

RIGHT TO ACADEMIC FREEDOM: ITS PLACE UNDER UGANDA CONSTITUTION

By

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Abstract

The whimsy absence of express provisions of law on the right to academic freedom in Uganda constitution and other subsidiary laws becomes a precursor to grave violation of this right not only by the state, but also by private individuals and other entities. Aside copious absence of these laws in the Constitution, paucity of knowledge that these rights exist amongst beneficiaries, and the apathy expressed by the judiciary and legislative organs in this direction is worrisome. Those who seem to be aware of the existence of these rights question its legality and applicability. The cumulating of these odds has endeared victims of such violations to take succor on a larger platform through an international instrument under the aegis of “Kampala declaration on social responsibility and intellectual freedom,” which clearly sets out these rights. It is upon these parameters that the scope of this work shall be built as it sets out the right of all stake holders, which includes teachers, lecturers and professors in universities or other academic institutions, and a cursory analysis of legislative and statutory lacuna thereto.

Introduction

The right to academic freedom refers to the right of professors, teachers and lecturers in universities or higher institutions of learning to speak freely and express their intellectual wish or opinion on political, social, and economic issues without fear of persecution, harassment, sanctions or loss of position.¹ Also according to Professor M. Mazrui², the right to academic freedom is a sub- right to education and free speech/freedom of expression.

The right to education and freedom of expression are provided for in the constitution³ and other international human right instruments,⁴ as “human rights”, and further recognized as essential in the realization of other rights⁵ which are social, political, and economic in nature. In that respect, Veriavaght and Coomans posited that such rights as the right to choose work and take part in leadership and decision making in one’s country or society can only be exercised meaningfully once a minimum level of education has been achieved.⁶ It is also regarded as a veritable tool for the development of human right culture and fundamental freedoms as a means of stimulating development.

According to article 1 of the Kampala Declaration on Intellectual Freedom and Social Responsibility, everyone has the right to education, and participate in intellectual activities. In the bid to give credence to importance of education, the committee on economic, social, and cultural right posits that education is one of the best investments a State could foray into. However, the importance of education is not only practical, hence a well-educated, enlightened and active mind would be able to wonder freely and widely as it becomes the source of joy and rewards of human existence.

Legal standard on the right to education is predicated on two basic spectrums, access to education on the basis of equality, non-discrimination and freedom to choose the kind of institution and content of education so desired.⁷ The right’ is all encompassing as it braces for education in all its forms, such as

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¹(1940), Statements on Academic Freedom

² Academic freedom in Africa

³ Article 30 of the 1995 Constitution of the Republic of Uganda

⁴Kampala Declaration on Intellectual Freedom

⁵ Article 30 of the 1995 Constitution of the Republic of Uganda

⁶Veriavaghts E &F Coomans the Right to Education in Heynsseels, Social, Economic Rights in South Africa 2005.

⁷ Circle of Rights, Economic, Social and Cultural Rights Admission.

primary education, secondary education, technical, vocational and higher education.⁸The words of Mazrui is highly instructive in construing the right to academic freedom, according to him “the essentials of academic freedom are firstly that universities have freedom to decide what to teach and to some certain levels, who to teach; secondly, freedom for academics to prioritize research and the manner of conducting such research, to publish research determinations and to publish their scholarly views, thirdly, freedom of expression for academics”.

On the other hand, the Committee on Economic Social, and Cultural Rights also alluded to the fact that the right to academic freedom is the right of individual academics to do research, publish and disseminate knowledge through teaching. It also vests the right in academic institutions such as universities, to demand a certain amount of autonomy to be accorded to them for its realization. The right also seeks to indemnify academic staff against persecution, harassment or intimidation resulting from their intellectual work and opinions. This is ensured by guaranteeing job security and prohibition of arbitrary dismissal or removal, except for reasons of proven misconduct and incompetence. Even in this context, disciplinary proceedings for dismissal or removal are required to be in accordance with duly set out procedures, for example, a fair trial before a duly constituted body of academic peers.

Given that the preceding paragraphs attempted to put in perspective what the right to academic freedom entails, the debate is, to what extent is this right(s) guaranteed under the Uganda constitution. The submissions of R. Holden⁹readily comes to fore in a literature on academic freedom as a human right in Africa;

It is something of a paradox, amidst the growing volume of literature on human rights in Africa, that none deals with the specific question of academic freedom as a right. This is even more puzzling given the serious infringements the right has suffered in most African countries in the post-independence era.

At this juncture, it becomes expedient to take a cursory glance at the historical development of academic freedom in a number of selected jurisdictions.

Historical Development

A peep at the European experience; particularly the case of medieval academic, shall give us a throwback on how it all evolved. European traditions recognized the fact that the ability of institutions of higher education to conduct research for the common good depends upon the freedom to search for truth and clarification. Prior to the 19th century, America did not consider institutions of higher education a center of research and scholarship, rather, the role of this institution of higher education was to pass received wisdom onto the next generation. Nowadays, academic freedom is considered as a basic human right in universities across the globe and consequently enshrined in many nations’ constitution, as well as U.N Universal Declaration on Human Rights. However, ‘university’ as a concept and a centre for research and learning, the principle of academic freedom as an essential element for such institution, finds its genesis in Europe.

The university institution in Europe could be considered as the cradle of academic freedom. This development was a spontaneous movement and not the result of planning.¹⁰Students gathered around teachers or resorted to famous schools attached to cathedrals in centers known as studia. Formalization of powers and duties of these new institutions started with the famous *Authentica Habita* also known as *privilegium scholasticum*, was a law issued by roman emperor, Frederick Barbarossa at the diet of Roncaglia sometime around November 1158. It was an Edict intended to protect traveling scholars. This law was incorporated into the “corpus iuris” (body of civil law) and today takes the form of the fundamental charter of the medieval university.

⁸ Paragraph 8-16 UNSCSCR

⁹Academic Freedom in Africa. R. Cohen et al (Eds) on human rights and governance in Africa.

¹⁰Nieruszowski (1966) 16 Ed.

In the late 19th century, the German notion of academic freedom consisted generally of three concepts: *Lehrfreiheit*, *Lernfreiheit* and *freiheit der wissenschaft*. *Lehrfreiheit*, or freedom to teach, embodied the notion that professors should be free to conduct research and to publish findings without fear or reprimand from the church or state. The other concepts include the authority of the individual professor to determine the content of courses and lectures and the rights of students to determine the course of their studies for themselves. These concepts became a model for other institutions. The American tradition of academic freedom evolved from this German theory.

Between 1870 and 1900, many American college graduates migrated to German universities for advanced learning and upon their return, contended that the German concept of academic freedom should be entrenched into the United States academic policies. However, some scholars of higher education viewed academic freedom and university as an ancient concept that originated in Europe and later spread round the world. Others look towards Islamic world where cities like Damascus, Baghdad and Cairo witnessed the establishment of learning centers in the 19th century, which could be described as universities. Other cities like Cordoba, Fes, Kairouan, Isphahan, Samarkand, and Timbuktu also represented centers where institutions of higher education were established, which in the Islamic world of the 19th century; the mosque represented a center of higher learning. In Christianity, universities during the 12th and 13th centuries came under the authority of the pope and enjoyed liberties that protected them from the tyranny of the kings. Yet the European history tells a lot about intellectuals who were either tortured or killed because their ideas were considered threatening.

The nature of academic freedom in the Islamic world of the 19th centuries took the form of research, publications, and discoveries. Hence, bookshops began to crop up all over Muslim entities by the 19th and 20th centuries. The proliferation of books became a precursor to emergence of early libraries.

Pre-colonial Period

African pre-colonial society practiced a system of traditional education which evolved in a number of stages which were linked to an individual physical development, ranging from infancy to puberty. The level of education acquired at a particular time and the age of teachers was linked to the physical and cognitive development of a person and the roles they played in the community as they progress. Education was acquired mainly through institutions common to many pre-colonial African societies, such as games, storytelling, apprenticeship, and initiation practices. Thus, individual growth and knowledge is resonated via communal settings with various numbers of teachers at each specific stage of a person's development.

Taking into consideration the nature of African society, founded on the embers of communal setting, academic freedom is not guaranteed hence moral and communal institutions guide teachings. However, this is without prejudice to traditional education which was well developed in some part of Africa such as Cairo, and Timbuktu in Mali,¹¹ University of Al.Azhar in Cairo, Egypt and University of Sankore in Mali were models of the African citadel of learning. It is worth to note that dating back to 12th century; the University in Timbuktu, Mali was revered for its good academic structure and planning. The academic curriculum braced for both the orthodox teaching and the Islamic doctrine. Its curriculum are graded into four levels, firstly the primary degree level, which requires the memorization of the holy Quran, learning the Arabic language, communication and writing skills and learning the basics of other academic disciplines. Secondly, there was the secondary degree level which introduced students to various strands of Islamic knowledge virtually all known science subjects are taught including physics, chemistry, and mathematics. The third and fourth level is referred to as the superior degree level in which advanced studies and research work were undertaken. The entire learning process revolved round the Islamic religion and its matrix, award of degrees in addition to academic excellence is dependent on the ability of students to demonstrate the mastery of Islam both in character and learning.

¹¹ WB Harvey; Freedom, University, and the Laws. The Legal Status of Academic Freedom in the Universities of Black Africa (1976)
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It is delightful to note that, the University was a conglomeration of autonomous institutions managed by teachers with whom students associates. Teachers were at liberty to express themselves within the purview of their academic rights and freedom, amidst an advanced research- based and good library organization.

Colonial and Post-Colonial Universities

African universities established during the colonial and post-colonial era could not create administrative upsets as most of their ideas are fashioned after the pre-colonial universities. They were autonomously managed institutions run by both academics and none academic staff. Although some school of thought opined that most colonial universities were established for the purpose of providing skills to African nations who in turn serve the colonial masters based on the skill acquired.

At the earlier years of independence in most African countries, there were established universities. Some were prior to independence while others came up thereafter. The likes of universities of Dar es Salaam, Tanzania, Nairobi, Kenya and Makerere in Uganda fall within these categories. The modus operandi of these universities was predicated on the ideals of institutional autonomy where academic freedom is guaranteed. Alluding to this fact, the statute establishing former university of East Africa, clearly stated that the object of the University was to preserve academic freedom and in particular, the right of a university or a university college, to determine who may teach, what may be taught, how it shall be taught and who may be admitted to study therein.¹² Unfortunately, this clause was in a whimsical manner omitted in the statutes setting up successive universities in East Africa.

The universities were state institutions and financially dependent on the state for their up keep. This dependency becomes the potent weapon for servitude. It is easier for authorities to whittle down the autonomous powers of the university in a bid to fostering its own agendas. They view the university as an established organ created subject to their whims and caprices for needs and development of the country. In this regard, it is the view of many leaders as exemplified by the former president of Tanzania, Julius Nyerere that:

The university colleges which comprise this university cannot be an island, followed with people who live in a world of their own, looking on with academic objectivity or indifference at the activities of those outside. East Africa cannot spend millions of pounds, cannot beg and borrow for the university, unless it plays a full and urgent task of East Africa even if it were desirable, we are too poor in money and educated man power to support an ivory tower existence for elite. Our problems will not wait. We must, and do demand that this university take on active part in the social revolution we are engineering.

The former President of Kenya, President Jomo Kenyatta shared same sentiments. These expressional believes has in no small measure decimate, the sanctity of the citadel of higher learning where robust debate and cross pollination of ideas and superior arguments should hold ways over primordial and political sentiments for sustainable development. This orientation without doubt in my mind, were the cradle of pictorial psycho which by overt tapestry culminated into despotic leadership in most African countries. As a result of this incursion, university became a circus for academic puppetry where individual ideology and policy are determined by the authority. For those who insist on their academic freedom and rights are often treated as renegades and outlaws. One will not forget in a hurry the perversion suffered by Dr. Farouk Ibrahim of University of Khartoum, Sudan for teaching DARWINISM; according to them, such teachings offends the content and tenets of the Islamic religion. This is just one amongst legion of cases of human right abuses that has become the rubber stamp of the academics. Uganda academic environment has not fared better from the treachery and travesty that pervades the academic horizon within the east African sub region.

The political instability, upheavals and restiveness become a major debacle that fester the embers of human right abuses in the country. The draconian regime of military dictator, Idi Amin Dada of Uganda

¹² Currie & J de wall the bill of rights handbook (2005) 370-371

in the 1970's earned the country a sobriquet of "the land of blood". Human right abuses at this period attained a notorious proportion all over Africa, if not the world. According to a classic personality study carried out by Godfrey E.N. Nsubuga¹³ in a book titled the Person of Idi Amin, he describes him thus; "Amin was a mixture of melancholic and choleric temperaments. He possessed extreme swinging moods. Joyous moment would suddenly change to dreary and tantrum moments. He was good at swimming, boxing, shooting, and rugby...he was a soldier by any description". Makerere University which was one of the foremost universities in Africa, renowned for its proven academic astute and integrity, became a victim of a bizarre leadership enmeshed in warped human right abuses.

In August 1976, troops led by the Minister of Education in a sinister manner, invaded Makerere Campus, and arrested students who boycotted lectures in reaction to certain academic anomaly that became the hall mark of a despotic regime. They were not only arrested but also subjected to torture. The government of Milton Obote (1980-85) brought some respite into governance as against the Idi Amin's cabal. However, the face-off between Mahmood Mamdani, a Professor in the Department of Political Science, and the Obote's government, was testamentary to the depravity suffered by the academic. This trajectory was sequel to a paper presented in a conference, criticizing government policy on creation of national parks, which according to him, was an infraction on the right of peasants to agriculture. It run against the mill of logic when a society and its institution is christened as "free" and "democratic" only to be an amalgam of authoritarianism.

However, it is worth noting that one should not be oblivious of the fact that academic freedom has also been implored as a potent instrument for abuse. As much as academic freedom is intended to foster free exchange of ideas within comity of scholars, it also requires that the custodian and beneficiaries of these rights must discharge their responsibilities in line with the ethics of their professional calling. Erudite scholars have also posited that although, the context and content of the challenges to academic freedom differ between countries, however, they all center on the challenges of institutional autonomy, ideological controls, internal governance and intellectual authority. It was further noted that the forces that seek to erode academic freedom emanates from the State, civil society and the academia itself, where transformation are often driven by globalization.

In Western democracies, public prosecutions of academics who express unpopular or unorthodox views are rare; however, it is not unusual for pressures and threats to be directed at perceived non-conformist. It suffices to say that America despite its advancement could not be insulated from the trajectory woe tale associated with the quest for academic freedom. In April 1995, a five to four decision by the Supreme Court denied the Board of Higher Education of New York City the right to dismiss a Professor for having invoked the Fifth Amendment against incriminating himself with communist party membership. The majority of the court condemned at the outset the practices of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment.

On the State level, the Illinois State Circuit Court declared in March that the Broyles law, requiring teachers to swear that they are not communist, was constitutional.

In May, the New Jersey Commissioner for Education ordered the Newark Board of Education to respect the cases of three teachers who have pleaded the Fifth Amendment. These and more have further laid credence to the fact that factors militating against academic freedom are global phenomenon.

From the human rights perspective, Rajagopal in one of his write up contend that "to say that something is a human right is to assert that protecting such a right does not depend on the national legal system, but on international law". Therefore, various international treaties, general comments, declarations, pacts and agreements for the protection of academic freedom are relevant; in spite they are more of persuasive canon.

¹³ Person of Idi Amin, a Classic Personality Study, Godfrey E.N Nsubuga

Effort to drive home this cardinal principle paid off through creation of different international legal framework for the protection of academic freedom. To mention but not limited to the following are: draft UNESCO Declaration On Academic Freedom (DDAF), world congress on education for human rights and democracy held in march 1993, UNESCO recommendation concerning the status of higher education teaching personnel, 11th March 1997, while the non-legal framework was advanced by “Lima” Declaration on Academic Freedom and Autonomy of Institutions of Higher Education adopted by the World University Service in 1988.

The Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academic proclaimed in 1990 by the Staff Association of the Institution of Higher Education in Tanzania was an illuminating factor towards achievement of this laudable objective. This Declaration was adopted by delegates of the staff associations of institution of higher education in Tanzania, on the 19th April 1990. The preamble to the Dar es Salaam Declaration noted that the constitution of Tanzania provides for the right to education and the right to opinion and expression, which rights, according to the Dar Declaration, includes academic freedom.

Kampala Declaration on Intellectual Freedom and Social Responsibility 1990 was adopted on the 29th of March 1990. (KDIFSR) its cardinal principle was centered on giving every intellectual the right to conduct intellectual activities such as research and teaching, free from any interference provided such activities are within the precinct of best global practice.

The grillage between the independence of institutions on one hand, and their accountability to the State on the other has heck the determination on where rights under academic freedom begins and ends. It can also be difficult to explain the distinction between “academic freedom” and “free speech rights, both are related but possessed distinct legal concepts. The right to academic freedom co-exists with constitutional rights although courts have recognized the relationship between the two.

Recommendation and Conclusion

It should be noted that no matter the mix, the need for academic freedom cannot be overemphasized. Uganda should take all necessary steps in facilitating the domestication of the Kampala declaration on intellectual and social responsibility with particular emphasis on “academic freedom” into its constitution. Inspiration should be drawn from Dar declaration which extends its right to free speech to include right to academic freedom.

In conclusion, the wordings of Prof. A Mazrui is highly instructive:

The right to academic freedom is a sub right to right to education and freedom of expression, the constitution generally provides for the right to freedom of expression on all sorts of topics in all sorts of settings and the right to education. Academic freedom on the other hand addresses rights within the educational context of teaching, learning, and research both in and outside the classroom for individuals at