

<sup>209</sup>*Esiaga v University of Calabar and 2 others* (2004) 3 SCM 61.

<sup>210</sup>*Esiaga* (As above) 61, 79.

A court of law which dabbles or flirts into the arena of university examinations, a most important and sensitive aspect of University function should remind itself that it has encroached into the bowels of University authority. Such a court should congratulate itself of being party to the destruction of the University and that will be bad not only for the Universities but also for the entire nation.

Courts as such give recognition to superior expertise and knowledge of some specialised bodies, particularly in the area of evaluation of data and in making regulatory decisions. Deference in the circumstances protects the sanctity of a university degree. To that extent, the courts have conceded the right to academic institution to award and revoke degrees for just cause.<sup>211</sup>

Jack Byrom<sup>212</sup> traces the courts disposition in this regard to about 700 years and conceded that the objects of the university are better realised when courts defer to the university on its academic decisions.

On the above reasoning, courts hesitate to dabble into domestic academic affairs of universities. On academic violation, courts most times defer to technical academic expertise of the universities. When the courts intervene, it is to ensure that the natural justice principles are complied with. The academic nature test presumes there is due observance of the university rules and regulations, students' handbook, Act establishing the institution and the Constitution.<sup>213</sup> Following this trend, Byrom submits thus:<sup>214</sup>

Consequent on the disposition of courts, any student who contests his academic grading, non conferment of degree, dismissal for falling below academic standard, is unlikely to prevail in his claims to prevent dismissal for academic reasons unless the actions of the institution were arbitrary or capricious,

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<sup>211</sup> In *The King v University of Cambridge*, [1334] 8*Modem Rep.* 148 (Eng.) the Chief Justice of the King's Bench's held 'reasonable cause' as a ground for revoking a university degree.

<sup>212</sup> JE Byrom 'To love and die in Dixon: An argument for stricter judicial review in cases of academic misconduct' (2012)(31) 1 *Review of Litigation* 147.

<sup>213</sup> *Sylvester v Texas Southern University*, 957F. Supp. 944, 948 (S.D.Tex. 1997), the school neglected to abide by its formal grade review procedures and the court set aside the institution's academic grading. See Byrom 157.

The observance of the principles of natural justice in academic matters is not expected to be thorough as is required on disciplinary cases.

I consider the individual academic freedom of the university student and do contend that academic dismissal or denial of a diploma is a colossal loss to him. The student forfeits time, money, and effort expended on an education, and may be barred from pursuing the same degree at another institution.<sup>215</sup>

In academic challenge cases, the student has bleak chances of having judgment. Thomas Schweitzer argues thus:<sup>216</sup>

The courts decline to dabble into academic arena as denoted by the Supreme Court in cases of *Horowitz* and *Ewing*; the fact that most institutions provide ample procedural due process before dismissing students; and weak academic records of complaining students, which make any additional procedures unhelpful.

It is rather advisable for the university student, to be conscious of the fact that his academic freedom to have a fulfilled academic career has corresponding obligations. One of such which I discuss in chapter three<sup>217</sup> is for the student to familiarise himself with academic demands and to meet up. He should know that in litigation on academic matters, there is no succour from the court, the issue before the court is whether the student meets the academic requirement or he does not meet it.

*Esiaga v University of Calabar and others*<sup>218</sup> is one of the authorities to the effect that the principle of deference to the university on academic matters applies in Nigeria. Foreign authorities, which give clearer scope of the principle, are referred to in course of this chapter.

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<sup>214</sup>JE Byrom 'To love and die in *Dixon*: An argument for stricter judicial review in cases of academic misconduct' (2012) (31) 1 *Review of Litigation* 147 160.

<sup>215</sup>*Horowitz v. Board of Curators of the Univ. of Mo.*, 538 F.2d 1317, 1320 & n.3, 1321 (8th Cir. 1976)

<sup>216</sup>TA Schweitzer, "Academic challenge" cases: Should judicial review extend to academic evaluations of students?' 41 *American University Law Review* 267, 323 (1992).

<sup>217</sup> See section 6.

<sup>218</sup>*Esiaga v University of Calabar and others* (2004) 3 SCM 61.



The Fifth Circuit in *Dixon v Alabama State Board of Education*,<sup>219</sup> laid precedent to the effect that where a student is alleged on academic violations, rather than disciplinary issues,<sup>220</sup> that student is not entitled to due process, and the courts will not on account of deference step in to review such decisions.

Due process requirement is thus far less stringent in the case of an academic dismissal than in a disciplinary dismissal. In the New Jersey case of *Napolitano v Trustees of Princeton University*,<sup>221</sup> the university's decision to revoke a student's degree due to academic plagiarism was in contention. The Court held that the issue before it was of an academic nature, and affirmed the trend to endorse institutions' decisions on academic suspensions or dismissal.<sup>222</sup>

In *Cieboter v O'Connell*,<sup>223</sup> the University of Florida refused to consider its student's dissertation because the university had discovered that the plaintiff 'had not demonstrated satisfactory development' in his education. On whether the university as such violated plaintiff's due process rights, the court upheld the university's decision.

Further observance of deference on academic matters is the United States of American case of *Board of Curators of the University of Missouri v Horowitz*.<sup>224</sup> The Court held that a student who was fully informed of faculty's dissatisfaction with her progress was accorded procedural due process despite lack of formal hearing.

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<sup>219</sup>*Dixon v Alabama State Board of Education*, 294 F.2d 150(5th Cir. 1961), 155. See also Schweitzer 297.

<sup>220</sup>I recognize in this paper the disciplinary violation as an act of misconduct and shall be using the two inter-changeably.

<sup>221</sup>*Napolitano v Trustees of Princeton University* 453 A.2d 263, 278 (N.J. Super. Ct. App. Div. 1982), See also *Wright v Texas State University*, 392 F.2d 728, 729 (5<sup>th</sup> Cir. 1968) *Militana v University of Miami*, 236 So.2d 162, 164 (Fla. App. 1970). See Byrom 161.

<sup>222</sup>Berger & Berger 302 304.

<sup>223</sup>*Cieboter v O'Connell* 236 So.2d 470, 472 (Fla. Dist. Ct. App. 1970). See Byrom 158.

<sup>224</sup>*Board of Curators of University of Missouri v Horowitz* 435 U.S. 78 (1978) Peter Byrne 'The threat to constitutional academic freedom' 31 J.C. & U.L. 79 (2004-2005) 89.

In the United States of American case of *Connelly v University of Vt & State Agricultural College*,<sup>225</sup> the plaintiff was a third-year medical student, but was dismissed after he received an ‘F’ Grade in Paediatrics-Obstetrics. He sued for reinstatement, claiming that he deserved, at least, a pass grade. District Court upheld the dismissal of the plaintiff, as it restated the discretion of the school on academic grading of the plaintiff, in the absence of arbitrariness, capriciousness, or bad faith on the part of the institution.

Substance, which is the academic decision that is taken is immune from review. The process of arriving at the decision is however reviewable by the court.

In the United Kingdom’s case of *R (Persaud) v University of Cambridge*<sup>226</sup> the substance was the issue for determination. The plaintiff’s PhD programme was terminated because of poor performances of student. The action of the University was contested in court and the student lost the case. Chadwick LJ, delivering the judgment of the Court, held thus:<sup>227</sup>

(t)here is no principle of fairness which requires, as a general rule, that a person should be entitled to challenge, or make representations with a view to changing, a purely academic judgment on his or her work or potential.

In the American case of *Regents of the University of Michigan v Ewing*,<sup>228</sup> medical school denied Ewing a second chance to take the NBME examination, because of poor prior academic performance. The university had already warned him that any further deficiency would lead to his dismissal. When he eventually failed the examination, he was not permitted to retake it and was dismissed. The Supreme Court concluded that the

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<sup>225</sup>*Connelly v University of Vt. & State Agricultural College*, 244 F Supp 156, 158 (D Vt1965). See Schweitzer 298. See also Byrom, 156.

<sup>226</sup>*R (Persaud) v University of Cambridge* [2001] EWCA Civ534 (10 April 2001). Kamvounias & Varnham 164, 165.

<sup>227</sup>Kamvounias & Varnham 164,

<sup>228</sup>*Board of Regents of the Univ. of Mich v Ewing* 742 F.2d 913 (6th Cir. 1984). See also 474 U.S. 214 (1985). Ewing had a rather dismal academic record, replete with C and C-minus grades, seven incompletes, and several terms during which he was on a reduced or irregular course load. *Id.* at 218-19 & n.4 (1985). See also Schweitzer 309, 310. See in addition Berger & Berger 302.

university did not act arbitrarily because the faculty made its decision after conscientious and careful deliberation on Ewing's entire career at the university.

In *Board of Curators of the University of Missouri v Horowitz*,<sup>229</sup> the plaintiff was a medical student, and she was dismissed for inadequate performance in her clinical courses. She had been alleged of poor relationship with patients, erratic attendance, and poor personal hygiene. She was subsequently placed on probation for a year. As there was no improvement after the one year, she was subsequently dismissed. In her action before the District Court, the Court upheld her dismissal, claiming she had been fairly and reasonably evaluated, having been afforded procedural due process above the requirement of the law.<sup>230</sup>

On academic deficient cases as above, the students can be said to have omitted to meet a pre-condition to the enjoyment of their academic right.<sup>231</sup> The obligation to demonstrate the professed quality on which they were admitted has to be discharged.

The courts recognise the institutional autonomy of the university and do defer and respect decisions of the institution. In line with the above principle, the Supreme Court of Queensland decided *Orr v Bond University*.<sup>232</sup> The application of plaintiff to undertake supervised research, leading to a Master of Arts was rejected. This was on the basis that the School did not have permanent staff to supervise his research. The Court held that a higher institution could only operate within its resources.

I submit that the court's decision here affirms the university autonomy to decide what programmes to run and students to admit to its academic programmes.<sup>233</sup>

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<sup>229</sup>*Board of Curators of the University of Missouri v Horowitz*, 435 US 78, 80 (1978). See also Schweitzer 275.

<sup>230</sup> See Berger & Berger, 302 303.

<sup>231</sup> See section 6 of chapter three.

<sup>232</sup>*Orr v Bond University* (Unreported) Supreme Court of Queensland, Dowsett J, 3 April 1996.

<sup>233</sup>This I discuss in section 3, chapter two.

The courts do not as a convention just opt to defer to the university on academic decisions, but for the technicality of the subject matter. On account of technical incapacity, the courts now defer to the universities those technical academic questions they are not capable of resolving adequately.<sup>234</sup>

Further on the technical incompetence of the courts on academic matters, New Zealand authority of *Norrie v Senate of the University of Auckland* is helpful. Woodhouse P in the case held thus:<sup>235</sup>

It is easy enough to understand why it has been held that non-justiciable 'in-house' issues ought to be left as a matter of course to the domestic tribunal either because they could not sensibly be turned into suitable problems for adjudication by the courts or simply as a matter of discretion.

United Kingdom Court in *Clark v University of Lincolnshire and Humberside* per Sedley LJ held thus:<sup>236</sup>

(t)here are issues of academic or pastoral judgment which the university is equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejune and inappropriate ... [and it] undoubtedly includes, in my view, such questions as what mark or class a student ought to be awarded or whether an aegrotat is justified.

When the courts however intervene in university's academic decision, it is to ensure that the natural justice principles are complied with. In the American case of *Russell v Salve Regina College*,<sup>237</sup> full performance by the student was hindered as the College barred her from her clinical training program on account of her 'offensive' weight. Her failing grade in the clinical course was however reviewed and consequently rejected by the court as a basis for her dismissal. She was awarded damages for wrongful dismissal. The court's intervention on academic matters was equally to do justice.

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<sup>234</sup>See *Esiaga v University of Calabar and others* (2004) 3 SCM 61, 79 and the holding of Tobi JCA.

<sup>235</sup>*Norrie v Senate of the University of Auckland* [1984] 1 NZLR 129, 134-5.

<sup>236</sup>*Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752.

<sup>237</sup>See *Russell v Salve Regina College* 90 F.2d 484, 489-90, (1st Cir. 1989). See Schweitzer 340 343.

In the New York case of *Susan v New York Law School*,<sup>238</sup> a law student was dismissed for academic deficiency and she sought a reinstatement while alleging an unfair grading in two subjects. The trial court held that the petitioner failed to demonstrate that her dismissal was arbitrary, capricious, or made in bad faith, and consequently dismissed the claim.<sup>239</sup>

Appellate division<sup>240</sup> reversed the decision holding that the papers should be re-assessed as the petitioner's paper might have suffered from an irrational reading by her professor. The court concluded that the school owes its students some protection against arbitrary and capricious grading.

On further appeal, the Court of Appeal<sup>241</sup> reversed the decision and reaffirmed the strong principle that courts should refrain from intervening in schools' judgments of their students' academic performance. This position should be maintained in the absence of bad faith, arbitrariness, irrationality, or a constitutional or statutory violation.

There is the recurring question of whether a student should be heard on expulsion on account of academic deficiencies.<sup>242</sup> As the debate rages on in respect of this issue, I submit that the student should be heard. Hearing in this sense is not to re-establish the academic deficiency, but to have a feedback on how the academic environment has influenced the student's predicament.<sup>243</sup> This will afford the institution the opportunity to make necessary amends. Institutional autonomy in the circumstances enables the university to create the enabling environment in which to realise its objects.

### 4.3.2 Disciplinary violations

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<sup>238</sup> *M Susan v New York Law School*, 76 N.Y.2d 241,244, 556N.E.2d 1104, 1106, 557 N.Y.S.2d 297, 299 (1990). See Berger & Berger 302.

<sup>239</sup> See Berger & Berger 302.

<sup>240</sup> *Susan*, 297, 299.

<sup>241</sup> *Susan* 297.

<sup>242</sup> See Queens Bench in *R v Aston University Senate, ex parte Roffey* (1969)2 QB 538 contrast with latter authority of *Herring v Templeman* (1973) 3 All ER 569.

<sup>243</sup> See section 4 of chapter three.

In this sub-section, I argue that academic institutions are expected to be vanguards of learning and good character. I contend that acts of staff and students, which undermine the institutional goals, constitute misconduct.<sup>244</sup> I consider misconduct in its varied gravity, and do submit that this determines the weight, which an institution, guided by its rules and regulations, attaches in awarding punishment.

The principles of natural justice that are binding on domestic tribunals of the university, as I enumerate above,<sup>245</sup> all apply here. By implication, therefore, a trial of misconduct entails having to afford the offending student a higher level of due process. Thus, in the American case of *Dixon v Alabama State Board of Education*,<sup>246</sup> the Fifth Circuit reversed the judgment of lower court. It held that ‘a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts’ regarding the alleged misconduct. A hearing, which is the presentation of both sides in considerable detail, is best suited to protect the rights of all involved.<sup>247</sup>

When a court engages in a thorough scrutiny of the schools proceedings upon a disciplinary violation, where it endorses that due process was not observed the proceedings and decision shall be set aside.

It is however remarkable to note that ‘non-academic’ issues occasionally have academic consequences.<sup>248</sup>

Thus, in New South Wales Court in *Lam v The University of Sydney*<sup>249</sup> was invited to review the case of a student who had been arraigned before disciplinary board of the university. The allegation was that the student offered money to an administrative staff,

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<sup>244</sup> The focus is on the students as I point out under academic violations.

<sup>245</sup> In section three.

<sup>246</sup> *Dixon v Alabama State Board of Education* 294F.2d 150, 155 (5th Cir. 1961). See Schweitzer 275, see also Byrne 166.

<sup>247</sup> See Byrom, 166.

<sup>248</sup> JE Byrom ‘To love and die in *Dixon*: An argument for stricter judicial review in cases of academic misconduct’ (2012) (31) 1 *Review of Litigation* 147 162.

<sup>249</sup> *Lam v The University of Sydney*[1997] NSWSCA 184 (22 April 1997). See also Kamvounias & Varnham 168.

to divulge content of question paper he was going to sit for. After trial, the Board found the charges had been established and ordered the expulsion of the student from the University.

Also, in the American case of *Fenje v Feld*,<sup>250</sup> the court confirmed the dismissal of a student from a medical residency program for dishonesty on his application for admission. The court held that a summary judgment was adequate in the circumstances of the case.

Here, the misconduct was dishonesty in the filling of a dossier, and the consequence was academic consequence was a dismissal. As such, I concede that disciplinary violations should have academic consequences as a degree is earned on the combination of good character and learning.

In summary, students under disciplinary violations enjoy greater level of due process and do take benefit of lapses in the observation of natural justice principles on disciplinary violations. It does happen that where the facts of a case do not favour a student, he nonetheless has judgement. As such, under disciplinary violations, students' academic freedom is better asserted.

#### **4.4 Jurisdiction on criminal violations**

In this section, I examine the power of the university to punish obnoxious acts of its members as disciplinary autonomy. This by implication is an extension of the university autonomy. I consider the violation of rules and regulations of academic institution as acts of misconduct. The realisation of the teaching, research and development objects of the university, I contend, can only be realised in a disciplined environment. I consider legal provisions on the competence of domestic tribunal of the university to try misconduct having criminal elements.

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<sup>250</sup>*Fenje v Feld* 398 F.3d 620, 629-30 (7th Cir. 2005). See Byrom 163, 164.

In doing this, I make recourse to diverse judicial interpretations of the legal provisions and what submissions writers have made. The judicial decisions are contradictory and I identify the courts' application of literal interpretation; liberal interpretation and pragmatic interpretation at various times. I arrive at the interpretations going by the effect that each has on individual academic freedom of members of the university. I subsequently make my submission on what is best for the institution, and on what best protect individual academic freedom of members of the university.

Constitutional provisions require that allegations on crime should be investigated by the police and should be tried in a law court.<sup>251</sup> I rely on jurisdiction on criminal trial in Nigeria following from Section 22(2) of 1963 Constitution, Section 33 of the 1979 Constitution and Section 36(4) of the 1999 Constitution. Section 36(4) of the 1999 Constitution provides:

Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.

Section 6(1) of the 1999 Constitution provides that the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation. Section 36(1) of the 1999 Constitution provides:

In the determination of a person's civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

The provision talks of enforcement of civil rights and obligations, which should legally be heard before a court of law. Universities' disciplinary tribunals apparently are not contemplated and judicial authorities uphold this position of law.

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<sup>251</sup>See Section 6(1); 36 (4) of the 1999 Constitution of the Federal Republic of Nigeria 1999.



The jurisdiction in respect of allegations of criminal conduct is yet another subject to discuss.<sup>252</sup> I refer to provisions of section 36(4) to the effect that:

Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal established by law.

In *Garba & others v University of Maiduguri*,<sup>253</sup> efforts were made to compare the domestic tribunal to a law court or tribunal. The domestic tribunal was however disqualified as either a court or a tribunal and it was held to be incompetent to try criminal cases, as there is no constitutional guarantee of its members' independence and impartiality to try offences against the laws of the land.

Notwithstanding, universities in Nigeria all have provisions in their laws vesting disciplinary powers in them. The University of Ibadan Act<sup>254</sup> for instance provides in Section 10(1)-(7) for discipline of staff and section 11 provides for discipline of students. I however submit that the supremacy and binding force of the Nigerian Constitution over all persons and authorities as contained in Section 1(1) of the 1999 Constitution holds. The Courts are vested with the powers to ensure that the sanctity of the Constitution is protected.

As a result, the provisions of the Act establishing a university and which vests disciplinary autonomy on the university must operate subject to constitutional provisions. The Constitution precisely provides on this in section 1(3): 'If any other law is

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<sup>252</sup>See *Garba and others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 413. Section 6(1); 36 (4) of the 1999 Constitution of the Federal Republic of Nigeria 1999 operate as ouster provisions. An ouster clause precludes the court or any other judicial or quasi judicial body from entertaining any action or claim brought before it on specific matters highlighted, or on any question pertaining to any action taken or anything done pursuant to the provision of any law.' See 10 Smith 'Enforcement of Human Rights Treaties in a Military Regime: Effect of Ouster Clauses on the Application of African Charter on Human and Peoples' Rights in Nigeria' (2000) 9(2) *Review of the African Commission on Human and Peoples' Rights* 192, 199. See also Taiwo (2009) 255.

<sup>253</sup>*Garba and others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 413.

<sup>254</sup> Cap U6, Laws of the Federation of Nigeria, 2004. The University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004, makes similar provisions on discipline of staff in section 18 (1)-(5) and

inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency, be void.’

I submit that the statutory provisions of disciplinary autonomy of universities are inconsistent with provisions of the Constitution as they lack judicial powers on civil and criminal matters. For purposes of emphasis, Section 36(1) of the 1999 Constitution provides for the determination of a person’s civil rights and obligations just as Section 36(4) provides for a charge with a criminal offence to be heard before a court or other tribunal established by law and constituted to maintain its independence and impartiality. The rules and regulations of the universities, I submit come under the civil and criminal matters. In that wise, going by *expressum facit cessare tacitum* rule of interpretation of Section 36(1)(4) of the Constitution, the universities lack disciplinary autonomy.<sup>255</sup>

I focus however on the jurisdiction of domestic tribunal to try misconduct having criminal elements. The law proscribes and judicial authorities and writers assert the lack of criminal jurisdiction of a university.<sup>256</sup> The visitor lacks jurisdiction over offences against the laws of the state.<sup>257</sup> In the extreme, where for instance, a university’s regulations forbid the taking of library books without approval, a student who violates that rule may not be punished by the university.<sup>258</sup> The problems generated on this principle of law is traceable to the gaps and omissions in provisions of law; the split judgements the courts give, and arguments and counter-arguments of writers. I then submit that the universities’ focus on their objects are distracted as the courts continue to

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discipline of students in section 20(1) - (8). University of Maiduguri Act, Cap U10 Laws of the Federation of Nigeria, 2004, in section 18 vests students’ disciplinary powers on the Vice Chancellor.

<sup>255</sup> I consider provisions of Section 36(1)(4) of the Constitution and invoke the principle of interpretation, which explains that the express mention of ‘courts’ and ‘tribunals established by law’ excludes the domestic tribunal which is not mentioned. See OF Olayinka *Rudiments of Nigerian Law* (2008) Nolco Publishing Co 45, 51.

<sup>256</sup> *Garba & Others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 413 per Obaseki JSC, 440. Peter Smith ‘The exclusive jurisdiction of the university visitor’ (1981) 97 *Law Quarterly Review* 610, 647.

E S Nwauche and JC Nwobike ‘The exclusive jurisdiction of Nigerian universities in comparative perspective’ 13 *African Journal of International & Comparative Law* 314 (2005) 318.

<sup>257</sup> *R v Bland* (1740) Mod 355 356.

<sup>258</sup> If the university does, the courts usually set aside the sanction. The courts’ reasoning has constantly being that the criminal element in the allegation bars the domestic tribunal from entertaining such cases.

do a balancing between the Constitution's exclusion of domestic tribunal and the need to uphold disciplinary autonomy of the universities.

#### 4.4.1 The literal interpretation

I examine here what the criminal jurisdictional status of the university is through the cases. The courts would continuously set aside decisions of the universities on criminal matters for as long as they fail to meet set pre-conditions. I submit that the courts here show little or no concern on possible indiscipline their decisions may bring on the university system. To the courts, the pre-conditions to exercise university disciplinary powers, particularly on criminal matters is to first conduct a criminal trial and to secure a conviction before the university can exercise what I regard as the residuary criminal jurisdiction. The domestic tribunal plays a waiting game, as it becomes lawful and due to dispense justice after the court has first exercised jurisdiction.

To the courts here, section 36(1)(4) of the 1999 Constitution should be interpreted literally. The courts believe a person may only enjoy fair hearing before a court or other tribunal established by law which is independent and whose members are impartial. The literal interpretation is to the effect that wordings of a statute should attract their ordinary grammatical meaning and nothing more. Clear and unambiguous words should be applied as such, notwithstanding that the result is irrational, unreasonable, absurd or inconvenient. Court should apply the ordinary, narrow and restrictive meaning.<sup>259</sup> The principle of interpretation as applied in the case *Garba and others v University of Maiduguri*<sup>260</sup> is to the effect that the courts did not mind the regime of indiscipline in the universities on lack of disciplinary autonomy.

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Where the member of the university does not contest the case in court, the sanction imposed by the university is effected.

<sup>259</sup>See *Adegbenro v Akintola* (1963) AC 614; *Chief Obafemi Awolowo v Alhaji Shehu Shagari* (1979) 12 NSCC 87. See also OF Olayinka *Rudiments of Nigerian Law* Nolco Publishing Co (2008) 42.

<sup>260</sup>*Garba and Others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 413.

The Supreme Court in *Garba and others v University of Maiduguri*<sup>261</sup> considered criminal allegations of wilful destruction of property, arson, looting and assaults against the appellants and held per Obaseki JSC as follows:<sup>262</sup>

The trial of erring students for criminal offences or breaches of the Criminal Code and Penal Code Laws are not within the jurisdiction conferred. Accordingly, the purported investigation by the Investigating Panel and Disciplinary Board, and the punishment meted out to the appellants, cannot stand and are hereby declared a nullity.

The Supreme Court in *Garba and Others v University of Maiduguri*<sup>263</sup> held that offences against the laws of the land fall outside the jurisdiction of the visitor and the vice-chancellor.

Section 6(1) of the 1999 Constitution vests the judicial powers in the courts established under the Constitution. The Supreme Court in *Garba and Others v University of Maiduguri*<sup>264</sup> per Obaseki JSC whittled down disciplinary powers of universities thus:<sup>265</sup>

Judicial powers are not vested in private persons, administrative tribunals or other authorities. By the purported exercise of judicial powers, the person injured is denied the right to a fair hearing under section 33(1) and (4) by the action of those persons or authorities.

The board must thus be independent and the members impartial. It is therefore clear that offences against the laws of the land fall outside the jurisdiction of the visitor and the vice-chancellor.<sup>266</sup>

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<sup>261</sup>*Garba* (as above). Also, in *Abia State University v Anyaibe* (1996) 3 NWLR Pt 439, 646 CA. The respondent was alleged of assaulting two students on the university campus, and he was consequently expelled. The Court of Appeal, per Katsina-Alu JCA, 667 emphasized on the competence of the university to hear criminal charge. See also Ese Malemi to the effect that visitor and vice-chancellor lack criminal jurisdiction. E Malemi *Administrative Law* Princeton Publishing Co (2003) 9.

<sup>262</sup>*Garba*, 413, 442.

<sup>263</sup>See Obaseki JSC (in *Garba*) 440.

<sup>264</sup>As above 440.

<sup>265</sup>*Garba* (as above) 439.

<sup>266</sup>The Court in arriving at this decision relied on authorities of *R and R v St John's College, Cambridge* (1693) 4 Mod 233. See also *Casson and Another v University of Aston in Birmingham* (1983) 1 All ER 88; Peter Smith 'The exclusive jurisdiction of the university Visitor' (1981) 97 Law Quarterly Review 610, 647.

Section 36(4) of the 1999 Constitution of Nigeria provides that criminal offences shall only be heard before a court or a tribunal. Thus, the Supreme Court in *Garba and others v University of Maiduguri*<sup>267</sup> considered criminal allegations of wilful destruction of property, arson, looting and assaults against the appellants and held per Obaseki JSC as follows: ‘Where obvious cases of breaches of our criminal and penal laws have taken place, the authorities of the university are not empowered to treat the matter as an internal affair.’<sup>268</sup>

The Court then held that the fundamental right of the appellants to fair hearing within a reasonable time by a court had been violated by their being punished for criminal offence without a preceding trial and conviction by a court.<sup>269</sup>

The University of Lagos Act vests disciplinary powers in respect of staff<sup>270</sup> and students<sup>271</sup> in the university’s administrative tribunal. The administrative tribunals of Nigerian universities are autonomous by the law establishing each university.

I consider the plethora of cases on this principle and submit that exercise of disciplinary autonomy of the university is subject to conditions. The pre-conditions are to first conduct trial before a court and to secure the court’s verdict, the university can then act on the same.<sup>272</sup>

In line with the disciplinary autonomy of a university, while a staff or student has been handed over to the police for investigation and possible trial, the university should be able to exercise its disciplinary authority on the case.

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<sup>267</sup>*Garba and others v University of Maiduguri* (1987) Law Reports of the Commonwealth (Constitutional and Administrative Law Reports) 413, 432: (1986) 1 NWLR pt 18. See also Ese Malemi, 9.

<sup>268</sup> Underlining is mine for emphasis.

<sup>269</sup>Obaseki JSC (in *Garba*), 585.

<sup>270</sup>See Cap U9, Laws of the Federation of Nigeria, 2004, particularly sections 18 and 19.

<sup>271</sup>Section 20. Section 3(d) of the University of Maiduguri, Act U10, Law of the Federation of Nigeria (LFN), 2004 vests in the university the power to discipline members of the university, which include staff and students. See also section 4 (1)(d) of the University of Lagos, Act U9 LFN, 2004.

<sup>272</sup>See *Garba and Others v University of Maiduguri*(1987) Law Reports of the Commonwealth 413 per Obaseki JSC 440.

In *Abia State University v Anyaibe*,<sup>273</sup> the respondent was alleged of assaulting two students on the university campus, he denied the allegation before the University Investigating Panel. He was nonetheless, subsequently expelled. The trial court had earlier set aside his expulsion as being invalid and had ordered his re-admission to the University. On the University's appeal, the Court of Appeal affirmed the trial court's judgment as it held that assault qualified as an offence under section 252 of the Criminal Code. The Court held further that Investigating Panel of the University did not qualify as a court of law or judicial tribunal having powers to try the respondent for crime. Katsina-Alu JCA buttressed on compliance with constitutional provisions when he held:<sup>274</sup>

The issue here is not whether the respondent was afforded the opportunity to defend himself before the panel, but whether the panel had the competence to hear and determine a criminal charge accusation against the respondent.<sup>275</sup>

The Supreme Court earlier in *Sofekun v Akinyemi*<sup>276</sup> held that once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accusers can be ventilated in public and where he would be sure of getting a fair hearing.

On the strength of the constitutional provisions above, the appearance of guilt, which can satisfy this section, is measured by the quantum of proof as laid down by law. It is for this reason that guilt in criminal matters is left for the ascertainment of courts of law or tribunals established by law.

This principle of law is not peculiar to Nigerian Universities; it applies to professional bodies as well. In *Denloye v Medical and Dental Practitioners Disciplinary Committee*,<sup>277</sup> disciplinary tribunal found the appellants guilty of five infamous conducts in professional capacities. The Supreme Court nullified the holdings of the Tribunal as it

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<sup>273</sup>*Abia State University v Anyaibe* (1996) 3 NWLR Pt 439 CA, 646.

<sup>274</sup> As above, 667.

<sup>275</sup> Underlining is mine for emphasis.

<sup>276</sup>*Sofekun v Akinyemi* (1980) 5 - 7 SC 1, 18.

<sup>277</sup>*Denloye v Medical and Dental Practitioners Disciplinary Committee* (1968) ANLR 298, See also *Legal Practitioners Disciplinary Committee v Gani Fawehinmi* (1983) 2 NWLR 414. See also Justus

had no jurisdiction to try misconduct, which is punishable as a crime under the Criminal Code.

Criminal allegations arising in matters before quasi-judicial bodies must as such be resolved through legal process.

In *Judicial Service Commission Cross Rivers & Other v Young*,<sup>278</sup> there were the allegations that the respondent tampered with the file relating to the Estate of Chief EO Efiom and did not render account of the Estate from January 2000 to February 2001. The Court per Aka'ahs JSC adopted the authority of *Garba v University of Maiduguri* to hold that there was criminal imputation, which should be resolved through legal process.

On the authority of *Esiaga v University of Calabar & 2 others*,<sup>279</sup> university's power to maintain discipline on commission of crime appeared to be restored.<sup>280</sup> Belgore JSC held:<sup>281</sup>

If the act of the student amounts to crime, the normal report should be lodged with the police but this will not preclude the university exercising its power under its statute to punish misconduct by any student.

What the university usually does is to suspend the accused person standing trial pending the determination of his case. This the university does to maintain peace and tranquillity on the campus and to ensure the accused is not around to tamper with documentary evidence in the case.

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Sokefun 'Enforcement of human rights' in Justus Sokefun (ed) *Issues in constitutional law and practice in Nigeria* (2002) 314.

<sup>278</sup>*JSC Cross Rivers & Other v Young* (2013) 12 SCM 98.

<sup>279</sup>*Esiaga v University of Calabar & 2 others* (2004) 3 SCM 61.

<sup>280</sup> I however contend that this case should not be considered as having conferred jurisdiction on domestic tribunal in respect of misconduct having criminal element. On an allegation of being in possession of items used by secret cult members, the appellant was only suspended pending the constitution of an investigative committee. The culprit sought the court to set aside the suspension order on the basis that domestic tribunal lacked jurisdiction on misconduct with criminal elements. The court refused to grant the order as it held that the issue of misconduct having criminal element did not arise. The Court held that the suspension order was not a sanction but a mere administrative step to investigate the allegation. For me, the court's decision had nothing to do with jurisdiction on criminal conduct.

<sup>281</sup>*Esiaga*, 9, 80.

Nonetheless, the disciplinary autonomy of the university in the circumstance is at times set aside on the strict application of the provisions of the Constitution. In the case of *Folayan v Obafemi Awolowo University*,<sup>282</sup> three students who were children of a member of staff of the university were suspended for beating up two lecturers and a security man. The Court overturned their suspension because they were suspended on a criminal allegation, which could only be adjudicated upon by the courts of the land.

I submit that order of suspension is a residuary power of the university, which should not be set aside by the court. The Court should rather affirm suspension order at least for peace to reign in the university.

Nwauche and Nwobike refer to Akin Oyebode's apprehension on disciplinary helplessness of universities on the literal principle of interpretation, which the court affirmed in Garba's case:<sup>283</sup>

A situation where students are rusticated or expelled for acts of indiscipline or misconduct only for them to re-surface on the campus within hours, brandishing interlocutory injunctions to the cheers and jeers of their confederates is not only dysfunctional but totally inimical to security and sanity within our universities. A way must be sought to release university chief executives from this encumbrance by providing in the law on university autonomy that disciplinary cases should terminate within the university.

This lopsided position of the law explains the increasing frequency with which Nigerian universities lose cases under judicial review. I A Abdulkadir then remarks:<sup>284</sup>

It seems, however, always that the law courts almost invariably take their decision based on legal technicality to free the erring student and staff but never seem to look for legal technicality to discipline the erring student or staff.

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<sup>282</sup>(Unreported suit no HIF/MISC.13/88) See also Nwauche and Nwobike 332.

<sup>283</sup>Akin Oyebode, a professor of law and the then Vice Chancellor of University of Ado Ekiti 'Legal imperatives of university autonomy' Tuesday 11 December, *The Guardian* (Nigeria) 85. Being the text of a lecture delivered at the Third National Training Programme for Senior University Managers (NATPSUMA III) at Enugu. Lecture cited in Nwauche & Nwobike 332.

<sup>284</sup> See IA Abdulkadir in his paper as Executive Secretary of the National Universities Commission, 'Executive perspectives on the development of the Nigerian University system, NUC Publication, 1994, 46, 47.



The Incidental curtailment of disciplinary powers of the universities as above compromises discipline in the university. It also explains the rot in the Nigerian University by way of moral decadence. Lack of disciplinary autonomy threatens the institutional autonomy to realize objects of the university. I align with Yetunde Adesanya (J) who submits that the unfolding culture of indiscipline on campuses of Nigerian universities is a drawback to the attainment of human development, for which such bodies are set up.<sup>285</sup>

The essence of this section and chapter in the thesis is captured in the genuine concern and apprehension of indiscipline by the trio of Akin Oyeboade,<sup>286</sup> I A Abdulkadir,<sup>287</sup> and Yetunde Adesanya (J).<sup>288</sup> The argument is that for lack of disciplinary autonomy of the universities as above captured, there is a regime of indiscipline in the universities. This situation now compromises on the institutional autonomy to realize universities' object of teaching, research and learning for nation's development.

### ***Residual criminal jurisdiction***

I consider the residual criminal jurisdiction as the jurisdiction that literal interpretation concedes to the domestic tribunal of the university. I argue that notwithstanding the clear constitutional provisions, the university whose member(s) are the culprits, and the university as venue where offensive acts take place deserves to have at least residual

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<sup>285</sup> Justice Yetunde Adesanya of High Court of Lagos State, Nigeria, as such advocates a visionary, planned and responsive administration which to her promotes the development of society. See foreword to Ese Malemi *Administrative Law* (2008) xi.

<sup>286</sup> Akin Oyeboade, a professor of law and the then Vice-Chancellor of University of Ado Ekiti 'Legal imperatives of university autonomy' Tuesday 11 December, *The Guardian* (Nigeria) 85. Being the text of a lecture delivered at the Third National Training Programme for Senior University Managers (NATPSUMA III) at Enugu.

<sup>287</sup> See I A Abdulkadir in his paper as Executive Secretary of the National Universities Commission, 'Executive perspectives on the development of the Nigerian University system, NUC Publication, 1994, 46, 47.

<sup>288</sup> Justice Yetunde Adesanya of High Court of Lagos State, Nigeria, as such advocates a visionary, planned and responsive administration which to her promotes the development of society. See foreword to Ese Malemi *Administrative Law* (2008) xi.

criminal jurisdiction. I also support this position with provisions of the law establishing the university as it establishes disciplinary autonomy for the university.

This development now introduces a matter of necessity. This is the survival streak for the university, if indiscipline will not wipe out the university system.

The university should play a waiting game while criminal litigation goes on in the court. I contend that order of suspension in appropriate cases should hold simultaneously with trial in court.<sup>289</sup> The court in *Folayan v Obafemi Awolowo University* set aside the University's sanction of suspension order in the circumstances.<sup>290</sup> The Supreme Court two years after, in *Ayewa v University of Jos*<sup>291</sup> however affirmed the right of the university to suspend a student pending investigation.

There are however authorities to the effect that suspension order may hold concurrently with court proceedings. The Supreme Court in *Esiaga v University of Calabar*<sup>292</sup> held that a hearing need not precede a suspension, since it was a temporary measure pending the setting up of appropriate committee on the matter.

The Court of Appeal in *Akinyanju v University of Ilorin*<sup>293</sup> built on this principle when it held that the act of suspension before investigation was not a breach of fair hearing. The court held further that suspension was an administrative act intended to ensure good and stable administration of the university.

*Esiaga v University of Calabar & 2 others*,<sup>294</sup> appears to restore higher institutions' power to maintain discipline on commission of crime. Belgore JSC emphasised on disciplinary autonomy of the university thus:<sup>295</sup>

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<sup>289</sup> University's administrative tribunal is then expected to act upon the court's verdict. See Obaseki JSC in Garba, 438.

<sup>290</sup> *Folayan v Obafemi Awolowo University* (Unreported suit no HIF/MISC.13/88).

<sup>291</sup> *Ayewa v University of Jos* (2000) 6 NWLR (Pt 659) 142.

<sup>292</sup> *Esiaga v University of Calabar & 2 others* (2004) 3 SCM 61; (2004) 7 NWLR (Part 872) 366.

<sup>293</sup> *Akinyanju v University of Ilorin* (2005) 7 NWLR (Pt 923) 87.

<sup>294</sup> *Esiaga v University of Calabar & 2 others* (2004) 3 SCM 61.

If the act of the student amounts to crime, the normal report should be lodged with the police but this will not preclude the university exercising its power under its statute to punish misconduct by any student.

I submit that suspension order is a residuary power of the university after lodging complaint with the police. This gives a big relief to the universities to maintain peace and orderliness while criminal proceedings go on in the court. Nonetheless, the universities should not abuse suspension of its members.<sup>296</sup>

Another aspect of residual jurisdiction of the university is for the university to try a culprit outside the criminal aspect of the misconduct. Thus, in the *Institute of Health Ahmadu Bello University Hospital Management Board v Mrs Jumair L Anyip*,<sup>297</sup> the appellant's disciplinary committee investigated the allegation of theft of expired drugs and was found not culpable. The institution nonetheless did not reinstate her back to her job.<sup>298</sup>

On a case of stealing of bags in an examination, under a residual jurisdiction, a culprit may be tried before the university's disciplinary board for disrupting on-going examination.

For the university to be able to exercise residuary disciplinary power, attempts are being made to include domestic tribunal of the university in the definition of 'a law court' and 'a tribunal.'

Oputa (CJ as he then was) in *Onuoha v Okafor*<sup>299</sup> defines the term 'a court' or 'a tribunal established by law' as one usually used to indicate a person or body of persons

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<sup>295</sup> *Esiaga v University of Calabar* (2004) 3 SCM 61, 80.

<sup>296</sup> An abuse is a situation where a member of the university is suspended on the basis of personal vendetta.

<sup>297</sup> *Institute of Health Ahmadu Bello University Hospital Management Board v Mrs Jumair L Anyip* (Anyip) (2011) 5 SCM 1.

<sup>298</sup> The plaintiff / respondent filed an action in the High Court to contest her dismissal from service. The court dismissed her claims. Her appeal to the Court of Appeal was however successful. The defendant / appellant appealed to the Supreme Court. The Court set aside the appeal on the basis that the dismissal was based on an unproven allegation of theft.

<sup>299</sup> *Onuoha v Okafor* (1985) 6 NCLR 503, 509.

exercising judicial functions by Common Law, statute, patent, charter, custom etc. Okonkwo explains the attributes of a ‘tribunal established by law’ as follows:<sup>300</sup>

- a) a body has power to take decisions which can affect the rights and obligations of others; and
- b) that power is specifically conferred by statute, that body is a tribunal established by law.

Okonkwo however concludes that when a vice-chancellor is exercising disciplinary powers conferred on him by the University Act, he is a tribunal established by law.

I consider the various submissions on what ‘a court’ and ‘a tribunal established by law’ mean and do submit that the position of Okonkwo<sup>301</sup> aligns with disciplinary autonomy of the university. On the basis of this, a university is better able to enforce discipline in the institution. I submit that the ‘liberal interpretation’ which Okonkwo advocates supports disciplinary autonomy for the university.<sup>302</sup>

There are other powers of the university after prosecution. With a *nolle prosequie*,<sup>303</sup> the prosecution is not allowed to take its full course. It is truncated mostly for political exigencies and it operates as an external control on the affairs of a university. The guilt of accused person is thus not established before the case is withdrawn. A *nolle* may arise when the government for instance shows interest in the criminal charge hanging on the neck of a party supporter who is incidentally a member of the university.

There is also the residual jurisdiction to punish where the court has confirmed culprit to be innocent. In *Garba & Others v University of Maiduguri*, Obaseki JSC held:<sup>304</sup>

Even where a student has been adjudged by a court as not guilty of the offence charged, the university acting by due process can satisfy itself of the commission of a misconduct which attracts even the severest of disciplinary measures.

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<sup>300</sup> CO Okonkwo ‘Discipline, Nigerian Universities and the law (1996) Nigerian Institute of Advanced Legal Studies 38.

<sup>301</sup> Okonkwo, as above.

<sup>302</sup> Okonkwo, as above.

<sup>303</sup> See Holt CJ in *Goddard v Smith* 6 Mod 261, see also Olayinka *Rudiments of Nigerian Law*, 75.

<sup>304</sup> *Garba*, 574.

As such, an institution exercises residual jurisdiction so as to maintain an environment conducive to the realisation of its objects.

### *Admission of guilt*

The Supreme Court in *Garba and Others v University of Maiduguri* applied the literal interpretation to the effect that the guilt of a culprit must be established before ‘a court of law’ or ‘a tribunal established by law’.<sup>305</sup>

I consider whether the rule will hold where there is admission of commission of the offence. In *Raymond Dantoe v Civil Service Commission, Plateau State* (Dantoe),<sup>306</sup> the appellant was a member of staff of the Plateau State Civil Service and together with others was accused of theft. It was reported that the appellant’s share had been recovered from him. He was requested to explain why disciplinary steps would not be taken against him. His reply to query and oral presentation before disciplinary committee were not satisfactory. His appointment was then terminated.

The Supreme Court referred to Section 33(1) and (4) of the 1979 Constitution to the effect that where a person who is charged with a criminal offence and is disputing the accusation, sanction must be predicated by a formal trial in the ordinary courts.<sup>307</sup> The Supreme Court upheld the trial court’s refusal to set aside the termination from service, as the appellant’s affidavit evidence did not deny commission of the offence.

In the circumstances, I submit that the rule that the guilt of a culprit must be established before ‘a court of law’ or ‘a tribunal established by law’ will not hold where there is admission of commission of the offence. The Supreme Court per Karibi-Whyte then distinguished between findings to be made on a trial of criminal offence from a finding on an admission of the commission of criminal offence.<sup>308</sup>

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<sup>305</sup> Garba, 413.

<sup>306</sup> *Raymond Dantoe v Civil Service Commission, Plateau State* (2001) 5 SCM 59.

<sup>307</sup> Dantoe, 73.

<sup>308</sup> Dantoe, 59, 74, 75.

The former involves a trial, the latter does not. An administrative body which acts on the admission of guilt by the accused has not tried the accused, has not violated the provisions of the constitution and cannot be said to have usurped the constitutional jurisdiction of the court. In the instant case the finding of the Court of Appeal is that the respondent merely acted on the admission of the appellant.

I consider the admission of guilt and submit that it extracts the disciplinary autonomy of the university from the constitutional provisions and the confines of the law courts. I now consider the adoption of the liberal interpretation, which by implication operates on a zero tolerance for indiscipline.

#### **4.4.2 Liberal interpretation**

I reflect on the experienced oddity in the literal interpretation, which necessitates the ‘minor offences’ and ‘serious offences’ yardstick as a basis to confer criminal jurisdiction on domestic tribunal. Liberal interpretation aims at conferring jurisdiction on the visitor on domestic parlance to forestall lawlessness in universities. The courts and academic writers have thus developed ‘the serious crime’ and ‘minor crime’ parameters as a basis of conferring criminal jurisdiction on domestic tribunal.

Section 36(4) of the 1999 Constitution of the Federal Republic of Nigeria 1999 provides that whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. The ‘the serious crime’ and ‘minor crime’ parameters are not the making of the Constitution.

The focus of the Constitution is ‘a charge with a criminal offence.’ My aim however is to forestall anarchy in the university. This is because the judicial review of domestic disciplinary proceedings most times restores staff and students who have been dismissed for misconduct back to the university. Such ‘returnees’ become ungovernable and continue to show disrespect to constituted authorities.

Counsel to the Respondent, Rotimi Williams SAN, in *Garba and others v University of Maiduguri*<sup>309</sup> condemned the inability of the respondent to enforce discipline on criminal misconduct. He argued that one of the built-in-authorities in the university is the visitor and that the courts had always recognized the authority of the visitor in matters of discipline. To him, whether a student who has matriculated should retain his status or should be suspended or dismissed because of discipline is an internal matter of a university.

On the need to protect the disciplinary powers of the visitor, Adediran expresses his apprehension over minor criminal offences being charged to court when such should be handled in-house. To the writer, suspension for a semester would reform the culprit in cases like affray, mere assault, stealing of pants, singlet and books and examination malpractices.<sup>310</sup>

Uwais JSC (as he then was) was as such prepared to distinguish between minor and serious offences. According to him:<sup>311</sup>

However, this does not mean that every trivial or minor offense committed by students becomes the subject of prosecution in a court of law. It is the responsibility of the vice-chancellor, in the exercise of his powers to distinguish between serious and minor acts of misconduct, which have given rise to serious or minor criminal offences.

The holding of his Lordship is in tune with the postulations of Okonkwo as it can be safely argued that the domestic tribunal of the university as such has criminal jurisdiction. I submit that liberal interpretation also protects the individual academic freedom of the staff and students. With disciplinary autonomy on criminal matters, cases against staff and students are handled with dispatch and they can soon go back to their academic programmes.

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<sup>309</sup> (1987) Law Reports of the Commonwealth (Constitutional and Administrative Law Reports) 413, 432. (1986) 1 NWLR pt 18. See also Ese Malemi 9.

<sup>310</sup> Adediran 'Judicial overthrow of universities disciplinary power: A comment on *Garba v University of Maiduiguri* (1990) *The Jurist* 51. See also Nwauche & Nwobike 331.

<sup>311</sup> *Garba v University of Maiduigiri* (1986) A.N.L.R 149, 217. See also Nwauche & Nwobiko 315.

The challenge embedded in the liberal interpretation is however, the lack of precision on what qualifies as ‘minor’ and ‘serious offences.’ In *Garba and Others v University of Maiduguri*,<sup>312</sup> the Supreme Court per Uwais JSC, alluded to this omission when he held thus:

The acts of misconduct which can, on one hand, be regarded as purely within the domestic affairs of a University and therefore, not calling for prosecution in a court of law and, on the other hand, crimes against the public, which should be prosecuted, is indeed very difficult to discern.

Uwais’ learned brother in the same case expressed his fears. Eso JSC conceded that the visitor’s powers on domestic parlance forestall lawlessness in universities. He however concluded that the great problem has been where to draw the line between domesticity and general law of the land.<sup>313</sup>

I round off on the account that the observed lacuna in legal provisions, which is to draw the line between domestic matters and matters falling under law of the land still robs the university of its criminal jurisdiction. The law courts in the circumstances of this omission apply the provisions of the Constitution in favour of the law courts.

#### **4.4.3 Pragmatic interpretation.**

In this column, I develop the pragmatic interpretation as the efforts of the courts in seeing that justice is done without any undue technicality. The feasibility in the approach by courts in curing indiscipline, I see as complementary to realisation of objects of the university. Trial before the law court is regarded under pragmatic interpretation as superfluous, if a culprit was given fair hearing before a domestic tribunal.

Mischief rule is the antecedent of pragmatic rule of interpretation. The mischief rule of interpretation maintains as sacrosanct, the purpose, cure of, solutions to certain

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<sup>312</sup>*Garba and Others v University of Maiduguri* (1987) Law Reports of the Commonwealth (Constitutional and Administrative Law Reports) 413, 463.

<sup>313</sup>Garba 413, 450.



irregularities or problems upon which an enactment being sought to be interpreted was made. Application of this rule of interpretation cannot sacrifice or compromise the purpose of making an Act and thus the Act has to be construed in such a way to eradicate the mischief and to uphold the remedy.<sup>314</sup>

The interpretation of Section 36(1)(4) of the 1999 Constitution is in issue in this chapter. The courts believe that a person may only enjoy fair hearing before a court or other tribunal established by law which is independent and whose members are impartial. I argue that the mischief, which the section seeks to cure, is in-equity in the nation. It seeks a nation where the rule of law operates, and where peace and tranquillity obtain. The literal rule of interpretation, which the courts substantially apply over-protect the rights of culprits and compromises on the nation's peace and tranquillity.<sup>315</sup>

Pragmatic rule allows for fair hearing, notwithstanding that it is before a domestic tribunal. No university needs to effect sanctions such as death penalty, imprisonment, payment of fine<sup>316</sup> on its members before it can realise its objects. All that a university requires is to be able to enforce sanctions prescribed in its rules and regulations on erring members of staff and students. Such sanctions applying to members of staff include; advice or counsel, oral warning, written warning, withholding of confirmation of appointment, withholding of annual salary increment, withholding of promotion, demotion, suspension, termination and dismissal. Sanctions applying to the students include warning, either oral or written, exclusion from the use of certain facilities like library, hostel, sporting equipments, cancellation of examination papers, suspension and expulsion from the university. Importantly, the best desire of the university will be to exclude a notorious member from the university system.<sup>317</sup>

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<sup>314</sup> See OF Olayinka *Rudiments of Nigerian Law* Nolco Publishing Co (2008) 44.

<sup>315</sup> The enjoyment of rights by the culprits should not be at the expense of another person or the nation at large.

<sup>316</sup> These are sanctions prescribed by the Criminal Code Act, Cap C38 LFN, 2004 and the Penal Code (Northern States) Federal Provisions Act, Cap P3, LFN, 2004.

<sup>317</sup> This will protect the system from collapse and shall serve as deterrence to others.

For me, enforcement of discipline in-house, coupled with compliance with due process protects culprit's right to fair hearing and promotes discipline in the university and the nation.

Cross<sup>318</sup> supports the application of mischief rule where application of any other rule would produce result, which will be contrary to the purpose of the legislation in question. In *Onyeanusu v Miscellaneous Offences Tribunal Owerri*,<sup>319</sup> the Supreme Court considered what mischief in the provisions of section 443(a) of Criminal Code Act was cured in a latter legislation, that is, Section 3(4)(a) of Decree No 20 of 1984 as amended.

The provisions of the Decree substituted 'any public building, dwelling house, office' in place of 'any building' provided for under the Criminal Code Act. The Supreme Court held that the mischief against which section 3(4)(a) of Decree was directed was to make it clear that 'any building' means any public building or any private building.

In keeping as sacrosanct the fair hearing demands of Section 36(1)(4) of the Constitution, the legal requirement that trial before a court must first hold, to establish guilt of an accused person is dispensed with. The courts defer to the university's investigative committees in finding the culpability of the member of the university. A member of the university who has a case to answer is invited before the disciplinary committee. He is alleged and he has to make his defence. Reports or recommendations of the disciplinary committee go to the vice-chancellor in respect of students. In respect of disciplinary committee for members of staff, recommendations of sanction go to the visitor through the council.

On allegations of criminal acts, where the accused person admits commission of the offence, I examine whether trial in court is still essential. The Court of Appeal in

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<sup>318</sup> Cited in OF Olayinka *Rudiments of Nigerian Law* Nolco Publishing Co (2008) 45.

<sup>319</sup> *Onyeanusu v Miscellaneous Offences Tribunal Owerri* (2002) 9 SCM 183. Olayinka (as above) 44.

*Dangote v CSC Plateau State*,<sup>320</sup> affirmed that an admission of the alleged crimes dispensed with due process.

In *Yusuf v Union Bank of Nigeria*<sup>321</sup> the Supreme Court affirmed that the mere allegation of a crime was not enough to oust the jurisdiction of the domestic tribunal. It suffices that an employee has been heard before he is summarily dismissed.

In *Federal Civil Service Commission & Others v J O Laoye*,<sup>322</sup> the appellant was found guilty of insubordination and fraudulent claim of money; he claimed overtime allowance when he was never on duty to work during the normal office hours. He claimed refund for a treatment in hospital, which never took place. He thus forged a doctor's certificate.

Laoye's case falls on all fours with *Mike Eze v Spring Bank PLC*.<sup>323</sup> The appellant was dismissed for gross misconduct on violation of the foreign exchange regulations in remitting foreign exchange to his wife who was abroad. The Court held it was not necessary to first wait for prosecution of the criminal charge before proceeding to discipline him.<sup>324</sup>

From the cases above, there is no reason to invite the police neither to investigate obvious facts nor to subsequently proceed to charge the same to court.

In *Raymond Dantoe v Civil Service Commission, Plateau State*,<sup>325</sup> the appellant was a member of staff of the Plateau State Civil Service and together with others was accused of theft. It was reported that his share of stolen property had been recovered from him. In this case, the literal interpretation manifested as the Supreme Court refused to reckon with recovered share of stolen property. Recovery of stolen property from the accused

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<sup>320</sup>*Dangote v CSC Plateau State*, (1995) 7 NWLR (Pt. 106) 652.

<sup>321</sup>*Yusuf v Union Bank of Nigeria* (1999) 6NWLR (Pt 457) 632.*FCSC v Laoye* (1989) 2 NWLR (pt106) 652.The Nigerian Court of Appeal in *University of Agriculture Makurdi v Jack* [2000] 11 NWLR (pt. 679) 658, 677 678; (1995) 7 NWLR (Pt. 106) 652.

<sup>322</sup>*Federal Civil Service Commission & Others v JO Laoye* (1989) 2 NWLR(Pt 106) 652.

<sup>323</sup>*Mike Eze v Spring Bank PLC* (2011) 11-12 Pt 1 SCM 93, see Mahmud JSC, 107.

<sup>324</sup>*Mike Eze* (as above) 106, 110.

<sup>325</sup>*Raymond Dantoe v Civil Service Commission, Plateau State* (2001) 5 SCM 59.

person, I submit should be taken as a confirmation of commission of a crime. The Supreme Court here was simply saying that even with an admission, the Court was the right place to determine guilt in criminal cases.

There is however one benefit of applying this principle. Where the suspect has been harassed, intimidated and coerced into admitting guilt, that admission, as a basis of conferring domestic jurisdiction would not serve the interest of justice.

In *Baba v Nigerian Civil Aviation Training Centre*,<sup>326</sup> the appellant was heard in-house, before his job was terminated. The rules of natural justice were observed. Bello CJN in the case held that an administrative panel is not bound to follow the procedure and practice of the court of law. He held that rules of natural justice must be observed. He concluded that opportunity of being heard before an administrative panel as against law court or a tribunal is not a denial of natural justice.

I submit that the case of *Baba v Nigerian Civil Aviation Training Centre*,<sup>327</sup> is one authority decided under the pragmatic interpretation. This principle aligns with the disciplinary autonomy of universities. I observe that the universities only need to overhaul their disciplinary processes.

The case of *Dudusola v Nigeria Gas Company Limited (Dudusola)*<sup>328</sup> is another authority to the effect that trial in a court may be dispensed with before terminating an employee on a criminal allegation.

The statement of claim of the plaintiff / appellant was that he was alleged of stealing certain items missing from the warehouse of which he was a supervisor. He claimed that on account of that, he was recommended for dismissal. The appellant however contended

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<sup>326</sup>*Baba v Nigerian Civil Aviation Training Centre (Baba)* (1991) 5 NWLR (Part 192) 388. See also *Dudusola v Nigeria Gas Company Limited* (2013) 7 SCM 24, 33.

<sup>327</sup>Baba (as above)

<sup>328</sup>*Dudusola v Nigeria Gas Company Limited* (2013) 7 SCM 24.

that his allegation was not subjected to a criminal process to determine his guilt before relieving him of his job.

The trial court entered judgement in favour of the plaintiff / appellant. The Court of Appeal set aside the judgement and dismissed the plaintiff's claim. The plaintiff / appellant further appealed to the Supreme Court, which held that the appellant did not prove that termination of his employment was based on an unproven criminal allegation.

The Supreme Court per Kumai Aka'ahs in lead judgement relied on the authority of *Baba v Nigerian Civil Aviation Training Centre*<sup>329</sup> to re-affirm that the observance of the rules of natural justice suffices, contrary to the court trial as a pre-requisite to justice.<sup>330</sup>

The Court in *Dudusola*<sup>331</sup> held that an employee who had been charged with a criminal offence could have his job terminated without court trial, provided the rules of natural justice were complied with.

From this line of authorities, I submit that having to subject an obvious case of commission of a criminal act to police investigation and eventual trial before court is superfluous. Trial before a domestic tribunal, in due observance of rules of natural justice in the circumstances should suffice. This is a pragmatic development in the dispensation of justice. Application of this principle aligns with my understanding of disciplinary autonomy of universities. If this position is attained, the disciplinary challenge in the realisation of objects of the universities becomes inconsequential.

I now visit the lacuna in legal provisions, which make the courts to apply different principles of law on similar facts.

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<sup>329</sup>Baba, 388. The rules of natural justice were observed before the services of the appellant were terminated. Bello CJN in the case held that an administrative panel is not bound to follow the procedure and practice of the court of law. He conceded that rules of natural justice must however be observed. He concluded that Opportunity of being heard before an administrative panel as against law court or a tribunal is not a denial of natural justice.

<sup>330</sup> See *Dudusola*, 33.

## 5 Conflict in provisions of the law

In this section, I consider the right to fair hearing as individual academic freedom of staff and students of the university. I look at the protection of the right through relevant legislations such as Act of a university and the Constitution. There is discrepancy in the provisions and I consider whether in the circumstances the constitutional provision should be upheld.

Every university has provisions in its Act on enforcement of discipline. The University of Ibadan Act,<sup>332</sup> for instance, provides in Section 10(1)-(7) for discipline of staff and section 11 provides for discipline of students. It is however observed here that the statutory provisions above conflict with constitutional provisions, which concede disciplinary powers in the country (including the universities), to law courts and tribunals.<sup>333</sup>

Constitutional provisions<sup>334</sup> vest powers on law courts to adjudicate on civil and criminal matters. This has been invoked by law courts to disqualify universities' disciplinary committees from investigating and hearing acts of members of the academic community particularly where such acts have criminal elements.<sup>335</sup> Section 6(1)(2) of the Constitution vests judicial powers in the courts at the Federal and the States respectively. It is my contention that the sub-sections operate as ouster provisions<sup>336</sup> as they operate to stop universities' disciplinary committees from enforcing discipline.<sup>337</sup>

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<sup>331</sup> *Dudusola v Nigeria Gas Company Limited* (2013) 7 SCM 24, 33.

<sup>332</sup> Cap U6, Laws of the Federation of Nigeria, 2004. The University of Lagos Act, Cap U9, Laws of the Federation of Nigeria, 2004, makes similar provisions on discipline of staff in section 18 (1)-(5) and discipline of students in section 20(1)-(8). The Technical University, Ibadan, 2012 Laws of Oyo State, Nigeria in sections 30 and 31 vest disciplinary powers over students in the Vice-Chancellor. Every university in Nigeria has a replica of these legal provisions.

<sup>333</sup> See sections 6; 36(1)(4) of the 1999 Constitution.

<sup>334</sup> As above.

<sup>335</sup> See *Garba*, 550.

<sup>336</sup> OF Olayinka 'Impeachment of executive under the Nigerian Constitution: A review of the Supreme Court decision in *Inakoju v Adeleke*' (2009) *Journal of the Faculty of Business and Communication Studies The Polytechnic, Ibadan* (2009) June & December 13(1&2) 178.

<sup>337</sup> See *Garba v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550. Olayinka considers the issue of adherence to constitutional provisions and submits that the judiciary as the compliant organ of government

*Esiaga v University of Calabar & 2 others*,<sup>338</sup> appears to restore university's power to maintain discipline on commission of crime. Belgore JSC held:<sup>339</sup>

If the act of the student amounts to crime, the normal report should be lodged with the police but this will not preclude the university exercising its power under its statute to punish misconduct by any student.

What the court conceded however was residual jurisdiction to the university. Judicial authorities have however established that the enforcement of suspension under residual jurisdiction is not automatic.<sup>340</sup>

The interpretation of section 36(4) of the constitution most times do not support university disciplinary autonomy. Consequently, in the enforcement of discipline, simple act of a student stealing lecture note of his colleague or lecturer will have to be investigated by the police and tried in law court.

The pressing desire to carry out this research is borne out of the fact that the statutory provisions vesting disciplinary powers in the domestic tribunal can be said to be ineffective as they conflict with the provisions of the Nigerian Constitution.<sup>341</sup> The area of conflict in jurisdiction was however captured by Uwais JSC.<sup>342</sup> The Law Lord examined the act of misconduct that should be dealt with under section 17 of the University of Maiduguri Act.<sup>343</sup> Exercise of disciplinary powers is domestic concern and

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is most equipped to ensure that the principles of constitutionalism are held sacrosanct. See OF Olayinka (2009)181.

<sup>338</sup>*Esiaga v University of Calabar & 2 others* (2004) 3 SCM 61.

<sup>339</sup>at p 9 and 80

<sup>340</sup> In *Folayan v Obafemi Awolowo University*, the court overturned the suspension of three students. They were alleged of beating two lecturers and a security man. The court held that criminal allegation could only be adjudicated upon by the courts of the land. (Unreported suit no HIF/MISC.13/88) See also Nwauche and Nwobike 332.

<sup>341</sup> The position of law in the circumstances is that the University Laws vesting disciplinary powers on the domestic tribunal of the university shall be void, null and of no effect. See section 1(3) Constitution of the Federal Republic of Nigeria, 1999.

<sup>342</sup>*Garba and others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 463. To Eso JSC, 450, the great problem has been where to draw the line. Where does domesticity end, and where does the general law of the land commence?

<sup>343</sup> Section 17(1) of University of Maiduguri Act, Cap 458, 1979 empowers the Vice-Chancellor to enforce discipline on a student found guilty of misconduct. The erring student could as such be suspended or

do not call for prosecution in a court of law. This is in conflict with the provisions of section 36(4) of the 1999 Constitution which prescribes that crimes against the public is beyond domestic concern and should be prosecuted in law court.<sup>344</sup>

Charles Soludo observes the conflicts in provisions of law and loss of disciplinary autonomy. This to him compromises on the state of discipline, with the universities being unable to meet their objectives. He points out that the graduates are unemployable and lack the capacity to collaborate with others in a bid to develop the nation.<sup>345</sup>

Precisely, law courts and tribunals by the provisions of the Constitution have the exclusive preserve to try misconduct, particularly those that have criminal elements in them, even where such arises within a university premises.<sup>346</sup> The extent to which the constitutional provisions concede disciplinary powers to universities is however not clearly defined.<sup>347</sup> The university students in Nigeria, out of the gaps and omissions in the constitutional provisions, do seek recourse to the law courts having not exhausted internal remedy.

Kayode Eso JSC in *Garba and Others v University of Maiduguri*<sup>348</sup> affirmed the visitors powers on domestic parlance vis-a-vis laws of the land. He expressed his discomfort on where domesticity ended and where the general law of the land commenced. The Law Lord<sup>349</sup> adopted the submission of Peter Smith<sup>350</sup> to the effect that the visitor was a private judge. The visitor is involved with purely domestic matters concerning the

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expelled. Sub-section 4 allows the Vice-Chancellor to delegate his powers to a disciplinary board. The provisions of law here do not suggest any external control on powers of the Vice-Chancellor.

<sup>344</sup> Section 36(4) of the 1999 Constitution insists that on an allegation of crime, trial may only be had before a court or a tribunal established by law.

<sup>345</sup> See Rotimi Lawrence Oyekanmi 'How 1999 Constitution retards growth of varsities, others' *The Guardian*, Monday 10 December 2012 8.

<sup>346</sup> Section 22 of 1963 Republican Constitution, Section 33(4) of the 1979 Constitution; Section 36(4) of the 1999 Constitution, see also Supreme Court decision on interpretation of the principle in *Sofekun v Akinyemi* (1980) 5 - 7 SC 1.

<sup>347</sup> The constitution fails to indicate whether concession of disciplinary powers to universities is based on certain criteria, for instance, how serious a misconduct is or whether a conduct amounts to a crime or civil in nature. The Supreme Court per Uwais JSC in *Garba*, 463 alluded to this omission.

<sup>348</sup> *Garba and Others v University of Maiduguri* (1987) *Law Reports of the Commonwealth* 413, 450.

<sup>349</sup> *Garba* (As above)



internal government and management of the foundation and went on to conclude that the visitor would be limited by the provisions setting up and governing the University. Whenever the general laws of the land were involved, like criminal law, he had no jurisdiction whatsoever.<sup>351</sup> The grey area in respect of jurisdiction was however captured by Uwais JSC thus:<sup>352</sup>

(t)he type of misconduct that can be dealt with under section 17 of the University of Maiduguri Act has not been defined by the Act...students are apt to commit and often do commit offences. Such offences, though criminal in nature, can also pass as misconduct in the context of section 17. The difference therefore, between the acts of misconduct which can on one hand, be regarded as purely within the domestic affairs of a University and therefore not calling for prosecution in a court of law and, on the other hand, crimes against the public, which should be prosecuted is indeed very difficult to discern.<sup>353</sup>

There is the need to maintain a balance between the jurisdictional exclusion and the disciplinary autonomy vested by the Act establishing the university. One option is for the courts to interpret the University Acts in line with Constitutional provisions.

In *Nigerian Army v Banni Yakubu*,<sup>354</sup> the Armed Forces Act which curtails right of appeal of members of Armed Forces was held to be in conflict with Constitutional provisions. The Constitution as the supreme law of the nation, the duty on the court in

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<sup>350</sup>PM Smith 'The exclusive jurisdiction of the university visitor' 97 *Law Quarterly Review* 610, 614 (1981).

<sup>351</sup>The above position informs the conclusion drawn by Nwauche & Nwobike when they considered the supremacy provisions of Sections 6(6)b, 251 and 272 of the 1999 Constitution vis-a-vis inconsistent section 12 of the University of Maiduguri Law thus: It is therefore in order to conclude that by this constitutional provision, Nigerian courts have unlimited jurisdiction and Nigerian universities have no exclusive domestic jurisdiction. ES Nwauche & JC Nwobike 317.

<sup>352</sup>*Garba and others v University of Maiduguri*, 463. To Eso JSC, 450, the great problem has been where to draw the line. Where does domesticity end, and where does the general law of the land commence?

<sup>353</sup>Difficulty in determining misconduct which is triable as a domestic affair of an institution and the ones that should be prosecuted in law court was echoed by Nwauche in his review of *Nnamdi Azikiwe University v Okafor*, (1999) 1 NWLR (pt. 595) 116 where the Court of Appeal held that an allegation of examination malpractice amounted to a crime and that the university was precluded from disciplining its student. See ES Nwauche 'Destroying the domestic forum of a university: The Court of Appeal in *Nnamdi Azikiwe University v Okafor*, 1 *Udus Law Journal* 196(2000). See also *Ekundayo v University of Ibadan* (2000) 12 NWLR (pt. 681) 220.

<sup>354</sup>*Nigerian Army v Banni Yakubu* (2013)5 SCM 187, 207.

the circumstances is to interpret or apply the Act in such a way as to bring it in line with the letters and intentment of the constitution.

On this authority, the courts interpret the provisions of law on disciplinary autonomy of university to align with constitutional provisions. The effect is the loss of disciplinary autonomy to the universities. This adversely affects the institutional autonomy to realise the objects of the universities.

I however submit that the way out is the application of pragmatic interpretation. I submit that the Court should concede jurisdictional autonomy to domestic tribunal once the court is satisfied that the culprit had a fair trial.

## **6 Benefits of external control on disciplinary autonomy**

In this section, I examine whether the assured fair trial has a link with judicial review. I consider the requirement of fair trial and investigate whether by judicial review a decision reached can be set aside.

The benefit of external control on disciplinary autonomy is also the positive impact of judicial review over in-house trials. Oputa JSC in *Garba and others v University of Maiduguri*<sup>355</sup> defines a trial as the extraction of questions in dispute or a process by which questions of fact in issue are decided. He observed in the case that the Disciplinary Investigation Panel regarded the appellants as witnesses. The Panel was then wrong in finding that the appellants were the culprits and for recommending them for disciplinary measures. The logical implication, according to the Law Lord, was an awkward situation of finding ‘a witness’ guilty of offences he was not alleged of committing.

### **6.1 Observance of due process**

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<sup>355</sup>*Garba v University of Maiduguri* (1987) Law Reports of the Commonwealth 413, 473. To Oputa, a witness may be found guilty of perjury if he lies, but the central issues of liability or guilt does not attach to witnesses.

In this section, I consider the procedural safeguards towards the protection of individual academic freedom. Section 36 of the 1999 Constitution provides for a right to fair hearing. Subsection (1) provides:<sup>356</sup>

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

In *Judicial Service Commission of Cross River State & Other v Dr (Mrs) Asari Young*<sup>357</sup> Peter-Odili JSC considered provisions of section 36(1) of the 1999 Constitution and its forebears on fair hearing. To her, the courts as well as the other adjudicating bodies like tribunals must act in good faith. They are expected to act fairly by giving the parties before them the opportunity to cross-examine, controvert, correct or contradict any relevant statement prejudicial to their view.

Section 36(6) of the 1999 Constitution provides that in a trial for a criminal offence, a person shall be entitled to;

- a) be informed promptly in the language that he understands and in detail the nature of the offence
- b) be given adequate time and facilities for the preparation of his defence.

It is my submission that on account of checks and balances by each organ of government on the other, the best from each is obtained. The prospect of having unjust administrative decisions or disciplinary sanctions reviewed, keeps the various universities in check and within the context of natural justice.

In the face of decisions that violate students' right to an undisturbed academic programme, Berger and Berger<sup>358</sup> submit that the continued enrolment of students is a

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<sup>356</sup> See also Article 7 of African Charter and Section 35(3)(d) of 1996 Constitution of South Africa.

<sup>357</sup> *Judicial Service Commission of Cross River State & Other v Dr (Mrs) Asari Young* (2013) 12 SCM 98.

<sup>358</sup> Berger and Berger contend that constitutional safeguards do not extend to students in private universities. Berger & Berger, 289, 291.

protected property interest. This, to them is immunised from arbitrary state action.<sup>359</sup> As such, when students face allegations at public colleges and universities, the Constitution shapes the proceedings. Colleges and universities funded by the government need to observe due process in students' disciplinary proceedings.

The Fifth Circuit in *Dixon v Alabama State Board of Education*<sup>360</sup> rejected the denial of due process on the basis that attendance of a university was not a constitutional right. The Court held that the governmental power of expulsion from the College should not be exercised in an arbitrary manner to violate the private interest, which was the right to remain at a student's college of choice.

South Africa is a force to reckon with in respect of judicial review of administrative action. The South African legal system has made provisions in its Constitution and in the Promotion of Justice Administration Act (PAJA)<sup>361</sup> on this subject. Nigeria has none of such, and I here rely on what apply in South Africa as a guide.

The PAJA was made to give effect to the right to administrative justice.<sup>362</sup> In *S v Makwanyane*, Ackermann J considered the constitutional dispensation to project into how to ensure procedural fairness in the following terms:<sup>363</sup>

State action must be such that it is capable of being analysed and justified rationally. The idea of the constitutional State presupposes a system whose operation can be rationally tested against or in terms of the law. Arbitrariness, by its very nature, is dissonant with these core concepts of our new constitutional order.

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<sup>359</sup>This position confirms the right of everyone to education as provided for in Article 17 of the African Charter on Human & Peoples Rights.

<sup>360</sup>*Dixon v Alabama State Board of Education*, 150, 155. See Schweitzer 275.

<sup>361</sup> Promotion of Administrative Justice Act, No 3 of 2000.

<sup>362</sup> PAJA now 'gives effect to' administrative justice rights and empowers courts and, or independent and impartial tribunals to review administrative actions as contained in Section 33 (3) of the Constitution.

<sup>363</sup>*S v Makwanyane* (1997) ZACC 5; 1997 (6) BCLR 759 CC at paragraph 25. Decisions must be rationally related to purpose for which the power was given, otherwise, they are in effect arbitrary and inconsistent with the requirement. See the Constitutional Court in *Pharmaceutical Manufacturers Association in Re Ex parte President of Republic of South Africa* 2002(2) SA 674 CC, paragraph 85. Cora Hoexter 'The future of judicial review in South African Administrative Law' 117 *South African Law Journal* 484, 506-07 (2000) contends that notwithstanding that a particular act does not constitute administrative action, it must comply with the principle of legality and may not be arbitrary or irrational.

Cora Hoexter explains that the basis of courts intervention in administrative matters is found in the rights to administrative justice contained in section 33 of the Constitution.<sup>364</sup> She submits that the section supersedes *ultra vires* provision, provided the action concerned is administrative. She concludes that the PAJA gives effect to administrative justice rights and empower the courts and independent tribunals to review administrative actions based on section 33 (3) of the Constitution.

I establish through decided cases and provisions of the law that on account of checks and balances by each organ of government on the other, the best from each is obtained. The prospect of having unjust administrative decisions or disciplinary sanctions reviewed, keeps the various universities in check and within the context of natural justice. This assures of enjoyment of academic freedom by members of the university.

## 6.2 Attainment of the rule of law

I view the rule of law as one of the benefits of judicial review. With the rule of law, the disciplinary committee will only act by the law without being partial or sentimental. Disciplinary action must be taken in full compliance with applicable statute, law or rule. The position of rule of law in Nigeria is captured in the provisions of section 1(1) of the 1999 Constitution as follows: ‘This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.’

Subsection (2) exemplifies the rule of law properly when it provides that the Country may only be governed by person(s) in accordance with the provisions of the Constitution.

The rule of law to Wade and Forsyth<sup>365</sup> is the conduct of activity within the framework of recognised rules, principles, which restrict discretionary power. AV Dicey<sup>366</sup> classifies the rule of law into absence of arbitrary power, equality before the law and the protection of human rights as well as the constitution being the product of ordinary law of the

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<sup>364</sup>Hoexter (2012) 117.

<sup>365</sup>W Wade & CF Forsyth *Administrative Law* Oxford: Oxford University Press (2009).

land.<sup>367</sup> Olayinka considers the two definitions and the rule of law as the wholesome application of the law and the law alone, devoid of any extraneous considerations like favouritism, nepotism, ethnicism and the like, in administration. Everyone is subject to the law made and not even government functionaries are exempted.<sup>368</sup>

In the South African case of *Minister of Health v New Clicks South Africa (Pty) Ltd* Chaskalson CJ held:<sup>369</sup>

The exercise of all public power is subject to constitutional control and it is the duty of Courts if called upon to do so to determine whether or not power has been exercised consistently with the requirements of the Constitution and the law.

Law is elevated above politics and judges are independent and impartial arbiters protecting citizens' rights and guarding against tyranny and arbitrariness in government.<sup>370</sup>

Judicial review is the exercise of the court's inherent power to determine whether an action is lawful or not and to award suitable relief. For this, no statutory authority is necessary to assume jurisdiction, the court is simply performing its ordinary functions in order to uphold the rule of law. The basis of judicial review is common law.<sup>371</sup> The courts review governmental decisions to check that governmental agencies remain within the powers delegated to them by the legislature.

*E P Iderima v Rivers State Civil Service Commission*<sup>372</sup> is a case on investigation of money stolen from the unit headed by the appellant. An Accountant General set up

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<sup>366</sup>Andrew Venn Dicey Introduction to the study of law of the constitution (1885) Reprinted 1996 as 8th edition. See also Funmilola Tolulope Abioye 'Rule of law in English speaking African Countries: The case of Nigeria and South Africa' Unpublished LLD thesis, University of Pretoria 2011 4.

<sup>367</sup> See OF Olayinka *Rudiments of Nigerian Law* Nolco Publishing Co (2008)12 - 15.

<sup>368</sup>Olayinka (as above)

<sup>369</sup>*Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC) para 313.Hoexter (2012) 149

<sup>370</sup>Hoexter (2012)140.

<sup>371</sup> See HWR Wade *Administrative law* 6th ed (Oxford: Oxford University Press, 1988) 36. See also Taiwo (2009) 245.

<sup>372</sup>*E P Iderima v Rivers State Civil Service Commission*, (2005) 10 11 SCM 107.

aboard of inquiry. The board completed its assignment and passed the result to the Civil Service Commission. The appropriate disciplinary authority in respect of senior civil servants such as the appellant was the Civil Service Commission. Conducting disciplinary matters against officers by delegation of duties violated Section 4 of the Civil Service Rules. The Court affirmed the submission of the appellant that the Accountant was not the appropriate Officer stipulated by the rules.<sup>373</sup>

The court in *E P Iderima v Rivers State Civil Service Commission*,<sup>374</sup> affirmed the ruling in *United Bank of Nigeria v Ogboh*<sup>375</sup> to the effect that disciplinary action must be taken in full compliance with applicable statute, law or rule. Dismissal of appellant based on the Accountant General's constituted Board of Inquiry report contravenes above provision of law, dismissal was thus set aside.

The appellant raised non-conformity with procedure and rules. The court set aside the dismissal, which was based on mere issue of query.<sup>376</sup>

Okonkwo observes that the university at inception maintained discipline among their staff and students in very diligent manner. He asserts that the disciplinary decisions were as such well taken by staff and students and there was no recourse to the courts.<sup>377</sup> Litigation free academic environment as above would have been created if Nnamani JSC's holding in *Garba and Others v University of Maiduguri* were upheld:<sup>378</sup>

University authorities, in imposing disciplinary measures, must of necessity do so in accordance with the laws of the land...Disciplinary measures ought to be imposed with firmness but, where possible, particularly in cases of less serious misconduct, with compassion and understanding...

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<sup>373</sup>Iderima (as above) 119.

<sup>374</sup>*E P Iderima v Rivers State Civil Service Commission* (2005) 10 11 SCM 107, 125.

<sup>375</sup>*United Bank of Nigeria v Ogboh* (1995) 32 NWLR (pt 380) 647 669.

<sup>376</sup>Iderima, 127 128.

<sup>377</sup> See CO Okonkwo 'Discipline, Nigerian Universities and the law' (annual lecture delivered at the Nigerian Institute of Advanced Legal Studies 1996) 1.

<sup>378</sup>Nnamani JSC in *Garba*, 461 462.

Fernand Dutille<sup>379</sup> concludes that the previous lack of students seeking external recourse may have been due to the existence of the following:<sup>380</sup>

University Visitor and for other reasons including satisfaction with internal processes, an inclination to settle matters within the community, the costs of litigation, judicial deference to university decisions, and cultural attitude.

Abioye submits that where law is faithfully observed, the rule of law exists, and societies that live under the rule of law enjoy great benefits in comparison to those that do not.<sup>381</sup> In conclusion, I submit that a failed experience of the rule of law leads to infringement of individual academic freedom.

### 6.3 *Ultra vires* doctrine

I consider the *ultra vires* doctrine as a mechanism employed by the courts to make the university keep to its purpose as enshrined in the object clause. In chapter two,<sup>382</sup> I contend that acting beyond the powers granted to the university is bad for two reasons: It would be injurious to the realisation of the teaching, research and development objects of the university. Secondly, it affects the enjoyment of individual academic freedom of members of the university. I submit that the doctrine is a beneficial instrument employed by the courts to protect the institution and individual academic freedom.

Administrative decisions or rules, which are made beyond the powers conferred, are visited by courts under the *ultra vires* doctrine. The courts are bound to set aside administrative action that is *ultra vires*.<sup>383</sup>

Section 1(3) of the University of Lagos Act provides an object clause with the following scope:<sup>384</sup> The advancement of learning; provision of courses of instruction with relevant facilities; promotion of research; and, provision of ancillary activities.

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<sup>379</sup> FN Dutille 'Law, governance, and academic and disciplinary decisions in Australian Universities: An American perspective' (1996) (13) *Arizona Journal of International and Comparative Law* 69 116.

<sup>380</sup> FN Dutille, 116.

<sup>381</sup> Funmilola Tolulope Abioye 'Rule of law in English speaking African Countries: The case of Nigeria and South Africa' Unpublished LLD thesis, University of Pretoria 2011, 5.

<sup>382</sup> See section 2.



It is not an excuse for the university to go into an adventure dictated by the moment. This I consider on the disposition of certain universities tending to hide under ancillary objects to cover whatever venture seems lucrative. I submit that the ancillary activities here must relate to the main objects.

Section 8 of the University of Lagos Act, provides that it shall be the general function of the Senate to organize and control the teaching of the University and the admission and discipline of students, and to promote research at the university. Going by the *ultra vires* doctrine, it would mean acting outside the contemplation of the law if contrary activity is pursued.<sup>385</sup> Going by this, I submit, it is outside the object of a University of Science and Technology to award a degree in Law.

It is equally an unauthorized act for a university of Agriculture to float programmes in Law and Management Studies. I also argue in chapter two that it is an abuse of institutional autonomy to operate outside the object clause.<sup>386</sup> I give examples of approved mandates of awarding degrees and higher degrees, which have been illegally extended to cover National Certificate in Education, National Diplomas and Higher National Diplomas.

The Tai Solarin University of Education (TASUED),<sup>387</sup> Ijagun-Ijebu, Ogun State, was set up to train quality manpower for the education sector. It has however deviated from its area of core competence by mounting programmes like Mass Communication, Geography and Transport Planning, Petroleum Science and Industrial Chemistry. This phenomenon has prompted the then Minister of Education, Ruqayyat Ahmed Rufai to issue a directive that specialised institutions should embark on conventional programmes.

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<sup>383</sup> Hoexter (2012) 115.

<sup>384</sup> Cap U9, Laws of the Federation of Nigeria, 2004. See also Section 1(3) of the University of Maiduguri Act, Cap U10, LFN, 2004; Section 4 (a) - (r) of the Technical University, Ibadan, Oyo State Law, 2012.

<sup>385</sup> Ouster clauses operate to ensure that universities operate by their objects clause.

<sup>386</sup> See section 2.

The universities seek to justify their digression on inadequate infrastructure to run the authorised programmes. The second argument is that unauthorized programmes are less capital intensive. As a result, Universities of Technology run programmes in the Arts, Law and Humanities and admit students accordingly, contrary to the Government education policy.

The majority of qualified university admission seekers fall into the Arts and Humanities discipline. The above scenario nonetheless, diversion of attention cannot be unconnected with economic realities. On account of lack of an environment conducive to learning as above, I make a call for institutional autonomy. I contend that an autonomous institution is one, which can afford to create an environment conducive to learning for itself. The lack of institutional autonomy as such has a negative impact on teaching and learning.

I consider the observance of the *ultra vires* doctrine<sup>388</sup> and benefits to the university, and submit that it protects the enjoyment of the academic freedom of members of the university. It affords academic staff job security.<sup>389</sup> I argue that academic freedom of the professor becomes threatened by a systemic phasing out of his programme of competence.

Individual academic freedom of the student is ensured where a university stays focused. The students receive the best quality learning in the circumstances. The situation at TASUED is one in which students do not have the programmes of their desire, but have to make do with programmes that the university could afford to run. I argue that students have the right to run programmes of choice and this is part of their academic rights.

The *ultra vires* doctrine<sup>390</sup> protects operation of programmes in which a university is endowed. I submit that a university on a frolic may not enjoy commendable ranking. Digression from objectives of a university is a major breach of the university's object

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<sup>387</sup> Ernest Nwokolo and Wale Ajetunmobi 'Controversy trails planned varsities' merger' The Nation Thursday 16 February 2012 25.

<sup>388</sup>Hoexter (2012) 115.

<sup>389</sup>See section 4, chapter three.

clause. It is regrettable that most of the federal and state-owned universities are now pre-occupied with matters outside teaching and impartation of knowledge.<sup>391</sup>

Ruqayyatu Ahmed Rufai warns universities to adhere to their approved carrying (absorptive) capacities to ensure standards and avoid overcrowding of classroom, which put pressure on the available facilities.<sup>392</sup> I submit that learning in above environment is derogation from the academic interest of the students, which I discuss in chapter three.<sup>393</sup> I consider that an authorised activity of a university, which is carried out in unconventional way, would violate the object clause and shall be caught under the *ultra vires* doctrine.<sup>394</sup>

As such, observance of the *ultra vires* doctrine ensures that teaching is carried out in a beneficial way to the students. This enhances individual academic freedom of the students.

*Ultra vires* doctrine applies to operation of universities in line with the objects. Activities of professors and staffers of a university that are outside the objects shall be binding not on the university but on the individual staff. I refer to chapter three,<sup>395</sup> to the effect that enjoyment of academic freedom by the staff has attaching obligations. This is the reason why human agents of the university, by way of staff, management and council members are expected to be individually and collectively responsible for *ultra vires* acts of the university.

Institutional autonomy as such is to the object clause and not beyond. An authorised activity of a university, which is carried out in unconventional way, would violate the object clause and shall be caught by *ultra vires* doctrine. As such, institutional autonomy would not protect *ultra vires* act of the university, no academic staff can then invoke the

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<sup>390</sup>Hoexter (2012) 115.

<sup>391</sup>'The ASUU strike threat' The Guardian Editorial Thursday 22 September 2011 14.

<sup>392</sup>'Government indicts Vice-Chancellors, begins reforms in universities' The Guardian, Monday 13 February 2012 4.

<sup>393</sup>See section 3.

<sup>394</sup>Hoexter (2012) 115.

protection of academic freedom to shelter his incompetence, lack of productivity, or neglect of legitimately assigned duties.<sup>396</sup> *Ultra vires* doctrine as such applies to ensure that unauthorised acts are not carried out as objects, and that the authorised acts are carried out in approved ways. In conclusion, judicial review is a rewarding exercise, notwithstanding that its application is limited. I now consider the challenges to judicial review.

## 7 Challenges to judicial review

In the last section, I discuss the desired checks the law courts apply on disciplinary powers of the universities. I now examine the limits of effective legal action.<sup>397</sup>

### 7.1 Delay in judicial review of disciplinary cases

In this section, I consider the argument that acts of misconduct with criminal elements must be investigated by the police and should be tried in the law court. I consider if undue delay in legal proceedings is beneficial to the affected member of staff or student who would remain out of the university for as long as the matter remains in court.

The right to have one's cause heard entails the right to be tried within a reasonable time.<sup>398</sup> Section 36(1)(4) of the 1999 Constitution provide for a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. What obtains in practice is

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<sup>395</sup> See section 6.

<sup>396</sup> See Van Alstyne 'Tenure: A summary, explanation, and 'defense,' 57 *American Association of University Professors (AAUP) BULL.* 328, 328 (1971); AAUP Declaration of Principles (1915) 169, 173. Personal failings, falling short of professional standards are excluded from protection. See also Rabban 1410.

<sup>397</sup> Lon L Fuller relies on poser of Roscoe Pound on 'what are the limits of effective legal action?' See LL Fuller 'The forms and limits of adjudication' 92 *Harvard Law Review* 353 (1978-1979) 354. See also Roscoe Pound 'The limits of effective legal action' 3 *A.B.A.J.* 55 (1917) 1.

<sup>398</sup> Article 7(1)(d) of the African Charter on Human & Peoples' Rights. Section 33(1) of the 1979 Constitution was reproduced in Section 36(1)(4) of the 1999 Constitution to emphasize hearing within a reasonable time.

however a contrast.<sup>399</sup> Delay in justice dispensation in Nigerian courts is a peculiar problem and to this Oko argues that the delay in court proceedings is a bar to access of justice in Nigeria.<sup>400</sup> On account of this, Chinua Asuzu makes a case for the incorporation of timely disposition of cases into procedural fairness.<sup>401</sup>

The delay in legal proceedings hampers the exercise of residual jurisdiction of the universities.<sup>402</sup> In the circumstances where a case takes an average of ten years in court and the member of the university is expected to subsequently face trial in the university is neither feasible nor justiciable.

In *Osakue v Federal College of Education (Technical) Asaba & 2 Others*,<sup>403</sup> the appellant was a full time lecturer and his appointment was terminated because he was doing a full time PhD programme without approval. He filed action in court in 1992 and it was finally decided in 2010.

I consider the period of 18 years which was spent outside academic career in pursuit of judicial review and submit that it violates appellant's academic freedom to job security.

Also, in *Professor Olutola v University of Ilorin*,<sup>404</sup> the appellant was banned from holding any elective office in the respondent, having been found guilty of allegation of plagiarism. He filed action in court in 1993 and it was finally decided in 2004. I submit that 11 years in pursuit of judicial review violates right to fair hearing. It distracts the attention of the lecturer and dissipates the resources available to the university to conduct research.

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<sup>399</sup> In *Esiaga v University of Calabar & 2 Others* (2004) 3 SCM 61, the appellant was a final year student before he was placed on suspension in 1991 on allegation of cult membership. His appeal was eventually set aside in 2004;

<sup>400</sup> See Okechukwu Oko 'Seeking justice in transitional societies: An analysis of the problems and failures of judiciary in Nigeria (2005)(31)1 *Brooklyn Journal of International Law* 9 39 40.

<sup>401</sup> C Asuzu *Fair hearing in Nigeria* Malthouse Press Limited Lagos (2010)188 189.

<sup>402</sup> See section 4 above.

<sup>403</sup> *Osakue v Federal College of Education (Technical) Asaba & 2 Others* (2010) 5 SCM 185.

<sup>404</sup> *Professor Olutola v University of Ilorin* (2004) 9 - 12 SCM (Pt2) 169.

In *Esiaga v University of Calabar & 2 Others*,<sup>405</sup> the appellant was a final year student before he was placed on suspension in 1991 on allegation of cult membership. His appeal was eventually set aside at the Supreme Court in 2004.

I submit that in the search for judicial relief, much destruction is done to the career of the student. This case was decided against the student. Even if the case was decided in his favour, the fact that he would be reinstated to continue from where he stopped and not the class he should be constitute a challenge to judicial review.

The appellants' appointments as academic staff were terminated in *Dr Oloruntoba-Oju & Other v University of Ilorin*,<sup>406</sup> in 2001. They were alleged of disrupting the holding of examination during a national strike. The Supreme Court eventually set the termination aside in 2009.

I attribute the delay in legal proceedings to the abuses in legal processes.<sup>407</sup> Delay in police investigation, un-availability of witnesses for court proceedings account for slowness in court proceedings.

Former Governor Chibuike Amaechi considers the critical role of the court as an institution for an orderly society. He stresses that where the court is not in position to address issue in dispute timely, the people lose faith in it. The result is recourse to self-help. He concludes thus:<sup>408</sup> 'If legal redress available for a party that has suffered some injury is not forthcoming in a timely manner, it is effectively the same as having no redress at all.'

Justice Muktar on her appointment as the Chief Justice of Nigeria in 2012 was advised to focus her mind and means solely to redress the thousands of souls whom the Nigerian

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<sup>405</sup> *Esiaga v University of Calabar & 2 Others* (2004) 3 SCM 61.

<sup>406</sup> In *Dr Oloruntoba-Oju & Others v University of Ilorin* (2009) 7 SCM 118,

<sup>407</sup> Incessant adjournments by litigants, filing applications to determine issues that are non-contentious and appeal to technicalities all contribute to delay in court proceedings.

nation has offended more than their offences. Attention should also be on others who seek remedy for injustice but due to unholy delay suffer irredeemable losses. David Mark, the former Senate President enjoins the Chief Justice of Nigeria to ensure there was a speedy dispensation of justice.<sup>409</sup>

Adeniyi Olatunbosun points out that the effect of delay in the dispensation of justice falls on the accused person in terms of finance, energy and time waste.<sup>410</sup> I submit that on account of delay in legal proceedings, the enjoyment of individual academic freedom of the culprit is on the line.

The House of Lords in *Page v Hull University Visitor*<sup>411</sup> held that a visitorial system produces a 'speedy, cheap and final answer in internal disputes.' Nwauche and Nwobike<sup>412</sup> consider the visitorial system in Nigerian Universities as a prospective credible, prompt alternative to dispute resolution but which mechanism regrettably is not developed.<sup>413</sup> The duo thus conclude that the visitor has failed to assist the university system with a simple fast and easy dispute mechanism.

I consider the argument of Nwauche and Nwobike that the visitor could provide a better alternative to judicial proceedings. I however submit that in view of the contentious criminal jurisdiction of the visitor, this is not going to be until the constitutional provisions empower him as such.

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<sup>408</sup> Kelvin Ebiri 'Amaechi seeks action against delay in trial of cases' The Guardian Tuesday 4 December 2012 6. Delta State Governor Emmanuel Uduaghan contends that speedy trial guarantees law and order. Hendrix Oliomogbe 'Uduaghan tasks judiciary over speedy trial' Monday 23 December 2013 4.

<sup>409</sup> Richard Anyamale 'Why new CJN must make quick dispensation of justice a priority' The Guardian Tuesday 14 August 2012 83. See also Abosede Musari 'CJN tasks judges on punctuality, quick dispensation of justice' The Guardian Friday 24 May 2013 4.

<sup>410</sup> Adeniyi Olatunbosun 'Tough on crime but soft on justice' An in-augural lecture delivered at the University of Ibadan on Thursday 06 November 2014, 37 38.

<sup>411</sup> *Page v Hull University Visitor* [1993] 1 All ER 97 109. See also ES Nwauche & JC Nwobike 'The exclusive jurisdiction of Nigerian Universities in comparative perspective' (2005) 13 *African Journal of International and Comparative Law* 314, 320.

<sup>412</sup> ES Nwauche & JC Nwobike (2005)314, 335.

<sup>413</sup> No university has any clear-cut policy of how to bring matters before the visitor there is thus no evidence that the visitor in Nigerian universities has exercised his interpretative or inherent jurisdiction.

In conclusion, I consider the undue delay in legal proceedings and recommend that the domestic tribunals and disciplinary committees should take a place of pride in maintenance of discipline. I also suggest the creation of specialised courts to handle cases emanating from the universities.<sup>414</sup>

## 7.2 Anti-productivity

In this section, I argue that judicial process untie the social and cultural bond between parties in a case. After litigations, things fall apart and the desired team spirit, which the university needs to accomplish its objects, becomes lost.

Ayua alludes to external control on enforcement of discipline and submits that such development operate at the expense of academic standards and traditions.<sup>415</sup> The court system in its operation creates enmity among loved ones. Litigation becomes unpopular as it breaks cultural ties of parties and their relatives. Litigants after court action experience strained relationships.

In the same way, external control of discipline most time promote strife and disorderliness in the universities. For instance, a student who has been rusticated or a member of staff whose appointment has been terminated is restored on the orders of a court, loyalty to authorities of the university may not be guaranteed. There is damage to the university system as courts reverse sanction of the university while it overlooks the alleged misconduct.

The Supreme Court in *Garba & others v University of Maiduguri* stalled the exercise of universities disciplinary autonomy. Realisation of the objects of the university, which is to teach, inquire, and to harness available resources for the advancement of knowledge in the above circumstances, becomes elusive. This confirms the position taken by Uri Abt that

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<sup>414</sup> In chapter five, I make a case for timely disposition of cases.

<sup>415</sup> Director General, the Nigerian Institute of Advanced Legal Studies in his foreword to the 1996 Annual Lecture of the Institute titled 'Discipline, Nigerian Universities and the Law' delivered by CO Okonkwo (SAN)



institutional autonomy and external control by law courts has diminished the rate of accomplishing teaching object of the university.<sup>416</sup>

I establish that judicial process untie the social and cultural bond between parties in a case. I point out that after litigations, things fall apart and the desired team spirit, which the university needs to accomplish its objects becomes lost.

### **7.3 Restricted discourse on matters**

I discuss here the technical provisions that disturb the free flow of evidence in court of law. Evidences, which can help in attaining justice, may not be received because of legal technicalities. This hinders the efficacy of judicial review.

The law courts are deliberative but only open to receive restricted information from parties and witnesses. Law courts have pleadings as a guide for court proceedings. Litigants file court processes and their oral testimonies must flow from their pleadings. Oral evidence which appears to be material for the consumption of the court, but which a litigant has not pleaded are expunged from the court's records. The scope of a judge's inquiry is thus restricted to what is brought before him in the pleadings.

I consider the formalised proceedings, which the law courts hold. The courts are hindered by legal technicalities particularly in certain peculiar cases in which flexibility is required. This development robs the litigants in such cases of justice and it hinders the efficacy of judicial review.

Institutional competence of courts to Jowell, covers only generalized but not specialized issues, which should be left to specialists. The courts are equally not suited for polycentric issues.<sup>417</sup> To some South African commentators, administrative law has always been about the judicial diagnosis of maladministration and judicial remedies for

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<sup>416</sup> Uri Abt 'Constitutional academic freedom and anti-affirmative action laws'(2010-2011) 37 *Journal of College and University Law* 609-612.

<sup>417</sup>That is, questions that cannot be settled outside other issues that are not before the courts. Lon L Fuller 'The forms and limits of adjudication' (1978-79) *Havard Law Review* 353. See also Hoexter (2012)150.

the abuse of power.<sup>418</sup> Judicial review is essentially a reactive or backward-looking safeguard. Judicial process is passive as courts most time hear disputes that happen and are brought to them by litigants.<sup>419</sup>

I contend that the inability of litigants to plead relevant facts robs them of opportunity to present a clearer case to the court. The court in the circumstances cannot give its best in adjudication.

I examine the formalised proceedings, which the law courts hold. From the proceedings, I point out that the courts because of legal technicalities lack the desired flexibility that some peculiar cases do desire. I point out that this development robs the litigants in such cases of justice and it hinders the efficacy of judicial review.

#### **7.4 Limiting clauses**

In this section, I consider limiting clauses as another technical legal provision that shut out a potential litigant in certain cases. Notwithstanding the merits in a case, the pre-conditions must be met in order to hear a case in court.

Review and remedies are controlled by the Constitution, the legislature and the courts.<sup>420</sup> Section 3 of the Limitation Law of Oyo State of Nigeria<sup>421</sup> provides that no action may be brought to recover land after expiration of ten years from the date in which the right of action accrued to the plaintiff.

In determining whether a suit is statute-barred, the court has to first look at the enabling statute to determine the period stipulated therein. It then looks at the plaintiff's writ and statement of claim to determine when the cause of action arose. The court compares it with when the action was brought for determination. The main purpose of a limitation

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<sup>418</sup>Hoexter(2012) 167.

<sup>419</sup>Hoexter(2012)168.

<sup>420</sup>Hoexter (2012) 168.

<sup>421</sup> Limitation Law of Oyo State of Nigeria, Cap 76, 2000. Section 18 provides that no action founded on contract, tort shall be brought after the expiration of five years from the date the cause of action accrued.

period is to protect a defendant from injustice of facing a claim, which he never intended to deal with.<sup>422</sup>

A member of the university who has a good case to file in court, but does not do it within time, will be caught by effluxion of time. This development limits the enjoyment of individual academic freedom of an aggrieved member of the university. It however protects the university from being exposed to an impending legal action indefinitely.

In this section, I consider limiting clauses as another technical legal provision that shut out a potential litigant in certain cases. Notwithstanding the merits in a case, the pre-conditions must be met in order to hear a case in court.

I consider limiting clauses as another technical legal provision that shut out a potential litigant in certain cases. I point out the benefit accruing to the university in limiting clauses, as the university is not exposed to impending litigation indefinitely. On the other hand, limiting clauses disturbs the enjoyment of individual academic freedom where a claim is filed outside time.

## 7.5 *Locus Standi*

I examine *locus standi* as a bar to a person's access to the court and judicial review. There are people who have interest in litigation, but such are some time regarded as not sufficient. *Locus standi* is the legal capacity to institute proceedings in a court of law or tribunal. To Stanley Ibe, *locus standi* is alternatively put as the right of a party to appear and to be heard on the question for determination before a court or tribunal.<sup>423</sup> Ordinarily, a party who desires to file an action in court must establish that he has *locus standi*. This has been one criterion adopted by law courts in ensuring that busy bodies are stopped from congesting courts workload.

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<sup>422</sup>*JFS Investment Ltd v Brawal Line &Ors* (2010) 12 SCM, 79. Where there is acknowledgement of a debt that is statute barred, the action is revived. See *NSITF v Klifco Nigeria Limited* (2010) 8 SCM 212.

<sup>423</sup>Stanley Ibe 'Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities' (2010) 10 *African Human Rights Law Journal* 197 204.

In the Court of Appeal decision in *Revd Segun Ademola Alli v National University Commission and others*,<sup>424</sup> the court held that accreditation is an issue between the university and the appellant (NUC), and that the university and not the law student was the competent party to maintain an action on accreditation matters.

Niki Tobi J (as he then was) held that *locus standi* entails that a litigant must show sufficient interest in a suit or matter.<sup>425</sup>

Sufficient interest can be determined if it can be established that the person who is seeking redress will suffer some injury or hardship arising from the litigation. He is then held to be eligible to file an action or to be joined as a party. On requirement of *locus standi*, Order II Rule 1 of the Fundamental Rights provides on cause of action as follows:<sup>426</sup>

Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress:

Tunde Ogowewo considers the plight of litigants and the judiciary on the interpretation of *locus standi* as he regrets the routine for cases to go on appeal to the Supreme Court on the issue of standing alone.<sup>427</sup> On account of the problem the one test used by Nigerian courts to determine standing to sue in all doctrinal contexts was formulated by Bello JSC in the Nigerian Supreme Court's decision in *Adesanya v President of the Federal Republic of Nigeria &Anor*.<sup>428</sup> Bello's test provided that:<sup>429</sup>

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<sup>424</sup>As above.

<sup>425</sup>Niki Tobi J in *Pam v Mohammed* (2008) 40 Weekly Reports of Nigeria 67 123; *Olagunju v Yahaya* (1998) 3 NWLR Part 542 501. *Stanley Ibe* 'Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities' (2010) 10 *African Human Rights Law Journal* 197 203.

<sup>426</sup>See the Fundamental Rights (Enforcement Procedure Rules) 2009. Equivalent provision under Order I Rule 2 of the Fundamental Rights (Enforcement Procedure Rules) 1979.

<sup>427</sup>Tunde I Ogowewo 'The problem with standing to sue in Nigeria' (1995) (39)(1) *Journal of African Law* 1.

<sup>428</sup>*Adesanya v President of the Federal Republic of Nigeria &Anor* [1981] 1 All NLR 1. See also Ogowewo (1995)1, 3.

<sup>429</sup>*Adesanya*, 39.

Standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of.

Abiola Sanni submits that the test and rule has however been adopted in a plethora of cases. To him, the person whose fundamental rights have been, are being or are likely to be violated are now allowed at law to challenge such a violation.<sup>430</sup>

*Locus standi* is applied to stop a litigant's application for judicial review. Legal capacity to defend an action has been held to be an essential factor in deciding the competency of an action.<sup>431</sup> On public interest matters, an applicant has to show sufficient interest in a matter. Busy bodies are barred from distracting the attention of the courts. Rules of court have now extended recognition for diverse interests. The current state of *locus standi* in Nigeria is now extensive.

*Locus standi* applies to stop a litigant's application for judicial review except he satisfies the court that he has sufficient interest in the case. I established that *locus standi* limits the application of judicial review.

## 7.6 Cultural challenge to judicial review

In this section, I consider litigation and judicial review in the context of cultural demands. I examine cases, which should go to litigation but for cultural disturbances.

An average Nigerian has his reservation for litigation. The disposition is because of everyone being brother to one another. There is a saying in Yoruba Language<sup>432</sup> that no one returns

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<sup>430</sup>See also Abiola Sanni 'Fundamental Rights Enforcement Procedure Rules, 2009 as a tool for the enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The need for far-reaching reform.' (2011) 11 *African Human Rights Law Journal* 520.

<sup>431</sup>*Administrator of the Estate of General SaniAbacha v Eke –Spiff & others* (2009) 8 SCM 103. *Locus standi* has thus been held to be the fore-runner to jurisdiction. Where a plaintiff lacks *locus standi*, the court will decline jurisdiction. *Basinco Motors Ltd v Woermann-Line &another* (2009) 8 SCM, 103.

<sup>432</sup> This is the language of one of the three prominent tribes in Nigeria, the tribe is based mainly in the South-West of the Country.

from court action to maintain existing brotherly ties. Fernand Dutile<sup>433</sup> considers staff and students' discomfort with judicial review. He contends there is increasing preference for the internal processes, inclination to settle matters within the community because of costs of litigation, judicial deference to university decisions, and cultural attitude.

Reservations on judicial review is also on account of dwindling efficacy of judicial review particularly, where a litigant would lose a case not because he had a weak case. This is because the various aspects of legal restraint operate in the realm of technical justice. They have nothing to do with merit or substance of a case at hand.

## **8 Conclusion**

In this chapter, I considered disciplinary autonomy as the extension of the enjoyment of institutional autonomy. I argued that for the university to be able to realise its teaching, research and development objects, the university must be able to control the state of discipline of members of the university.

I focussed attention on the structure that administers discipline in the university. I as such discussed how the organs and officers of the university do apply the natural justice rules. I pointed out the fact that non-compliance with the rules subject decisions reached to be set aside.

I also analysed the conditions for external control of discipline. I argued that in respect of cases involving students coming for review, the courts are guided by the academic and disciplinary violations. I pointed out the fact that the courts defer to the universities on account of academic violations while it ensures that disciplinary violations are given adequate trial.

I also considered the courts' interpretation and application of the constitution on jurisdiction of domestic tribunal on criminal cases. I pointed out the lacuna in the provisions of law, which impact negatively on disciplinary authority of the university. I then developed three

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<sup>433</sup> FN Dutile 'Law, governance, and academic and disciplinary decisions in Australian Universities: An

yardsticks for an in-depth appreciation of court's rulings on the subject of criminal jurisdiction.

I considered the benefits inherent in external control via judicial review as well as the disadvantages therein. The most important is the anti-productivity consequent on broken cordiality and team spirit necessary for the realisation of objects of the university.

I argued that the literal interpretation give no consideration for disciplinary autonomy of the university. The liberal interpretation I contend recognises the need to maintain disciplinary autonomy by way of residual jurisdiction. The pragmatic approach I contend is in tune with disciplinary autonomy of the university.

I considered the fact that institutional autonomy and external control by law courts has diminished the rate of accomplishing the teaching, research, and learning towards the nation's development.<sup>434</sup> I then gave strong support for the pragmatic rule of interpretation, which supports disciplinary autonomy of the university.

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American perspective' (1996) (13) *Arizona Journal of International and Comparative Law* 69 116.

<sup>434</sup> Uri Abt 'Constitutional academic freedom and anti-affirmative action laws' (2010 2011) 37 *Journal of College and University Law* 609, 612.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 1 Introduction

In this thesis, I consider the legal status and working relationship of universities with regulatory bodies such as the NUC<sup>435</sup> and the JAMB.<sup>436</sup> I do this with a view of determining how well the objectives of establishing a university are realised in such circumstances. I consider this along with the coexistence of the domestic organs and officers of the university, which are vested with powers in the administration of the university. I argue however that the university coexists with external bodies. In this respect, I consider the council and its power of administration as well as the senate and its academic functions.

I examine the legal framework for academic freedom through international law, regional laws, constitutional provisions, and national legislation. I give examples of academic rights such as the freedom of association, freedom of expression, security of tenure for the academic staff and secured studentship for the students. The students and academics enjoy the right to unfettered inquiry. This I do, believing that institutional autonomy affords an enabling environment under which the university, staff and students assert rights essential for their status and for their operations.<sup>437</sup>

I examine the issue of indiscipline and the negative impact of this on the realisation of the objects of the university. I look at the disciplinary powers of universities in Nigeria and the seeming limits placed on them. I focus in this respect on certain conflicting legal provisions in disciplinary powers of university on misconduct having criminal elements in

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<sup>435</sup> National Universities Commission Act Cap N81, LFN, 2004.

<sup>436</sup> Joint Admission and Matriculation Board Act Cap J1, LFN 2004.

<sup>437</sup> With autonomy a university attains a state of excellence in the discharge of its functions and it protects individual academic freedom.



them. I then consider how apparent limitations on the domestic tribunals of the university should be addressed for the university to accomplish its mission.

## 2 Findings and recommendations

### 2.1 Institutional autonomy and the objects of the universities in Nigeria

In chapter two, I investigate institutional autonomy and the objects of the universities in Nigeria. I point out that objects of the university are the legal provisions upon which institutional autonomy is asserted. I conclude that the teaching and impartation of knowledge is the main and substantive object of every university.<sup>438</sup>

I examine the teaching and impartation of knowledge and establish that it links with discipline in the university.<sup>439</sup> I point out that though the issue of a university having to maintain discipline on its campus does not appear expressly in the object clause of any university, by implication, it comes as an ancillary object. I conclude as such, that the maintenance of discipline is an incidental object of the university.<sup>440</sup>

I point out that the lack of discipline in the university threatens the institutional autonomy of a university to realize set objects. I conclude that the unfolding culture of indiscipline on campuses of Nigerian universities is a drawback to the attainment of human development and other objects for which the universities are set up.<sup>441</sup>

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<sup>438</sup>See section 2 of chapter two.

<sup>439</sup> I consider institutional autonomy of the university to carry out functions of teaching; individual academic freedom of stakeholders in the teaching business and the disciplinary autonomy of the university to maintain discipline.

<sup>440</sup> See section 2 of chapter two.

<sup>441</sup> Justice Yetunde Adesanya of High Court of Lagos State, Nigeria, as such advocates a visionary, planned and responsive administration which to her promotes the development of society. See foreword to Ese Malemi *Administrative Law* (2008) xi. See section 4 of chapter four.

I identify institutional autonomy as a flexible concept having varying degrees of control on the university.<sup>442</sup> I then conclude that increasing regulation and external control leads to a declining efficiency of the university.<sup>443</sup>

I consider the NUC's<sup>444</sup> operations as being below expectations, just as it condones the inadequacies in the universities. I then conclude that the present composition of the NUC does not bring dynamism to a university system of the twenty-first Century.<sup>445</sup> I acknowledge that the universities have abundant human resource and tested administrators as compared to the composition of the NUC. I then recommend that the Association of Nigerian Universities or its equivalent-in-title should constitute the universities' regulatory body. I suggest that the body to be formed should be without the active involvement of the government. I suggest that the representatives of the government on the body need not be the Executive Secretary or the Chairman. The Government's educational policies should then be adopted as working instruments of the NUC.<sup>446</sup>

I identify the over-centralization of power as one of the causes of the crises in the Nigeria's education sector.<sup>447</sup> I point out that federalism in Nigeria does not operate by the constitutional provisions on power sharing between the central government and the federating units. I establish that the State owned tertiary institutions (established under the law of a State) are not spared of the application of the national regulatory provisions on education.<sup>448</sup>

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<sup>442</sup>Oshio admits that going by University Autonomy Act 2003, 2007 there is no absolute autonomy. See P Ehi Oshio 'Autonomy and management of federal universities under the Universities Autonomy Act' 1 McLendon 271, 279 280. See Okojie, 9. See also JF Ade Ajayi 'Towards an African academic community,' in TM Yesufu (ed) *Creating the African University: Emerging issues of the 1970's*. The Association of African Universities, Ibadan, Oxford University Press (1996) 11. See generally section three of chapter two.

<sup>443</sup> See the NUC's regulatory powers in section 4 of chapter two.

<sup>444</sup> National Universities Commission Act Cap N81, LFN, 2004.

<sup>445</sup> See section 4 of chapter two.

<sup>446</sup> See section 4 of chapter two and section 5 of chapter three.

<sup>447</sup> Adamolekun in an interview with London Financial Times 20 May 2008.

<sup>448</sup> Onyechere JAMB (2) 68.

I point out regulatory policies of federal government agencies on who should be admitted to study in a university, who may be appointed and until when, of which a state-financed university must abide with. I observe that the concentration of powers on the federal government and its agencies makes states lose their powers under the concurrent legislative list.<sup>449</sup>

I then conclude that all laws contrary to the constitutional provision on federalism should be amended to be in conformity with it.<sup>450</sup> The NUC Act, the JAMB Act, and other relevant legislation should be amended to recognise powers of the states and power distribution in a federal state.<sup>451</sup>

I look at the mono-source-revenue to the federal universities. I point out that the statutory federal allocations is now inadequate to run the universities as it hardly covers research and infrastructural development after payment of salaries.<sup>452</sup> I then conclude that for the provision of quality education and for greater access to university education,<sup>453</sup> there should be the payment of tuition fee while government continues to subsidise university education.<sup>454</sup>

I point out that external collaboration is essential for the realisation of the objects of the university; and that collaboration is beneficial to the university if the relationship is well defined, considered and approved by the university.<sup>455</sup>

I examine the appointments to the Council of the university as it is based on political considerations. I point out this facilitates the loss of power of appointment of the university as the council opts to externalise its appointments to gratify its benefactors.<sup>456</sup>

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<sup>449</sup>See section 6 of chapter two.

<sup>450</sup>Interview of Adamolekun with London Financial Times 20 May 2008.

<sup>451</sup>See section 6 of chapter two.

<sup>452</sup>Kelvin Ebiri 'VC of Uniport hinges varsities' survival on increased fees' <http://www.ngrguardiannews> accessed 29 June 2015.

<sup>453</sup>The position adopted by the Registrars of Nigerian Universities. See Section 5 cap two.

<sup>454</sup>See section five of chapter two.

<sup>455</sup>Julius Okojie 16. See section 3 of chapter two.

<sup>456</sup>See section 4 of chapter two.

I then explore the provisions of the Universities Autonomy Act, 2007 as it prescribes moral and academic qualifications for council members, appointed as community representatives; and as it empowers the Council to appoint its vice-chancellor and other officers without the government's endorsement. I also examine the composition of the senate under the Act, which now excludes nominees of the vice-chancellor. I then consider the integration of the students into the management of the university, under the Act.<sup>457</sup>

I conclude that the law establishing each university should be amended to incorporate the provisions of the Universities Autonomy Act, 2007, in respect of the provisions above.<sup>458</sup>

## 2.2 Institutional autonomy and academic freedom

In chapter three, I investigate institutional autonomy and academic freedom and point out that academic freedom is the individual academic freedom of staff and students of the university. I highlight that the enjoyment of academic freedom is meant for the promotion and protection of scholarly inquiry<sup>459</sup> by the prescribed professional standards. I identify academic freedom and university autonomy as the pre-conditions for a healthy university system. I observe that they are essential conditions not only for the realisation of objects of a university, but for survival of the university.<sup>460</sup>

I find out that institutional autonomy and academic freedom are related concepts, just as the former provides the enabling environment within which the later is enjoyed. I discover also that the relationship between institutional autonomy and academic freedom is on the negative side where the institution hampers the enjoyment of academic freedom.<sup>461</sup>

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<sup>457</sup>See section four of chapter two.

<sup>458</sup> Universities Autonomy Act, 2007, see also section 4 of chapter two. See also section 3 of chapter three.

<sup>459</sup> See J Peter Byrne 'Academic freedom: A special concern of the First Amendment,' 99 *Yale Law Journal* (1989) 267 288, 251. See Neal H Hutchens 'Preserving the independence of public higher education: An examination of state of constitutional autonomy provisions for public colleges and universities' 35 *Journal of College and University Law* 271 2008-2009, 279.

<sup>460</sup>Section 4 of chapter three.

<sup>461</sup> See section of 4 of chapter three.

I observe that institutional autonomy has links with the government's discharge of its obligations. I point out that government's default on its obligations has negative impact on the enjoyment of institutional autonomy. In that regard, I consider section 14(1) (b) of Chapter 2 of the 1999 Nigerian Constitution. I consider the provisions of the section on security and welfare of the people, which was given as the primary purpose of government. I find out that government's default in this respect manifests in the security lapses, which is being experienced in the universities. I point out that this development now threatens the realisation of objects of the university.<sup>462</sup>

I also consider the university education as it relates to the nation's development. I observe that there is a disconnection between the curriculum and course content of university programmes and the needs of the nation. I point out this account for the huge percentage of university graduates who are unemployed. I then conclude that employers of labour should collaborate with the universities in developing curriculum relevant to the needs of the private sector and that of the nation.<sup>463</sup>

I point out that academic freedom thrives on the independent and uninhibited exchange of ideas among teachers and students, and on the autonomous decision making of the academy itself.<sup>464</sup> I observe that absolute autonomy is not feasible and thus opt for diverse autonomy and levels of observance in each case. I then conclude that external collaboration with bodies such as donor and research agencies, industries and employers of labour does not violate institutional autonomy. I caution however, that the terms of memoranda of understanding have to be considered and approved by the senate of a university.<sup>465</sup>

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<sup>462</sup> See section 4.2.3 of chapter three.

<sup>463</sup> See section 3(2) of chapter two.

<sup>464</sup> David M Dumas *et al* 'Parate v Isibor: Resolving the conflict between the academic freedom of the university and the academic freedom of university professors' *Journal of College and University Law* (16)(4)(1989-1990) 718.

<sup>465</sup> See section three of chapter two.

I investigate legal provisions on academic freedom in the country and discover that they are spread across international instruments, the Constitution and national legislation. I point out this makes it difficult for victims of rights violation in the universities to rely on legal provisions in making their cases.<sup>466</sup> I conclude that codification of the provisions on academic freedom should be embarked upon.

### **2.3 University disciplinary autonomy**

In chapter four, I examine university disciplinary autonomy and point out that for the university to realise its teaching, research and development objects, it must be able to control the state of discipline of members of the university.<sup>467</sup>

I observe the gaps and omissions in the provisions of the Constitution, which impact negatively on disciplinary authority of the university. I discover this makes the courts to seek to strike a balance between the provisions of the Constitution and disciplinary autonomy of the university. I point out that the courts observe academic and disciplinary violations as a yardstick for judicial review. I observe that the courts defer to the comparative expertise of the universities in academic matters, while it ensures a review of disciplinary violations.<sup>468</sup>

I observe the courts as they adopt the civil and criminal violations divide, to be properly guided on issues of jurisdiction.<sup>469</sup> I point out that the courts adopt various rules of interpretation to suit each occasion. The literal rule of interpretation, for instance, is applied by the courts to divest domestic tribunal of universities of disciplinary autonomy.<sup>470</sup> The liberal rule of interpretation is applied by the courts to enable domestic tribunal of the university to maintain disciplinary autonomy by way of residual jurisdiction. The pragmatic approach vests jurisdiction on domestic tribunals,<sup>471</sup> and thus

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<sup>466</sup> See section 5 of chapter three.

<sup>467</sup> See section 1 of chapter four.

<sup>468</sup> See section 4.3 of chapter four.

<sup>469</sup> See section 4 of chapter four.

<sup>470</sup> See section 4.4.1 of chapter four.

<sup>471</sup> See section 4.4.3 of chapter four.

creates room for the exercise of disciplinary autonomy of the university. I observe that limitations on the domestic tribunals of the university disturb the university in accomplishing its mission. I then conclude that the pragmatic rule of interpretation should be applied by the courts in interpreting provisions on misconduct with criminal elements.

I establish there is a link between disciplinary autonomy and the individual academic freedom of staff and students. I point out that the university is under an obligation to maintain discipline by adopting established procedural safeguards. I conclude that this protects the individual academic freedom of secured tenure to the members of staff and secured studentship to the student.<sup>472</sup> I point out that the benefits of judicial review notwithstanding, there are various limits to the invocation of the concept.<sup>473</sup>

I investigate the control of the law courts on domestic tribunals of universities and point out that such is based on abuses of procedural safeguards. I identify the non-compliance with the rules of natural justice as a basis for setting aside decisions of the university.<sup>474</sup> I point out that non-compliance with the rules of natural justice before applying sanctions increase the volume of cases, which a university has in court. I establish that litigation in the circumstances depletes the human and material resources, which the university should have committed into academic ventures. I point out that officers of the university mischievously apply sanctions on erring members of the university without following due process.<sup>475</sup> I then recommend that sanctions should be prescribed and applied on such officers.

I discover that most universities do not have comprehensive provisions on acts of misconduct and the punishment thereon.<sup>476</sup> As ignorance is no excuse, I recommend that a detailed provision as it relates to staff and students should be prepared and made available to members of each university.

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<sup>472</sup> See sections 3 & 4 of chapter four; see also section 3 of chapter three.

<sup>473</sup> See section 7 of chapter four.

<sup>474</sup> See section 4 of chapter four.

<sup>475</sup> See section 3.2.1 of chapter four.

I point out that the average duration of proceedings on cases for judicial review is ten years. I then conclude that this violates the individual academic right of the member of university who is seeking relief.<sup>477</sup> I recommend the establishment of a specialised court to hear cases emanating from the universities expeditiously. Mediation and conciliatory processes should also be encouraged as alternative dispute resolution mechanism to the court actions.

I investigate the application of the *ultra vires* doctrine in the university. I point out that the officers of the university must act within the provisions of the law establishing the university. I establish that actions that exceed the law are *ultra vires* the university and as such not binding on the university but on the officers.<sup>478</sup>

The recommendations and suggestions, which are made above, are relevant to corporate bodies, government establishments, and professional bodies. This is because they have similar problems in maintaining discipline on misconduct having criminal elements.<sup>479</sup>

### **3 General conclusion**

In this thesis, I establish that disciplinary autonomy is an extension of the enjoyment of institutional autonomy. I observe the legal constraints on the domestic tribunal to enforce discipline in the university especially on misconduct having criminal elements. I point out that for the university to be able to realise its teaching, research and development objects, the university must be able to control the state of discipline of its members.

I observe a disconnection between the curriculum and course content of university programmes and the needs of the nation. I trace this to the huge percentage of university graduates who are unemployed. I then conclude that employers of labour should

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<sup>476</sup> See section 3.1.1 of chapter four.

<sup>477</sup> See section 7.1 of chapter four.

<sup>478</sup> See section 7 of chapter four.

<sup>479</sup> See section 4 of chapter four.



collaborate with the universities in developing curriculum relevant to the private sector and the nation.<sup>480</sup>

I investigate operations of a pragmatic and result-based university and conclude that absolute autonomy is not feasible. In practical terms, I point out that the university cannot exist as an ivory tower, which exists by itself and for its own benefit alone. I then consider diverse autonomy in the area of governance, academic and financial. I also identify the various levels of external control in respect of each. I then conclude that external collaboration with donor and research agencies, industries and employers of labour is essential. I point out that the terms of the collaboration have to be considered and approved by the senate of a university.<sup>481</sup>

I investigate individual academic freedom and point out that it is essential for academic survival and for the realisation of the teaching, research, and impartation of knowledge and development of the nation. I conclude that academic freedom must be enjoyed in line with professional standards.<sup>482</sup>

I consider organs and officers of the university that administer discipline in a university. I point out that they are under obligation to apply the natural justice rules. I find out that the non-compliance with the rules of natural justice subjects the decisions reached to be set aside.<sup>483</sup>

However, the study does not pretend to address all the problems in the education sectors of Nigeria. As pointed out in section 1 of chapter four, the study has some limitations. There is in-adequate provisions in Nigeria on academic freedom. The problem was however resolved by relying on the international law relevant to Nigeria; regional law; and national legislation.<sup>484</sup>

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<sup>480</sup>Section three of chapter two.

<sup>481</sup>See section three of chapter two.

<sup>482</sup>See section six of chapter 3.

<sup>483</sup>See section four of chapter 4.

The recommendations and suggestions are not useful for the universities alone. They are relevant to corporate bodies, government establishments, and professional bodies.<sup>485</sup> These bodies share similar experiences in maintaining discipline on misconduct having criminal elements in them.

It is hoped that the outcome and results of this research will attract desired attention of the policy-makers in Nigeria. It is submitted that to get the desired impact of the university on the nation's development, a new way of doing things as advocated in this thesis shall be embraced. Every stakeholder in the university education, from the government, members of the university, regulatory agencies, parents and every citizen of Nigeria has to be committed in making desired sacrifices. The private sector must equally complement the efforts of the government and the university in running a university, which is good for the twenty-first century. This should be done by the private sector as beneficiaries of a good university system.

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<sup>484</sup>See section five of chapter 3.

<sup>485</sup>This general problem manifests in the array of cases considered in this thesis.

## BIBLIOGRAPHY

### BOOKS, CHAPTERS IN BOOKS AND ARTICLES

Abt, U 'Constitutional academic freedom and anti-affirmative action laws' (2010 - 2011) (137)(3) *Journal of College and University Law* 628.

Adar, K 'Human rights and academic freedom in Kenya's public universities: The case of the universities academic staff union' (1999) (21)(1) *Human Rights Quarterly* 179.

Adediran, O 'Judicial overthrow of universities disciplinary power: A comment on *Garba v University of Maiduiguri*' (1990) *The Jurist* 51.

Adesina, J 'Civil society and the Abacha State: Reflection on the 1996 ASUU strike' (1998) 3 *Review of Economy and Society*.

Ajayi, I A & Ayodele, JB (2004) *Fundamentals of educational management* Ado-Ekiti: Green-line publishers.

Ajayi IA & Ekundayo, TH 'Management of university education in Nigeria: Problems and possible solutions' (2009) *Revitalization of African Higher Education* 222.

Ajayi, JFA 'Towards an African academic community,' in Yesufu TM (ed) (1976) *Creating the African University: Emerging issues of the 1970's*, published by the Association of African Universities, Ibadan, Oxford University Press, 11.

Ajayi, JFA, Goma, L K H & Johnson, G A (1996) *The African experience with higher education* The Association of African Universities, Ghana.

Akinbola, B 'The right to inclusive education in Nigeria: Meeting the needs and challenges of children with disabilities' (2010) 10 *African Human Rights Law Journal* 468.

Alatishe, Y 'The dynamics of judicial review in Issues in constitutional law and practice in Nigeria' in Sofekun, J (ed) (2002) *Essays in honour of Dr Olu Onagoruwa* 275

Alf, R *Law and justice*, (1958) London, Stevens & Sons Limited 284.

Alston, K & Malherbe, R 'The constitutional right to academic freedom: An exploration into definition, scope and threats' (2009) 1 *Journal of South African Law* 102-123, 103.

Arko-Cobbah, A 'Intellectual freedom and academic freedom: Some challenges and opportunities for academic libraries in Africa' 28 (2) 2011 *Mousaion* 77.

Arogundade, L 'FOI and the society: The imperatives of FOI' in Arogudade, A (ed) (2003) *FOIA (Freedom of Information Act) and civil society* :International Press Centre (IPC) with the support of IFJ and LO/TCO 4.

Aronson, M 'Private bodies, public power and soft law in the High Court' (2007)35 *Federal Law Review* 11.

Asuzu, C (2010) *Fair hearing in Nigeria* Lagos Malthouse Press Limited, Lagos 188 189.

Babalola, A 'University administration in Nigeria: The role of pro-chancellor and governing council' in Fawehinmi-Biobaku, B & Olanrewaju, A (eds) (2008) *Afe Babalola: The living legend, his articles, lectures and speeches* Lagos Nigeria: Biographers Limited.

Babalola, A 'An address on the occasion of the NUC presentation of the best University Council of the year 2002 award to the university of Lagos 15 December 2003 at the NUC Auditorium in Afe Babalola the living legend, his articles, lectures and speeches (2) Olanrewaju & Fawehinmi-Biobaku (eds 2008)194.

Babalola, JB, Jaiyeoba, AO; and Okediran, A 'University autonomy and financial reforms in Nigeria: Historical background, issues and recommendations from experience' in Babalola, JB and Emunemu, BO (eds) (2007). *Issues in higher education: Research evidence from sub-Saharan, Africa*. Lagos: Bolabay publications.

Baxter, L (1984) *Administrative Law* 305 307.

Beloff, M 'Academic freedom - rhetoric or reality?' 22 (2010) *Denning Law Journal* 117.

Berdahl, R *et al* 'The contexts of American higher education, in Altbach, PG *et al* (eds) (1999)*American higher education in the twenty-first Century: Social, political, and economic challenges* 1.

Berger, CJ and Berger, V 'Academic discipline: A guide to fair process for the university student' (1999) (99) *Columbia. Law Review* 289, 290.

Bowling, A 'Green State University Academic Charter' cited in Patrick Pauken 'Academic freedom and institutional autonomy in American and Australian universities: A twenty-first century dialogue and a call to leaders' (12)(7) 2007 *Austl. & N.Z. J.L. & Educ.* 9.

Byrne, JP 'The threat to constitutional academic freedom' 31 (2004-2005)*J.C. & U.L.* 79, 84.

Brand, D '*Financial Constitutional Law: A Comparison between Germany and South Africa*' (2006) *Konrad-Adenauer, Johannesburg*.

Brand, D 'Judicial deference and democracy in socio-economic rights cases in South Africa' (2011) *Stellenbosch Law Review* 614.

Brand, D 'Law and the city: Keeping the poor on the margins' (2014) *De Jure* 189.

Brand, D & Heyns, C (eds) *Socio-Economic Rights in South Africa* (2005) Pretoria University Law Press, Pretoria.

Brand, D & Murcott, M 'Administrative Law' (2013) *Annual Survey of South African Law* 61.

Brand, D & Russell, S (eds)(2002) *Exploring the Core Content of Socio-Economic Rights: South African and International Perspectives* Protea Book House, Pretoria.

Bridge, JW 'Keeping peace in the universities: The role of the university visitor' 86 *LQR* (1970) 531.

Byrom, JE 'To love and die in *Dixon*: An argument for stricter judicial review in cases of academic misconduct' (2012)(31) 1 *Review of Litigation* 147.

Caplow, S 'Clinical legal education in Hong Kong: A time to move forward' (2006) 36 *Hong Kong Law Journal* 231.

Chenwi, L 'Correcting the historical asymmetry between rights: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (2009) 9 *African Human Rights Law Journal* 23-51.

Connell, MA & Savage, F 'The role of collegiality in higher education tenure, promotion, and termination decisions' (2000-2001) 27 J.C. & U.L. 833 838.

Coomans, F 'The core content of the right to education' in Brand, D & Russell, S (eds) (2002) *Exploring the core content of socio-economic rights: South African and International Perspectives* Pretoria South Africa: Protea Book House.

Craver, C 'Implications of the elimination of mandatory retirement for professors 16 (1989 – 1990) *Journal of College and University Law* 344.

Davis, M 'Students, academic institutions and contracts - A ticking time bomb?' (2001) 13 *Education and the Law* 9;

Degni-Segui, R 'Academic freedom and university autonomy in C6te d'Ivoire' in *The State of Academic Freedom In Africa* 1995.

De Klerk, J & Rens, J 'The role of values in school discipline' (2003) 68 (4) *Koers* 354.

Dixon, M & McCorquodale, R (2003) *Cases and materials on International Law*, New York: Oxford.

Dlamini, CRM 'Limitations on and threats to university autonomy and academic freedom' 2000 *THRHR* 171-179

Dlamini, CRM 'University autonomy and academic freedom in transition: The British experience' (2001)(16) *SAPR/PL* 343.

Dutile, DN 'Law, governance, and academic and disciplinary decisions in Australian Universities: An American perspective' (1996) (13) *Arizona Journal of International and Comparative Law* 69.

Ekundayo, HT and Adedokun, MO 'The unresolved issue of university autonomy and academic freedom in Nigerian Universities' (2009)(4)(1) *Humanity and Social Science Journal* 61.

Ellmann, S 'Weighing and implementing the right to counsel' (2004)(2) 121 *South Africa Law Journal* 318.

Farnsworth, AE (1990) *Contracts* Little Brown & Co Law & Business 2ed

Fawehinmi, G 'Ouster of court's jurisdiction by statutes' in Olarinde, ES *et al* (eds)(1997) *Contemporary issues in the Nigerian legal system* 67.

Fessel, S 'The impact of academic freedom policies on critical thinking instructions (2006)(1) *Critical Thinking* 51.

Finkin, MW 'On "Institutional" academic freedom' (1982 – 1983) 61 *Texas Law Review* 849.

Fuchs 'Academic freedom - its basic philosophy, function, and history' (1963) 28 *Law & Contemporary Problems* 433.

Fuller, LL 'The forms and limits of adjudication' (1978-79) *Havard Law Review* 353.

- Glinz, C ‘The right to be given reasons as part of a fair administrative procedure: A comparative study of Namibian, South African and German law’ (2009)(4)(2) *Namibia Law Journal* 4.
- Goldberg, E and Sarabyn, K ‘Measuring a “Degree of Deference”: Institutional academic freedom in a Post- Gruter World’ (2011) 51 *Santa Clara Law Review* 217.
- Goodlad, S ‘Four forms of heresy in higher education: Aspects of academic freedom in education for the professions’ in Tight (ed.), 49.
- Govindjee, A ‘Freedom of expression’ in Govindjee, A & Vrancken, P (eds) (2009) *Introduction to human rights law*: LexisNexis: Durban/Johannesburg/Cape Town, 119.
- Grange, MJ *et al* ‘The training and development of lecturers within the framework of the relevant Acts on Higher Education’ (2006) (20) 1 SAJHE 72.
- Harman, G ‘The erosion of university independence: Recent Australian experience’ *Journal of Education*, (1983)(12) 501.
- Hayek, FA (1944) *The road to serfdom*: London, Routledge & Sons Limited 54.
- Hertogh, M & Halliday, S ‘Judicial review and bureaucratic impact in future research’ in Hertogh, M & Halliday, S (eds) (2004) *Judicial review and bureaucratic impact* 269.
- Hoexter, C (2012) *Administrative Law in South Africa*, JUTA, 108.
- Hoexter, C ‘The future of judicial review in South African Administrative Law’ (2000) 117 *South African Law Journal* 484.
- Holmes, S & Sunstein, CR (1999) *The cost of rights: Why liberty depends on taxes*.
- Horwitz, P ‘Fisher, academic freedom, and distrust’ (2013) 59 *Loyola Law Review* 489.
- Horwitz, P ‘Three faces of deference’ 83 (2008) *Notre Dame Law Review* 1061.
- Hutchens, NH ‘Preserving the independence of public higher education: An examination of state constitutional autonomy provisions for public colleges and universities’ 35 (2008-2009) *Journal of College and University Law* 271.
- Ibe, S ‘Beyond justiciability: Realising the promise of socio-economic rights in Nigeria’ (2007) 7 *African Human Rights Law Journal* 225.
- Ibe, S ‘Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities’ (2010) 10 *African Human Rights Law Journal* 197.
- Ibukun, WO (1997) *Educational management: Theory and practice*; Ado – Ekiti, Green-line publishers 225.
- Ikhariale, M ‘The institution of the visitor in English and overseas universities: problems of its use in Nigeria’ (1991) 40 *ICLQ* 699.
- Kamvounias, P & Varnham, S ‘Legal challenges to university decisions affecting students in Australian Courts and Tribunals’ (2010)(34) *Melbourne University Law Review* 140.
- Kaplan, C & Schrecker, E (eds.), *Regulating the Intellectuals: Perspectives on Academic Freedom in the 1980s*, New York, Praeger, 1983 6.

Kwoka, MB 'The Freedom of Information Act trial'(2011 – 2012) 61 *American University Law Review* 217.

Lenta, P 'Democracy rights, disagreements and judicial review' (2004) 20(1) *South Africa Journal of Human Rights* 1.

Lenta, P 'Judicial deference and rights' (2006) TSAR 456.

Lewis, M 'An Alsatian in England' (1984) 47 *Modern Law Review* 171.

Lindsay, B 'Complexity and ambiguity in university law: Negotiating the legal terrain of student challenges to university decisions' (2007)12(2) *Australia &New Zealand Journal of Law &Education* 7.

Lindsay, B 'Student subjectivity and the law' (2005)10 *Deakin Law Review* 628.

Lovejoy 'Academic freedom'(1930) (1) *Encyclopaediaof the Social Sciences* 384.

Malemi, E (2008) *Administrative Law*: Princeton Publishing Co 9.

Mamdani & Diouf, M (1994) *Academic freedom in Africa* 354.

Mbiada, CJT 'The exhaustion of internal remedies in administrative law: A comparative analysis of the South African and the Cameroonian requirements and procedure' 20(1)(2012) *African Journal of International and Comparative Law* 119 – 131.

McConnell, D *Autonomy and accountability, some fundamental issues* in Altbach, P &Berdahi, RO (eds) (1981) *Higher education in American Society* (30 - 49) Buffalo Prometheus Books.

McConnell, MW 'Academic freedom in religious colleges and universities' (1990) (53)(3) *Law and Contemporary Problems* 307.

McLendon, MK 'State governance reform of higher education: Patterns, trends, and theories of the public policy process' in Smart, JC (ed) (2003) *Handbook of theory and research* 57.

Metzger, W 'Profession and constitution: Two definitions of academic freedom in America' (1988) 66 *Texas Law Review* 1265.

Mgbekem, SJA (2004) 'Management of university education in Nigeria' Calabar: Unical Press.

Morka, F 'Economic, social and cultural rights and democracy: Establishing causality and mutuality' in HURILAWS (ed) (2005) *Enforcing economic, social and cultural rights in Nigeria – Rhetoric or reality?* 85.

Nicol, D 'Academic freedom and social responsibility' in Kertesz, SD (ed)(1972) *The task of universities in a changing world* Notre Dame Press 406.

Nwabueze, BO (1992) *Military rule and constitutionalism* Ibadan: Spectrum Law Publishing.

Nwauche, ES 'Destroying the domestic forum of a university: The Court of Appeal in *Nnamdi Azikiwe University v Okafor*' (2000) *I Udus Law Journal* 196.

Nwauche, ES 'The role of a visitor in the federal university system in Nigeria' (1987 - 1999) 3 *Nigerian Juridical Review* 45.

Nwauche, ES & Nwobike, JC 'The exclusive jurisdiction of Nigerian universities in comparative perspective' (2005) 13 *African Journal of International & Comparative Law* 314.

Oba, AA 'The African Charter on Human and Peoples' Rights and ouster clauses under the military regimes in Nigeria: Before and after September 11' (2004) 4 *AHRLJ* 275.

Odinkalu, CA 'Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights' in Evans, M & Murray, R (eds) (2002) *The African Charter on Human and Peoples' Rights – The system in practice 1986-2000*, 178.

Ogowewo, T I 'The problem with standing to sue in Nigeria' (1995)(39)(1) *Journal of African Law* 1.

Ogunraku, AO (2012) *University administration in the 21st Century, a new direction* :Obafemi Awolowo University Press Ltd.

Ojedele, P & Ilusanya, G 'Planning and policy of higher education in Nigeria' in Babalola, JB *et al* (eds) (2006) *Educational management: Thoughts and practice*. Ibadan. Codat publications.

Ojo, JD 'A critical analysis of the criminal aspects of April 1978, students demonstration in the Nigerian Universities' (1980)(80) *Viertel-jahresBerichte* 139.

Ojo, JD (1990) *Law and university administration in Nigeria*; Lagos, Nigeria: Malt House Press Ltd

Okafor, N (1971) *The development of universities in Nigeria*. London: Longman Group Ltd 141.

Okany, MC (2007) *Nigerian Administrative Law*: African First Publishers.

Okorosaye-Orubite, AK *et al* 'University autonomy, academic freedom and Academic Staff Union of Universities (ASUU) struggles in Nigeria: A historical perspective' (2012) 8 (12) *Asian Social Science* 266.

Okpaluba, C & Juma, L 'The problems of proving actual or apparent bias: An analysis of contemporary development in South Africa' (2011) (7)14 *PER/PELJ* 13.

Okwor, RE 'Constraints to university autonomy: The Nigerian perspective' in Akubue, AU & Enyi, D (eds) (2001), *Crises and challenges in higher education in developing countries: A book of readings*: Wisdom Publishers Ltd Ibadan 61 70.

Olayinka, OF 'Impeachment of executive under the Nigerian Constitution: A review of the Supreme Court decision in *Inakoju v Adeleke*' (2009) June & December 13(1&2) *Journal of the Faculty of Business and Communication Studies The Polytechnic, Ibadan* 181.

Olayinka, OF (2008) *Rudiments of Nigerian Law*: Nolco Publishing Co, Ibadan, 14.

Olong, AM (2007) *Administrative Law in Nigeria: An Introduction*. Lagos, Nigeria: Malthouse Press.

Olopade, O 'Right of an adult patient of sound mind to refuse medical treatment: Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo Revisited' *Commentaries and Law Review Section* (2003) 3 *SCM* 197.

Omotola, JO 'Democracy and constitutionalism in Nigeria under the Fourth Republic, 1999 – 2007' (2008) 2(2) *Africana* 1.

Oosthuizen, Botha, Roos *et al* 'Aspects of Education Law' (eds) 4(2009) 10.



Ordorika, I 'The limits of university autonomy: Power and politics at the Universidad NacionalAutonoma de Mexico' (2003) (46) 3 *Higher Education* 361.

Okechukwu Oko 'Seeking justice in transitional societies: An analysis of the problems and failures of judiciary in Nigeria (2005)(31)1 *Brooklyn Journal of International Law* 9.

Oseni, M 'Adequacy of budgetary allocation to educational institutions in Nigeria' (2012)3(1) *Pakistan Journal of Business and Economic Review* 153.

Quinot, G 'New procedures for the judicial review of administrative action' (2010) 25 (2) *South African Public Law* 646

Sacco 'Legal formant: A dynamic approach to Comparative Law (1991) *AJCL* 1.

Saint, W *et al* 'Higher education in Nigeria: A status report' (2003) *Higher Education Policy* 20.

Sanni, A 'Fundamental Rights Enforcement Procedure Rules, 2009 as a tool for the enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The need for far-reaching reform. (2011) 11 *African Human Rights Law Journal* 520.

Schwartz, (1962) *Introduction to American Administrative Law* 117.

Schweitzer, TA 'Academic challenge' cases: Should judicial review extend to academic evaluations of students?' (1992)41 *American University Law Review* 267.

Scully, CM 'Autonomy and accountability: The University of California and the State Constitution' July (1987) *Hastings Law Journal*.

Shattuck, J 'Federal restrictions on the free flow of academic information and ideas, in Curry, RO (ed)(1988) *Freedom at risk: Secrecy, censorship, and repression in the 1980s*' 45.

Shyllon &Obasanjo (1980) *The demise of the rule of law in Nigeria under the military: Two points of view*; Ibadan University Press 49.

Smith, IO 'Enforcement of human rights treaties in a military regime: Effect of ouster clauses on the application of African Charter on Human and Peoples' Rights in Nigeria' (2000) 9(2) *Review of the African Commission on Human and Peoples' Rights* 192,

Smith, N 'Constitutional academic freedom' *South African Law Journal*, (1995)(112)(4) 678-680, 680.

Smith, PM 'The exclusive jurisdiction of the visitor' (1981) 97 *Law Quarterly Review* 53.

Sokefun, J 'Enforcement of human rights' in Sokefun, J (ed)(2002) *Issues in constitutional law and practice in Nigeria* 314.

Suleiman, A &Arikewuyo, MO *Educational management:Thoughts and practice*:Ibadan: Codat publications.

Taiwo, EA 'Enforcement of fundamental rights and the standing rules under the Nigerian Constitution: the need for a more liberal provision' (2009) (9)(2) *African Human Rights Law Journal* 546 575.

Taiwo, EA 'Judicial review of the impeachment procedure in Nigeria' (2)(2009)(3) *Malawi Law Journal*.

Taiwo, EA 'Locus standi in Nigeria' in Sofekun, JA (ed) (2002) *Issues in Constitutional Law and practice in Nigeria* Olabisi Onabanjo University, Ago Iwoye, Nigeria: Molukom Press & Co.

Taiwo, EA 'Repugnancy clause and its impact on customary law: Comparing the South African and Nigerian positions - Some lessons for Nigeria' (2009) 34(1) *Journal for Juridical Science* 89-115.

Taiwo, EA (2011) *Basic concepts in legal research methodology (A practical guide on writing excellent Master's and Doctoral Theses)*: St Paul's Publishing House, Ibadan, Nigeria.

Taylor, Y & Taylor, R 'Academic freedom and racial injustice: South Africa's former 'open universities' 2 (2010)(6) *South African Journal of Higher Education* 897.

The Open Universities in South Africa and Academic Freedom, (1957-1974) - A review by the Academic Freedom Committees of the University of Cape Town and the University of Witwatersrand (Juta & Co, 1974)

Tiamiyu, RA 'Questioning the claim of inadequate funding of tertiary education in Oyo State, Nigeria' *International Journal of Governmental Financial Management* 47.

Tight, M 'So What is academic freedom?' in Tight, M (ed.) (1988) *Academic freedom and responsibility*, Society for Research into Higher Education & Open University Press, Milton Keynes, 132.

Pauken, P 'Academic freedom and institutional autonomy in American and Australian Universities: A twenty-first century dialogue and a call to leaders' (2007) 12(7) *Australia & New Zealand Journal of Law Education* 8.

Picozzi 'University disciplinary process: What's fair, what's due, and what you don't get, (1987) 96 *Yale Law Journal*, 2136-40.

Pieterse, M 'Coming to terms with the judicial enforcement of socio-economic rights' (2004) 20 *SAJHR* 383.

Popoola, A 'A doctrinal and comparative perspective of the enhancement of citizens' participation in democratic governance' in Arogundade, L (ed) (2003) FOIA (Freedom of Information Act) and civil society; Published by International Press Centre (IPC) with the support of IFJ and LO/TCO P 32.

Posner, W 'The origins and nature of the distinction between individual and institutional academic freedom' 65.

Pound 'The limits of effective legal action' (1917) 3 (55) *ABAJ* 1.

Pretorius, DM 'The defence of the realm: Contract and natural justice' (2002)(119) *South African Law Journal* 363.

Pretorius, G 'Some thoughts on the search for just and democratic school in South Africa' (2007) 25(4) *Perspective in Education* 87.

Rabban, DM 'Does academic freedom limit faculty autonomy?' (1987-1988) 66 *Texas Law Review* 1405.

Russell, C *Academic Freedom*, Routledge: London & New York, 1993, p. 1.

Yudof, M 'Three faces of academic freedom' (1987) 32 *Loyola Law Review* 831.

Van Alstyne 'Tenure: A summary, explanation, and 'defense'' 57 (1971) *American Association of University Professors Bulletin* 328; American Association of University Professors, Declaration of Principles (1915)

Van Alstyne 'The specific theory of academic freedom and the general issue of civil liberty' in Pincoffs, E (ed) (1972) *The concept of academic freedom* 59.

Wade, HWR (1988) *Administrative law* : Oxford University Press 36.

Wade, W & Forsyth, CF (2009) *Administrative Law*: Oxford University Press.

Ziekow, J (2006) *Verwaltungsverfahrensgesetz*. Stuttgart: Kohlhammer.

## TABLE OF CASES

### NIGERIAN CASES

*Abe v University of Ilorin* (2013) 12 SCM 27.

*Abia State University v Anyaibe* (1996) 3 NWLR Pt 439, 646 CA.

*Adegbenro v Akintola* (1963) AC 614.

*Adekunle v University of Port Harcourt* (1999) 3 NWLR (Pt181) Page 534.

*Adeniyi v Governing Council of YabaTech* (1993) 6 NWLR (Pt 300) 426

*Adesanya v President of the Federal Republic of Nigeria &Anor*, [1981] 1 All NLR 1.

*Administrator of the Estate of General SaniAbacha v Eke –Spiff & others* (2009) 8 SCM 103.

*Akintemi v Onwumechili&ors* (1985) 1 NWLR (pt. 1)69.

*Akinyanju v University of Ilorin* (2005) 7 NWLR (Pt 923)87.

*Animashaun v University College Hospital* (1996) 12 SCNJ 179.

*Archbishop Anthony Okogie and Others v The Attorney-General of Lagos State* (1981) 2 NCLR 350.

*Asein v University of Ibadan*, Unreported CA/1/63/84.

*Attorney General of the Federation v Guardian Newspapers* (1999) 5 SCNJ 324.

*Attorney - General, Ondo State v Attorney-General, Federation of Nigeria* (2002) 9 SCM 1

*Attorney General 36 States v Attorney General of the Federation* (2002) 5 SCM 1.

*Ayewa v University of Jos* (2000) 6 NWLR (Pt 659) 142.

*Baba v Nigerian Civil Aviation Training Centre* (1991) 5 NWLR (Part 192) 388.

*Bakare v ACB Ltd* (1986) 3 NWLR (Pt 26) 47

*Basinco Motors Ltd v Woermann – Line &another* (2009) 8 SCM, 103.

*Carlen (Nig) Ltd vUniversity of Jos* (1994) 1NWLR (Pt.323) 631.

*Chief Obafemi Awolowo v Alhaji Shehu Shagari* (1979) 12 NSCC 87.

*Comrade Babatunde Dosunmu v Governing Council of The Polytechnic, Ibadan* Suit No NIC/LA/47/2009, National Industrial Court, Lagos Judicial Division, (Unreported)

*Council of the University of Ibadan v Adamolekun* (1967) NSCC 210.

*Cyril Osakue v Federal College of Education (Technical) Asaba&2 Others* (2010) 5 SCM 185.

- Dangote v CSC Plateau State*, (1995) 7 NWLR (Pt. 106) 652.
- Dangote General Textile Products Ltd & Others v Hascon Associates Nigeria Ltd* (2013) SCM 212.
- Dare Jimoh v The State* (2014) 11 SCM 216.
- David Osuagwu v AG Anambra* (1983) 4 NWLR (Pt.285) 13.
- Denloye v Medical and Dental Practitioners Disciplinary Committee* (1968) ANLR 298.
- District Officer v Queen* (1961) SCNLR.
- District Officer v Queen* (1971) 11 SC 211.
- Dr Oloruntoba-Oju & Others v University of Ilorin* (2009) 7 SCM 118.
- Dr Tunde Bamgboye v University of Ilorin & 1 other* (1999) 6 SCNJ 295.
- Dudusola v Nigeria Gas Company Limited* (2013) 7 SCM 24.
- Egwu v University of Port Harcourt* (1995) 8 NWLR (Pt 414) 419.
- Ekundayo v University of Ibadan* (2000) 12 NWLR (pt. 681) 220.
- Elizabeth Iyamabo v University of Ife (reported in Akintemi v Onwumechili)*(1982) 1NWLR (Pt. 18)
- Emmanuel Egwumi v The State* (2013) 5 SCM 109.
- Emuze v Vice Chancellor, University of Benin* (2003) 7 SCM 19.
- Eperokun, MO & 2 others v University of Lagos* (1986) 4 NWLR (Pt 34) 162.
- Esiaga v University of Calabar and 2 others* (2004) 3 SCM 61; (2004) 7 NWLR (Part 872) 366
- Fawehinmi v Akilu* (1987) 12 SC 136.
- Federal Civil Service Commission &Others v J O Laoye* (1989) 2 NWLR(Pt 106) 652.
- Federal Republic of Nigeria vAlhaji Mika Anache&Others* (2004) 14 WRN 1 90, 61.
- Fetuga v University of Ibadan* (2000)13 NWLR (pt 683) 118.
- Folayan v Obafemi Awolowo University* (Unreported suit no HIF/MISC.13/88)
- Francis Adesegun Kaito v Central Bank of Nigeria* (1999) 5 SCNJ 1.
- Garba & others v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550; (1986) ANLR 149; (1987) Law Reports of the Commonwealth 413.
- Hart v Military Governor of Rivers State* (1971) 11 SC 211.
- Haruna Gyang & Another v Commissioner of Police, Lagos State & Others* (2013) 12 SCM (Pt 2) 258.
- Institute of Health Ahmadu Bello Uniiversity Hospital Management Board v MrsJummair L Anyip* (2011) 5 SCM 1.
- Isaac Boro v Republic* (1967) All Nigerian Law Report.
- JFS Investment Ltd v Brawal Line &Ors* (2010) 12 SCM 79.
- JSC Cross Rivers & Other v Young* (2013) 12 SCM 98.
- Judicial Service Commission of Cross River State & Other v Dr (Mrs) Asari Young* (2013) 12 SCM 98.
- Kunle Osisanya v Afribank Plc* (2007) 4 SCM194.
- Lakanmi & Other v The Attorney General (Western State) and others* (1971) SC.
- Legal Practitioners Disciplinary Committee v Gani Fawehinmi* (1983) 2 NWLR 414.

*Legal Practitioners Disciplinary Tribunal v Chief GaniFawehinmi*(1985) 2 NWLR (pt 7) 300.  
*Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*(2001) 4 SCM 78; (2003) 3 SCM 197.  
*Mike Eze v Spring Bank PLC* (2011) 11-12 Pt 1 SCM 93.  
*Nigerian Army v Banni Yakubu* (2013) 5 SCM 187.  
*NnamdiAzikiwe University v Okafor* (1999) 1 NWLR (pt 595) 116: *I Udus Law Journal* 196(2000)  
*NSITF v Klifco Nigeria Limited* (2010) 8 SCM 212.  
*Obo v Commissioner for Education* (2001) 2 SCM 57.  
*Odukale v University of Ife* (Unreported) Suit No: MBSC/8/78 of 14/4/78.  
*Ogugu v The State* [1994] 9 NWLR (Pt 366) 1.  
*Okaru v Ndili* (1989) 4 NWLR (Pt. 118) 700.  
*Okeke v AG Anambra State* (1992) 1NWLR (Pt 215) 60.  
*Olafisoye v Federal Republic of Nigeria* [2004] 4 NWLR (Pt 864) 580.  
*Olagunju v Yahaya* (1998) 3 NWLR Part 542 501.  
*Olaniyan & others v University of Lagos* (1985) 2 NWLR (Pt 9) 599.  
*Olaofe v University of Ibadan* (2001) 10 NWLR (Pt 720) 126.  
*Olatunbosun v NISER Council* (1988) 3 NWLR (Pt 80) 25.  
*Olufeagba & 43 Others v Abdur – Raheem &3 others* (2009) 11 12 (Pt.1) SCM 125.  
*Onuoha v Okafor* (1985) 6 NCLR 503.  
*Onwumechili v Akintemi* (1985) 3 NWLR (Pt 13) 504.  
*Oyeneye v Odugbesan* (1972) 4 SC 244.  
*Shittu Onigbede & 9 others v Samuel Balogun & Another* (2002) 4 SCM 144.  
*Sofekun v Akinyemi* (1980) 5-7 SC 1.  
*The Council of Federal Polytechnic, Mubi v Yusuf* (1998) 1 NWLR (Pt 533) 343.  
*Pam v Mohammed* (2008) 40 *Weekly Reports of Nigeria* 67.  
*Patrick Magit v University of Agriculture Makurdi& others* (2005) 12 SCM 226.  
*Professor Olutola v University of Ilorin* (2004) 9-12 SCM (Pt 2) 169: (2004) 12 SCNJ 236.  
*Psychiatric Hospitals Management Board v Ejitagha* (2000) 2 SCNQ (Pt 2) 1360.  
*Psychiatric Hospitals Management Board v Mrs Doris Edosa* (2001) 4 SCM 159.  
*Raymond Dantoe v Civil Service Commission, Plateau State* (2001) 5 SCM 59.  
*United Bank of Nigeria v Ogboh* (1995) 32 NWLR (pt 380) 647 669.  
*University of Agriculture Makurdi v Jack* [2000]11 NWLR (Pt679) 658.  
*University of Calabar v Essien* (1996) 12 SCNJ 304.  
*University of Ilorin v Akinrogunde* (2002) 3 NWLR (Part 755) 626.  
*University of Ilorin v Rasheedat Adesina* (2014) 6 SCM 222.  
*University of Ilorin v Stephen Olanrewaju Akinola* (2014) 7 *Supreme Court Monthly* 174.  
*University of Jos v MC Ikegwuoha* (2013) 7 SCM 126.

*University of Nigeria Teaching Hospital Management Board & Another v Nnoli* (1994) 8 NWLR (Pt 363) 376.

*Yusuf v Union Bank of Nigeria* 1999) 6NWLR (Pt. 457) 632.F.C.S.C v *Laoye* (1989) 2 NWLR (pt. 106) 652.

*Ziideeh Patrick v Rivers State Civil Service Commission* (2007) 2 SCM 204.

## **SOUTH AFRICAN CASES**

*AAA Investments (Pty) Ltd v Micro Finance Regulatory Control* 2007 (1) SA 343 (CC)

*Administrator, Transvaal v Zenzile* 1991 (1) SA 351

*Albutt v Centre for the Study of Violence and Reconciliation* 2010 (3) SA 293 CC

*Baloro v University of Bophuthatswana* 1995(8) BCLR 1018.

*Bato Star v Minister of Environmental Affairs* 2004 (4) SA 490 (CC)

*Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd*[2010] 3 All SA 577 (SCA)

*Cape Bar Council v Judicial Service Commission and another (Centre for Constitutional Rights and another as amici curiae)* (2012] 2 All SA 143 (WCC)

*Centre for Social Accountability v Secretary of Parliament and others* 2011 4 All SA 181.

*Cupan v Cape Display Chain Services* 1995 (5) BCLR 598 (D)

*Democratic Alliance v Ethekwini Municipality* 2012 (1) All SA 412 (SCA)

*Department of Education, North West v Van Eck & others* 2011 (4) BLLR 341 (LC)

*Du Preez v Truth and Reconciliation Commission* 1997 (3) SA 204 (A) at 231C-E.

*Executive Council, Western Cape Legislature and Others v President of Republic of South Africa and Others* 1995 (4) SA 877 (CC) (1995 (10) BCLR 1289)

*ExParte Minister of Native Affairs: In re Yako v Beyi* 1948 (1) SA 388

*Federation of Governing Bodies of SA Schools & others v MEC for the Department of Basic Education, Eastern Cape & others* 2011 (6) BLLR 616 (ECB)

*Government of Republic of South Africa v Grootboom* 2001 1 SA 46 (CC)

*Hamata v Chairperson Peninsula Technikon Internal Disciplinary Committee* 2002 (5) SA 449 SCA

*Joseph v University of Limpopo & others* [2011] 12 BLLR 1166 (LAC)

*LC v Dale College Boys Primary School and others* [2012] 2 All SA 224 (ECG)

*Lunt v University of Cape Town* 1989 (2) SA 438.

*M & G Media Ltd v 2010 FIFA World Cup Organising Committee South Africa Ltd* 2011 (5) SA 163.

*Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC)

*Moreau- Berube v New Brunswick (Judicial Council)* (2002) 209 DLR (4<sup>th</sup>) 1 (SCC)

*National Lotteries Board and others v SA Education and Environment Project and another* 2012 (1) All SA 451 (SCA)

*Pharmaceutical Manufacturers Association in Re Exparte President of Republic of South Africa* 2002(2) SA 674 CC.

*President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 144 (CC)

*S v Makwanyane* (1997) ZACC 5; 1997 (6) BCLR 759 CC

*SA Predator Breeders Association and others v Minister of Environmental Affairs and Tourism* 2011 (2) All SA 529 SCA

*Sibanyoni and others v University of Fort Hare* 1985 (1) SA 19 (CkS)

*Simunye Developers CC v Lovedale Public FET College* (2010) ZAECGHC 121 (9 December 2010)

*Smith v Banjo* 2011 (2) All SA 577(KZP)

*UNISA v Reynhardt* 2010 (12) BLLR 1272 (LAC)

*UNISA v Solidarity obo Marshall and others* 2009 (5) BLLR 510 (LC)

*University of Pretoria v Commission for Conciliation, Mediation, Arbitration and Others* 2012 BLLR 158 LAC.

*Wessels v Minister for Justice and Constitutional Development* 2010 (1) SA 128 (GNP)

*Wildlife Society of Southern Africa v Minister of Environmental Affairs and Tourism and of the Republic of South Africa* 1996 (3) SA 1095

## **CASES FROM OTHER JURISDICTIONS**

*Barnard v Inhabitants of Shelburne*, 102 N.E. 1095, 1097 (Mass. 1913).

*Board of Curators of the University of Missouri v Horowitz*, 435 US 78, 80 (1978)

*Bromsburg v Hayes* (1972) 408 US 665.

*Casson and Another v University of Aston in Birmingham* (1983) 1 All ER 88, 91 92.

*Cieboter v O'Connell* 236 So.2d 470, 472 (Fla. Dist. Ct. App. 1970)

*Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752.

*Clayton v Trustees of Princeton University* 608 F. Supp. 413, 439 (D. N.J.1985),

*Cohen v San Bernardino Valley College* 92 F.3d 968 (9th Cir. 1996)

*Comyn v Attorney General* IR (1950) 142.

*Connelly v University of Vt. & State Agricultural College*, 244 F Supp 156, 158 (D Vt1965).

*Davis v Alaska*, 415 U.S. 308, 316 (1974) .

*Dixon v Alabama State Board of Education*, 294 F.2d 150, 158 (5th Cir. 1961).

*Durayappah v Fernando* (1967) 2 AC 337 (PC)

*Edwards v California University of Pennsylvania* 156, F 30 488, 491 (3rd Circuit 1998).

*Eiland v Wolf*, 764 S.W.2d 827, 838 (Texas Court of Appeal 1989)

*Ewing v Board of Regents of the Univ. of Mich.*, 742 F.2d 913 (6th Cir 1984)

*Fenje v Feld* 398 F.3d 620, 629-30 (7th Cir2005)

*Frank & Another v Chairperson of the Immigration Selection Board*, 1999 NR 257

*Gabrilowitz v Newman*, 582 F.2d 100 (1st Cir. 1978)

*Goddard v Smith* 6 Mod 261

*Gorman v University of Rhode Island*, 837 F.2d 7, 9-11 (1st Cir. 1988).

*Gorum v Sessoms* 561 F.3d 179, 185 (3d Cir. 2009)

*Griffith University v Tang* (2005) 221 CLR 99, 156-7 [165].

*Harding v University of New South Wales* [2002] NSWSC 113 (1 March 2002) [17].

*Herring v Templeman* (1973) 3 All.E.R 569.

*Home v Cox*, 551 S.W.2d 690, 691 (Tenn. 1977)

*Kanda v Government of Malaya* (1962) AC 332

*Kay v Board of Higher Education*, 18 N.Y.S.2d 821, 831 (N.Y. Sup.Ct, 1940) 829.

*Lam v The University of Sydney* [1997] NSWSCA 184 (22 April 1997).

*Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329.

*McLaughlin v Massachusetts Maritime Academy*, 564 F. Supp. 809 (D. Mass. 1983)



- Militana v University of Miami*, 236 So.2d 162, 164 (Fla. App. 1970)
- Napolitano v Trustees of Princeton University* 453A.2d 263, 278 (N.J. Super. Ct. App. Div. 1982)
- Norrie v Senate of the University of Auckland* [1984] 1 NZLR 129.
- Ogunleye v State of Arizona*, 66 F. Supp. 2d 1104 (D. Ariz. 1999)
- Orr v Bond University* Unreported, Supreme Court of Queensland, DowsettJ, 3 April 1996.
- Parate v Isibor* 868 F.2d 821 CA 6 Tenn (1989)
- Pickering v Board of Education of Township High School District205, Will City* 91 US 563 (Supreme Court, 1968) at 566-574)
- Salve Regina College v Russell*, 499 US 225,111S. Ct. 1217,113 L.Ed.2d 190 (1991)
- Schmidt v Secretary of State for Home Affairs* (1969) 2 Ch 1149
- Silva v University of New Hampshire* N.H, 888 F. Supp. 293 (D.N.H. 1994)
- Sweezy v New Hampshire* 354 US 234, 250 (1957)
- Sylvester v Texas Southern University*, 957F. Supp. 944, 948 (S.D.Tex. 1997)
- R v Aston University Senate, ex parte Roffey* (1969)2 QB 538.
- R v Bland* (1740) Mod 355.
- R (Persaud) v University of Cambridge* [2001] EWCA Civ534 (10 April 2001).
- R v Chancellor of the University of Cambridge* (1923) 1 Str.557.
- R v Chancellor, et al of the Universities of Cambridge*(1794) 6 TR 89.
- R and R v St John's College, Cambridge* (1693) 4 Mod 233.
- Regents of the University of California v Bakke*438 US 265, 312 (1978)
- re Trahms v The Trustees of Columbia University in the City of New York*, No. 107796, slip op. at 5 (N.Y. Sup. Ct. June 18, 1996)
- Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & Universal Basic Education Commission* (Suit ECW/CCJ/ App/0808) delivered on 27 October 2009. <http://ccs.infospace.com/ClickHandler.ashx?id=20150424&app=1&c=qtypehosted&s=qt=C13A2CFFFDC20E04AE4B85367177C462> accessed 24 April 2015.
- Rigg v University of Waikato* (1984) 1 NZLR 149, 181.
- Russell v Salve Regina College*90 F.2d 484, (1st Cir 1989)
- The King v University of Cambridge*, [1334] 8*Modem Rep.*148 (Eng.)
- Thomas v University of Bradford* (1985) 3 WLR 248.
- Thomson v University of London* (1864) 33 LJ Ch 625.

*Thorne v University of London* (1966) 2 QB 237.

*Wright v Texas State University*, 392 F.2d 728, 729 (5<sup>th</sup> Cir. 1968)

*Zemel v Rusk* (1965) 381 US 1.

## **DISSERTATIONS AND THESES**

Abioye, FT ‘Rule of law in English speaking African Countries: The case of Nigeria and South Africa’ Unpublished LLD Thesis, University of Pretoria 2011.

Bako, RB ‘The concept of academic freedom and crises in the Nigerian University system’ Unpublished Thesis, Doctor of Philosophy, Department of Arts and Social Science, Faculty of Education, University of Jos, 2006.

Brand, D ‘Courts, socio- economic rights and transformative politics’ Unpublished LLD Thesis, Stellenbosch 2009.

Dlamini, CRM ‘University autonomy and academic freedom in South Africa’ Unpublished LLD Thesis, UNISA 1996.

Ibe, S ‘Beyond the rhetoric: Transcending justiciability in the enforcement of socio-economic rights in Nigeria’ Unpublished LLM dissertation, Maastricht University, Netherlands, 2006.

Plasket, C ‘The fundamental right to just administrative action: Judicial review of administrative action in the democratic South Africa’ Unpublished LLD Thesis, Rhodes University, 2002.

Smit, M ‘The role of school discipline in combating violence in schools in the East London Region’ Unpublished Master of Education Dissertation, The University of Fort Hare East London, 2010.

Taiwo, EA ‘The implementation of the right to education in South Africa and Nigeria’ Unpublished LLD Thesis, Nelson Mandela Metropolitan University, April 2011.

## **CONFERENCE PAPERS, SEMINARS, SYMPOSIA & LECTURES**

Adamolekun, L ‘Education sector in crisis: Evidence, causes and possible remedies.’ 2012/2013 Distinguished Lecture of Joseph Ayo Babalola University (JABU), Ikeji Arakeji, Osun State, Nigeria Thursday 24 January 2013.

Adegbite, JGO ‘The education reform agenda: challenges for tertiary education administration in Nigeria’ Being a paper presented at the Sixth Annual Seminar of the Conference of Registrars of College of Education in Nigeria. (South-West Zone) at the College of Education, Ikere-Ekiti, Ekiti State. 12-13 June 2007.

Adeniran, FA ‘Where there is no vision’ Inaugural Lecture series 1, The Polytechnic, Ibadan – Nigeria, delivered at the North Campus Assembly Hall, The Polytechnic Ibadan on Wednesday 18 June 2014 13.

Adesina, J 'The changing relations of unions and state in Nigeria: Neo-liberalism and the dilemma of democracy' Paper prepared for the colloquium on Etat et Acteurs Emergents en Afrique held at Maison des Sciences de L'Homme, Paris, France 16-18 November 2000.

Ajayi, I A& Ekundayo, H T 'Funding initiatives in university education in Nigeria.' Being a paper presented in 2006 at the National conference of National Association for Educational Administration and Planning, Enugu State University of Science & Technology.

Ajayi, JFA 'Academic freedom and university autonomy in Nigeria today: A historical survey and research for new strategies' A lecture delivered at the Academic Staff Union of Universities Conference in Kano, 1980.

Babalola, Afe 'University administration in Nigeria: The role of pro-chancellor and the Governing Council Paper presented to the Committee of Pro-Chancellors from Federal, State and private Universities in Nigeria.

Byrne, JP '*Academic freedom without tenure?*' (1997) American Association for Higher Education, New Pathways Working Paper No 5.

Candido, AH 'A right to talk dirty?: Academic freedom values and sexual harassment in the university classroom' 4 U Chi. L. Sch. Roundtable 85 1997 at 89.

Fawole, O 'An address delivered by the Rector, during the swearing in ceremony of the student union executives and students representative council' Friday 3 October 2014, in the North Campus Assembly Hall of The Polytechnic Ibadan, Nigeria.

Ogunraku, A 'Administration of Nigeria's tertiary institutions in the 21st Century: Challenges and the way out' Being a paper delivered at the First Registry Annual Public Lecture Emmanuel Alayande College of Education, Oyo, Oyo State, Nigeria on Wednesday 19 November 2014 23.

Okonkwo CO 'Discipline, Nigerian Universities and the Law' Paper presented at the Annual Lecture of the Nigerian Institute of Advanced Legal Studies, University of Lagos Campus, 1996.

Olayinka, OF 'The law and constitutional guarantees in disciplinary proceedings in higher institutions in Nigeria' paper presented at the Training and Capacity Building/ Retreat, for Heads of Departments, The Polytechnic Ibadan, held at Ada, Osun State Nigeria, 17-19 February 2011.

Olatunbosun, A 'Tough on crime but soft on justice' An in-augural lecture delivered at the University of Ibadan on Thursday 06 November 2014.

Onyeonoru 'University autonomy and cost recovery policies: union contestation and sustainable university system' Retrieved on line from [portal.unesco.org/education/en/files/36322](http://portal.unesco.org/education/en/files/36322),

Oyeneye, OY 'Current issues in the administration of university education in Nigeria' Being a Lecture delivered at the 15th Convocation ceremony of the University of Ado-Ekiti. 29 March 2006.

Peters, A 'Building human capital for sustainable development: Role of the university' delivered at the University of Ibadan, 2013 Registry Discourse, Thursday 26 September 2013.

Popoola, A 'The bench, the bar and the challenges of democratic consolidation in Nigeria: Issues and prospects' paper delivered by the Professor of Law and Dean, Faculty of Law, Obafemi Awolowo University, Ile Ife, Nigeria Commemorative lecture in honour of the Pro-Chancellor and Chairman of Council, Chief Wole Olanipekun, SAN. 19 July 2011, Trenchard Hall, University of Ibadan, Nigeria

Shyllon, F 'Freedom, justice and due process of law' Inaugural lecture delivered at the University of Ibadan, Nigeria on Thursday 15 May 1986.

Taiwo, EA 'Defining the nature and content of the right to education in Nigeria: A call towards a positive realisation' Seminar paper presented at the Tilburg Law School during a Lunch Seminar Series of the Netherlands Institute of Advance Studies. 08 December 2011.

Taiwo, EA 'The implementation of the right to education in South Africa and Nigeria' seminar presented at the Faculty of Law, University of Ibadan, Nigeria, 15 February 2010.

Taiwo, EA 'The regulatory bodies, academic freedom and institutional autonomy in Africa: Issues and challenges - Nigerian example' A conference paper presented at the CODESRIA Conference 'Academic freedom and the social responsibility of academic and researcher in Africa: What are the new challenges?' Oran, Algeria, 09-11 March 2010.

Weber, L 'University autonomy, a necessary, but not sufficient condition for excellence' Being a paper presented at IAU / IAUP Presidents' symposium. Chiang Mai, Thailand 89 December. 2006.

## INTERNET SOURCES

AAUP, *Sexual Harassment: Suggested Policy and Procedures for Handling Complaints*, available at <http://www.aaup.org/statements/Redbook/rbsexha.htm> (accessed 12 October 2004)

Adedipe, NO 'Strains and stresses in the Nigerian University system: sustainable quality assurance prospects by private universities' at the 3rd Convocation lecture of Al Hakimah University <http://saharareporters.com/article/strains-and-stresses-nigerian-university-system-sustainable-quality-assurance-prospects-priv> (accessed 28 February 2014)

Berube M 'What does "Academic freedom" mean?' Washington: American Association of University Professors." <http://www.aaup.org/AAUP/pubsres/academe/2006/ND/Feat/beru.htm> Accessed 30 April 2012.

Dabalén, A *et al* 'Labour market prospects for university graduates in Nigeria' Higher Education Policy November 2000 [http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2004/09/14/000090341\\_20040914113724/Rendered/PDF/299420UNIOLabor1market0graduates.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2004/09/14/000090341_20040914113724/Rendered/PDF/299420UNIOLabor1market0graduates.pdf) (accessed 29 July 2013)

Ketchum, D 'A student's duties & obligations' [http://www.ehow.com/list\\_6805249\\_student\\_s-duties-amp\\_obligations.html](http://www.ehow.com/list_6805249_student_s-duties-amp_obligations.html) accessed 9 September 2014.

Okojie, JA 'University autonomy: Repositioning the Nigerian education system in the 21<sup>st</sup> Century' Paper presented by the Executive Secretary, National Universities Commission Abuja. 14 October 2011. [www.nuc.edu.ng](http://www.nuc.edu.ng) (accessed 2 July 2015)

Olayinka, OF 'Beyond being the most populous black nation' <http://www.focusnigeria.com/most-populous-country.htm> (accessed 2 July 2014)

Olayinka, OF 'Nigeria's National Conference: The right to have it right in the education sector' <http://africlaw.com/2013/10/21/nigerias-national-conference-the-right-to-have-it-right-in-the-education-sector/> (accessed 2 July 2014)

Olayinka, OF 'Nigeria without the oil' [www.focusnigeria.com/nigeria-without-oil.htm](http://www.focusnigeria.com/nigeria-without-oil.htm) (accessed 2 July 2014)

Onyeonoru, I 'University autonomy and cost recovery policies: union contestation and sustainable university system' Retrieved on line from [portal.unesco.org/education/en/files\\_36322](http://portal.unesco.org/education/en/files_36322) (accessed 29 July 2013)

Oshio, PE 'Autonomy and management of federal universities under the Universities Autonomy Act' [www.nigerianlawguru.com](http://www.nigerianlawguru.com) accessed 4 April 2012.

University of Fort Hare 2010 [www.ufh.ac.za](http://www.ufh.ac.za) University of Fort Hare 2010 Prospectus: Disciplinary Procedures DR 20 [www.ufh.ac.za/Prospectus\\_2010.pdf](http://www.ufh.ac.za/Prospectus_2010.pdf) (accessed 1 January 2010).

Yankah K 'Academic freedom: myths, realities, and boundaries.' Lecture delivered to University of Ghana Students Representatives Council (SRC) [http://www.codesria.org/IMG/pdf/Albert\\_Arko\\_Cobbah.pdf](http://www.codesria.org/IMG/pdf/Albert_Arko_Cobbah.pdf) accessed 30 April 2012.

## NEWSPAPER ARTICLES AND REPORTS

Abdulkadir 'Executive perspectives on the development of the Nigerian University system, NUC Publication, 1994, 46, 47.

Abiodun Fagbemi '48 UNILORIN students get first class degrees' The Guardian Monday 13 October 2014 89, also at [www.ngrguardiannews.com](http://www.ngrguardiannews.com) accessed 15 October 2014.

Abiodun Fagbemi 'UNILORIN admits 8093 out of 64121 applicants, Igbinedion varsity matriculates 900' The Guardian Thursday 17 January 2013, p 50

Abiodun Fanoro 'Babawale charges alumni associations to challenge impunity, corruption in schools' The Guardian 17 April 2014 54.

Abiodun Fanoro 'Regionalism: Yoruba say no retreat no surrender' The Guardian Thursday 19 June 2014 19.

Abosede Musari 'CJN tasks judges on punctuality, quick dispensation of justice' The Guardian Friday 24 May 2013 4

Adamolekun in an interview with London's *Financial Times* 20 May 2008.

Akin Oyebo 'Legal imperatives of university autonomy' Tuesday 11 December, *The Guardian* (Nigeria) at 85. Being the text of a lecture delivered at the Third National Training Programme for Senior University Managers (NATPSUMA III) at Enugu.

Akinpelu Oluwatobi 'National development: Legal equality and federal character principle' The Guardian Tuesday 10 November 2015 51.

Alemma-Ozioruva Aliu 'Protest in Benin over UNIBEN visitation panel' The Guardian Thursday 24 February 2011 63.

'An address of Olusegun Odunola, the Rector of the Polytechnic Ibadan at a retreat organized for the institution's administrators' The Guardian Tuesday 22 February 2011 63.

Ann Godwin 'Students suffer as ASUU, Amaechi lock horns over appointment of Vice Chancellor' The Guardian Thursday December 2012 49.

Ayuba Mohammed 'Nigerians, hold these lecturers accountable' The Guardian, 10 January, 2014 14.

'Barovbe wants Higher School Certificate re-introduced' The Guardian Thursday 22 August 2013 55.  
<http://www.nuc.edu.ng/pages/pages.asp?id=31B> accessed on 28 February 2014.

Bertram Nwannekanma 'Institutionalising free legal service culture in Nigeria' The Guardian Tuesday 15 April 2014 81.

Charles Gyamfi Deputy 'VC of TASUED abducted' The Guardian Wednesday 15 October 2014 75, [www.ngrguardiannews.com](http://www.ngrguardiannews.com).

Charles Ogugbuaja 'IMSUTH medical students protest delay in graduation' The Guardian Thursday 17 January 2013 44.

ChidoOkafor 'Delta varsity teachers protest rising abduction cases' The Guardian Tuesday 4 December 2012 p 6

Chukwuma Muanya 'NIM decries unethical practices in Nigeria varsities' The Guardian Thursday 28<sup>th</sup> April 2011, 48.

Collins Olayinka 'NAAT decries laboratory decay in tertiary institutions' The Guardian 1 April 2014.

'Committee on Needs Assessment submits recommendations' The Guardian, Thursday 22 November 2012 54.

Communiqué of the meeting of the National Executive Council (NEC) of the Academic Staff Union of Universities (ASUU) held at the Federal University of Technology, Owerri 5 – 6 February, 2011, The Guardian, Thursday, February 24, 2011, 64.

Davidson Iriekpen 'From whence come NUC's powers to suspend varsities' licences?' The Guardian 29 Aug 2012. This Day Life Saturday 26 April 2014.

Edoba Omoregie 'Legality or otherwise of the post-UTME' The Guardian 13 December 2011 88

Emeka Anuforo 'NMA wants prescription laws enforced, faults NUC on PhD' The Guardian Thursday 6 September 2012 5.

Eno-Abasi Sunday 'Academia has surrendered moral high ground to political class' The Guardian 24 April 2014 49.

Eno-Abasi Sunday 'Distinguish yourselves in academics, enjoy motivational package for scholars' The Guardian Thursday 17 April 2014 54.

Eno-Abasi & Akinwotu 'Triumph of students' will at LASU' The Guardian Thursday 14 August 2014 54.

Eno-Abasi Sunday 'WAEC deplors presentation of ill-prepared students for exams' The Guardian 19 November 2015 49.

Ernest Nwokolo & Wale Ajetunmobi 'Controversy trails planned varsities merger' The Nation Thursday 16 February 2012 25.

Ex-students of MOCPED decry non-release of results, certificates four years after graduation' The Guardian, Friday 19 September 2014 5.

'EXT-NG introduces electronic ordering, receipt of academics' the Guardian 24 April 2014.

Festus Iyayi 'Of monsters and demons in the Nigerian University (2) The Guardian Wednesday 3 September 2014.

Friday Olorokor 'Committee seeks 26% budgetary allocation for education' Punch 17 June 2014.

Friday Olorokor 'ANCOPSS condemns politicization of education' The Punch 22 May 2015 46.

'Government indicts Vice-Chancellors, begins reforms in universities' The Guardian, Monday 13 February 2012 4.

Hendrix Oliomogbe 'Uduaghan tasks judiciary over speedy trial' Monday 23 December 2013 4.

Hussain Obaro 'A look beyond N200b to save education system' The Guardian Tuesday 24 March 2014 80.

Ike Onyechere 'Still on the need to scrap JAMB (1) The Guardian Monday 8 April 2013 67.

Ike Onyechere 'Still on need to scrap JAMB (2) The Guardian, Tuesday 9 April 2013 68.

Ikechukwu Okoli 'Rethinking education measurement in Nigeria' The Guardian Wednesday 20 March 2013 64.

Inemesit Akpan-Nsoh 'FG plans to make hostel accommodation compulsory in varsities' The Guardian Monday 2 November 2015, 5.

Isa Abdulsalami 'Provost laments non –accreditation of courses 38 years after school's establishment' The Guardian Thursday 3 April 2014 48.

Joshua Oyeniya 'UTME, irregularities and allied issues' The Guardian Wednesday 15 May 2013 14.

Kanayo Umeh 'Obasanjo charges varsities on solutions to terrorism' The Guardian 24 November 2015, 5.

Kanayo Umeh 'Shekarau blames exams' failure on poor motivation of teachers' The Guardian Thursday 4 September 2014 4.

Kanayo Umeh 'Stakeholders canvass increased budgetary allocation for education' The Guardian 27 March 2014 43.

Kelvin Ebiri 'Amaechi seeks action against delay in trial of cases' The Guardian Tuesday 4 December 2012 6.

Kelvin Ebiri 'VC of Uniport hinges varsities' survival on increased fees' <http://www.ngrguardiannews> accessed 29 June 2015.

Kofoworola Belo-Osagie 'OOU/TASUED fusion: Matters arising' The Nation Thursday 16 February 2012 40.

'Kwasu VC warns students against vices' The Guardian Thursday 6 December 2012 65.

Lawrence Njoku 'Enugu North urges reversal of UNN pro –chancellor's sack' The Guardian 23 December 2013 4.

Mary Ogar 'ICPC set to prosecute perpetrators of sexual harassment, corruption in varsities' The Guardian Thursday 25 July 2013 50.

Mary Ogar 'Students list reasons for poor quality of Master's, PhD theses' The Guardian Thursday 27 June 2013 49.

Mohammed Abubakar 'ASUU, JAMB differ on unified exams for varsities, others' The Guardian, Tuesday 24 November 2009 5.

Mohammed Abubakar 'Govt orders recall of FUPRE VC, registrar, probes varsity's crisis' The Guardian, Friday 18 November 2011 5.

Mohammed Abubakar 'VCs seek secure varsities, ban frivolities' The Guardian Tuesday 16 October 2012 19.

Muyiwa Adeyemi 'Babalola blames polytechnic councils on strikes, advises against appointment of politicians' The Guardian Thursday 17 April 2014 51.

'NUC rejects accusations in newspaper's editorial' The Guardian Thursday 22 August 2013 55.

Odiaka Timothy & Isioma Odiaka '2013 budget and Nigerian universities' Punch 31 October 2012.

Oghogho Obayuwana 'Unemployment crisis: Nigeria can learn from Canadian solutions' The Guardian Monday 31 March 2014 71.

Ogugbuaja C 'IMSUTH Medical Students protests delay in graduation' The Guardian 17 January 2013 44.

'Ogun sacks TASUED VC, appoints Obilade,' The Nigerian Tribune, Thursday, 10 January 2013 47.

Oluremi Omowaye 'What makes a standard university' The Guardian, Wednesday 24 October 2012 68.

'Oyewole identifies five challenges facing tertiary education' The Guardian 27 March 2014 44.

'Recommendations of the Committee on Needs Assessment of Nigerian Public Universities (3)' The Guardian Thursday 13 December 2012 53, 55.

Rekia Sanni 'Rector tasks lecturers, administrators on needless strikes' The Guardian Wednesday 10 July 2013 64.

Richard Anyamale 'Why new CJN must make quick dispensation of justice a priority' The Guardian Tuesday 14 August 2012 83.

Rotimi Lawrence Oyekanmi 'Issues in 2012 Education Ministry Report' The Guardian Thursday 25 July 2013 49.

Rotimi Oyekanmi 'How 1999 Constitution retards growth of varsities' The Guardian Monday 10 December 2012 8.

Rotimi Lawrence Oyekanmi 'How Appeal Court decided NUC, Lead City varsity's case' The Guardian 17 October 2013 55.

Rotimi L Oyekanmi 'How national open varsity can create more access' The Guardian 16 January 2014 36.

Rotimi Lawrence Oyekanmi 'Report exposes rot in public varsities, proposes 189 recommendations' The Guardian Thursday 15 November 2012 47, 52.

Saxone Akhaine 'Rectors pledge improved academic training with new equipment' The Guardian Thursday 15 December 2011 47.



Steve Elijah 'Uniport Four: Respecting right to inviolability of life' The Guardian Tuesday 23 October 2012 73.

Sylvester Akhaine *et al* 'ASUU strike and national ignorance' The Guardian Wednesday 30 October 2013 13.

'The ASUU strike threat' The Guardian Editorial Thursday 22 September 2011 14.

The Guardian Editorial 'The bills on varsity standards' The Guardian Friday 19 August 2011 14.

'The National University Commission: Undaunted in Regulating Universities' The Guardian Thursday 11 October 2012 63.

Timothy Isioma Odiaka '2013 budget and Nigerian universities' Punch 31 October 2012.

Tunji Braithwaite 'Only a Confederal Constitution, loose federation best suited for Nigeria' The Guardian Thursday 17 April 2014 12.

Ujunwa Atueyi 'How LASU projects support learning' The Guardian 2 April 2014 18.

Ujunwa Atueyi 'Higher education critical to national development' - Osinbajo' The Guardian Thursday 5 November 2015 52.

'Uniport VC Insists on HOD's removal' The Guardian 23 October 2012 55.

Yemi Idowu 'ASUU: The log and the speck' The Guardian 30 October 2013 13.

Yemi Sotade 'University admission: Matters arising' [www.guardianngr.com](http://www.guardianngr.com). Accessed 30 October 2014.

'UTME 2013: House of Reps summon JAMB Registrar over mass failure' Posted by Daniel on 10 May 2013. Information Nigeria Portal accessed Saturday, 17 May 2014.

## **LIST OF CONVENTIONS AND STATUTES**

### **[A] CONVENTIONS, DECLARATIONS AND CHARTERS**

African Charter on Human and Peoples' Rights, 1981.

African Charter on the Rights and Welfare of the Child, 1990.

American Convention on Human Rights 1969.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981.

Declaration on the Elimination of All Forms of Racial Discrimination, 1963.

Declaration on the Elimination of Discrimination against Women, 1967.

International Convention on the Elimination of All Forms of Racial Discrimination, 1966.

International Covenant on Civil and Political Rights, 1966.

International Covenant on Economic, Social and Cultural Rights, 1966.

UNESCO Convention against Discrimination in Education, 1960.

United Nations Charter, 1945.

Universal Copyright Convention, 1952.

Universal Declaration of Human Rights, 1948.

## **[B] NIGERIAN STATUTES AND LEGISLATION**

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983 (Cap A9) LFN, 2004.

Anambra State University Edict No. 20 of 1985.

Constitution Federal Republic of Nigeria, 1979.

Constitution of the Federal Republic of Nigeria, 1999.

Constitution Federal Republic of Nigeria (Third Alteration) Act, 2010.

Criminal Code Act, Cap C38 LFN, 2004

Economic and Financial Crimes Commission, (Establishment, etc) Act, Cap E1, LFN 2004.

Education (National Minimum Standards and Establishment of Institutions) Act No 9 of 1993.

Education (National Minimum Standards and Establishment of Institutions) Act, Cap E3, LFN 2004.

Evidence Act, Cap E 14, Law of the Federation, 2004

Freedom of Information Act, 2011.

Hospital Management Board Act, Cap 374 of 1990.

Independent Corrupt Practices and Other Related Offences Act, 2000.

Joint Admission and Matriculation Board Act Cap J1, LFN 2004.

Limitation Law of Oyo State of Nigeria Cap 76, 2000.

National Universities Commission Act, 1962.

National Universities Commission Act Cap N81, LFN, 2004.

Penal Code (Northern States) Federal Provisions Act, Cap P3, LFN, 2004.

The Technical University, Ibadan, Oyo State Law, 2012, Oyo State of Nigeria Gazette 21 of 2012.

The Universities (Miscellaneous Provisions)(Amendment) Act No 25 of 1996.

Universities Autonomous Act, 2003.

Universities Autonomous Act, 2007.

University of Calabar [Cap 453) LFN 1990.

University of Ibadan Act, Cap U6, Laws of the Federation of Nigeria, 2004.

University of Ilorin Act, Law of the Federation, Cap U7, 2004.

University of Lagos Act, Cap U9 Laws of the Federation of Nigeria, 2004.

University of Maiduguri Act, Cap U10 LFN, 2004.

University of Port Harcourt Act, Cap 461, LFN 1990.

University of Port Harcourt Act, Cap U13, LFN 2004.

Usmanu Dan Fodio University, Sokoto Act Cap U14, Laws of the Federation 2004.

### **(C) SOUTH AFRICAN STATUTES AND LEGISLATION**

Constitution, Republic of South Africa, 1993.

Constitution, Republic of South Africa, 2006.

Higher Education Act, No 101 of 1997.

Higher Education Act, 2003.

Labour Relations Act 66 of 1995.

Promotion of Access to Information Act, No 2 of 2000.

Promotion of Administrative Justice Act, No 3 of 2000.

Statute of the University of Pretoria, Gazette No 25852 of 2003.

Supreme Court Ordinance, No 6 of 1914.