THE REGULATORY BODIES, ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY IN AFRICA: ISSUES AND CHALLENGES- NIGERIAN EXAMPLE

BY

ELIJAH ADEWALE TAIWO

ABSTRACT

Academic freedom is often described as a four-fold right 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. It entails the freedom of a university to select its own staff and to determine its own standards, as well as the freedom of both staff and students to free expression in their teaching, studying, publishing and research. The enjoyment of academic freedom requires institutional autonomy which is the freedom an educational institution enjoys in managing its internal affairs without undue interference from outside bodies or persons, especially, from the government or its agencies. Nigeria has witnessed many issues challenging academic freedom and institutional autonomy such as summary dismissal of universities teachers for being critical of government policies. The paper also argues that the establishment of regulatory bodies such as the Nigerian Universities Commission, the Joint Admission and Matriculation Board and the like has eroded the hitherto autonomy and freedom enjoyed by the universities. The paper advocates for a system which adequately guarantees academic freedom. It commends for Nigeria and other African countries, the South African position which constitutionally guarantees the right to academic freedom and scientific research.

1. INTRODUCTION

The right to education has been given wide recognition in a number of important international and regional human rights instruments.\(^1\) The concept ‘academic freedom’ is an important aspect of this right. Since the Second World War, there has been a global emphasis on human rights, which led to the passing of the Universal Declaration of Human Rights and the signing of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. These have been reflected in regional human rights treaties and human rights guarantees contained in national constitutions.\(^2\) The Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, constitute the International Bill of Rights, collectively, they provide for the right to education at global level.\(^3\) The UDHR for instance states that the right to education is for all people and states further that elementary education shall be free and compulsory while higher education shall be accessible to all on the basis of merit.\(^4\) Similarly, the ICESCR guarantees the right of everyone to education.\(^5\)
According to the Committee on Economic, Social and Cultural Rights (CESCR), the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Although the issue of academic freedom is not explicitly mentioned in article 13 of the ICESCR, the Committee deems it appropriate and necessary to make some observations about the issue because in its experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The enjoyment of academic freedom requires the autonomy of institutions of higher education. 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. Universities have always considered the two concepts to be indispensable values and have defended them as such.

According to Ajayi, Goma and Johnson, the two concepts relate to 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. It is submitted, therefore, that no one 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.

In this paper, an attempt shall be made to examine the meanings, content and challenges of academic freedom and institutional autonomy in Africa taking Nigeria as an example. The paper shall contend that academic freedom and institutional autonomy if properly practiced should strengthen the right to education. The paper is divided into five parts. Following this introduction is the part two which examines the meanings of the terms, ‘academic freedom’ and ‘university autonomy.’ It also discusses institutional accountability as part of autonomy. In part three, the paper examines academic freedom, institutional autonomy as well as the issues challenging academic freedom in Nigeria. The core of academic freedom and its interdependency with other rights are discussed in part four while conclusion is the last part.

2. MEANINGS OF ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY
2.1 Academic Freedom
‘Academic freedom’ as a concept defies absolute definition. Russell submits 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’. In this regard, Kaplan and Schrecker note as follows: ‘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, for example, was used 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.’

Various writers and scholars have attempted identifying various manifestations of academic freedom. Smith submits that ‘academic freedom has been described as a fourfold right 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.”’ Academic freedom also entail 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.

Tight posits that ‘academic freedom refers to the freedom of individual academics to study, teach, research and publish without being subject to or causing undue interference…’ Ajayi et al also define it as ‘the freedom of members of the academic community, individually and/or collectively, in the pursuit, development, and transmission of knowledge.’ It is opined that in the pursuit of knowledge, academics may not be hindered from following the approach which they think is most fruitful with regard to scientific or scholarly discovery. It guarantees the right of academics to freely teach according to his/her conscience and convictions. In this regards, Russell submits that academic freedom is ‘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…’

Academics have to teach and do research, in the course of this, they have to express certain views which may not be popular but which may nevertheless be valid. This freedom
requires that they should pursue the truth without any fear of reprisals. On this point, O’Hear submits that ‘academic freedom amounts to no more than a right supposedly given to academics to say and teach what they believe to be true.’ 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. The purpose of academic freedom is to enable both academics and students to do their job effectively.

Goodlad postulates four aspects of academic freedom namely; (i) the freedom of students to study: an issue concerning access; (ii) the freedom of students in what they learn and how they learn it: an issue concerning curriculum and pedagogy; (iii) the freedom of faculty (members of the lecturing staff) to decide what to teach and how: issues concerning course approval, validation, and accreditation, and (iv) 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. The various definitions propounded by scholars as examined above confirm the multifaceted nature of the concept ‘academic freedom.’ The meaning of the term ‘institutional autonomy’ is now examined next.

2.2 Institutional Autonomy

Like the term ‘academic freedom’, the term ‘institutional autonomy’ is also susceptible to problem of precise definition. According to Ojo, ‘university autonomy may be defined as that freedom granted each university to manage its internal affairs without undue interference from outside bodies, persons, or, most especially, from the government that in most parts of Africa, sustains it financially.’ 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. The CESCR states that ‘[a]utonomy is that degree of self-governance necessary for effective decision-making by institution of higher education in relation to their academic work, standards, management and related activities.’

It is submitted that university autonomy relates to the corporate freedom of an institution in society, while academic freedom is concerned with both the autonomy of the university and
the freedom of teacher and student in learning and in research. In this context, Ajayi submits that university autonomy does not mean the right of the individual professional but the rights of the institution to govern itself. University autonomy is further defined ‘as the freedom and independence of a university, as an institution, to make its own internal decisions, whatever its decision-making processes are, with regard to academic affairs, faculty and student affairs, business affairs, and external relations.’ It is taken to mean self-government by a university. For a university to play a meaningful role and discharge its responsibilities effectively, it must enjoy a high degree of institutional autonomy, in addition to academic freedom of its academic staff.

As part of its autonomy, it must have freedom to run its own affairs, without external interference; it must have the right to organize its internal affairs, to make decisions, and to establish its own academic programmes. The content of institutional autonomy may be summed up thus: ‘the principle of institutional autonomy refers to a high degree of self-regulation and administrative independence with respect to student admissions, curriculum, methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources generated from private and public sources. Such autonomy is a condition of effective self-government.’ In this respect Rendel submits:

Academic freedom for an institution usually includes autonomy or self-government according to the terms of its constitution, with power to determine academic policies, the balance between teaching and research, staffing ratios, the appointment, promotion and discipline of staff at all levels, the admission and discipline of students, curricula, standards, examinations and the conferring of degrees and diplomas; and with control over the material resources needed to undertake these activities.

Academic freedom in its broadest sense includes university autonomy, but the two terms are not necessarily synonymous. While university autonomy relates to the corporate freedom of an institution in society, academic freedom on the other hand is concerned with both the autonomy of the university and the freedom of teacher and student in learning and in research. In principle, it can be argued that academic freedom and university autonomy cannot be separated. The close relationship between the two concepts cannot be denied since the two go hand in hand. Tight explains that the view that the two concepts are mutually supporting and that it is desirable to encourage both if each is to flourish, remains the best summary of the symbiotic relationship between the two.
Malherbe reasons that the two concepts, though closely related, however, are not the same for the following reasons: first, the actual content of academic freedom and university autonomy differ in the sense that the former refers to the rights of the individual academic, whereas the latter refers to those aspects of the right to be pursued by the institution. Secondly, although autonomy over academic-related matters includes matters of primary importance to the individual lecturer, academic freedom applies to everybody involved in the practice of science and not only to lecturers. Thirdly, for the fact that an autonomous university may restrict the academic freedom of its lecturers, autonomy, therefore, is no guarantee of academic freedom; it is, however, a question whether academic freedom can flourish in the absence of autonomy.44

Institutional and individual academic freedoms are both essential for a conception of academic freedom which implies that all decisions concerning the production of knowledge within institutions of learning must, ultimately, be taken by academics. Smith declares that decisions about the hiring of academic staff and the admission of students are integral to this process as the decisions that individual lecturers take about the truth of various theories they wish to propound.45 Therefore, the university’s right to decide who will teach involves not only the hiring and firing of lecturers but also the right to make decisions about their conditions of service, their status in the institution and their access to its resources.46

Russell points out that interference with the university’s right to determine its own academic standard by, for example, choosing how many students to accept and deciding the standard of its degree leaves it without real academic freedom.47 In the same vein, Smith asserts that without the institutional right to decide who may be admitted to study and who may teach, the research priorities and capacities of individual academics will inevitably be significantly restricted.48 Working from the above, it is convenient to conclude that academic freedom in its broadest sense encompasses university autonomy. The two concepts go hand in hand and each is essential for effective enjoyment of the other. An important aspect of institutional autonomy is institutional accountability which is considered below.

2.2.1 Institutional Accountability

An important component of institutional autonomy is institutional accountability. The CESCR submits that issue of institutional autonomy must be consistent with systems of public accountability. According to the Committee, ‘[s]elf-governance or institutional autonomy must
be consistent with systems of public accountability, especially in respect of funding provided by the State. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. Where there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.\textsuperscript{49} It is submitted that the proportion of public income that goes into universities budgets requires universities accountability. It is essential for governments to know how the money is spent, what the results of teaching are, whether or not the students are really well-educated when they graduate, and the result of research, whether or not they can be put to good use by society and whether or not their quality stands up to international comparison.\textsuperscript{50}

The major problem, however, is how to reconcile the autonomy of the university with government control of finance. The State is answerable for public funds and therefore, has a specific duty and responsibility to allot public funds in a manner which assures the efficiency of the educational system and an economical use of available resources.\textsuperscript{51} Since government provides funds to universities, it is logical that it should know how the money is spent.\textsuperscript{52} Ajayi et al submit paradoxically that teaching and research seem to suffer both when universities are entirely autonomous and when they are rigidly supervised.\textsuperscript{53} It is admitted that academics as decision-makers need a partner to whom they are accountable. This partner may be a state bureaucracy, or their own university administration, or a foundation or any authority to which they must periodically demonstrate the scientific and social relevance of their activities and which in turn grants them the necessary autonomy and resources while mediating social demands.\textsuperscript{54}

Experience shows, however, that issues of institutional accountability pose dangers to institutional autonomy in the sense that government finance officers, who may at times be ill-equipped to make educational decisions often take crucial decisions which may have lasting adverse effect on educational institutions.\textsuperscript{55} In reality, most African governments use financial control to influence and sometimes to direct their universities on the rate of growth both in terms of capital development and student intake, the staffing of universities and the remuneration payable to academic staff.\textsuperscript{56} A degree of financial autonomy is essential for the effective operation of the universities.\textsuperscript{57} The next part now examines the concept ‘academic freedom’ in tertiary institutions in Nigeria.
3. ACADEMIC FREEDOM IN NIGERIAN TERTIARY INSTITUTIONS

There is no specific constitutional provision on academic freedom in Nigeria. This is unlike the position in South Africa where the Constitution expressly guarantees the right to academic freedom.\textsuperscript{58} The South African Constitution provides: ‘[e]veryone has the right to freedom of expression, which includes- … academic freedom and freedom of scientific research.’\textsuperscript{59} In Nigerian situation, the concept of academic freedom can be inferred from the provision of section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999 which provides for the freedom of expression and the press. The section states: ‘[e]very person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.’\textsuperscript{60}

Also, Nigeria is a signatory to various international human rights instruments which bear on the right to academic freedom.\textsuperscript{61} Article 19 of the ICCPR, 1966 for instance 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.\textsuperscript{62}

Article 15(3) of the ICESCR, 1966 also obliges the States Parties to respect the freedom indispensable for scientific research and creative activity. It is submitted 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.\textsuperscript{63}

However, unwarranted government interference and abuses of academic freedom have eroded the autonomy and quality of higher learning institutions in the country. For example, summary expulsion of university professors and lecturers for being critical of government educational policies and other national issues epitomizes a gross violation of academic freedom.\textsuperscript{64} 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.\textsuperscript{65}

Similarly, the establishment of many regulatory bodies in Nigerian tertiary education sector has compromised the ideal concept of academic freedom and institutional autonomy in the
country. The Nigeria University Commission (NUC) 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. In addition, this body is vested with the power to disburse money to universities in the country. The functions of the NUC are elaborate and are expressly stated in section 4(1) of the NUC Act. The duties 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 federal universities; taking into account, in advising the Federal and State Governments on university finances, such grants as may be made to the universities by State Governments and by persons and institutions in and outside Nigeria; undertaking 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, etc.

In the process of performing these functions, the institutional autonomy of Nigerian universities has been compromised. Also, undue rigidity which is capable of hampering smooth operation of the universities has been introduced. With this arrangement, unnecessary barrier is placed between the Ministry in charge of education and the universities. The Commission is to perform its functions of advising the President and Governors of the States through the Minister of Education. In the process of enforcing the formulated policies, some institutions are often been starved financially and this is contrary to the ideal of academic freedom and institutional autonomy.

Also, the Joint Admission and Matriculation Board (JAMB) is established to conduct examinations into the Nigerian universities and other higher educational institutions throughout the country. The institutional autonomy to decide who to admit and on what criteria has invariably been transferred from tertiary institutions to this regulatory body. In terms of the JAMB Act, the body has the sole responsibility to set the admission standard and to determine whom and when to admit. Many factors such as a quota system, educational disadvantaged states policy and federal character have been introduced into admission process thereby putting merits into second position in some cases. While JAMB determines the number of students each university is to admit, the NUC determines those courses that are to be offered, who will teach them and the qualifications of those to teach those courses.
It is submitted that this arrangement not only profoundly affects various elements of academic freedom and university autonomy; in many respects, it completely erodes their exercise. Now in Nigeria, universities may not themselves decide which courses to offer, who will teach them, what research will be conducted, and to whom they will award their qualifications. The State (through NUC) approves or disapproves a university’s applications for all these matters and by approving or rejecting programmes, it decides in effect, the direction which a university will be specializing. A bureaucrat, rather than the university decides whether a particular lecturer is fit to teach. Also, the State (through JAMB) prescribes admission requirements (and eventually select and allocate students), assessment methods and criteria and, in effect decides whom qualifications should be awarded. It is submitted that this constitute a gross violation of the ideal concept of academic freedom and institutional autonomy which calls for a redress.

The grant of tenure to teachers and researchers who have successfully completed a period of probation is a vital aspect of academic freedom. Tenure is a status which the teacher could take to a new post and retain on promotion until retirement. However, the experiences of Nigerian academics are not palatable in this regard. The dismissal of 49 lecturers and professors of the University of Ilorin in May 2001 during the Obasanjo regime for participating in strike action called by the National body of the Academic Staff Union of Universities (ASUU) is a good illustration in the recent time. Happily enough, the Nigerian Supreme Court recently declared their dismissal a nullity for violating the rule for fair hearing and ordered their reinstatement into their respective positions in the university. The case was not the first time that the Nigerian government would dismiss academic staff on issues relating to academic freedom. In 1973, members of the National Association of University Teachers (NAUT) which was the forerunner of the present Academic Staff Union of the Universities (ASUU) embarked on a nation-wide indefinite strike to press home their demand for a review of their poor conditions of service. The General Gowon led military government, instead of addressing the issue, responded by sacking the lecturers and gave 24 hours within which they were to vacate their official residence.

Similarly, between 1988 and 1990, ASUU was officially banned by the Federal Military Government of Nigeria. Not daunted, academics continued to organize and networked at both local and national levels under a new name: the Association of University Teachers (AUT). They
were able to coordinate their struggle against the World Bank University Sector Loan Facilities and the federal government commitment to rationalize and retrench staff in the universities. The Obafemi Awolowo University Chapter of the Association on 20 April 1990 hosted a national conference on World Bank Loan issue. At the conference, academics from various universities agreed to collectively resist the World Bank loan, they also decided to openly assert their rights to freedom of association.\textsuperscript{78}

The morning after the conference, the military coup attempt of Major Gideon Orka occurred. Two key members of the organizing committee of the conference, Professor Omotoye Olorode and Dr Idowu Awopetu were framed by government and were immediately arrested and detained as alleged coup suspects.\textsuperscript{79} This was seen by everyone as an open attempt to cow the union in its campaign against unpopular government policies and decisions. Earlier in March 1988, a radical sociology lecturer and anti-apartheid activist from Ahmadu Bello University Zaria, Dr Patrick F Wilmot along with Ms Firinne N. C. Adelugba of Bayero University Kano were abducted and deported from Nigeria on 8 March 1988 for being critical of government policies.\textsuperscript{80} Academics and universities staff suffered greatly under the military regime in Nigeria.

Again, in 1992, ASUU embarked on strike to press home their demands for better condition of service, separate salary structure (Universities Academic Staff Salary Structure) and demand for general improvement on the state of the universities in the country. Reacting to this, the government announced the dismissal of all striking lecturers through a newly enacted Decree which categorized university education as essential services and retrospectively prohibited universities teachers from embarking on strike.\textsuperscript{81} The salaries of universities teachers were stopped and dismissal letters were issued out to all the lecturers who refused to return to work. All these were done in defiance of court injunction restraining the government from arbitrarily terminating the appointments of the universities lecturers.\textsuperscript{82} This impasse was not resolved until the end of Babangida’s regime when Professor Abrahams Imogie was appointed the Secretary for Education to replace Professor Nwabueze who was the then Minister for Education. Imogie directed all the Vice-Chancellors of the Nigerian Universities to formally write to each academic staff withdrawing the earlier sacked letters served on them.\textsuperscript{83}

However, that there is hardly any country in the world whose government does not retain some forms of control over its universities. Justice Kayode Eso posits that this accords with common sense as the universities are not separate governments per se but exist for the service
In the same vein, Ajayi et al submit that pragmatism dictates certain limitations which academics and their universities must accept and put up with in practice. It is also observed that academic freedom and institutional autonomy have their own limitations as there is no meaningful freedom without a limitation. However, it is worth noting that there should be limited control of universities by government agencies.

The unsavoury experiences violating academic freedom are not peculiar to Nigeria; violation of academic freedom is in fact a common feature of most African countries. For example, summary expulsion of over forty university professors and lecturers from Addis Ababa University, Ethiopia, in the mid-1990s epitomizes a gross violation of academic freedom and illustrates the intolerance of academic freedom that governments in many African countries have. Examples of the violation of academic freedom may also be taken from South Africa especially during the apartheid era. While it lasted, apartheid educational policy impacted adversely on the academic freedom and institutional autonomy in South Africa. Perhaps it is as a result of the experience of violation of academic freedom during the apartheid time that the made the 1996 South African Constitution to specifically guarantee the right to academic freedom.

In 1957, when the National Party Government made clear its intention of applying the principle of racial separation in university education, the University of Cape Town and the University of Witwatersrand unequivocally declared their opposition in a booklet titled: ‘the Open Universities in South Africa.’ The said publication emphasized four essential freedoms of a university, namely, the right of the 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.’ However, as a result of the moves by government to close the doors of these universities to African, Asian and Coloured students, during the 1957, the fourth aspect of the four freedoms, to wit, ‘freedom to determine who may be admitted to study’ was given much emphasis.

The apartheid education system has been criticized as criminal, oppressive and a violation of academic freedom. In this regard, Polanyi contends: ‘[t]o 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.”

During apartheid era, several academics were subjected to trial in violation of their freedom of expression and academic opinions. Trial and prosecutions for expressing one’s academic view is capable of limiting individual academic freedom. The case of *S v Van Niekerk*, in which Dr van Niekerk of the Law School of the University of Witwatersrand was tried for contempt of court, is a classical example.

In that case, the contempt arose from the article he published in the *South African Law Journal* in which he discussed the racial factor in the imposition of death penalty in South Africa. Although, he was acquitted on the ground that that he had not intended to be contemptuous of the court, the judgment was a warning or restraint against pursuing research of this kind by any scholar. The inhibitions on freedom of speech (academic freedom) resulting from the possibility of contempt of court charges were further emphasized in a sister case of *S v Van Niekerk*. In that case, the appellant, who had become a professor of law at the University of Natal, was charged before Fannin J in the Durban and Coast Local Division with the two crimes of contempt of court and attempting to defeat or obstruct the course of justice. The proceedings arose out of a speech he delivered at a public meeting held in Durban City Hall on 9 November 1971. This meeting was directed against certain aspects of the Terrorist Act, 83 of 1967 (more especially, detention for interrogation without trial and solitary confinement) and to the circumstances that various people had died while detained under that Act. The meeting had in attendance between three and five thousand people.

He spoke from a typewritten speech, a copy of which he handed to the press. In it, he supported a ‘demand for an open judicial enquiry into possible abuses under the Terrorist Act’, strongly condemning certain provisions of the Act, equating the obtaining of information from detainees with the procuring of evidence by torture. Secondly, he criticized what he considered to be a reprehensible inaction on the part of lawyers regarding those provisions, specifically, including the judiciary. Thirdly, he advanced a ‘solution’ which he had exhorted the judiciary to adopt, including an exhortation to all judges that they should, in effect, ignore the testimony of all witnesses who had previously been detained under the Act. The whole tenor of his speech was criticism of the inaction of lawyers (including judges), and a call for protest and action against those provisions which he regarded as otiose. He criticised the judges for not raising their voices in protest.
The 10 November 1971 issue of the Daily News (a newspaper circulating in Durban and elsewhere) carried a fairly comprehensive report of the City Hall Meeting and of the resolutions passed thereat. Reference to a petition supporting this request, and which, *inter alia*, made mention of ‘the Pietermaritzburg Terrorist Trial’, was also included in the newspaper report. This latter, under the banner heading ‘Appeal to the Judiciary’, incorporated a brief summary of appellant’s speech.\(^96\) He was convicted on contempt and charge of attempting to defeat or obstruct the course of justice for inviting judges to reject the evidence of witnesses held for lengthy periods under the Terrorism Act 83 of 1967. He was sentenced to pay a fine of 100 Rand with an alternative of one month’s imprisonment.\(^97\) Confirming the judgment on appeal, the court, Botha, JA held: ‘for all the foregoing reasons, I accordingly come to the conclusion that appellant was rightly convicted of contempt of court.’\(^98\)

Security law also impacted greatly on academic freedom in South Africa during apartheid days. 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. In terms of the Publications and Entertainments Act, the Publications Control Board was empowered to declare any literary work ‘undesirable’. During this period, it was reported that over 26 000 works, many of which are books of accepted literary quality were banned in South Africa.\(^99\) Similarly, under the Suppression of Communism Act, the writings of any person listed or prohibited from attending any gathering, or who was formerly resident in South Africa and who the Minister of Justice is satisfied is directly or indirectly furthering any object of communism, may not lawfully be used either as references for teaching purposes or as sources for scholarly writings.\(^100\)

The consequence of this Act was that unless with the permission of the Minister of Justice, many works of well-known South African scholars could not be distributed, discussed in the lecture rooms or used as source of academic research work.\(^101\) Restrictions as mentioned above limit the scope of open debate in a number of disciplines in the universities, and inhibit the free flow of ideas and scholarly inquiry.\(^102\) The limitations on freedom of research under the above circumstances are obvious. In some case, several academics restricted under the Suppression of Communism Act were excluded from both teaching and research in terms of their restriction orders. Others who were given exception to teach were prohibited from publishing without ministerial consent.\(^103\) These limitations deterred some scholars from entering such
prohibited fields of study (especially contemporary South African literature and social sciences) or prompted them to pursue less significant inquiries.\textsuperscript{104}

However, it is submitted that now with the provisions of section 16 of the 1996 South African Constitution, academic freedom and freedom of scientific research has become a constitutionally guaranteed right which is binding on the State. It is a right which the State must respect, protect, promote and fulfil.\textsuperscript{105} Both staff and students are entitled to this right which the State or institutions may not derogate from except to the extent which the bill of rights is constitutionally limited.\textsuperscript{106} For any limitation to this right to be acceptable, it has to be reasonable and justifiable in an open and democratic society.\textsuperscript{107} Having a provision such as this in the Nigerian Constitution as well as in the constitutions of other African countries will strengthen the enjoyment of academic freedom in the continent.

It is submitted that autonomy of the university requires that it should have absolute power to determine who may be admitted to study. Power to conduct examinations to determine who should be admitted to study should be left with the universities or other institutions. As Russell argues, interference with the university’s right to determine its own academic standard by, for example, choosing how many students to accept and deciding the standard of its degree leaves it without real academic freedom.\textsuperscript{108} In the same vein, Smith asserts that without the institutional right to decide who may be admitted to study and who may teach, the research priorities and capacities of individual academics will inevitably be significantly restricted.\textsuperscript{109} Thus, the functions being performed currently by JAMB and NUC in conducting examinations into the Nigerian universities as well as determining the number of students to be admitted, is a violation of academic freedom and institutional autonomy as postulated above by Russell and Smith. In South Africa for example, there is no central body conducting examinations for all the universities in that country rather, the universities determine the criteria for admission and they admit candidate on their own criteria.

In Nigeria, larger percentage of candidates who obtain very high scores in JAMB entrance examinations fail to perform well in the universities and are eventually withdrawn from the universities. This accounts for the recent post JAMB examinations introduced by most universities in Nigeria. Also, most high scorers in JAMB examinations fail to pass the individual university post JAMB exams. It is therefore recommended that JAMB be scrapped and this duty be transferred to the universities as was the position before 1978 when JAMB was established.
As to the National Universities Commission; it determines who is to teach in addition to determining the courses to be taught through accreditation of those courses. For instance the NUC recently ordered that all lecturers in Nigerian universities must as from the year 2010 possess PhD qualification, otherwise, they would no longer be allowed to teach in the universities. This directive has put undue pressure on professional faculties such as Law, Medicine, Engineering and many more which traditionally based their promotion on professional competence and publications. In enforcing this directive by the NUC, all Nigerian universities have implemented the policy of not allowing competent academics promotion beyond certain grade level unless they possess doctoral degree. The disastrous effect of this apart from violating academic freedom is that many of the affected academics may either resign from the universities or transfer their services to other sectors of economy thereby leading to brain-drain in those professional faculties.

4. THE CORE OF ACADEMIC FREEDOM AND ITS INTERDEPENDENCY WITH OTHER RIGHTS

At the core of the right to academic freedom is the right of the individual to do research, to publish and to disseminate learning through teaching, without government interference.\textsuperscript{110} It is submitted that the right to academic freedom implies a positive duty of the State to promote research and teaching by providing functional academic and scientific institutions, or at least the financial and organizational back-up needed to exercise the right to academic freedom and scientific research.\textsuperscript{111} It is submitted that one of the reasons for establishing universities is to realize academic freedom.\textsuperscript{112} If the State could prescribe to universities that no research critical of the government may be funded by the university or that no researcher critical of the government may be appointed, academic freedom would be left stranded.\textsuperscript{113} To achieve academic freedom, a right to a degree of institutional autonomy is therefore essential.

The contents of academic freedom in any country may be summarised as follows: 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;\textsuperscript{114} 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
related activities, including preparatory, management and supporting actions, and dissemination of results through publication;\textsuperscript{115} freedom to decide who shall teach and conduct research. This implies peer evaluation according to academic criteria and compliance with professional and ethical norms;\textsuperscript{116} and the right to tenure, which means that when an academic complies with reasonable criteria, he or she is entitled to a permanent position.\textsuperscript{117}

It is submitted that all human rights are fundamental to the realisation of academic freedom, thus academic freedom and all other human rights/freedom are indivisible. Thus, academic freedom cannot exist in a society which is not free because violations of general liberty will almost always affect the freedoms of the university.\textsuperscript{118} Freedom of person, freedom of movement, freedom of speech and freedom of assembly are all fundamental to the university in the pursuit of the truth.\textsuperscript{119} Asserting the interdependency of academic freedom with other rights Malherbe posits as follow:

\begin{quote}
[I]t means that 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.\textsuperscript{120}
\end{quote}

Although, it is not the business of the university to engage in politics, it is submitted, however, that the correct philosophy is that the university autonomy and academic freedom does not mean a university’s seclusion from the rest of the world. A university should be permitted to experiment with unorthodox views and ideas and to assemble peacefully to protest where necessary.\textsuperscript{121} 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.\textsuperscript{122}

5. CONCLUSION

Nigerian Constitution does not specifically provide for academic freedom as a constitutional right as obtainable in South Africa, though, provisions supporting the concept are drawn from other rights provided for in the Constitution as well as from various international human rights instruments that Nigeria has adopted. There is the need for the right to be better guaranteed. In the past, Nigerian academics used to organize conferences with particular
emphasis on academic freedom and institutional autonomy. This has declined lately and the concept of academic freedom is rarely articulated with academic communities. It is therefore suggested that for adequate guarantee of academic freedom, the concept should be a subject of discussions from time to time among academics and within institutional setting. A conference such as this advocating and raising awareness on academic freedom across Africa is therefore welcomed and should be continuous.

The centralization of the control of the universities in Nigeria has eroded the autonomy, which universities normally enjoyed worldwide. The National Universities Commission and the Joint Admission and Matriculation Board for example, in their functions have directly or indirectly eroded the autonomy of the Nigerian Universities in the context examined above. It is conceded that some of the functions performed by these bodies are beneficial to Nigerian educational system. However, for the fact that these functions traditionally belonging to the universities world-wide, transferring these functions to the regulatory bodies has eroded the concept of academic freedom and institutional autonomy thereby opening tertiary educational institutions to some sort of dangers compromising their autonomy. The arrangement as obtainable now in Nigeria violates the four essential feature of academic freedom namely, the right of the 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. This calls for a redress.

Though academic freedom is not a right without limitations, however, to make educational institutions functional, there should be limited control of universities by government agencies, in this case, NUC and JAMB. To make academic freedom meaningful and relevant, universities and other educational institution should, on their own initiative, engage in periodic evaluation of their programmes, performance of their institutions and of their teaching and research staff. In tune with the principle of accountability, there should be a periodic evaluation and appraisal of university programmes so as to ensure their relevance and responsiveness to development. Periodic evaluation will save tertiary institutions from decadence and makes them more relevant to the society in this age of globalization.
END NOTES

* LLB (Hons), LLM, MPhil (Ife), BL (NLS), Lecturer, Faculty of Law, University of Ibadan, Nigeria & LLD Candidate, Nelson Mandela Metropolitan University, Port-Elizabeth, South Africa. E-mail: ea.taiwo@mail.ui.edu.ng or equitabletaiwo@yahoo.com


3 See art 26, UDHR; arts 13 & 14, ICESCR, and art 19(2), ICCPR which though not expressly providing for the right to education, but the provision of the article is wide to encompass the right to education.

4 Art 26 of the UDHR 1948.


7 General Comment No.13, op cit, par 38.

8 General Comment No.13, op cit, par 40.


10 Ibid.


12 Ibid, at p. 168.


Committee) *The Open Universities in South Africa*, 1957, pp. 11-12; italic not in the original text but for emphasis here.

17 See Birley, *Richard Freethan Memorial Lecture*, 1970, p. 4, citing with approval the features of academic freedom that are contained in a resolution of the Council of the University of Rhodesia of 10 December 1965; See also, *The Open Universities in South Africa, op cit*, p. 3.


21 Ibid.


23 Proposing the Amendment to the Education Bill of 1988 (England), Lord Jenkins of Hillhead (as Chancellor of Oxford University) claimed for academics: ‘the freedom 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 of losing their jobs or privileges they may have at their institutions.’ See Russell, *op. cit*, pp. 1-2.


27 See the CESCR which asserts as follows: ‘Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds.’ See General Comment 13 par 39.


30 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.

31 General Comment No. 13, *op. cit*, par 40.
32 See The Open Universities in South Africa op. cit, p. 2.
35 Ibid.
36 Ibid, at p. 169.
37 Ibid.
40 See The Open Universities in South Africa, op. cit, p. 2.
41 Ibid.
45 See Smith, op. cit, p. 680.
46 Ibid, at p. 685.
47 See Russell, op. cit, p. 107.
48 See Smith, op. cit, p. 680.
49 General Comment 13, op. cit, par 40.
50 See Ajayi, et al, op. cit, p. 170.
51 Ibid.
52 Ibid, p. 171.
54 Ibid.
55 Ibid, p. 171.
56 Ibid.
57 For example, universities should be allowed a fair of measure of autonomy in deciding allocation of general university subventions among the departments and institutes.
58 Section 21(1)(b) of the Constitution of Republic of Ghana, 1992 also guarantees the right to academic freedom in the following terms: ‘All person shall have the right to freedom of thought, conscience and belief, which shall include academic freedom.’
59 See section 16(d) of the Constitution of the Republic of South Africa, 1996. It is observed that the first part of section 16 is intended to grant everyone a generous measure of expression protection, including freedom of the press and other media, freedom to receive or impart information or ideas, freedom of artistic creativity, academic freedom and freedom of scientific research. As a result 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. See A. Govindjee, ‘Freedom of Expression’ in A. Govindjee & P. Vrancken (eds.), Introduction to Human Rights Law, LexisNexis: Durban/Johannesburg/Cape Town, 2009, p. 119, at p. 120.
This is in contrast with the position in South Africa where section 16(d) of the 1996 South African Constitution expressly provides for the right to freedom of expression which includes *inter alia*, academic freedom and freedom of scientific research.

Both Covenants ratified on 29 October 1993.

See also, art 19 of the UDHR 1948 which also provides that ‘[e]veryone has the rights 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.’

Although, 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. See also, *General Sani Abacha v Chief Gani Fawehinmi* (2001) 1 CHR 20. It is submitted that having ratified the ICCPR and ICESCR, the provision of these treaties which guaranteed academic freedom, are applicable in Nigeria by virtue of its obligations under international human rights law and rules of customary international law. See M. Dixon & R. McCorquodale, *Cases and Materials on International Law*, New York: Oxford, 2003, p. 28.


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. See Tefera & Altbach (eds.), *op. cit*, p. 11.

See Preamble to the NUC Act, Cap N81 Laws of the Federation of Nigeria (LFN) 2004.

See section 4 of the National University Act Cap N81, LFN 2004.

See section 4(1)(a)-(l) of the NUC Act.

For example, in 1985 the government enacted Decree 16 of 1985, establishing the National Minimum standards and conditions for the accreditation of the universities courses and programmes. The Decree sought to, in the first instance, harmonize all programmes and courses across the universities and in the second instance, empowered accreditation panels to inspect courses, facilities and staffing to determine compliance with minimum standards. The report of the panels were then to serve as the basis for the selection of departments, programmes and facilities to be closed down in order to ensure standards and remove ‘duplication’. The staff of closed departments, faculties and programmes were then to be retrenched as part of the rationalization exercise. See Y. Z. Ya’u, *Academic Staff Union of Universities under Attairu Jega: A Leadership Profile*, Centre for Social Science Research & Development, Lagos, 2004, p. 19.

The JAMB Act provides for the functions of the Board and provides that it shall be responsible for the general control of the conduct of matriculation examinations for the admissions into all Universities, Polytechnics and Colleges of Education in Nigeria; appointment of examiners, moderators and invigilators, members of subject panels and committee and other persons with respect to matriculation examinations and any other matter incidental thereto; placement of suitably qualified candidates in collaboration with the tertiary institutions,
collection and dissemination of information on all matters relating to admissions into tertiary institutions. See Section 5(1) & (2) of the Act.

74 See Tight (ed.), op. cit, p. 75; see also, Malherbe (2000), op. cit, p. 60.

75 University of Ilorin is one of the federal universities in Nigeria.

76 See Dr Taiwo Oloruntoba-Oju & Others v Prof Shuaib O. Abdul-Raheem & Others [2009] 13 NWLR (pt 1157) 83, at 142-143, where the Supreme Court held inter alia that section 15(1) of the University of Ilorin Act guarantees to the administrative, academic and professional staff fair hearing before their appointment can be terminated and thus gives the exercise of such disciplinary powers a statutory flavour. In the instant case, there was no evidence that the procedure for termination of appellants’ employments as to fair hearing was observed.

77 See Ya’u, op. cit, p. 5.
78 Ibid, p. 23.

80 Government alleged that Dr Wilmot was a South African spy, a charge nobody even within the government circles was ready to believe given the antecedents of Wilmot as anti-apartheid activist. See Ya’u, op. cit, pp. 18-19.

81 See Essential Services (Teaching) etc Decree 1992.
82 See Ya’u, op. cit, p. 30.

85 See Ajayi, et al, op. cit, p. 245.
86 See Teferra & Altbach (eds.), op. cit, p. 11.
87 During this period, the two universities were “open universities” in the sense that they admitted students on academic grounds, without regard to race, colour or creed. See The Open Universities in South Africa op. cit, p. vii.

89 The right of the university to select its own teachers, freedom of expression, and many more were advocated. See The Open Universities in South Africa op. cit, p. 1.
90 See Ajayi, et al, op. cit, p. 73.

92 1970 (3) SA 655 (T).
94 The judgment has been criticized by the council of the Society of University Teachers of Law of South Africa as an attempt on the part of the authorities to discourage academic examination of judicial process. For the text of the statement of 9 September 1970, see South African Law Journal, 1970, vol. 87, pp. 467-468.
95 1972 (3) SA 711 (AD).
96 At 714-717.
With Holmes, JA concurring, at p. 725.

Blanket exceptions from these prohibitions were granted by the Publications Control Board to university libraries, provided the works are not of a “communistic” nature and provided the books are kept under lock and key in the reference section and are used only for bona fide study and research purposes. See The Open Universities in South Africa, op. cit, p. 28.

In this category were the works of Professors Edward Roux, HJ Simons, MA Millner, R Hoffenberg and Mr. BA Hepple.

A classic example of the effects of those restrictive statutes was given in respect of the publication of the second volume of a book titled The Oxford History of South Africa, published in 1971 by the Clarendon Press of the University of Oxford. After receiving legal opinion, the publishers and editors felt obliged to omit from the South African edition a chapter by Leo Kuper entitled ‘African Nationalism in South Africa, 1910-1964’. The chapter contained many quotations from banned persons and organizations, and their publication in South Africa could have laid the local editor and the branch of the publishing house open to prosecution. In view of the legal problem, the editors and publishers decided to produce a separate South African edition in which pages 424-427, on which Professor Kuper’s chapter appeared, were completely blank. A postscript to be added is that subsequent to this publication, the authorities later permitted the international edition, containing Prof Kuper’s chapter, to be distributed in South Africa. See The Open Universities in South Africa, op. cit, pp. 30-31.

See sections 7(2) & 8 of the Constitution.

Section 7(3) of the Constitution.

See Russell, op. cit, p. 107.

See Smith, op. cit, p. 680.


Malherbe (2000), op. cit, p. 60.

Ibid.

Ibid.


See The Open Universities in South Africa, op. cit, p. 4.

Freedom of academic expression, in the sense of freedom for university teachers to teach and to pursue research freely, and freedom for students to debate old and new ideas freely, is simply a special manifestation of the freedoms of speech, assembly and association. See The Open Universities in South Africa, op. cit, pp. 5 & 25.

See Malherbe, Higher Education South Africa, op. cit, p. 8.

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