

Mandates of the Special Rapporteur on the right to education; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
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19 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 44/3 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **proposed Public University Bill 2020, which reportedly will affect the autonomy of the universities and thus, academic freedoms.**

According to the information received:

In February 2020, the Government of Ghana presented the Public University Bill 2020 that, if passed without further amendments, would enable the President of the Republic and the Ministry of Education to exercise control over the public universities of the country.

According to articles 7 and 33 of the Bill, the University Council, as the governing body of the University, shall in particular determine the strategic direction of the University; monitor and evaluate the implementation of policies within the university; control finances and funds; ensure equal opportunities for university members; make professional level appointments; be the final decision maker on matters of discipline; and enact statutes for the implementation of the Public University Act.

The Bill further details the composition of the Council, granting extended nomination powers to the President of the Republic. According to article 5, the Council shall consist of a Chairperson, the Vice-Chancellor of the University, "five persons", and six representatives of varied institutions (one of them being a non-voting member). This provision establishes that the President of the Republic would directly appoint the Chairperson and the "five persons", whereas representatives of the varied institutions would be appointed by different academic bodies or staff. The Council itself would appoint the Vice-Chancellor (article 16). The President of the Republic would further have the power to dissolve and reconstitute the Council in case of emergency and appoint an interim one to operate for a stated period (article 5). In addition, the President of the Republic could revoke the appointment of a member of the council "for stated misconduct or for any other just cause" (article 8). The President shall also appoint the Chancellor of the university from three nominees proposed by the Council.

In addition, the Bill authorizes the Minister of Education to give mandatory directives to a public university on matters of policy (article 47) and to approve any acquisition, sell, lease, mortgage, alienation or disposal of property by the university or engagement in any other transaction. Lastly, article 40 and 48 establish a Centralised Application Processing Service, a body that would be in charge of processing the admissions for all public universities.

We are concerned that, if adopted, the Bill would give the effective operational control over public universities throughout the country to the executive power. This may have a negative impact on the right to freedom of opinion and expression and the right to education, including universities' autonomy in the academic, financial and administrative areas. Despite article 43 relating to the need to respect academic freedoms, the Bill poses a grave risk to the enjoyment of academic freedoms in Ghana, and therefore the quality of its education system.

We would like to draw your attention to article 13 of the International Covenant on Economic, Social and Cultural Rights, ratified by Ghana on 7 September 2000, recognizing the right of everyone to education. As noted by the Committee on Economic, Social and Cultural Rights, academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds (General Comment 13, para. 39).

Furthermore, "the enjoyment of academic freedoms requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, 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. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible." (Ibid. para 40).

We would also like to underline that the UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel points out that higher-education organizations should be considered and recognized as a force which can contribute greatly to educational advancement and which should, therefore, be involved in the determination of higher education policy (para 8). The Recommendation underlines the importance of guaranteeing the autonomy of institutions as a precondition to guarantee the proper fulfilment of the functions entrusted to higher education teaching personnel and institutions (para. 18). This obligation implies that states will protect the autonomy of educational institutions from any threat, and they cannot limit the rights of higher-education teaching

personnel (para. 19 and 20). Universities need a system of accountability to ensure that they address themselves to the contemporary problems facing society, and higher education personal should participate in the planning of such systems (para, 22m and 24). All higher education personnel have the right to fulfil their function without fear of repression by the state or any other source (para. 27). Finally, no member of the academic community should be subject to discipline, including dismissal, except for just and sufficient cause demonstrable before an independent third-party hearing of peers, and/or before an impartial body such as arbitrators or the courts (para, 48).

In addition, academic freedom is also to be protected in accordance with article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ghana on 7 December 2000, relating to the right to freedom of opinion and expression. In a recent report, the Special Rapporteur on the right to freedom of opinion and expression noted that a scholarly work product, which includes data research and analysis, should be protected as an opinion, which, under the ICCPR, cannot be subject to any interference. The freedom to form an opinion and to develop this by way of reasoning is held to be absolute (A/75/261, paras. 16 and 17). According to the Special Rapporteur on the right to freedom of opinion and expression, States are, in this context, under a positive obligation to create an institutional protection and autonomy environment for individuals to seek, receive and impart information and ideas (paras. 10 and 56 (3)). To that end, States should not retain excessive powers over the hiring of personnel of the institutional leadership; otherwise, it would be inconsistent with academic criteria and reflect political control rather than the advancement of learning (paras. 12 and 34). Academic institutions should retain autonomy in their administrative, financial, pedagogical and disciplinary functions, but they should also adopt and enforce policies that ensure the protection of the free expression rights of the members of their communities, resisting official or social pressure and promising human rights compliance institutionally (para. 13).

In view of the aforementioned observations, we respectfully urge your Excellency's Government to take the necessary action to withdraw or amend the Public University Bill so as to ensure the autonomy of universities and the full respect for academic freedom.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional comment(s) you may have on the above-mentioned information.
2. Please provide information on measures taken to guarantee the right to education and freedom of opinion and expression aspects of academic freedom, including university autonomy, from the executive power.
3. Please provide information on consultative processes established or envisaged to ensure the participation of the academic community in the drafting of new legislation and regulations relating to universities.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the right to education

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Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression