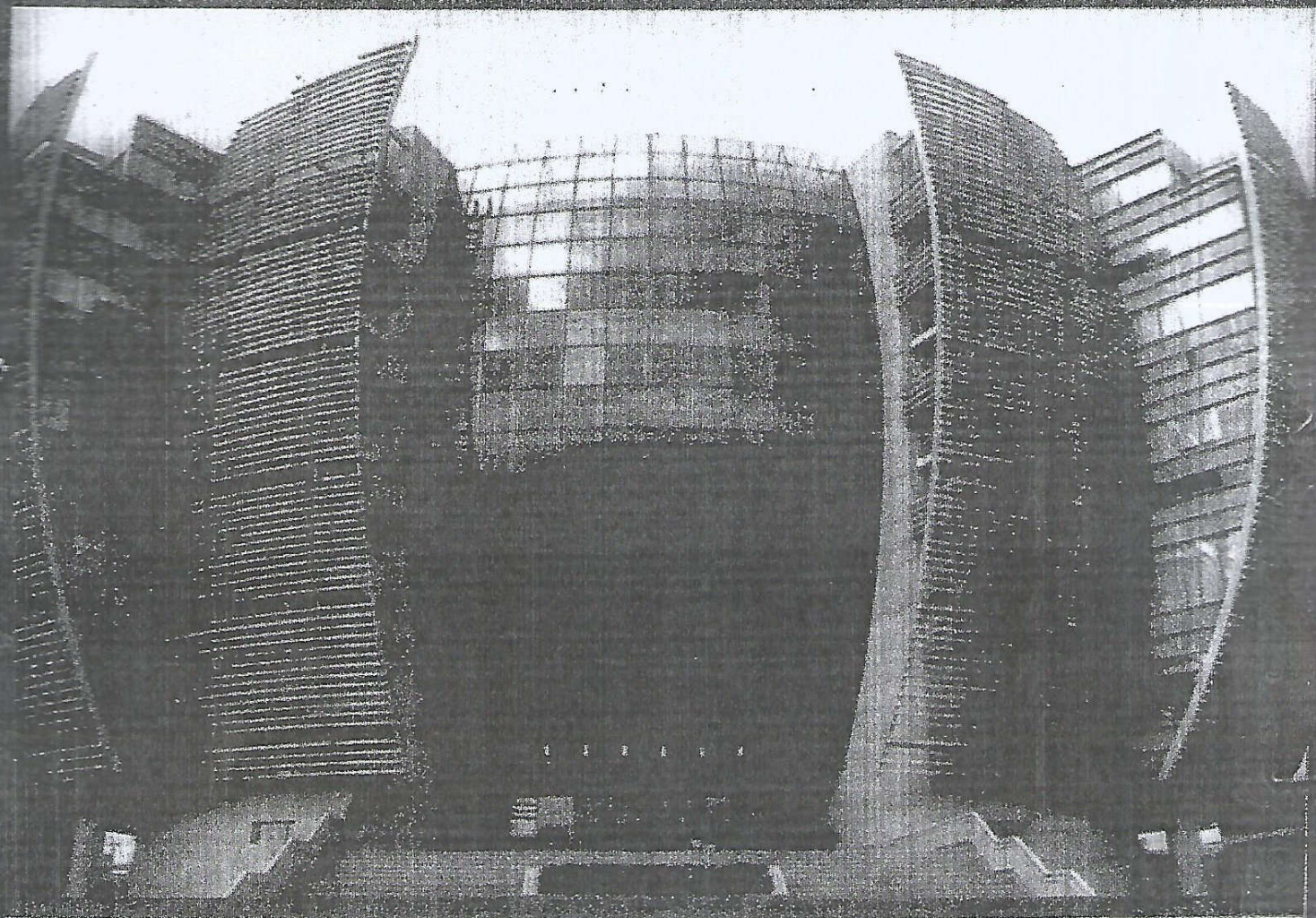


# LAW AND PRACTICE OF UNIVERSITY GOVERNANCE IN NIGERIA

HONOUR OF  
**PROFESSOR SABURI  
ADEJIMI ADESANYA**



Edited by:

**Professor Olusesan Oliyide**



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## A Critique of the Laws Regulating Universities in Nigeria\*

### 1.0 Introduction

The University model is a unique creation of law, with significant global standards, set towards the attainment of its objectives and derived from its historical background. Accordingly, any regulation of a University must address the features of this model. Fundamental features of this model are institutional autonomy and academic freedom, towards the attainment of the set goals of the University. Therefore, laws regulating Universities, often, comprise of the entire mechanisms, processes and strategies, by which components of University can exercise their autonomy.

Universities and their staff and students 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 regulation of Universities.<sup>1</sup> No meaningful critique of relevant laws can be achieved without a test of University autonomy. To determine the level of autonomy enjoyed by a University, the first source to examine is the enabling Act and other laws regulating the University. These spell out the level of regulatory or government involvement in the day-to-day running of the University.

In critiquing the laws, this chapter examines the goals of University education in Nigeria and the extent to which the extant relevant laws in the country have helped to attain these goals. It also examines the

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1. See, United Nations Committee on Economic Social and Cultural Rights; 1976; <https://www.ohchr.org/EN/ProfessionalInterest/pages/CESCR.aspx>, accessed on 8 August, 2017.



nature of the country's University system, what it calls the University model, and the implication of regulatory laws on this model. In this respect, the regulatory agencies, especially the National Universities Commission ("NUC") and the Joint Admissions and Matriculation Board ("JAMB"), come into critical scrutiny. Also in focus is the Visitor, the Governing Council and the Senate. It answers the basic question: whether and to what extent Nigerian laws regulating Universities have been compliant in the traditional mould and global standards on regulation of University. It underscores the fact that institutional or University autonomy and academic freedom are a *sine qua non* to attaining the teaching, research and innovation endeavours of a University. In doing this critique, this chapter is divided into two sections. The first section examines the laws in Nigeria, in order to determine their loopholes and inherent weaknesses. The second section considers these laws, in the light of international standards, by looking at the laws under the themes of 'autonomy' and "academic freedom", in order to determine their adequacy. This section also contains the concluding remarks, which include suitable recommendations.

### **1.1 The Importance of the University System**

"University model" is a unique creation of law, designed to perform the critical role of refiners of human resources, in the scheme of national and global development. Universities are critical to the development initiatives of a nation because they create the platform for the acquisition, development and inculcation of the proper value-orientation for the survival of individuals and society; they develop the intellectual capacities of individuals to understand and appreciate their environment; they help to acquire both physical and intellectual skills for impacting the society; they help to acquire an objective view of local and external environment towards the making of optimum contributions to national development, through the training of high level manpower and all these, through the promotion of scholarship and research.

Since Universities develop human resources, their regulation is critical to economic growth and development. At the Going Global 2013 Conference under the theme: "Global Education: Knowledge-Based Economies for 21st Century Nations",<sup>2</sup> tertiary education was

2. See, <https://www.emeraldgrouppublishing.com/products/books/...page.htm?id...>, accessed 8 August, 2017.



recognized as driver of knowledge-based economies, which, in future, will create the well-being of nations.

Focusing on Universities, Boulton<sup>3</sup> observes as follows:

"In the last two decades, higher education worldwide has moved from the periphery to the centre of governmental agendas in most countries. Universities are now seen as crucial national assets in addressing many policy priorities, and as: sources of new knowledge and innovative thinking; providers of skilled personnel and credible credentials; contributors to innovation; attractors of international talent and business investment; agents of social justice and mobility; contributors to social and cultural vitality; and determinants of health and well-being".

Bearing in mind this significant role of University education, the question is: how has Nigeria fared in the development of human resources at this level? It is the popular belief that Nigerian Universities are turning-out graduates without skills and this makes them unemployable.<sup>4</sup> During the 2014 launch of "Education for All, Global Monitoring Report for Nigeria",<sup>5</sup> the UNESCO Director in Nigeria described Nigeria as a country with "education without learning", stating that Nigeria has the worst form of education indicators, globally. Again, the 2017 Human Capital Development Report<sup>6</sup> ranked Nigeria 114th out of 130 countries surveyed. This is not surprising, as the facts on ground present a sorry state. Public Universities in Nigeria are, usually, beset with debates on autonomy, restructuring, funding, quality of education, among others. They are plagued by incessant strikes, students' unrest and closures that, unduly, stretch University sojourn beyond expectation, all in the quest to addressing some of

3. See, Boulton, G., "What Universities are For"; <https://www.arden.ac.uk/university/degrees>, accessed on 8 August, 2017.
4. See, The Guardian, "State of Nigerian Universities" *Guardian Newspaper* 8 November, 2017, 15.
5. See, "The Global Monitoring Report 2013/2014: Implications For A Renewed Agenda for steady and qualify Education"; <https://en.unesco.org/.../global-monitoringreport-20132014-implications>, accessed on 8 August, 2017.
6. See, The Global Human Capital Report 2017; [https://www.weforum.org/does/WEF-Global\\_Human\\_Capital\\_Report\\_2017.pdf](https://www.weforum.org/does/WEF-Global_Human_Capital_Report_2017.pdf), accessed on 8 August, 2017.



these concerns. While private Universities have emerged to fill the gap of access; they create their own challenges, ranging from legal status, ownership, access (in the strict sense), academic freedom, and quality assurance, of Faculty and facilities.<sup>7</sup> There are constant debates on University autonomy and the limits of governmental control, the question of accountability and of academic freedom.

The imperative for change has, therefore, been an unending feature of academic and political discourse. However, no such change can be attained outside of the legal framework. It is on this note that this chapter does a critique of the laws that regulate Universities in Nigeria. 'Law' is an instrument of social engineering; accordingly, a tool of governance. In the regulation of Universities, it is expected that law must produce visible and tangible results. What implications does regulation have on core values of the University system, in particular, the time-tested principles of institutional autonomy and academic freedom? What social development issues arise and how can regulation promote the vision of Universities? These and other issues form the subject of the underlying discussion. The chapter argues that University regulation must not detract from the University model.<sup>8</sup>

### **1.2 The University Model in Nigeria**

As a federating unit, the Constitution of Nigeria puts education on the concurrent legislative list; the Federal and State governments are therefore competent to legislate on education.<sup>9</sup> The extant laws regulating Universities in Nigeria include the enabling law of each University, which established it and states its objectives and functions<sup>10</sup>

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7. Adediran, O. and Gbadamosi, O., "Legal Status of Private Universities in Nigeria" Vol. 41, Issue 3 (2015) *Commonwealth Law Bulletin*, 446 - 484.
  8. Olanipekun, W., "Challenges to Governance in Emerging Democracies", paper delivered at forum to commemorate the 50th Anniversary Celebration of the Faculty of Law, University of Lagos, Lagos, Nigeria, on the 26 July, 2012.
  9. *Constitution of the Federal Republic of Nigeria 1999, Concurrent Legislative, Items 27 - 30.*
  10. Ogungbe, M.O., "University Administration and the Laws of the University", Ogungbe, M.O. and Oliyide, O. (eds.), *Essays on Law and University Administration in Nigeria* (Faculty of Law, Ogun State University, Ago-Iwoye, 1999).



and the following: the *Universities (Miscellaneous Provisions) Act, 1993*<sup>11</sup> ("UMPA No. 11 (as amended)"); the *Universities (Miscellaneous Provisions) (Amendment) Act, 2003* ("the Autonomy Act"),<sup>12</sup> the *Education (National Minimum Standards) (Establishment) Act, 1985* ("ENMSA"),<sup>13</sup> the *National Universities Commission Act, 2004*,<sup>14</sup> the *Joint Admissions and Matriculation Board Act, 1989*,<sup>15</sup> and the *Universities (Miscellaneous Provisions) (Amendment) Act, 2012*. As indicated earlier, each University has its own enabling law, which provides the legal template for its existence.<sup>16</sup>

Universities also have staff conditions of service which stipulate domestic governance issues, government policies like the NUC Benchmark Minimum Academic Standards ("BMAS"), also, play a key role in University governance to the extent that such do not contradict the principal laws.

A University in Nigeria is required by law to be established, irrespective of the ownership, under or pursuant to an Act of the Federal government or law of a state; provided that where the University is established or to be established by a Government of a State or a Local Government Council, it shall be established by state law.<sup>17</sup> However, research has revealed that no private University in Nigeria is established

11. Otherwise known as Act, No. 11, 1993, as amended by the *Universities (Miscellaneous Provisions) (Amendment) Act, 1993*, otherwise known as Decree No. 55 of 1993; the *Universities (Miscellaneous Provisions) (Amendment) Act No. 25 of 1996*; the *Universities (Miscellaneous Provisions) (Amendment) Act, 2003*; and the *Universities (Miscellaneous Provisions) (Amendment) Act, 2012*. The *Universities (Miscellaneous Provisions) Act No. 11, 1993* and the *Universities (Miscellaneous Provisions) (Amendment) Act, 1993*, No. 55 of 1993 as well as the *Universities (Miscellaneous Provisions) (Amendment) Act, 1996*, No. 25 of 1996, have been adapted and incorporated into the various enabling laws of the Federal Universities in the Laws of the Federation of Nigeria, 2004. However, the *Universities (Miscellaneous Provisions) (Amendment) Act, 2003* and the *Universities (Miscellaneous Provisions) (Amendment) Act, 2012*, are yet to be incorporated.

12. *The Autonomy Act, 2003*.

13. No. 16, 1985, now known as Cap. E3, Laws of the Federation of Nigeria, 2004.

14. Cap. N4, Laws of the Federation of Nigeria, 2004.

15. No. 33, 1989, as amended by No. 4, 1993, now known as Cap. J1, Laws of the Federation of Nigeria, 2004.

16. See for example, the *University of Lagos Act, 2004*, Cap. U9, Laws of the Federation of Nigeria, 2004; the *University of Ibadan Act, 2004*, Cap. U6, Laws of the Federation of Nigeria, 2004; the *Olabisi Onabanjo University Law, 2006*, Vol. 4, Laws of Ogun State of Nigeria, 2006 (as amended); the *Lagos State University Law, 2003*, Vol. 4, Laws of Lagos State, 2003; *University of Abuja Act, 2004*, Cap. U2, Laws of the Federation of Nigeria, 2004; and the *Obafemi Awolowo University (Transitional Provisions) Act, 2004*, Cap. O2, Laws of the Federation of Nigeria, 2004.

17. ENMSA, section 19. The institutions to which this section applies are those established or to be established with respect to "university education, technological education or professional education", among others.



by law in line with the provisions of ENMSA, 1985. This has implications on the ownership, control, autonomy, delivery of quality education, labour, and legal personality.<sup>18</sup> Universities may be sponsored or owned by the Government of the Federation or of a State or by a Local Government or by a company incorporated in Nigeria; by an individual or association of individuals who are citizens of Nigeria. Universities may, therefore, be owned by the Federal Government, State governments, religious organizations or private individuals.<sup>19</sup> Application for the establishment of any University is made to the Minister, through NUC.<sup>20</sup>

A marked feature of the University system is its relatively fragmented organizational structure which is run through Committee systems.<sup>21</sup> In Nigeria, there are administrative policies which define the responsibilities of University administration, including legal obligations and legislative requirements for the governing boards. They ensure that all staff members are aware of the nature of their duties and responsibilities.

#### **1.4 Composition of Universities**

By the provisions of UMPA, 2003,<sup>22</sup> and the enabling laws of Universities,<sup>23</sup> a University consists of a Chancellor; a Pro-Chancellor and a Council; a Vice-Chancellor and a Senate; a body to be called Congregation; a body to be called Convocation; the Colleges of the University and their respective Courts of Governors and Academic Boards; the Faculties, Schools, Institutes and other teaching units of the University; all graduates and undergraduates; and all other persons who are members of the University, in accordance with provisions made by statute in that behalf. To understand the University model, some of these members will now be examined.

18. Adediran, O. and Gbadamosi, O., "Legal Status of Private Universities in Nigeria", op. cit.

19. It is noteworthy that Open University has become a feature of University education in Nigeria since 1983 when the National Open University (NOUN) was established to encourage tuition by correspondence and closely supplemented by lectures and other broadcast, among others. By its very nature NOUN provides a means of access to University education by those who would have been unable to attain it due to geospatial, labour engagement and other constraints; see the *National Open University Act, 2004*, Cap. N63, Laws of the Federation of Nigeria, 2004, section 1(3).

20. ENMSA, section 21(1).

21. Clark, B., "The Entrepreneurial University: New Foundations for Collegiality, Autonomy and Achievement" Vol. 13, No. 2 (2001) *Higher Education Management*, 9 - 24.

22. This amends the UMPA, 1993.

23. See for example, the *University of Lagos Act, 2004*, op. cit.



### 1.4.1 The Visitor

The office of the Visitor is a British export to Nigeria adopted, mainly, to patronize and glorify the Universities rather than play any regular active role in the affairs of the Universities.<sup>24</sup> The office of the Visitor, historically, developed as an institution to oversee the affairs of the church and correct offences in the diocese and parishes.<sup>25</sup> The Bishop acted as Visitor to ecclesiastical corporations while the founder and his heirs acted as Visitor to Corporations, such as colleges and schools,<sup>26</sup> Civil corporations were subject to the control of the common law courts.<sup>27</sup>

Each University in Nigeria has a Visitor.<sup>28</sup> The President of the Federal Republic of Nigeria is the Visitor of all Federal Universities while a State Governor is the Visitor of a University owned by the State. Some explicit roles prescribed for the University Visitor under the extant laws is that the Visitor shall cause a visitation to each University when, necessary, at least, every five years.<sup>29</sup>

*"The Visitor shall make the report of such visitations and white paper thereon available to the Council which shall implement same".<sup>30</sup>*

The requirement of visitation is commendable, as a Visitation Report, normally, serves as a mirror of the past, a lesson for the present and a guide for the future. However, the laws are silent on the modalities for such visitation and how the interests of the University is protected. Must the Visitor be present? Does he delegate to a Panel and what should be the composition of such? This is, particularly, important, in the face of the stipulation that the Governing Council shall implement the report of the Visitation Panel. The directive to implement the report

24. Okonkwo, C. O., *Discipline, Nigerian Universities and the Law* (Nigerian Institute of Advanced Legal Studies, Lagos, 1996), 28.

25. Okonkwo, C. O., *Discipline, Nigerian Universities and the Law*, op.cit.

26. Okonkwo, C. O., *Discipline, Nigerian Universities and the Law*, *ibid*.

27. See, *Phillip v. Bury* [1694] 1 Ld. Ryam, 5; 91 E.R. 900; see also, Ikhariale, M. A., "The Institution of Visitor in English and Overseas Universities: Problems of its Use in Nigeria" (1991) 40 *I. C. L. Q.*, 669.

28. *Ibid*, section 7AA (1).

29. *Ibid*, section 7AA (2). Before the *UMPA*, 2003, the Visitor was responsible for appointment and removal of the Vice-Chancellor and was, accordingly, the arrow-head of the University.

30. *Ibid*, section 7AA (3).



underscores the overshadowing presence of the Visitor, despite the stipulation that the "Governing Council shall be free in the discharge of its responsibilities". The use of the word: 'shall', as legally construed, does not leave room for discretion and jeopardizes University autonomy. It can only be where the Governing Council is at liberty to objectively decide on the course of action, as the arrow-head of University governance, that there can be creativity and corporate governance. It is noteworthy that the laws are silent on modalities for Visitation Panel and whether those on the Panel should be stakeholders in University system.

The Governing Council's tenure is four years from the date of its inauguration "provided that where a Council is found to be incompetent and corrupt it shall be dissolved by the Visitor and a new Council shall be immediately constituted for the effective functioning of the University". Again, the modalities for arriving at the conclusion that a Council is incompetent is unstated and the law is, flagrantly, disregarded by University Visitors. There are many concerns here: how is the Council found incompetent? Who arrives at this conclusion - the University or the community? A court of law? A Panel of Inquiry? The basic supervisory role of Council may render the application of this section unrealistic.

#### 1.4.2 The Governing Council

The Governing Council is the arrow-head of a University. The enabling law of each University<sup>31</sup> and UMPA, 2003 establish the Council. By section 2 (1) of UMPA, 2003, each University shall have a Governing Council, headed by the Pro-Chancellor, consisting of the following: (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

31. For example, section 5 of the University of Lagos Act, *ibid*, established the Governing Council; see also, the University of Ibadan Act, *op. cit.* and Delta State University Law, 2008, Cap. B7, Laws of Delta State, 2008.



Congregation from among its members; and (h) one person appointed by Convocation from among its members.<sup>32</sup>

Under the law, persons to be appointed to Council must be of proven integrity, knowledgeable and familiar with the affairs and tradition of the University.<sup>33</sup> Also, Council has a tenure of four years, from the date of its inauguration provided that where it is found to be incompetent and corrupt, it must be dissolved by the Visitor and a new Council, must, be immediately constituted, for the effective functioning of the University.<sup>34</sup> The powers of Council must be exercised, as provided in the law relating to Council and the statutes of each University and, to that extent, establishment circulars that are inconsistent with the laws and statutes of the University shall not apply to the Universities.<sup>35</sup>

Council is charged with the general control and superintendence of the policy, finances and property of the University, including its public relations.<sup>36</sup> In this context, in the case of Federal Universities, Council must ensure that proper accounts of the University and the Colleges are kept and that the accounts of the University and of each of the Colleges are audited, annually, by auditors appointed by Council from the list and in accordance with guidelines supplied by the Auditor-General for the Federation; and that an annual report is published by the University, together with certified copies of the said accounts as audited. Also, Council must meet, as and when necessary, for the performance of its functions under the law that established the University, and shall meet, at least, three times in every year. These provisions are reinforced by *section 2AAA (2) of UMPA, 2003*, which also enjoins Council to ensure that the disbursement of funds of the University complies with the approved budgetary ratio of personnel cost; overhead cost; research and development; library development; and the balance in expenditure between academic vis-à-vis non-academic activities.

32. This composition creates a 16-member body, consisting of eight internal members and eight external members. There may be few variations for State and Private Universities.

33. *UMPA, 2003, section 2 (2)*.

34. *Ibid*, section 2A.

35. *Ibid*, section 2AA.

36. *Ibid*, section 8.



The functions of Councils of Federal Universities include appointment<sup>37</sup> and removal of Vice-Chancellor, Deputy Vice-Chancellors and other staff.<sup>38</sup> Notice of such appointment must be given to the Visitor. The power of Council to remove the Vice-Chancellor from office on grounds of "gross misconduct or inability to discharge the functions of his office as a result of infirmity of body or mind", must be exercised after due process. The removal can be proposed by Council, Senate or Congregation.<sup>39</sup> In exercising this power, Council must constitute a Joint Committee of Council and Senate to investigate the allegations made against the Vice-Chancellor and to report its findings to Council. Where the allegations are proved, Council may remove the Vice-Chancellor or apply any other disciplinary action as it deems fit and notify the Visitor, accordingly. However, a Vice-Chancellor, who is removed, has a right of appeal to the Visitor.

#### **1.4.3 The University Registrar, Bursar and Librarian**

The enabling laws of all Universities provide for the office of Registrar, Bursar and Librarian. Under extant law, they hold office for a fixed tenure of five years.<sup>40</sup> However, *UMPA, 2012* is dangerously silent on the removal of the officers and raises the question of the grounds upon which they can be removed from office. University Councils are, therefore, to ensure that this gap is not left untreated by making provisions for this in its statute.<sup>41</sup>

#### **1.4.4 Discipline of Other Staff and of Students**

University staff are appointed, disciplined and removed by Council but their employment is with statutory flavor<sup>42</sup> as against master-servant relationship. Any staff may be disciplined or removed, for various reasons, including misconduct and inability to perform the functions of his office or employment, after due process. Each University has Staff Disciplinary Committee and Students Disciplinary Committee, for this purpose. To the extent of composition and

37. *UMPA*, sections 4 and 6.

38. A Vice-Chancellor now has single five-year term, by virtue of section 3 of *UMPA, 1996*, which amended section 3 *UMPA, 1993* (as amended).

39. *Ibid*, section 3 (9) - (11).

40. *UMP (Amendment) Act, 2012*.

41. Sections 25 to 27 of *UMP (Amendment) Act, 2012*, *ibid*.

42. *Garba and Others v. The University of Maiduguri* [1986] 1 N.W.L.R. (Pt.18) 550.



administration, the system is internal and conforms with collegiality and self-governance. In all cases of removal or other forms of discipline, the principles of natural justice must be followed.<sup>43</sup> Students' discipline must also be undertaken pursuant to the power conferred on the Vice-Chancellor, which may include expulsion from the University for misconduct. A student may appeal to Council, which may confirm, set aside or modify the decision as Council may deem fit, in the circumstance.

In the light of the above legal framework, it must be observed that University Councils in Nigeria are central to University governance. Good corporate governance is, needed, in the composition of Councils; they must have a high degree of autonomy, in order to be able to undertake full management of Universities. Councils are a core development component of Universities and should be accountable for the vision of the institution. The present composition of public University Councils is against the norm of institutional autonomy and self-governance, as it leaves the appointment of external members to overriding government authorities, without input from the University system. The need for Nigerian Universities to be globally competitive requires that the present ambience of Councils, particularly, of public Universities, tailored after the civil service, is a major detraction from the fundamental goals. Beyond autonomy, in the exercise of the power to appoint Council members, good corporate governance demands that the individuals selected be value-driven and possess the exposure to steer the University towards its vision. This underscores the self-governance needs of Universities, to participate in the selection process.

Again, a major drawback of these laws in Nigeria is the absence of any requirement or qualifications for Council membership. The provision in *sub-section (2) of the Autonomy Act, 2003*, that "persons to be appointed to the Council shall be of proven integrity, knowledgeable and familiar with the affairs and tradition of the University", has been rightly described as "mere moral qualification"<sup>44</sup> and it is submitted that they are qualifications devoid of any objective

43. *R. v. Chancellor of University of Cambridge* [1720] 1 str. 552; *King v. Sussex Justices Ex parte McCarthy* [1924] 1 K.B. 256; *Oke v. Nwaogbuiniya* [2001] 1 S.C. (Pt. 1) 22; *LPDC v. Fawehinmi* [1985] 2 N.W.L.R. (Pt. 7) 300; *Abiola v. FRN* [1995] 1 N.W.L.R. (Pt. 405) 1; and *Federal Civil Service Commission v. Laoye* [1992] 2 N.W.L.R. (Pt. 106) 652.

44. Oshio, P., "Legal Issues in University Governance in Nigeria"; <https://www.nigerianlawguru.co.>, accessed on 15 October, 2017.



evaluation. The failure to even stipulate minimum educational qualifications for membership is strange. It is recommended that Council members, who are not *ex-officio* members, ought to demonstrate proven leadership as well as accomplishment in human resource development; show that they have received University education, preferably, at the highest level; establish that they have a background of sound exposure in policy formulation and execution; and prove that they are business-savvy, in order to be qualified for appointment. Another flaw, here, is that the laws do not seem to provide a channel to challenge the choice of Council members. This, it is submitted, derogates from self-governance as well as University autonomy. As a critical organ of University governance, the selection criteria for the Pro-Chancellor who will be Council Chair and other external members ought to involve the University in the exercise of their institutional autonomy.

Taking a look at the situation in a sister country, Ghana, public Universities, just as in Nigeria, are established, as bodies corporate, with perpetual succession and having the right to sue and be sued. Unlike the situation in Nigeria, however, the Chancellor of a public University in Ghana, is elected by an Electoral College, made-up of an equal number of members from the University Council and the Academic Board. The qualification of a Chancellor is provided for in the Constitution of Ghana, and the country's President is, specifically, barred from holding the office of Chancellor or Head of any University in Ghana, for as long as he continues in office as President. Vice-Chancellors are also appointed by each University's Electoral College. Also, in many United Kingdom Universities, Chairs of Councils, including, Visitors and Pro-Chancellors, are elected by staff, students and other stakeholders.

The Finance and General Purposes Committee of Council ("FGPC") is created by *section 8(2) of UMPA*. FGPC "shall, subject to the directions of the Council, exercise control over the property and expenditure of the University, other than that of the colleges, and perform such other functions of the Council as the Council may from time to time delegate to it". By *section 8(3)*, provision shall be made by statute with respect to the constitution of FGPC.

Presently, FGPCs of University Councils in Nigeria, are not occupying the proper threshold in University administration. For example, in terms of funding of Universities, this matter ought to be



approached, dynamically, so as to ensure that the Committee achieve its mandate of effectively controlling and managing the assets and liabilities of the Universities, subject to the directions of the various Councils, for the sustainable growth and development of the Universities. As it is, the legal framework has reduced the FGPCs' role to mere auditory role and this, it is submitted, is inimical to the growth of the Universities.

The truth is that the description of the function of FGPC, leaves little room for independence, discretion and initiative. The charge to be "in general control and superintendence of the policy, finances and property of the University, including its public relations" and to "exercise control over the property and expenditure of the University, other than that of the colleges, and perform such other functions of the Council as the Council may from time to time delegate to it", although susceptible to wide discretion, is constrained by the "civil service mentality", usually exhibited by Council. The work of Council has become merely affirmative, devoid of development impetus. Council and FGPC must, therefore, appreciate the need to open Universities' finances to market-driven modalities, and within this, context, to attract funding and grants for research and development. At the moment, NUC has, practically, usurped the role of FGPC and this impugnes self-governance and autonomy and is adverse to the growth and development of the Universities.

Furthermore, the office of Pro-Chancellor should not be seen as ceremonial, confined, only, to attendance of statutory meetings but must be a channel of pro-actively embarking on developmental policies towards the attainment of the goal of the University.

#### 1.4.5 Senate

Each University must have a Senate which is composed of<sup>45</sup> some academic members of staff.<sup>46</sup> Under the law, University Senates have powers in all academic matters, including the organization and control

45. *UMPA, section 7 A (1)*; see also, the enabling laws of all Universities, for example, the *University of Lagos Act, 2004, ibid* and the *Olabisi Onabanjo University Law, 2006, ibid*.

46. The Vice-Chancellor; the Deputy Vice-Chancellor; all Professors of the University; all Deans, Provosts and Directors of academic units of the University; all Heads of Academic Departments, units and research institutes of the University; the University Librarian; and academic members of the Congregation, who are not Professors, as specified in the laws of each University; see, *UMPA, section 7 (A) (2)*.



of the following: (a) teaching and research; (b) admission of students; (c) award of degrees, including *Honoris Cauca*, Certificates and Diplomas; (d) promotion of research; and (f) the exercise of other functions in accordance with the laws and statutes of the University. As will be shown immediately hereafter, the roles of Senates and Councils of Nigerian Universities are being usurped by regulatory agencies, especially, NUC and JAMB.

#### **1.4.6 Regulatory Agencies**

##### **1.4.6.1 NUC**

Section 10 (1) of the Education (National Minimum Standards and Establishment of Institutions) Act, 2004<sup>47</sup> ("ENMSA") gives NUC 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 in formal consultation with the universities for that purpose, after obtaining prior approval therefore through the Minister, from the President".

From the foregoing, NUC is empowered to perform oversight functions on Universities in Nigeria. In this connection also, section 15, ENMSA, gives NUC the power of inspection of Nigerian Universities, in the following words:

"(1) It shall be the duty of the appropriate authority to keep himself or itself informed of the nature of- (a) the instruction given at approved institutions to persons attending courses of training; and (b) the examinations as a result of which approved qualifications are attained and appropriate certificates are awarded, and for the purposes of performing that duty, the appropriate authority may appoint inspectors to visit institutions or to oversee such examinations.

(2) It shall be the duty of an inspector appointed under this section to report to the appropriate authority- (a) the sufficiency or otherwise of the instruction given to persons

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47. Op. cit.



Section 24(1), *ENMSA*, gives the NUC power to issue guidelines to relevant institutions in respect of matters relating to development of physical infrastructure, student:teacher ratio, lecture rooms and accommodation amenities, laboratories, academic calendar and such physical structures as would be required in order to ensure the maintenance of the minimum standards prescribed in respect of any such institution.

It is submitted that most of the functions of NUC, as provided in *section 4, NUC Act* and *ENMSA*, are inimical to academic autonomy and freedom. These functions include the following: (i) providing the general programmes to be pursued by the Universities, in order to ensure that they are fully adequate to meet national needs and objectives; (ii) making recommendations for the establishment of new academic units in existing Universities or the approval or disapproval of proposals to establish such academic units; (iii) receiving block grants from the Federal Government and allocating them to Federal Universities, in accordance with such formula as may be laid down by the Federal Government; (iv) 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; (v) undertaking periodic reviews of the terms and conditions of service of personnel engaged in the Universities and making recommendations thereon to the Federal Government, where appropriate; (vi) recommending to the Visitor of a University that a visitation should be made to such University as and when it considers it necessary; and (vii) acting as the agency for channeling all external aid to Universities in Nigeria.

In the guise of performing these functions, NUC has, often, introduced guidelines which usurp institutional autonomy. Frequently, there is conflict between NUC standards on the one hand and standards of professional bodies, such as Council of Legal Education,<sup>48</sup> Nigerian Medical and Dental Council,<sup>49</sup> Act, No. 2, 1962; now Cap. L10, LPN, 2004. Institute of Chartered Accountants of Nigeria,<sup>50</sup> Chartered

48. Act No. 2, 1962 now Cap. L10, Laws of the Federation of Nigeria, 2004

49. Established by Medical and Dental Practitioners, Act, Cap. M8, Laws of the Federation of Nigeria, 2004.

50. Established by the Institute of Chartered Accountants of Nigeria, Act, No. 15, 1965.



Institute of Bankers of Nigeria,<sup>51</sup> *etcetera*, on the other hand. Regulation of Universities in Nigeria is, thus, unduly, weighted in favour of NUC and other bodies, as agents of government. The limits of control that NUC can exercise over Universities is undefined, such that, it has become the norm for NUC to appropriate unto itself power to impose regulations and policies on such sensitive issues as nature of questions, the establishment structure, the number of lecturers and all other determinants of University autonomy. For example, Universities have the power to determine their admission requirements under their enabling laws; yet, it is, constantly, in issue whether the conduct of Post-Unified Tertiary Matriculation Examination ("P UTME") is within the powers of the Universities.

The power of NUC to lay down minimum standards for all programmes taught in Nigerian Universities, has been used, in collaboration with the Universities, to developed Minimum Academic Standards for all programmes taught in Nigerian Universities in 1989. The document was then used as a major instrument of academic accreditation. Today, Universities are regulated by NUC-developed Benchmark Minimum Academic Standards ("BMAS"). While admitting that, in developing BMAS, NUC engaged industry as employers of Nigerian graduates and academia, the use of BMAS has been abused to deny lecturers of promotion in the name of establishment. While not derogating from the argument that NUC is improperly positioned in the governance of Universities, some of its functions have to do with quality assurance, which ought to have been interpreted in harmony with institutional autonomy.

NUC credits itself with having evolved a robust scheme of international standards for the accreditation of programmes in the system which has had a salutary effect on the commitment of the system managers to quality of their programme delivery. For the accreditation exercise, NUC developed the BMAS for every undergraduate programme in the University system. The BMAS forms the basis of accreditation of programmes in the National University System ("NUS"). Universities interact with NUC through its

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51 Initially Established by the Chartered Institute of Bankers Decree, 1990, now re-established and covered by Chartered Institute of Bankers of Nigeria Act, No.5, 2007.



performance of this important quality assurance function. The result of programme-based accreditation exercise is in terms of a programme being found to be worthy of "full accreditation", "interim accreditation" or, the worst case, "denied accreditation". The commitment of the University administration is towards ensuring that all programmes attract full accreditation or, where the deficiencies cannot be fully taken care of, an interim accreditation.

Based on its experience over the years, NUC realized the inadequacy of absolute reliance on programme accreditation to handle quality assurance in all its ramifications in a world now characterized by nation states committing resources to nurture world-class Universities, to face the challenges of globalization. This has led to the development and deployment of various elements to undertake, what is now commonly referred to as, institutional accreditation. The developed institutional accreditation, which seeks to capture the operational environment for the conduct of the basic functions of teaching, learning, research and community service, is based on the minimum standards set for the following criteria: (i) institutional vision, mission and strategic goals; (ii) institutional governance and administration; (iii) institutional resources; (iv) quality of teaching, learning and research; (v) institutional efficiency and effectiveness; (vi) extension services and consultancies; and (vii) transparency, financial management and stability.

While it is conceded that the accreditation teams include senior academics, mostly Professors, it has not been unknown for NUC to overturn the recommendation of accreditation teams.

Through the policies of NUC on accreditation of institutions and programmes, NUC determines who is to teach in addition to determining the courses to be taught. Consequently, 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.<sup>52</sup>

NUC's policy that premised the continued employment and promotion of all lecturers in Nigerian Universities on the condition of obtaining Ph.D, as from year 2010, is a candid example of letting bureaucrats run the institution, to the detriment of institutional

52. Ajayi, I. A. and Ekundayo, H.T., *The Deregulation of University Education in Nigeria: Implications for Quality Assurance* (Nebula Publishers, Australia), 2008, 202.



autonomy. As rightly noted by Ajayi, *et al*, 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 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 is that, apart from violating academic freedom, many of the affected academics may either resign from the Universities or transfer their services to other sectors of the economy, thereby, leading to brain-drain in those professional Faculties.<sup>53</sup>

It is submitted that the extant legal framework has promoted unwarranted government interference and abuses of academic freedom and has 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's education policies and other national inadequacies, epitomizes a gross violation of academic freedom and results in the perpetuation of a culture of self-censorship. Also, 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 larger than life status of NUC has compromised the institutional autonomy of Nigerian Universities. Also, undue rigidity which is capable of hampering smooth operation of the Universities has been introduced. NUC is to perform its functions of advising the President and Governors of States, through the Minister of Education. With this arrangement, unnecessary barrier is placed between the Ministry in charge of education and Universities.

#### **1.4.6.2 JAMB**

JAMB is established to conduct examinations into the Nigerian Universities and other higher educational institutions throughout the country. *Section 5 of JAMB Act*<sup>54</sup> states as follows:

53. Ajayi, I. A. and Ekundayo, H.T., "The Dérégulation of University Education in Nigeria: Implications for Quality Assurance", *op. cit.*

54. *Ibid.*



1. Notwithstanding the provisions of any other enactment the Board shall be responsible for -

- a. the general control of the conduct of matriculation examinations for admissions into all Universities, Polytechnics (by whatever name called) and Colleges of Education (by whatever name called) in Nigeria;
- b. the placement of suitable qualified candidates in the tertiary institutions having taken 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 the preferences expressed or otherwise indicated by candidates for certain tertiary institutions and courses and

2. For the avoidance of doubt, the Board shall be responsible for determining matriculation requirements and conducting examinations leading to undergraduate admissions and also for admissions to National Diploma and the Nigerian Certificate in Education courses, but shall not be responsible for examinations or any other selective process for postgraduate courses and any other courses offered by the tertiary institutions.

3. Subject to the provisions of this Act, the Minister may give the Board directives of a general character or relating generally to particular matters with regard to the exercise by the Board of its functions under this Act and it shall be the duty of the Board to comply with such directives”.

These provisions conflict with *sections 25 to 27 of the 2012 Act*, which empower Council, in conjunction with Senate, to make statutes to regulate various issues concerning the University (including admission of students, their discipline and welfare, staff appointments and conditions of service, constitutions, functions and procedure of the authorities and constituent bodies of the University, *etcetera*) and to amend or revoke them, where necessary.

Bearing in mind the pillars of autonomy, that an institution should decide who to admit and on what criteria, there is no better test of disregard. The admission process has, invariably, been transferred from



tertiary institutions to this regulatory body. JAMB has introduced many policies to govern admission, to the detriment of institutional autonomy: quota system, Educational Less developed States ("ELDS") Policy and Federal Character are such examples. 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 the qualifications of those to teach them.

However, it is admitted that absolute deregulation is impossible and there is, hardly, any country in the world whose government does not retain some forms of control over its Universities. However, there must be limited control of Universities by government agencies. 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. Taking a cue from South Africa, for example, there is no central body conducting examinations for all the Universities; rather, Universities determine the criteria for admission and admit candidates on their own criteria. To strike the proper balance of autonomy with accountability, Universities should, periodically, engage in the evaluation of their programmes, performance of their institutions and of their teaching and research staff.

#### **1.4.8 Funding**

Funding is critical to University governance. To a large extent, University funding determines the scope and extent of autonomy. The perennial demand for additional funding of Universities, by stakeholders, attest to the challenge of funding. Good financial planning is crucial to University sustainability and to meeting the vision of the institution. Funding issues arise at the point of establishment as well as towards sustainability and progress of the University. 'Sustainability' implies that a University has adequate funds to meet its capital and recurrent expenditure, on a continuing basis.

Section 24, *ENMSA* requires that, at the point of establishment, NUC must receive evidence to show that the institution will be provided with adequate funding, both capital and recurrent; and academic and support staff. Emerging Universities must also ensure that "the proposed staffing guidelines shall meet with current guidelines" of NUC.<sup>55</sup>

55. In the case of Technical Education or Colleges of Education, the National Board for Technical Education or the National Commission for Colleges of Education (as the case may be).



By section 3, *ENMSA*, the Federal Government must be satisfied that, on approval being given, the sources of funding and necessary funds will be available. By virtue of section 4, the Federal Government or its accredited agency, must ascertain and be satisfied that the fixed and enabling assets; that is, funds, land, movable and immovable assets, are appropriate for establishing the institution, in the light of such factors as:

- (i) the type of institution envisaged;
- (ii) its philosophy and objectives; and
- (iii) the costs of goods and services prevailing at the time.

Towards sustainability, government must also be satisfied that the assets shall be assigned to the University on approval being given for the University to be established; and that the applicant has supplied a concrete and guaranteed source of financial support to the University to the tune of ₦200 million, over a period of five years.

Of the financial resources available to public Universities, 90% come from government.<sup>56</sup> University resources inflows include: Government or Proprietor subventions, remittances from TETF and other agencies of government; students fees and levies; sources of income other than those from the above, mainly: grants from funding agencies, endowment gifts and donations; investment income, consultancy services and others. Allocations of such funds are NUC-prescribed, in terms of personnel, goods and non-personnel services, and capital projects.

Self-financing would promote autonomy, but with the risk of inhibiting access to education due to exorbitant fees. In this context, some have even suggested that the fees be deregulated across Universities and across Faculties, based on the value their degrees confer.<sup>57</sup>

The question of finance underscores the need to involve investment experts in University management, in order to create or commercialize products, goods and services out of the research developments in University systems. There is nothing wrong with setting targets for

56. Ojukwu, L.O., Ipaye, T.F., Maduagwu., M., Ogwezzy-Ndisika, A. and Iwuagwu, O., *Walking the Vision: Rahamon Adisa Bello* (Unilag Press, Lagos, 2017).

57. Alos, A. J., "Business Unusual: The Value Driven Strategies for Managing Change in Nigerian Universities", Vol. 1, No. 2 *ASUU-UNILAG Journal of Contemporary Issues*, 1 - 21.



University councils as if they are private concerns. Universities need to embrace private-sector initiative, to generate funding.

The Tertiary Education Trust Fund ("TETFUND") was set up in 2011, through the *Tertiary Education Trust Fund Act, 2011*,<sup>58</sup> to administer and disburse education tax collections to Federal and State tertiary educational institutions in Nigeria, for the primary purpose of providing auxiliary support for the general improvement of education in public tertiary institutions, including Universities. The main source of income available to TETFUND is the 2% education tax paid from the assessable profit of companies registered in Nigeria. Only Federal and State institutions are qualified.<sup>59</sup> Records show that the inability of beneficiary institutions to use allocated funds has been a challenge, resulting in the build-up of unaccessed allocated funds, as a result of improper documentation, non-rendering of financial returns and infractions of the *Public Procurement Act*,<sup>60</sup> among others.<sup>61</sup>

The current policy of Nigerian Government is that University education must be tuition-free; but this can no longer be sustainable if Universities must produce graduates who will meet the felt needs of the Nigerian society, especially and humanity, generally. It is necessary to engage, continually, in research on the cost implications of University education, in terms of cost per student, staff development, research and infrastructure.

*Bello* has lent his voice to financial autonomy needed in Universities. In this regard, the respected University Administrator said as follows:

"Tuition should be paid: it does not matter whether or not we are running free education. Government should start paying the tuition of students and allow the universities to manage it. When a student fails to finish within the stipulated period, he or she can now be told to pay the

58. This Act repealed and replaced the *Education Tax Act, 2004*, Cap. E4, Laws of the Federation of Nigeria, 2004 and the *Education Tax Fund (Amendment) Act, 2003*; No. 17, 2003.

59. This means Universities, Polytechnics and Colleges of Education in the ratio of 2: 1: 1, respectively.

60. 2007

61. Professor Suleiman Elias Bogoro, Executive Secretary, *TETFund Guidelines for Tertiary Institutions*.



commercial rate of the fees...Up to 20% of university students are extra year students, because their education is free. This will also enhance efficiency in administration. Now you pay salaries and you want us to run universities with just 2% as overhead, and you say that the university should go and utilize Internally Generated Revenue (IGR) to run its services; how can that work? I also discovered that American universities make up to 50% of their income from hospital care expenses, because they own and run their own teaching hospitals. Here we own those that control the teaching hospital but we don't get anything from it, because the teaching hospitals are under the federal ministry of health".<sup>62</sup>

It must be pointed out that the National Students Financial Aid Bill passed through second reading at the Senate of Nigeria on the 15 November, 2017. It aims to establish sustainable aids to education.

Meanwhile, government is not doing well in its effort to fund public Universities. While UNESCO recommends minimum of 26% of total national budget to education, the highest percentage allocation by the Federal government is 9.5% and the average allocation by State governments is 11.6% and this is grossly low and inimical to growth in the Universities.

The financial dependence of public Universities on government continues to be a major source of friction,<sup>63</sup> especially because, on most occasions, government fails to honour its commitments. For example, funds for revitalizing public Universities arising from the NEEDS Assessment Report, were not honoured. The 2017 ASUU strike is still pressing for actualization of the MOU signed between ASUU and the Federal Government, as far back as 2009.

The policy of non-payment of tuition, coupled with insufficient funding by government, has affected the quality of University education in Nigeria.

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62. Professor Rahamon Bello, a renowned Professor of Engineering and respected University administrator, is the immediate past Vice-Chancellor, University of Lagos, Lagos, Nigeria.

63. Ogbogu, C.O., "Modes of Funding Nigerian Universities and the Implications on Performance", paper presented at the 2011 Barcelona European Academic Conference, Barcelona, 6 - 9, July.



Nothing in the laws governing Universities, precludes them from accessing other sources of funds though. However, the dynamics of regulation are constraining. The question arises as to how did government become involved this much. Answer to this is historical. According to Babalola:<sup>64</sup>

"At inception the Nigerian university system was fashioned after the classical UK University: this classical system was controlled solely through a democratic system operated and run by tenured professors and scholars. It was funded on a very restrictive base through private endowments, or benefaction by the wealthy and by the missionary with whom the university was closely allied in its origins. This model of University governance began to fade globally after the Second World War; the influence of which continues to shape what we have in Nigeria today. After the Second World War, the warfare state recognized the benefits of public investment in the conduct of advanced learning, research, technology development, foreign policy and war. Government began to recognise the relationships between a country's war strategies and its abilities to produce technology through research. There was therefore a geometric rise in the level of relationships between governments and the universities. The result was the evolution of Universities and learning centers funded directly by governments. With increased funding came a sharp rise in governmental influence in key decisions on admissions, access, enrolment, faculty composition, tenure and the election of principal officers. The breakdown of the elite classical model of University education continued at an exponential rate with the takeover of governments by military dictatorships in many parts of Africa. With military leadership in Nigeria came the added impetus for military authorities to curtail student demands and protests, checkmate University Staff Unions and influence key decisions such as governing council constitutions,

64. Babalola, A., "University Autonomy and Good Governance", paper presented at the 2014 Conference of Committee of Pro-Chancellors held at Abuja, 10 - 11 June, 2014. Chief Afe Babalola, a foremost Nigerian Lawyer, is the Proprietor and Chancellor of Afe Babalola University, Ado-Ekiti, Ekiti State, Nigeria.



university quotas, policies and structure. In the periods between 1966 to 1999 when Nigeria was under military rule, Nigerian University systems therefore became increasingly less autonomous, less collegial, and highly dependent on government for funding and for decision making. Government involvement increased with controls over the constitution and membership of Governing Councils, direct control over the appointment of key administrative officers of Universities; and financial controls. Simply put, Government became a key stakeholder and decision maker in Nigeria's University systems. These relics of military rule are unfortunately still present today. As such, the reality of University education in Nigeria today remains that of perpetual demand by University authorities for more autonomy to internally decide, run and execute their own programs and policies".<sup>65</sup>

Funding has imposed limitations on staffing and affects quality. Limited funding results in understaffing, poor research and inability to innovate. According to NUC, understaffing, especially in relation to academics, is a major challenge of the laws and this poses serious challenge to the quality of programme delivery. From the available data, the total enrolment for the different programmes and levels in the Nigerian University system during the 2006-2007 session was 1,096,312, with the Federal Universities accounting for 56% of enrolment, State Universities, 37% and Private Universities, 3% only. The total staff strength of 27,934 translated to a students:academic staff ratio of 40:1, globally. Private Universities had the lowest ratio of 19.2 while State Universities had the highest ratio of 59.1. These figures show the rather poor staffing levels of the Universities, particularly, the State Universities.<sup>66</sup> captured the situation as follows:

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65. *Ibid.*

66. See, <https://www.nun.edu.ng>, Professor Abubakar Abdul Rasheed is the Executive Secretary of NUC.



"A key challenge at present towards actualizing the desired quality university education remains the paucity of high quality academic staff. There were a total of 27,39 academic staffs within the University system as at 2006 comprising Federal - 17,836 (65%), State - 7,586 (28%) and Private 1972 (7%). Of these, Professor/Reader cadre constituted just 5,483 (20%), Senior Lecturer Cadre 6,475 (23.6%), while Lecturer I cadre constituted 15,436 (56.4%). Computation using current approved student/teacher ratios however indicates that the Nigerian University System requires a total of 34,712 academic staff for effective course delivery across the disciplines".<sup>67</sup>

Beyond the assessment of the extant relevant Nigerian laws done above, a complete critique of these laws would require a comparison of the laws with the good practices promoted by the international regime on the subject-matter of this chapter. It is, thus, fundamental to examine the critical issue of the global perspective on University autonomy, academic freedom and accountability vis a vis Nigerian laws. This shall, now enage attention.

## **2.0 International Standards and Nigerian Laws: A Critique**

### **2.1 University or Institutional Autonomy**

The 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel<sup>68</sup> defines "University Autonomy" as follows:

"...that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights....Autonomy is the institutional form of academic

67. See, generally, <https://www.nuc.edu.ng>.

68. The 1997 ILO/UNESCO Recommendation complements the 1966 ILO/UNESCO Recommendation concerning the Status of Teachers.



freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions..."<sup>69</sup>.

According to UNESCO, there are three essential components of meaningful University Autonomy: (i) self-governance; (ii) collegiality; and (iii) appropriate academic leadership.<sup>70</sup> 'Self-governance' refers to the ability of a University to exercise internal control or rule over itself. 'Collegiality' refers to shared-power and authority vested among colleagues. In an autonomous University, decision-making powers are exercised among scholars, students, staff, and stakeholders in the academic environment, in a fair and democratic way. As such, those decisions are autochthonous (that is, home grown) and derive legitimacy from within.<sup>71</sup> "Appropriate academic leadership" involves academic leadership that is merit-based and which has inherent capacity to elicit respect by the followership.

Autonomy is critical for many reasons: first, to attain true research and learning, Universities must be free to innovate; second, autonomy will promote a culture of merit and fairness within the University system; third, autonomy is vital to reduce the perennial tensions, clashes and strikes between Governments and University hierarchy. University authorities must be given the freedom to chart their own course and then implement, without undue manipulations or interference by governments; fourth, Universities require autonomy to be able to attract and retain the very best minds; and finally, autonomy will allow innovation and excellence. Universities must be allowed to internally innovate different ways to fulfil their vision and mission.

Ajayi submits that University autonomy is the rights of the institution to govern itself. It is "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".<sup>72</sup> For a University to play a meaningful role and discharge

69. Paragraphs 17 - 21.

70. Babalola, A., "University Autonomy and Good Governance", *op. cit.*

71. Babalola, A., "University Autonomy and Good Governance", *ibid.*

72. Ajayi, I. A. and Ekundayo, H.T., "The Deregulation of University Education in Nigeria: Implications for Quality Assurance", *ibid.*



its responsibilities, effectively, it must enjoy a high degree of institutional autonomy, in addition to the freedom of its academic staff.

## **2.2 Academic Freedom**

The *ILO/UNESCO Recommendation* does not include definition of academic freedom in its definition section, but the body of the document does refer to two definitions of the concept. First, regarding academics, *paragraph 27* stipulates thus:

"higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to the following five sets of freedoms: 1. Freedom of teaching and discussion. 2. Freedom in carrying out research and disseminating and publishing the results thereof. 3. Freedom to express freely their opinion about the institution or system in which they work. 4. Freedom from institutional censorship. 5. Freedom to participate in professional or representative academic bodies".

The Recommendation also recognizes another form of academic freedom in *paragraph 18*, which describes "institutional autonomy" as "the institutional form of academic freedom".

"Academic freedom" is the right of the scholar, in his or her teaching and research, to follow the truth wherever it leads, without fear of punishment for having violated some political, social or religious orthodoxy. In the American case of *Sweezy v. New Hampshire*,<sup>73</sup> Justice Frankfurter explains "academic freedom" in the following words:

"the four essential freedoms of a university are - 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".

73. 354 U.S. 234, 250, 77 S.Ct.1203, 1 L.Ed.2d 1311, 1957.



"Academic freedom" is a facilitator and guarantor for the generation, dissemination, application, and protection of knowledge. It must, therefore, be protected by laws on University governance.

Elements identified as the constituent elements or rights of academic freedom are as follows: (a) institutional autonomy (or specific academic freedom for institutions),<sup>74</sup> which includes institutional rights, duties, and responsibilities; (b) rights and freedoms of higher-education teaching personnel, which includes individual rights and freedoms<sup>75</sup> (civil rights, academic freedom, publication rights, and the international exchange of information), self-governance and collegiality, and the duties and responsibilities of higher-education teaching personnel;<sup>76</sup> (c) individual rights and freedoms (or specific academic freedom for academics) and institutional self-governance;<sup>77</sup> and (d) security of employment in the profession,<sup>78</sup> including tenure or its functional equivalent, which applies to terms and conditions of employment, among them, entry into the academic profession, security of employment, appraisal, discipline and dismissal, salaries, workload, social security benefits, health, and safety.

Though the African Charter does not, explicitly, guarantee academic freedom, the African Commission on Human and Peoples' Rights, in the landmark ruling *Good v. Botswana*,<sup>79</sup> recognized academic freedom under the Charter.<sup>80</sup>

In a survey of autonomy compliance in African Universities, four indicators emerged:

First, whether the institution is endowed with financial, administrative, pedagogical, proprietary, and disciplinary autonomy

74. *ILO Recommendation*, para. 17.

75. *Ibid*, paras. 31 and 32.

76. These rights include freedom "to take part in the governing bodies and to criticize the functioning of higher education institutions" and "to elect a majority of representatives to academic bodies within the higher education institution"; *ibid*, para. 31.

77. *Ibid*, paras. 25 to 30.

78. *Ibid*, para. 46.

79. *Kenneth Good v. Republic of Botswana*, Communication 313/05, 26 May, 2010.

80. Africa has contributed to the issue of academic freedom by coming up with the Dar Es Salaam Declaration on Academic Freedom and Social Responsibility and the Kampala Declaration on Intellectual Freedom and Social Responsibility, both adopted in 1990, seven years before the *ILO/UNESCO Recommendation*. See Appiagyei-Atua, K., Beiter, K.D. and Terance K., T., "A Review of Academic Freedom in African Universities. Through the Prism of the 1997 ILO/UNESCO Recommendation"; <https://www.academblog.org/.../read-the-new-journal-of-academic-freedom>, accessed on 8 August, 2017.



(among other types) and possesses the right to sue and to be sued in its own capacity. It emerged that unlike some African countries,<sup>81</sup> Nigeria lacks explicit constitutional provision on academic freedom. Academic freedom can, however, be inferred from *section 39(1) of the Constitution, 1999*, which provides for the freedom of expression and the press. The section states that "[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". Furthermore, Nigeria is a signatory to various international human rights instruments which bear on the right to academic freedom.<sup>82</sup>

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 (as amended) 19 of the ICCPR*, collectively, guarantee academic freedom in Nigeria.

The second indicator is whether there is respect for individual rights and freedoms, in line with *Paragraph 27 of the ILO/UNESCO Recommendation* above? The level of compliance was determined by examining legislative enactments and the statutes of the Universities, to determine the extent to which these rights and freedoms are incorporated in the laws establishing such institutions. The survey concluded that Nigeria can be said to be fully compliant, formally, from the legal framework.

The third indicator is self-governance and collegiality. *Paragraph 31 of the ILO/UNESCO Recommendation* provides thus:

"Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education

81. The South African Constitution expressly guarantees the right to academic freedom by providing as follows: "[e]veryone has the right to freedom of expression, which includes ...academic freedom and freedom of scientific research".

82. *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. *Article 15(3) of the ICESCR, 1966* also obliges the States Parties to "respect the freedom indispensable for scientific research and creative activity".



institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution".

Accordingly, applying the principles of *Paragraph 31* calls for including academic staff on Council; in the case of Senate, its representation should be in the majority, to encourage democracy within the University system, in order to ensure accountability and enable the flourishing of academic freedom. The key, here, is the balance of representation of the University hierarchy, the academic staff association, government, and the community. The introduction of University in Nigeria, through *UMPA*,<sup>83</sup> has, to a large extent, corrected the imbalance in representation. Unfortunately, the absence of a law establishing private Universities in Nigeria has rendered the analysis, inchoate.

The last indicator is tenure, which is related to the right to work, guaranteed under *ILO Conventions* and the *ICESCR*, among others.<sup>84</sup> In different African countries, there have been abuses of this right, by governments and University management, against academics, as a means to silence them. According to *Paragraph 46 of the ILO/UNESCO Recommendation*, tenure refers to "security of employment in the profession. Further, it ensures that...higher-education teaching personnel who secure continuing employment following rigorous evaluation can only be dismissed on professional grounds and in accordance with due process....It should be as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education".

83. *Ibid.*

84. See, for example, *ILO Convention concerning Employment Policy* (ILO no. 122), 569 UNTS 65, which entered into force on 15 July, 1966 and *Article 6 of the ICESCR*. 48; see also, Roos, P. and Gatta, M., "Gender (In)Equity in the Academy: Subtle Mechanisms and the Reproduction of Inequality", Vol. 27 (2009) *Research in Social Stratification and Mobility*, 177 - 200; <https://www.yale.edu/ciqle/INAUGURAL%20PAPERS/genderequity507entire.pdf>, accessed on 29 October, 2017.



In assessing Nigerian laws on University governance, there is need to consider, with respect to tenure, the existence or non-existence of protections against arbitrary dismissal; procedures to be followed before dismissal or application of disciplinary sanctions; the possibility of appeal to a higher body or a regular court; and the right to form unions, strike and engage in collective bargaining, and so on. Thus, this survey relied on constitutional provisions on the right to work or the country's labour laws, to determine if tenure is protected for University academic staff. Historically, Nigeria has not fared well on the question of tenure. It is conventional that the Visitor exercised his discretion to the absolute detriment of University sustainability, in the past. On many occasions, University Vice-Chancellors and academic staff had been summarily dismissed by the Visitor, even suffering the loss of their Professorship.<sup>85</sup> Governing Councils are dissolved and not re-constituted, immediately, lecturers are dismissed due to involvement in industrial activities, and all these with implications on the development of the University.<sup>86</sup>

The enactment of *the Autonomy Act* is most gratifying when the history of the exercise of the powers of the Visitor is considered in Nigeria. *The Autonomy Act* enthrones respect for the rule of law in University discipline by using the concept of "due process" and the failure to do this will attract judicial inquiry.

Section 2 AA and 2 AAA of *the Autonomy Act* frees Universities from Government strangulation through the Visitor. Section 2AA provides thus:

"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".

85. For example, in the 1990s, Professor Ndili of the University of Nigeria, Nsukka was arbitrarily removed as Vice-Chancellor by the Visitor and he lost his Chair, purportedly, acting under the *Public Officers (Special Provisions) Decree, 1984*. Similarly, academic staff have been removed in the past under this Decree, contrary to the provisions of the enabling enactments of Universities. The draconian legislation deprived the court of its original jurisdiction under section 236 of the 1979 Constitution and suspended the provisions of Chapter IV of the said Constitution, which relates to fair hearing. The courts were, however, brave to uphold the rule of law by resisting the ouster clause in some other cases, such as *Lakanmi v. Attorney-General, Western State* [1971] 1 U.I.L.R. 201.

86. See, Babalola, A., "University Autonomy and Good Governance", *ibid*.



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86. See, Babalola, A., "University Autonomy and Good Governance", *ibid*.



Furthermore, the provisions of *section 2 AAA* are to the following effect:

“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”.

Bearing this in mind, *the Autonomy Act 2003*, proceeds to make some specific provisions in clearly giving autonomy in governance. This is, particularly, as it relates to appointment and removal of principal officers.

*Section 4, Autonomy Act, 2003* amends *section 3 of UMPA, 1993*. *Section 4* improved University autonomy by giving Council, rather than the President, the power to appoint and remove the Vice-Chancellor. That section provides as follows:

“The Council shall select and appoint as the Vice-Chancellor one candidate from among the three candidates recommended to it under subsection (3) of this section and thereafter inform the Visitor”.<sup>87</sup>

“The Vice-Chancellor may be removed from office by the Governing Council on grounds of gross misconduct or inability to discharge the functions of his office as a result of infirmity of the body or mind, at the initiative of the Council, Senate or the Congregation after due process”.

The rules of fair hearing are entrenched in *section 5 of the Autonomy, 2003*, in the following words:

“When the proposal for the removal of the Vice-Chancellor is made, the Council shall constitute a joint committee of Council and Senate consisting of: three members of the Council one of whom shall be the Chairman of the committee, and two members of the Senate, provided that where the ground for removal is infirmity of the body or mind, the Council shall seek appropriate medical opinion.

87. *Section 4, UMPA.*



The committee shall conduct investigation into the allegations made against the Vice-Chancellor and shall report its findings to the Council. The Council may where the allegations are proved remove the Vice-Chancellor or apply any other disciplinary action it may deem fit and notify the Visitor accordingly provided that a Vice-Chancellor who is removed shall have right of appeal to the Visitor”.

Collegiality is explicitly promoted by the provision that there shall be no sole administration in any Nigerian University. In any case of a vacancy in the office of the Vice-Chancellor, Council shall appoint an acting Vice-Chancellor, on the recommendation of the Senate.

Also, *section 6, Autonomy, 2003*, provides thus:<sup>88</sup>

*“A Deputy Vice-Chancellor may be removed from office for good cause by the Council acting on the recommendations of the Vice-Chancellor and Senate”.*

By virtue of *section 6 (7)*, “good cause”, for the purpose of *section 6*, means “gross misconduct” or “inability to discharge the functions of his office arising from infirmity of body or mind”.<sup>89</sup>

As laudable as these provisions are, the interpretative and conceptual scope is questionable, especially, within the concept of persistent financial dependence of Universities on government. To a large extent, Universities are still, constantly, harassed by the overbearing

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88. This section amends *section 4 of UMPA, No. 11, 1993*.

89. *Italics supplied*.



control of governments.<sup>90</sup> Almost all policies of the civil service are construed as applicable to Universities.<sup>91</sup>

The persistent use of the word 'misconduct', in the discipline of staff and students of the Universities has, always, generated controversy. It has been argued that failure to define it is dangerous because it is liable to abuse, with grave consequences. Fairness demands that a staff or student should know, before hand, what transgressions may earn him or her discipline. By leaving the term undefined, the Vice-Chancellor and Council become legislative, executive and judicial powers. In *Essien v. University of Calabar*,<sup>92</sup> a letter written by a staff to the Vice-Chancellor was considered, by the Vice-Chancellor, and the Court of Appeal, to amount to 'misconduct'.<sup>93</sup> Others, however, think, otherwise. Subjectivity, therefore, comes to play, here. "Good cause" is

90. Even control of degree awards, depicted for example, in the recent abolition of pass degree by NUC.

91. See, Oshio, P., "Legal Issues in University Governance in Nigeria", op. cit., where he examined some government circulars that created tension in the University system; including: Circular No. HCSF/O61/S.1/III/68 of 26 August, 2009, issued by the Head of the Civil Service of the Federation entitled: "Tenure of Office for Permanent Secretaries and Directors". By this, Government tried to introduce tenure and retirement age for Permanent Secretaries and Directors in the Federal Civil Service and Circular No. HCSF/O61/S.1/III/68 of 21 October, 2009, entitled: "Applicability of Tenure System to Parastatals, Agencies and Statutory Corporations of Government", which attempted to clarify its applicability to Parastatals, Agencies and Statutory Corporations of Government. It states that "while noting that these institutions are established by law with varied mandates, specialization, remunerations and other conditions of service, that are regularly updated, they are all under the larger public service. It is noteworthy that these amendment affects officers on G.L. 17 or its equivalent in the Departments or Agencies. Accordingly, they are to operate within the framework of the 2008 Public Service Rules (Official Gazette No. 57, Vol. 96 of 25 August, 2009). Accordingly, the Governing Boards of all Parastatals, Agencies and Statutory Corporations of Government, which, currently, apply 60 years of age or 35 years of service for mandatory retirement, are hereby directed to realign their conditions of service with the recently approved tenure policy and to forward same for the ratification of the Head of the Civil Service of the Federation, promptly, in view of the effective date of the policy which was 1 January, 2010. In questioning the applicability of these Circulars to Directors in the University system, in view of the provisions of section 2AA, UMPA, he has rightly argued that these Circulars were inconsistent with the laws and statutes of the Universities, within the meaning of section 2AA of the *Universities (Miscellaneous Provisions) (Amendment) Act 2003*, (*The Universities Autonomy Act No. 1, 2007*) and do not apply to the Universities. He strengthened this inconsistency argument upon the subsequent enactment of the *Universities (Miscellaneous Provisions) (Amendment) Act, 2012*, entitling Principal Officers of Universities, namely, Registrar, Bursar and University Librarian to remain in the University system, on completion of their terms. This is also the case with the Vice-Chancellors, Deans and Heads of Departments and academic Directors, after serving their respective terms.

92. (1996) 10 N.W.L.R. (Pt. 477) 225.

93. Okonkwo, C. O., *Discipline, Nigerian Universities and the Law*, ibid. 33 -34.



also a ground for discipline of a staff, for example, removal of Deputy Vice-Chancellor. "Good Cause" is defined in the *Autonomy Act* as "gross misconduct or inability to perform the functions of the office". Unfortunately, "gross misconduct" is also undefined in the Act.<sup>94</sup>

Discipline of staff and students is critical to University governance and are components of institutional autonomy. The common law has, always, recognized the autonomous nature of Universities by not allowing judicial interference in matters that have been decided by the Visitor.<sup>95</sup> According to *Lord Diplock*, at common law, the court has no jurisdiction to deal with the internal affairs or government of the University, for these have been confined, by law, to the exclusive province of the Visitor.<sup>96</sup> Therefore, the English Court of Appeal in *Thorne v. University of London*<sup>97</sup> held that all questions regarding the construction and regulation of the University of London, with respect to examinations and degrees, were within the exclusive jurisdiction of the Visitor to the University and were, accordingly, non justiciable in the High Court. In *Akintemi v. Onwumechili*,<sup>98</sup> *Coker, J.S.C.* stated that "the concept of the office of the visitor of an educational institution is ancient and its functions are well established by numerous authorities of courts operating the common law system. Indeed, the powers of the Visitors are derived from our statutes". All matters, including the interpretation of University regulations, award of degrees, appointment and promotion of staff are exclusively within the province of University government.<sup>99</sup>

However, it is trite law that all public activities, actions and duties are to be governed by the overriding principles of natural justice and a violation of this will be accordingly justiciable. Thus, in the *Akintemi's Case*, *Obaseki, J.S.C.* held that "if however in the process of performing their functions under the law, the civil rights and obligations of any of the students or candidates is breached or denied, or abridged, it will grant remedies in the protection of those rights". Accordingly, where principles of fair hearing are violated, it does not vitiate the jurisdiction of the courts. The court held in *Akintemi's Case* that "if a matter is

94. Section 6 (7), *UMPA*.

95. *University of Lagos Act*, *ibid.* section 14.

96. In *Thorne v The University of London*, (1967) *MelbULawRw* 6.

97. *Ibid.*

98. [1985] *1N.W.L.R.*, 67, 68.

99. Aibe, D. M. O., "Natural Justice and Discretionary Powers in University Governance", University of Uyo Public Lecture 1991.



justiciable in Nigeria, the domestic nature of the matter does not, under the 1979 constitution oust the jurisdiction of the court..."<sup>100</sup> It can only mean that until the remedies are exhausted, any resort to court action would be premature".<sup>101</sup> The court will, therefore, not usurp the functions of the Senate, Council and Visitor of the University in the selection of fit and proper candidates for passing and for the award of certificates, degrees and diplomas.<sup>102</sup>

These common law principles underscore institutional autonomy by affirming self-governance and collegiality. They recognize that the employment of a lecturer is with statutory flavor, thereby, recognizing security of tenure as defined in the *UNESCO Recommendation*. However, there is a judicial restriction of this liberty. Thus, the power of the University to internally discipline staff and students, is encumbered in the face of an allegation of crime.

The line of cases, from *Garba v. University of Maiduguri*<sup>103</sup> till date, has consistently held that the powers of the courts do not involve the investigation of a crime. The Supreme Court held that offences against the laws of the land fall outside the jurisdiction of the Visitor and the Vice-Chancellor.<sup>104</sup> According to *Oputa, J.S.C.*, where the offences against a student amount to criminal offences, then, the Boards and Tribunals are out. In this case, the proceedings before the Disciplinary Investigating Panel are vitiated from two angles. First, the Panel lacked constitutional and legal competence to undertake the inquiry and to arrive at the conclusion that the Appellants were the culprits in a serious criminal offences of arson, malicious damage and indecent assault. Second, the incompetent inquiry was vitiated by its failure to accord the Appellants fair hearing, either under the rules of natural justice or under the provisions of section 33 of the Constitution.<sup>105</sup>

100. See, section 6(6) of the 1979 Constitution.

101. 40 para B. C.

102. Per Obaseki, J.S.C., 40.

103. *Ibid.*

104. Referred to and followed *Casson and Another v. University of Aston in Birmingham* [1883] 1 All E.R 88; see also, Smith, P.M., "Exclusive Jurisdiction of the University Visitor" Vol. 97 (1981) *Law Quarterly Review*, 610 - 647.

105. See, *Ihuoma v. University of Benin*, Suit No. B/5M/89 and *Adekunle v. Alele-William* Suit No. FHC/B/18/M2/87, xxx. In these cases, it was held that a fact-finding panel in the University need not, necessarily, observe the rules of natural justice. For example, appearance of a lawyer to represent a student or allowing the student to cross-examine witnesses. Procedure should be liberal, otherwise, it would be impossible to find a headway, in a case like the latter, where about 124 persons, including the Applicant, appeared.



Offences against the laws of the land are outside the jurisdiction of the Visitor. Except under express power, he cannot be a judge in his own cause. The tribunal of the Visitor is "*forum domesticum*", its jurisdiction being derived from the founders' right to determine matters concerning his own creation. The maxim is: "*cujus est dare, ejus est dispenere*".<sup>106</sup> Thus, in *Amolegbe v. Lagos State University*,<sup>107</sup> the High Court held that where the discipline of a student will lead to rustication or expulsion, there must be strict compliance with the law, especially, the rules of natural justice, as the Vice-Chancellor is performing a sort of *quasi judicial* function,<sup>108</sup> because his action would affect the fundamental right of the student. The power to suspend a student was not merely a matter of internal discipline.<sup>109</sup>

The decision in *Garba's Case* and its subsequent endorsement has been a recurrent subject of criticism. Though based on good rationale as espoused above, the full purport of the decision continues to haunt the administration of Universities. According to *Okonkwo*, failure to distinguish nature of crime, what happens where a case is struck-out for non-prosecution, which is a discharge that is not on the merits, are all causes for concern. These concerns were raised by *Coker, J.S.C.* in *Garba's Case*.<sup>110</sup> The blanket rule that Universities should not inquire into allegations of crime by staff and students constitutes a very serious setback to maintenance of discipline by Universities. In effect, the law will, likely, foster indiscipline in Universities.<sup>111</sup>

### **2.3 Autonomy and Accountability**

An important component of institutional autonomy is institutional accountability. According to the Committee on Economic, Social and Cultural Rights, "institutional autonomy" must be consistent with systems of public accountability. It notes thus:

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106. This, literally, means: "he who gives something may also direct how it is to be used".

107. Suit No. ID/2114/90.

108. This is significant because if it were classified as ministerial or executive, the authority concerned would not be obliged to observe the principles of fair hearing.

109. See, *Glynn v. Keele University* [1971] 2 All E.R. 89.

110. Bamiro, O. A., "Tertiary Education in Nigeria and the Challenges of Corporate Governance", speech at the TETFund Year 2012 Strategic Planning Workshop, held at Abuja, 7 to 8 August, 2012.

111. *Okonkwo, C. O., Discipline, Nigerian Universities and the Law, ibid.*



"[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".

The UNESCO recommendations also recognize accountability. How is this to be attained? It has been emphasized that autonomy does not mean lack of regulation. *The 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel* provides a definitive answer on how to balance University autonomy with public accountability:

"In view of the substantial financial investments made, Member States and higher education institutions should ensure a proper balance between the level of autonomy enjoyed by higher education institutions and their systems of accountability. Higher education institutions should endeavour to open their governance in order to be accountable. They should be accountable for:

- (a) effective communication to the public concerning the nature of their educational mission;
- (b) a commitment to quality and excellence in their teaching, scholarship and research functions, and an obligation to protect and ensure the integrity of their teaching, scholarship and research against intrusions inconsistent with their academic missions;
- (c) effective support of academic freedom and fundamental human rights;
- (d) ensuring high quality education for as many academically qualified individuals as possible subject to the constraints of the resources available to them;
- (e) a commitment to the provision of opportunities for lifelong learning, consistent with the mission of the institution and the resources provided;



- (f) ensuring that students are treated fairly and justly, and without discrimination;
- (g) adopting policies and procedures to ensure the equitable treatment of women and minorities and to eliminate sexual and racial harassment;
- (h) ensuring that higher education personnel are not impeded in their work in the classroom or in their research capacity by violence, intimidation or harassment;
- (i) honest and open accounting;
- (j) efficient use of resources;
- (k) the creation, through the collegial process and/or through negotiation with organizations representing higher-education teaching personnel, consistent with the principles of academic freedom and freedom of speech, of statements or codes of ethics to guide higher education personnel in their teaching, scholarship, research and extension work;
- (l) assistance in the fulfilment of economic, social, cultural and political rights while striving to prevent the use of knowledge, science and technology to the detriment of those rights, or for purposes which run counter to generally accepted academic ethics, human rights and peace;
- (m) ensuring that they address themselves to the contemporary problems facing society; to this end, their curricula, as well as their activities, should respond, where appropriate, to the current and future needs of the local community and of society at large, and they should play an important role in enhancing the labour market opportunities of their graduates;
- (n) encouraging, where possible and appropriate, international academic co-operation which transcends national, regional, political, ethnic and other barriers, striving to prevent the scientific and technological exploitation of one state by another, and promoting equal partnership of all the academic communities of the world in the pursuit and use of knowledge and the preservation of cultural heritages;
- (o) ensuring up-to-date libraries and access, without censorship, to modern teaching, research and information resources providing



information required by higher-education teaching personnel or by students for teaching, scholarship or research;

- (p) ensuring the facilities and equipment necessary for the mission of the institution and their proper upkeep;
- (q) ensuring that when engaged in classified research it will not contradict the educational mission and objectives of the institutions and will not run counter to the general objectives of peace, human rights, sustainable development and environment".

"Public accountability" means internal integrity and transparency by University officials. The University has a duty to, proactively, inform the public of attaining optimum use of resources and following due process in life with institutional autonomy and fundamental principles of law. Autonomy that is accountable places a duty of open governance - effective communication, quality and excellence in goals, commitment to institutional goals, fair and just treatment of students without discrimination, protection of vulnerable groups, like women and minorities protection of staff from violence, intimidation and harassment, efficient use of resources, collegiality, commitment to felt needs and developmental goals of the society and engagement in global academic cooperation. This must be strategically attained and not reactive to challenges of non-transparency by government or other stakeholders. Universities must own both the strategy and the implementation of their institutional goals, mission and vision. Accordingly, the role of Councils are pivotal to institutional autonomy. Regulatory laws in Nigeria are, therefore, still a far cry from this ideal.

The foregoing underscores that there is need for laws regulating Universities to distinguish, clearly, University management from administration. While management and administration have been used, interchangeably, there are several distinctions between them, one of which is the fact that management is wider in scope than administration. In other words, management implies a process of which administration is an aspect.<sup>112</sup> 'Management' is the utilization of physical and human resources through cooperative efforts and it is

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112. Udey, F. U., Ebuara, V. O., Ekpoh, U. I. and Edet, A. O., "Management and Administration of Nigerian Education System: Problems, Challenges, The Way Forward", paper presented at the 11th International Conference of Educational Management Association of South Africa (EMASA) held 7 - 9 August, 2009.



accomplished by performing the function of planning, organizing, staffing, directing and controlling. 'Administration', on the other hand, is concerned with the performance of executive duties, the carrying out of policies and decisions to fulfill a purpose, and the controlling of the day-to-day running of an organization.<sup>113</sup> It is also the careful and systematic arrangement and use of resource (human and material), situations and opportunities for the achievement of the specified objectives of a given organization.<sup>114</sup> 'Administration' is, therefore, a sub-set of 'management'.<sup>115</sup>

Curriculum review and development are strategic for the realization of value-driven missions. Under the present legal framework, curriculum development in Nigerian Universities is stratified by bureaucratic considerations, resulting in outdated curriculum. The need for industry to link with the academia and economic policy-drivers is not considered. Law and policy considerations seem to stratify the intellectual capability of Universities in Nigeria.

Teaching and research lies in the heart of Universities for their standing as centres of fundamental thinking and intellectual leadership to be assured.<sup>116</sup> As sources of knowledge-generation, they play key roles in promoting sustainable development. Research, particularly, helps solve practical problems and brings about material improvement via high-tech products. It also provides insights and new ideas that enrich human understanding of various social, economic and cultural phenomena.<sup>117</sup> Thus, promotion of sustainable development, through teaching and research, should be integral policy issues in higher educational institutions in Nigeria. In order to achieve this, the critical role of regular curricular-review, must be underscored, in order to ensure that the content of their teaching reflects the rapidly advancing

113. Eratomode, V. F., *Education Administrator Applied Concepts and Theoretical Perspectives* (Joja Educational Research and Publishers Limited, Lagos, 1991).

114. Nwankwo, J. I., "School Administration and Human Learning in School", Ezewv, E. E. (ed.), *Social Psychological Factors of Human Learning in School*. (Leadway Books Limited, Onitsha, 2002).

115. Adepoju, L., *Fundamentals of School Administration, Planning and Supervisor* (Alafas Nigeria Company, Ibadan, 1998).

116. Orlans, H. and Smith, B.L., "Teaching Research and Universities", Vol. 30, No. 2 (1992) *Minerva: A Review of Science, Learning and Policy*, 132.

117. Abbott, J. and Doucouliagos, C., "The Efficiency of Australian Universities: A Data Development Analysis", Vol. 22, No. 1 (2003) *Economics of Education Review*, 89-97, (2004).



frontiers of scientific knowledge. By subjecting these to regulatory institutions is injurious to autonomy and jeopardizes academic excellence. It must be underscored, in the face of the composition of NUC.

### **3.0 Conclusion**

This chapter has shown the role of Universities as refiners of human resources. Universities are expected to transform into socio-economic development agents, through the development and deployment of their teaching, research and innovation capacities to moving the country from a resource-based economy to a knowledge-based economy. This calls for a paradigm-shift in respect of formulation of strategic vision and plan for its implementation that addresses the key issues of the environment, for teaching, learning and research, funding and funding sources, and a governance system that manages, efficiently, resource inflow and outflow. This focus on extant laws regulating Universities in Nigeria has examined the University model, globally, through the principles of institutional autonomy and academic freedom. It has been found that, while the formal legal framework is existing, there is no substantial autonomy under Nigerian laws. Many issues critical to the sustenance of the University model are poorly conceptualized in Nigeria. From the powers of the Visitor, the composition of Councils, the overbearing governmental control through NUC and JAMB and the historical failure of government to respect the rule of law, the laws are found deficient in the goal to attain excellence in learning and global competitiveness. It has also been found that the fact of almost exclusive funding of public Universities by government and the curiously non-existing law establishing private Universities in Nigeria have both created a recipe for inefficient system in Universities. It has been argued that autonomy and public accountability, rather than appearing exclusive, are, mutually, inclusive. It has made a strong case for limited regulation of Universities, only, to attain public accountability, and no more. Looking at the indicators for institutional autonomy and academic freedom, the chapter has concluded that the legal treatment of institutional autonomy provides a qualified compliance level, but poor in the area of individual rights and freedoms. However, there is reasonable democratic structure in the composition of University Councils and Senates, while the statutory shield given to University



lecturers provides formal, but not necessarily substantive security of tenure. In the collegial system existing under the law, University autonomy is also limited, by the judicial interpretation of University powers, in respect of discipline of students and staff.

This chapter has concluded that the laws regulating Universities in Nigeria, subjects Universities to the shadow of over-regulation through government agencies, principal of which, are NUC and JAMB. Accordingly, curriculum development, conditions for and type of degrees, the determination of size and rate of the growth; the establishment of the balance among 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; autonomy to shape their curriculum and syllabus, and the freedom to decide how to allocate among their various activities, such funds as are made available to them, are not insulated from government control.<sup>118</sup>

In the light of the fact that Nigerian public Universities lack the freedom to own the management and administration of the model, which is subjected to tyrannical whims of regulatory government bodies, they lack substantive independence. To achieve this, limited regulation is recommended, in order to erode the overbearing presence of government and to create room to public Universities to fulfil their mission. Substantive independence deals with enabling and empowering Universities to carry-out their roles and missions without overbearing government influence. It has been recommended that Universities should own the strategy and the implementation of governance, for example, by having strong inputs in the selection of members of Council who, ultimately, go a long way, in shaping the destinies of the Universities.<sup>119</sup>

Again, financial autonomy is strongly recommended, whereby, Universities are at liberty to plan and budget according to their priorities or felt- needs, subject, only, to accountability. In this respect,

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118. Johnson, A.; *A Handbook on Academic Freedom*, Ekundayo, H.T., "The Deregulation of University Education in Nigeria: Implications for Quality Assurance", *ibid*, Babalola, A., "University Autonomy and Good Governance", *ibid*; see also Committee on Economic, Social and Cultural Rights; <https://www.jstor.org/stable/524862>; see also Ajayi J. R., "The African Experience With Higher Education"; <https://www.jstor.org/stable/524862>.

119. Babalola, A., "University Autonomy and Good Governance", *ibid*.



it is recommended that the tasks of University governance should be wholesomely formulated by Council, both on paper and in practice. Council should, without undue government influence, be given the freedom to formulate growth strategies for the University. Many have called for deregulation so that the quality of University education will be better, when each University is allowed to achieve its fundamental mission, in the way it thinks appropriate.<sup>120</sup> This chapter concludes that the laws regulating Universities in Nigeria need to be amended in order to attain global best practices towards situating University education and management in Nigeria, in the proper place, within the development process.

120. Alos, "The University's Mission and Core Values"; <https://www.cam.ac.uk/...university/university/the-universitys-mission->, accessed on 8 August, 2017.