

UNIVERSITY TEACHERS ASSOCIATION OF GHANA

UNIVERSITY OF GHANA BRANCH

POSITION ON THE DRAFT GHANA PUBLIC UNIVERSITIES BILL-2018

A. BACKGROUND TO THE BILL

We, members of University of Ghana Branch of UTAG herein present our position on the Draft Ghana Public Universities Bill 2018 for inclusion in the overall views to be presented to the government. We are for quality education and we have all agreed that there is the need for us to ensure that the right things are done to secure the quality of teaching, research and university administration. The processes that led to this position document were elaborate, having collated views and comments from our members, our senior academics and seasoned administrators including some of our former Vice Chancellors and Pro-Vice Chancellors. We further utilised records such as the University of Ghana Visitation Panel's Report (2007), Council's Statement on the Report of Visitation Panel, the Constitution of the Republic of Ghana and references were made to best practices globally.

It is important to note that the basic premise of a harmonised Public Universities Act is wrong as it stands now because the intention is to create a one-size-fit-all situation for all public universities. This is against the principle which supports the idea that universities worldwide seek to be uniquely innovative and to progress, and this largely is based on how different they can be from other universities or other institutions of higher education. That is, differentiation, and having unique cultures and sub-cultures, are generally seen as major characteristics of university development. Moreover, societal progress is driven by academics and their institutions competing to generate new knowledge, and it is this competition which leads to excellence and discovery. It is important to note that the Act setting up a university is expected to help define its character. As a consequence, universities cannot be treated as if they have the same purpose of existence. This Public Universities Bill is designed to curb differentiation by taking away all incentives that promote competition and excellence. Universities worldwide through research, collaboration with industry and current social issues determine how to contribute to the development of the world. There are technicalities in the process that go beyond politicization. It will, therefore, not be prudent to leave this responsibility in the hands of the Minister of Education to issue directives on what universities should do and/or not do.

At an emergency general meeting held on 12th April, 2019 to discuss the Bill, UTAG-UG constituted a five-member Committee to collate views and reasons from members of our association, justifying the position taken at this meeting. In the following pages, we present areas we disagree with the Draft Bill, reasons for our stance, justifications for these reasons and some recommendations informed by experience and best practices globally.

B: AREAS OF DISAGREEMENT IN THE DRAFT BILL

Clause 1 (1) A Public University shall be a body corporate with perpetual succession, established by this Act or in accordance with the Technical Universities Act, 2016 (Act 922) or its Amendment.

COMMENTS: What this means is that even after the passage of this Bill into law, the Technical Universities Act is going to remain in force. If that is the case, then the other universities Acts should be allowed to remain and be operational. Secondly, the term ‘body corporate’ should be qualified by ‘autonomous’. We expect universities to enjoy scientific, cultural, pedagogical, administrative, financial and property autonomy and this should reflect in any law that seeks to establish and regulate the functioning of public universities, especially since the Constitution of the Republic of Ghana recognises academic freedom.

Clause 1(6): All Universities shall satisfy the requirements, regulations and Policy directives set out by the Ghana Tertiary Education Commission

COMMENTS: This provision is subject to abuse. Moreover, the Minister of Education has been given such broad powers in the Bill already. Ghana Tertiary Education Commission (GTEC) is supposed to be a merger of the NCTE and NAB but this is not set up yet. The mandate given to the yet-to-be-established GTEC could violate the institutional autonomy of the university.

Clause 2 (b): in determining the subjects to be taught, special attention shall be given to courses of special relevance to the needs and aspirations of the country as a whole.

COMMENTS: This provision is likely to be abused. In countries like Uganda and Rwanda, their governments have described some courses as “irrelevant”, such as Conflict Resolution, Psychology, Women and Gender Studies. In the end, if the current Bill is passed into law, the Minister for Education could use the powers granted him under the law to make regulations and policy directions for the university. The provision is irrelevant. One of the core functions of any universities is its relevance to society. Moreover, clause 2(k) of the Bill is sufficient to take care of that situation. The only problem is Article 38 of the Constitution which does not deal with tertiary education.

Clause 3: University Campuses: the government may grant a public institution or facility to become part of a Public University.

COMMENTS: The question we ask is: Will the Universities have no say in this process? This may lead to imposition of institutions or facilities (on political grounds) on universities when such institutions or facilities do not have anything to do with the mandate of the university. The Kwame Nkrumah Ideological Institute is a poignant reminder.

Clause 5 (a-j): University Council.

- **The governing body of a Public University is a Council which shall consist of the following nine members appointed by the President including:**
- **(a) a Chairperson nominated by the President;**
- **(b) the Vice-Chancellor;**
- **(c) four persons nominated by the President, one of whom shall be a woman;**
- **(d) one representative of the registered Unions in the university on rotational basis**
- **(e) one representative of the University convocation elected by the convocation;**
- **(h) one representative of the students of the University, nominated by the Students' Union; and**
- **(j) one representative from the National Council for Tertiary Education who shall be a non-voting member.**

COMMENTS: This is one of the clauses in the Bill we disagree with. It immediately gives the Government total control of the Council. The government will end up having majority stakes in the composition of the Council; 10-member council is too narrow. Moreover, on what basis and for how long will the various unions rotate? The rotation of unions is a non-starter, a violation of freedom of association and a denial of the role of UTAG in particular to take part in self-governance of the university. Is GRASSAG going to rotate with SRC? What will be UTAG's role *vis a vis* GAUA, TEWU or FUSSAG? What about Conference of Heads of Assisted Secondary Schools (CHASS) representation? Is that now completely removed? How then can the universities maintain the very important links with the lower level of education from where they get their 'raw materials'? This will also immediately make the government indirectly become the appointing body of the VC, which will immediately wipe off all the gains that tertiary institutions have fought for over the years, and which the 1992 Constitution granted in many respects.

Furthermore, for us in the University of Ghana, this aspect is not in line with what is accepted by the University Council, under the chairmanship of Mr. A. Oteng-Gyasi in respect of Section 4.5.1(i) of Council's Statement on the Report of Visitation (April 2008): "The Council should be enlarged, so as to have a majority of non-university members. The increase would bring further expertise onto Council and enable it to establish an appropriate committee structure. Council indeed endorses the Panel's recommendations concerning the functions of Council and the committee structures needed to carry these out".

(3) The chairperson and other members of the Council shall be appointed by the President in accordance with Article 70 of the Constitution.

COMMENTS: Article 70 (1) Constitution, “The President shall, acting in consultation with the Council of State, appoint... (d) the Chairman and other members of... (iii) the governing bodies of public corporations;... and (e) the holders of such other offices as may be prescribed by this Constitution or by any other law not inconsistent with this Constitution.” Universities are not “public corporations” and therefore do not come under this provision in the 1992 Constitution. Rather, Article 195(3) applies to university councils which provides that “The power to appoint persons to hold or act in an office in a body of higher education, research or professional training, shall vest in the Council or other governing body of that institution or body.”

International documents supporting our position

The Kampala Declaration on Intellectual Freedom and Social Responsibility (1992)
Article 11: Institutions of higher education shall be autonomous of the State or any other public authority in conducting their affairs, including the administration, and setting up their academic, teaching research and other related programmes.

Article 12: The autonomy of institutions of higher education shall be exercised by democratic means of self-governance, involving active participation of all members of the respective academic community.

UNESCO Recommendation on the Status of Higher Education Teaching Personnel (1997)

17. The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is 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.

Clause 3(5) The President may dissolve and reconstitute the Council in cases of emergencies or appoint an interim council to operate for a stated period.

COMMENTS: The intention of this Bill is certainly to give government total control of the universities. The President is going to be able to appoint and dismiss people from any university, which the constitution sought to prevent in the first place through Articles 68 and 195. Also, who will determine what constitutes an emergency meriting the intervention of the President over and above the heads of the Chancellor and the Council? This is a recipe for capricious interventions by any President.

Meeting of Council:

7(2): The quorum at a meeting of the Council is seven members of the Council.

COMMENT: If Government will have a majority of members, as contained in the Bill, the Council can meet with seven members including the five government

appointees, and excluding the Vice Chancellor, and vote to dismiss the Vice Chancellor. If this was the law, the VC of KNUST could have been easily removed from office by indirect interference of government.

Clause 14: Chancellor of a Public University

- (1) A Public University shall have a Chancellor.**
- (2) The Council shall nominate three persons for consideration and appointment by the President.**

COMMENTS: With this provision, there is no academic freedom for the university. This is a surreptitious and indirect way of making the President circumvent the letter and spirit of Article 68 of the 1992 Constitution, which will lead to interference of government in the affairs of the university, something which the 1992 Constitution has so far successfully managed to prevent. Chancellors should be elected through an electoral college, as we have it at the University of Ghana.

Clause 16: Vice-Chancellor of the University

- (1) A University shall have a Vice-Chancellor.**
- (2) The Council shall appoint the Vice-Chancellor for a Public University in accordance with procedures specified in the Statutes.**
- (3) The Vice-Chancellor shall hold office on the terms and conditions specified in the letter of appointment.**
- (4) The Vice-Chancellor shall hold office for a term of three years and is eligible for re-appointment for another term only.**

COMMENTS: Three years is definitely not enough. A term of four years is the ideal, and there should be a provision for appointment for another term if that term will exceed two years but will not reach the requisite four years before the retirement date of the person so appointed. In effect, if the four years for the first term is accepted, it should be possible for a young VC to serve for up to six years. A term of three years may result in the tenure of a VC coinciding with the tenure of a Council, and this can create a situation where there can be the possibility of a University having no substantive Council and VC. Moreover, carriage of institutional memory from one council to another is likely to be compromised. The situation we are describing here has happened before, in 1966/67 over the positions of Cruise C. O'Brien, Willie Abraham and Alexander A. Kwabong, and the situation was not the best for the University. It also resulted in a lot of interference by government in the affairs of the university.

Clause 18: Pro Vice-Chancellor (s) of a Public University

- (1) A Public University shall have a Pro Vice-Chancellor (s).**
- (2) The Council shall appoint the Pro Vice-Chancellor(s) of a Public University in accordance with the Statutes of the Public University.**

- (3) **The Pro-Vice Chancellor shall hold office for a term of three years and is eligible for re-appointment for another term only.**

COMMENT: We do not think it is a good idea for the term of a Pro-VC to be co-terminus with that of a VC and Council. There should be overlap so as to avoid a situation where in the absence of a substantive VC there is also no Pro-VC to act pending the appointment of a new VC, especially if the Pro-VC is also a contender for the new VC appointment.

Clause 23, Paragraph 2: The University may:

(a) enter into an agreement or relationship with another institution whether academic or non-academic within or outside the country in furtherance of the objectives for which it was established, subject to approval by the Minister for Education, in consultation with the National Council for Tertiary Education;

COMMENTS: This certainly means that if one wins a research grant, his/her institution (Institute, ORID or VC etc) cannot sign the agreement unless UG seeks the Minister's approval. This will certainly stifle innovation and academic freedom.

Why should the University seek approval from the Minister and/or NCTE even for the hundreds of memorandums of understanding and research cooperation agreements it signs every year? This is simply going to introduce further bureaucratic bottlenecks in the performance of academic functions. Granted, there are certain major cooperation agreements, especially those based on country-to-country agreements, that will need government participation in arriving at a good and workable agreement. But Universities have so many minor agreements that definitely do not require bureaucratic government interventions, and which will best be left to the universities to manage internally. If this Clause stays, the universities stand the danger of losing out considerably in this highly competitive era of looking for research and other academic grants. Other institutions with less bureaucracy are likely to outperform Ghanaian universities. Moreover, most funding agencies are not comfortable with governments directly managing their funds; they will rather prefer the universities to supervise the management of the research funds. This will constitute undue interference by the Minister and NCTE in the internal affairs of the university. In any case, NCTE does not have such a mandate. Why is NCTE still alive if we are to have the GTEC in place, per this Bill?

Clause 36: Centralized Admission Platform:

COMMENTS: With the provision for a Centralised Admissions Platform in this Bill, the autonomy of Ghanaian public universities is negatively affected. Unless this provision is made elaborate, we call for it to be expunged from the Bill. It looks like another form of Computerized School Selection and Placement System (CSSPS), and this will make the University Admissions Board become irrelevant. Is there a role for Colleges to determine who qualifies, cut off points, etc., or the Universities will follow CSSPS mode of operation? These are critical issues that, if not addressed, will come to bite the universities especially if they cede admissions to a central body, as proposed in the Bill. The Colleges must continue to have a stake in who gets admitted

and how many students they can conveniently admit. Otherwise, universities will be filled with protocol admissions as we find in the CSSPS admissions. Secondly, we have not expanded infrastructure, yet the free SHS graduates who qualify for admission will be in by next year. We see this as an attempt to have a back door for pushing the ever increasing number of SHS graduates into the universities without recourse to existing capacity (lecturers, lecture halls, accommodation etc).

Further, according to T.B Davie, academic freedom means a university can "determine for itself on academic grounds: (1) who may teach (2) what may be taught (3) how it should be taught, and (4) who may be admitted to study."¹

36 (1) Public Universities established under this Act shall operate with harmonised Statutes.

COMMENTS: A) This will not be practically useful and possible. Due to different cultures and norms on each campus, it is not wise to have a uniform statute for all public universities. This clause in the Bill seeks in one swoop to sweep away the peculiarities, history, idiosyncrasies and specific realities of public universities which have long informed enacting these statutes and their subsequent evolution. This will also stifle difference and competition among the universities. Each university should have the freedom to enact its own statutes so long as they do not deviate from the Act establishing the universities. This is a recipe for confusion because no two universities are the same or have the same structures and objectives. Statutes are normally drawn up to cater for certain peculiar circumstances of a university. One cannot expect the statutes of a technical university to be the same as that of a liberal arts university. The NCTE does not have the mandate to make statutes for public universities under its current law.

41 (1) and (2) Academic Freedom

(1) A Public University, in performing its functions shall—

- a. have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs;**
- b. have power to regulate its affairs in accordance with its independent ethos and traditions and in doing so it shall have regard to—**
 - i. the promotion and preservation of equality of opportunity and access;**
 - ii. effective and efficient use of resources; and**
 - iii. its obligations as to public accountability.**

(2) A member of the academic staff of a university shall have the freedom, within the law, in the member's teaching, research and any other

¹ Quoted in Higgins, J. (2000) Academic Freedom in the New South Africa, in *Boundary 2* Vol 27, No. 1, 97-119 at 106.

activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state opinions, and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom.

COMMENTS: The first paragraph is somehow positive because it touches on institutional autonomy. However, it is not comprehensive enough. Paragraph 2 of this clause is also positive; it has quite comprehensive details for individual academics. However, the ability to enjoy it is linked to respect for the university's autonomy and for academics to be able to take part in governance.

C: UTAG-UG POSITION, JUSTIFICATION AND RECOMMENDATION

In light of the above feedback, UTAG-UG calls for the rejection of the Bill for the following reasons.

First, the traditional process for effecting changes in laws governing universities and their administration has been side-stepped. It is the universities that exercise or should exercise the freedom to identify any challenges, starting the process, forwarding proposals to Cabinet spelling out what the needs/challenges are, and working with government to agree on the contents of a Bill to be sent to Parliament. In other words, the process is a bottom-up approach. The opposite approach, however, is what we are witnessing here. We therefore see this move as an attempt by the government to micro-manage tertiary institutions, which is a recipe for disaster, to say the least. The result will be a flagrant violation of the institutional autonomy of public universities in the country and a consequent cascading effect on other stakeholders in the university system, namely academics and their unions, and students and their unions.

Second, the principle of placing all public universities under one governing law and one common statute is in itself questionable. UTAG-UG believes there were very good reasons in the past for every public university to have its own Act establishing it. If this is to be changed, one would expect that there will be the necessary provision of strong and convincing reasons for such a change. The explanatory memorandum of the Bill does not provide any convincing rationale for the decision to have all the universities in Ghana governed by one law and a common set of statutes. The objective of the Bill is not clear and raises several issues that may pose a threat to what generations over the years have fought for in the governance of our universities and other tertiary institutions – academic freedom and freedom from governmental interference. The end result of this Bill, if passed into law, will be micro-management of tertiary institutions by Presidents and Ministers of Education and through such bodies as the NCTE.

Third, every university is peculiar, has its own history and culture, and is mandated to undertake specific objectives in the national interest. It is therefore dangerous to straight-jacket all universities under one law. The issue of diversity and difference of tertiary education which has become very crucial, is now likely to be seriously compromised, contrary to the UNESCO Recommendations which provide under Paragraph 9 thus: “Respect should be shown for the diversity of higher education

institution systems in each Member State in accordance with its national laws and practices as well as with international standards.”

Having said so, UTAG-UG agrees that there are certain critical issues which should be regulated on equal basis on all public and even private university campuses. These include the criteria for promotion, criteria for the granting of Book and Research Allowance, etc. Therefore, government can collaborate with the relevant stakeholders on the university campuses to agree on such a law which will also recognise the right of each university to have its own laws in order to promote innovativeness, competitiveness and difference that will bring out quality standards in what they do to progress.

CONCLUSION

For the first time in its constitutional history, academic freedom is recognised in Ghana’s 4th Republican Constitution, Article 21(1)(b), making it among a few African countries that enjoy such a status. The recognition and the level of respect for academic freedom in a particular country commensurate with that country’s democratic credentials. Ghana, having achieved remarkable success in its democratic transformation agenda, therefore, deserves the kind of academic freedom its tertiary institutions are enjoying, if not even better. As things stand, *A Review of Academic Freedom in Africa through the Prism of the UNESCO Recommendations*, co-authored by Professor Kwadwo Appiagyei-Atua (using the University of Ghana Basic Laws) places Ghana as being among the higher ranks for the respect of academic freedom in Africa.² There is a historical antecedent to this record. For several years after independence, Ghana’s universities have fought governments, both military and civilian, which sought to shrink its freedom and independence. Unfortunately, all their genuine efforts will be reversed if the current Bill is to be passed into law in its current state and form. This is because the Bill, as it is, seeks to take back power from university management, academics and their unions and students, and place them in the hands of the President of the Republic, the Minister of Education, the NCTE and the government’s majority representatives on the university council the ultimate powers to make decisions for all public universities. Such a move will certainly not be in line with the country’s democratic credentials and therefore has the potential to affect our rankings as one of the beacons of democracy in Africa. It is for this reason that the Bill should not be allowed to see the light of day.

The government is also reminded that it is obligated under the UNESCO Recommendation Paragraph 74 that “Member States and higher education institutions should take all feasible steps to apply the provisions spelled out above to give effect, within their respective territories, to the principles set forth in this Recommendation.”

² “A Review of Academic Freedom in Africa through the Prism of the UNESCO Recommendations.” (2016) Vol Seven AAUP *Journal of Academic Freedom*, 1-23 and “Positioning Academic Freedom in the Discourse on the Revitalisation of Higher Education in Africa” (2015) Vol XXVIII *University of Ghana Law Journal*, 243-265.

F: COMMITTEE MEMBERS

- 1. Prof. Kwadwo Appiagyei-Atua, School of Law, Chairman**
- 2. Prof. Ildiko Csajbok-Twerefou, Department of Modern Languages, Committee Member**
- 3. Dr. Samuel Kojo Kwofie, Department of Biomedical Engineering, Committee Member**
- 4. Ms. Patience Dzandza, Department of Information Studies, Committee Member.**
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