EVALUATING THE INSTITUTIONAL FRAMEWORK FOR DELIVERING ADMINISTRATIVE JUSTICE TO STUDENTS AT THE UNIVERSITY OF NAIROBI

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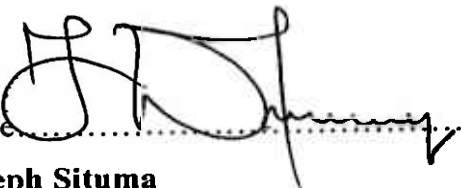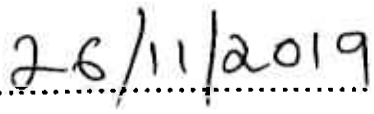
November, 2019

DECLARATION

CANDIDATE: I hereby declare that this Research Project is my original work and has not been presented for any other academic award at the University of Nairobi or any other institution.
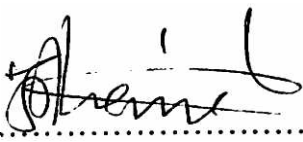
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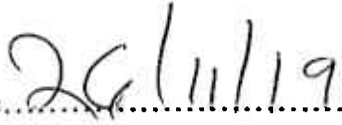**Moses Okoth Opiyo**

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DEDICATION

I dedicate this work to my parents, Mr. James Obunge and Mrs. Jenifer Opiyo; for being my greatest inspiration and supporters throughout this process of life. I can never thank you enough.

ACKNOWLEDGEMENT

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ACRONYMS AND ABBREVIATIONS

ACHPR – African Charter on Human and Peoples Rights

CAJ - Commission for the Administration of Justice

COK - Constitution of Kenya

ECHR - European Convention on Human Rights

FGD – Focus Group Discussion

ICCPR – International Covenant on Civil and Political Rights

KII – Key Informant Interview

UDHR – Universal Declaration of Human Rights

UON - University of Nairobi

UN - United Nations

ABSTRACT

This research study investigated University of Nairobi's institutional framework for delivering administrative justice to its students. The research was undertaken in response to the evident increase in number of students aggrieved by administrative decisions of universities who successfully seek judicial review outside of the confines of the university. The study assessed the university's internal administrative justice structures and processes and how students' knowledge and perceptions relate to their ability to access administrative justice at the university. Literature was reviewed on the concept, international, regional and local trends pertaining to administrative justice in institutions of higher learning. The study is posited on Paul DMaggio and Walter Powwel's Theory of Institutional Isomorphism that describes the character of institutions operating within a sector. The research adopted an exploratory research design which was very useful because it does not allow the manipulation of the variables. Survey questionnaires, Key Informant Interviews and Focus Group Discussion were used in addition to obtaining secondary information from desktop research of previous scholarly works. The study found that students at the university were not sufficiently empowered to interact with the institution's administrative justice structures and processes due to several underlying factors including gender-based dynamics, student orientation and structural factors. This is compounded by the prevailing wide perception gap (between administrators and students) on the quality of administrative justice structures and processes at the university. University administrators perceive the structures, processes and prevailing student knowledge, awareness and perceptions as adequate. Students, however perceive the structures and processes as laden with bureaucracy and norms that do not promote efficiency and effective delivery of administrative justice and are also susceptible and vulnerable to internal and external influences. The study made several policy oriented and administrative recommendations towards improving on the student access and interaction with the university's institutional arrangements for delivering administrative justice to students.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction and Background

The right to a fair trial in administrative justice protects against administrative decisions that may impede the full expression of the dignity, rights and freedoms of individuals within the jurisdiction of a public institution. International instruments from which the right is derived (including ICCPR, ECHR and ACHR) recognise the entitlement of every citizen to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

The legislative framework, structure and processes by which administrative decisions are made within any public institution and the systems for resolving disputes arising from such decisions, reflect on the state of relationships between institutional stakeholders and the enjoyment of rights, entitlements, duties and responsibilities therein. Public institutions are enjoined to uphold natural justice principles when making decisions that affect individuals interacting/operating within their jurisdiction. Natural justice principles seek to ensure that these decisions are only taken after fair and equitable procedures have been followed.

The entitlement of every citizen to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair is codified in Kenya's Constitution under Articles 47 and 59 and subsidiary legislations including The Fair Administrative Action Act and The Commission on Administrative Justice Act. The public institution mandated to receive complaints and investigate administrative actions that may manifest as abuse of power, unfair or unresponsive treatment by public officers is The Commission on Administrative Justice (Office of the Ombudsman) which is a constitutional commission was established pursuant to Article 59 of the Constitution of Kenya.

Universities, as institutions of higher learning, contribute to the socio-economic and cultural development not only through the production of knowledge, but also as managers of human resources and students. The administration of the interaction of various stakeholders within the university ecosystem provides a test for measuring the universities' respect for and promotion of the rights of individuals and groups of people under their care. University institutions worldwide have therefore formulated regulations and procedures that guide the welfare, discipline and relationships of stakeholders operating within their ecosystems.

The implication of these regulations and procedures, specifically for university students, not only requires that due process be followed during the disciplinary proceedings, but also that students be aware, knowledgeable of, and have access to the disciplinary rules and procedures.

The institutional arrangements[1] that normatively guarantee autonomy and fairness for respective universities to administer justice within their respective jurisdictions are embedded in respective laws that establish the institutions, together with bylaws, policy and regulations that are formulated by respective university Councils, Senates and Boards.

This study seeks to evaluate public university's institutional arrangements for delivering administrative justice to students by assessing the university's institutions for delivering fair administrative justice to students and the students' knowledge and perception of the institutional arrangements. The evaluation was premised on the two concepts of the right to fair hearing and the right to be heard. The essence of the concept is that those who are affected by administrative decisions are entitled to be heard by an unbiased decision-maker. This study sought to assist in assessing the degree to which these institutional arrangements (with respect to students' access to administrative justice) adhere to national legal frameworks and guarantees.

1.2 Statement of the Research Problem

The right to fair trial is a fundamental right that is protected by law against limitation or derogation[2]. Within the bureaucratic environment that many public universities naturally find themselves, the institutional arrangement for delivery of fair administrative action remains a real challenge (Reddy , 2004). University authorities are enjoined to uphold natural justice principles when making administrative decisions. This should be apparent not only in the procedures followed during administrative justice proceedings, but also in the eventual outcomes of the proceeding.

All public universities in Kenya are governed by The Universities Act No 412 of 2012. The development of this Act is as a result of an amalgamation of various constitutive legislations for the then seven[3] existing public universities in Kenya. The transitional arrangements for the

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[1] Term institutional arrangements is used to refer to the formal structures and processes through which individuals and community at the university interact with and influence each other in making decisions.
[2] Both in the UDHR's Article 10 and ICCPR'S Articles 14 and 16
[3] The Universities Act Cap. 210B; The University of Nairobi Act; The Kenyatta University Act; The Moi University Act Cap; The Jomo Kenyatta University of Agriculture and Technology Act; The Egerton University Act; The Maseno University Act; and The Masinde Muliro University of Science and Technology.

commencement of the new law effectively retained identical administrative justice structures, processes and proceedings across all public universities.

There has been an increase[4] since 2010 in the number of students, aggrieved by public university administrative decisions, and who have successfully sought judicial reviews at the High Court of Kenya. Whether this increase is a reflection of the inadequacy of existing institutional arrangements to deliver administrative justice to the students or the existing state of student knowledge and perception on administrative justice, institutional arrangements and human rights, is undetermined. Kamvounias and Varnhaim (2010) suggested a relationship between the increase in litigation involving Australian university students and the state of internal rules and processes and stakeholder perceptions, hope and expectations. Ultimately, administrative decisions that impede the full expression of the inherent dignity and inalienable rights of students in public universities, impact negatively on their welfare and interactions within the university ecosystem and, therefore, the university's quest and contribution to the production and nurturing of information, knowledge and innovation.

1.3 Objectives of the Study
1.3.1 General Objective
The main objective of the study was to evaluate the institutional framework for delivering administrative justice to students in Kenya's public universities.

1.3.2 Specific Objectives
i. To analyse the internal institutional structures for dispensing fair administrative justice in Kenya's public universities;

ii. To assess how public university students' knowledge on the institutional arrangements relate to their ability to access administrative justice at the university;

iii. To assess how students' perceptions on the institutional arrangements relate to their ability to access administrative justice at the University of Nairobi.

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[4] According to RoK (2015) report, the number of cases by the students' leaders pertaining unfair justice by the disciplinary committee have been on the rise since 2005 from 61 to 113 in 2015. This depicts 85% increase from 2005 to 2015.

1.4 Research Questions

i. To what extent do existing internal institutional arrangements (law, regulations, structure, processes and procedures) influence the delivery of administrative justice to students in Kenya's public universities?

ii. To what extent does student knowledge on the institutional arrangements affect the delivery of administrative justice to students in Kenya's public Universities?

iii. To what extent does student perceptions on existing institutional arrangements affect the delivery of administrative justice to students in Kenya's public universities?

1.5 Justification for the Study

The right to fair administrative action is one of the fundamental rights and freedoms recognised in the UDHR, ICCPR and The Constitution of Kenya. This study is significant because it sought to add to the body of knowledge on the right to fair administrative justice, in the context of institutional arrangements within public universities in Kenya. The study has provided evidence that will potentially improve understanding of how the structures and processes of university-based administrative justice work, are perceived, used by students at the university. Such understanding is key to ensuring that justice is delivered in the interests of all.

The study has yielded useful practical recommendations in the areas of administrative justice and institutional framework and their applicability in public universities in Kenya. It has identified institutional strengths and weaknesses that relate to the delivery of administrative justice to university students and make recommendations which could be used in reviewing/reforming institutional framework for delivery of administrative action within public universities in Kenya. The study also contributes to the literature on administrative justice that will be used by scholars and other interested parties.

1.6 Study Assumptions

This study is based on the following assumptions:

i. Existing institutional arrangements (law, regulations, structure, processes and procedures) influence the delivery of administrative justice to students in Kenya's public universities.

ii. Student's knowledge and awareness on the existing institutional arrangements affect the delivery of fair administrative action in Kenya's public universities.

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iii.   Student's perceptions on the existing institutional arrangements affect the delivery of fair administrative action in Kenya's public universities.

1.7 Scope and Limitations of the Study

The study's topic scope is the institutional arrangements for delivering administrative justice to students in Kenya's public universities. The geographical scope was the University of Nairobi. The data was collected within a period of 30 days.

Though deliberate effort was made to have a worthwhile study with sufficient validity and reliability, this study cannot offer conclusive solutions to institutional arrangements for delivering administrative justice to students in public universities because other public universities in Kenya might be subject to dynamics that are significantly different from those of University of Nairobi.

Being that the study undertaken within a public institution, bureaucratic and hierarchical challenges limited the time projected to collect data for the study. The organizational structure of the University of Nairobi is hierarchical whereby every employee reports to and is accountable someone else within the institutional hierarchy. This hierarchical structure increases bureaucracy and communication tends to be a hinderance to efficiency and effectiveness of any internal research. The researcher requested the university's management for permission to conduct orientation of participants.

1.8 Study Organisation

The study is organised into five chapters.

Chapter One provides background information of the study, statement of the research problem, the study objectives, the research questions that will guide the study, the significance of the study, the scope and limitations of the study.

Chapter two examines literature relevant to the study, the theoretical framework on which the study is based and conceptual frameworks that is developed from the theoretical framework.

Chapter three describes components of the methods and methodologies that was used during the study. These include the study site, research design, study population, data collection methods, sampling methods, data analysis methods and ethical considerations.

Chapter four focuses on presentation and interpretation of data that was collected during the research study.

Chapter five presents conclusions and recommendations that were drawn from the study including proposed areas for future research.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The chapter examines relevant literature on administrative justice generally and administrative justice in institutions of higher learning. It also presents the theoretical framework and derived conceptual framework.

2.2 The Concept and Law of Administration of Justice

Adler (2003) describes administrative justice as premised on the rule of natural justice and concerned with administrative decisions by public authorities that affect individual citizens and the mechanisms available for the provision of redress. The rule of natural justice dictates that one should not be condemned unheard. Public institutions have both legislative (power to prescribe regulations) and judicial powers (to adjudicate on cases prescribe through its regulations). These powers are delegated by a higher legislation (usually an Act of Parliament) to the public institution. (Tomlinson, 2017) describes administrative justice in terms of decisions taken by public bodies and distinguishes it from criminal justice and civil justice. Administrative justice is therefore concerned with procedural fairness, rather than with the substantive decision of the tribunal. This means that the procedures adopted must ensure that rights are respected, fairness upheld and redress (if necessary) enabled. Martin Partington (1998) describes the concept of administrative justice as consisting of institutional framework and principles and values.

Administrative justice is also dispensed through quasi-judicial tribunals which are distinct from courts and are established within institutions to provide expeditious and relatively informal resolution of civil and administrative matters within institutional statutory or regulatory confines. Secolsky & Denison (2017) established that this distinction derives from an evolution of perception from a place whereby administrative adjudication was perceived as being contrary and in competition to court-based adjudication. Administrative justice tribunals ordinarily not engage in determining the rights and duties of individuals as against other individuals, but on breaches associated with the core mandate of the respective institution. Courts of law, however, engage in a wider spectrum of civil and criminal law.[5] Administrative justice therefore deals with the exercise by an administrative agency of judicial powers delegated to the agency by a legislative body.

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[5] Administrative Justice." Dictionary of American History

The principles of administrative justice include entitlement to fair trial; the right to be presumed innocent until proven guilty; the right to be adequately and comprehensively informed of the charge and the evidence; the right to have adequate time and facilities to prepare a defence; the right to have a timely trial; the right to be present when being tried; the right to an advocate of one's choice; the right to remain silent; the right to adduce and challenge evidence; the right to be tried for an offence known in law; the right to the benefit of the least severe punishments and the right of appeal or review upon conviction. [6]

The principles of independence and impartiality are integral in describing the quality of administrative justice. Institute (2015) opines that the actualization of these principles require the doctrine of the separation of roles and functions of interested parties and freedom from impartiality and undue pressure. The proceedings must be free from bias and the objective perception of bias with public scrutiny, and media only excluded for reasons of morals, dignity, public order, security, the privacy of the parties, or when in the opinion of the tribunal, publicity would prejudice the interests of justice.

University institutions acting as corporate entities, are supposed to facilitate an environment where people who interact with it are empowered to protect their rights against infringement by other people or bodies operating within the institution. They should also allow parties to bring actions against the institutions to ensure regulation of their powers and accountable for their actions. If people are unable to interact with these institutions in a manner that protects their rights, respect for the rule of law will be enhanced (Ojwang, 2014).

The International Covenant of Civil and Political Rights mentions entitlement to fair and public hearing by a competent, independent and impartial tribunal established by law. The right to administrative justice is protected under article 6 of the European Convention on Human Rights; Article 8 of the American Convention on Human Rights; and Article 7 of the African Charter on Human and Peoples' Rights. United Kingdom's key administrative justice law, Tribunal Courts and Enforcement Act, describes administrative justice through a wider systemic index involving both the process, the procedures for making such decisions, the law under which the decisions are made and the systems for resolving disputes and airing grievances arising from the decisions. South Africa's Constitution codified administrative justice under its Bill of Rights[7]. Kenya's constitution[8] (Article 47) also recognises the

[6] As described by FJ Doebbler in 'Introduction to International Human Rights Law'

[7] https://www.sahistory.org.za/article/south-african-constitution-bill-rights

entitlement of every citizen to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Kenya's constitutional provisions under Articles 50 and 232 also relate to administrative justice. Article 232 describes the principles and values essential for public officers and which enable achievement of administrative justice. These include professional ethics, efficiency, prompt action, impartially, equitable provision of service, accountability for administrative acts, transparency and provision to the public of timely, accurate information. Article 50 of the Constitution provides for a fair and public hearing before a court or other independent and impartial tribunal. Both South Africa and Kenya have gone ahead to adopted subsidiary legislation that enables the constitutional provisions on administrative justice.

For South Africa, it is the Promotion of Administrative Justice Act which prescribes for efficient administration of justice by independent and impartial tribunals. South Africa's Higher Education Act provides for participatory democracy whereby university students are expected to participate in designing administrative justice rules and regulations and also participating in proceedings of tribunals that are formed through such rules. Kenya's Fair Administrative Action Act and The Commission on Administrative Justice Act are administered by the Commission on Administrative Justice (CAJ). Individuals, groups and institutions may report cases of breaches by public officers and institutions, including public universities. The Commission produces an annual report that documents its intervention on complaints brought against public officers and institutions. There have been several such complaints brought against university institutions by students.

2.3 Administrative Justice in Institutions of Higher Learning

Universities, as corporate entities, are employers and managers of the human resources and students in their fold. Within this corporate environment, the micro and macro-level structures and relationships through which the university develops and implements its rules and regulations, determines the administrative characteristics of individual universities. The administrative character of a university determines how stakeholders within the university relate to the institution (de Boer & File, 2009). Within this bureaucratic environment that many public universities naturally find themselves, the institutional arrangement for delivery of fair administrative action is a major challenge (Reddy, 2004). The management of administrative justice processes within the university ecosystem therefore provides a test on

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[8] http://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/213-47-fair-administrative-action

respective universities' respect for and promotion of the fundamental human rights. Administrators, faculty, staff, and students expect that reasonable and effective measures be in place to respond more efficiently to a campus administrative issues and to minimize risks that may arise.

(Perkins, 1993) (Perkins, 1993) argues that autonomy or self-government being key ingredients in the ideology of institutions of higher learning necessitates respective institutions be in control of their internal government and governance processes. This autonomy and self-governance endeavor have a relationship to the administrative justice regime within respective universities. (Kamvounias & Varnhaim, 2010) identified a trend that is moving away from a centralised system of management of tertiary education whereby the state has yielded more autonomy to institutions to enhance the responsiveness of the system.

Patty and Sally (2010) identified an increasing trend of Australian students resorting to courts and tribunals, aggrieved by the fairness of university decision-making. This is probably due to the country's additional administrative justice avenues available to students including recourse through parliamentary Ombudsman offices which act as external independent review structures for administrative decisions by public officers and have the authority to investigate and inquire into the actions of universities and annually report information about such complaints (Bradley, 1980). Several Australian universities have also established internal ombudsmen as administrative justice structure that independently reviews administrative justice decisions affecting students and staff (Christian, 2016). In the United States, a student found responsible for any crime is almost always expelled from the university and his record permanently tainted with the charge. This has the effect of limiting his future educational, employment, and housing opportunities.

Public universities in Africa have over time gone through various transformations which have had implications for the nature and quality of administrative justice to respective students. The early history of post-independence public universities in Africa is characterised by strong government controls and nationalism (Thierry M Luescher, 2016). (Mohamedbhai, 2008) writes about the era of expansion of University education in Africa (late 1980s and 1990s) where there was a change in the governance frameworks of universities characterised by the introduction of university charters and regulatory frameworks governing quality of higher education. (Mulinge & Arasa, 2017) have written on the place of public university students in Africa within this era of transformation and their leverage to influence administrative justice, governance and management decisions. Most of the administrative justice decisions affecting

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students in universities during this era were undertaken in a stereotypical and polarised environment where the student was labelled as an activist and anti-State. The academia including university students were perceived as threats to the political establishment and closely monitored and intimidated by the State (Tremblay, Lalancette, & Roseveare, 2012). A survey of university leaders in Africa indicated that state interference on institutional autonomy was high and that university leaders reported less government interference in countries that had adopted a more open governance system (multiparty system) than those that retained autocratic systems of governance (Sanyal & Johnstone, 2015).

Progressively, administrative justice systems have had a crucial part in limiting the role of student unions and movements and their imprint on national politics and on societal change. Jowi[9] identifies a transformation whereby student politics was based on philosophical and ideology issues to a situation whereby emergent societal issues are the main driving factors that shape the agenda of student organisations and student protests. An overview of trends in African higher education[10] identified state dominance in the constitution and operation of university structures. The constitution of respective university Senates and Councils and the appointment of chief officers was particularly identified. While, the leadership and nurturing role of government in the development of the higher education system is not in dispute, it has often acted directly against principles of good governance through inappropriate intervention in University internal affairs (Mongkhonvanit & Emery, 2013). This scenario automatically challenges the principles and practice of academic freedom and institutional autonomy in African Universities.

Varghese (2016) has, however, identified a post-millennial trend of governance reforms in Africa public universities that leans towards greater institutional autonomy and increased accountability and corporativism. In a majority of Africa's public universities, the head of state no longer personally serves as the chancellor. Though the appointment to the position remains at the discretion of the State, appointments have leaned towards merit (distinguished personalities and leaders of industry, societal and academy). Vice Chancellors are also increasingly recruited through competitive processes rather than through the direct appointment but the State, as was the norm previously. The legal regime governing university sector has also undergone fundamental change with the introduction of regulatory institutions that set and monitor academic and institutional standards, guide policy implementation and

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[9] Luescher. Thierry & Klemencic. Manja & Jowi, James. (2016). Student Politics in Africa: Representation and Activism.
[10] Governance of higher education, research and innovation in Ghana, Kenya and Uganda

ensure accountability. Respective University governing boards have also been empowered to preside over university affairs without the need to obtain higher ministerial approval. The law has also enabled greater financial management control for respective universities including in income generation, expenditure and budget control (Schofer & Meyer, 2005).

Mulinge and Arasa (2017) recommend the democratization of the organisational structures, composition, operational rules and procedures of universities in Kenya in order to achieve equity in power relationships within respective institutions. This, he argues will justify universities claim to being advocates of open societies. In the same vein, Kamonche (2010) prescribes criteria to be met by university's administrative justice tribunals in order to ensure fair administrative action: the tribunal must be competent and qualified to do its job; it must be fair and impartial; the tribunal must be acceptable; the tribunal must be suitable for doing the particular job entrusted to it; the tribunal is constituted with the traditions of the particular institution where it is established. Both the administrative justice process and the conduct of administrators must, conform to the prevailing laws.

2.4 Administrative Justice in Public Universities in Kenya

(Mulinge & Arasa, 2017) are of the opinion that Universities Act of 2012 introduced a new era of relatively wider representation and participation of staff and students in key university governing bodies. Long before the advent of the Universities Act 2012, both Sifuna[11] and Mwiria[12] wrote on state capture of the administrative structure of public universities in Africa and how this has seriously undermined public universities' autonomy and academic freedom. There has not been significant change in the structural and influence relationships between public universities and The State. All public universities consist of the Council of which majority of members are nominees of the Chancellor in some form or the other. The Chancellor is a political appointee and therefore beholden to the appointing authority (The State). This situation has the potential of swaying university affairs (including administrative justice processes) in the government's favour, with full protection of the law (Mwiria 1992).

The Council also consists of other key appointees who are representatives of Education and Finance State departments. The State has used this leverage to occasionally order university closures, discipline of students, determine terms and conditions of service for university staff. Students and academic staff have been victimized for exercising their freedom of association and expression, especially when criticizing university policies or powerful individuals within

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[11] Focused on governance in Kenyan public universities

[12] Focused on University Governance at a more regional level (Anglophone Africa)

the universities (Sifuna D. N., 2012). Sifuna (2012) argues that public university leadership in Kenya has not delivered on quality service and accountability and recommends increased democratisation and participatory decision-making within university structures and processes.

Public universities in Kenya have regulations that guide the process of administrative justice within the institution. These are done through prescribed tribunals, Councils and Committees that are tasked with various administrative, disciplinary responsibilities and mandates. All the public universities in Kenya are established by the University Act of 2012. The development of this Act is as a result of an amalgamation of various constitutive legislations for the then seven existing public universities in Kenya. The transitional arrangements for the commencement of the new law effectively retained identical administrative justice structures, processes and proceedings across all public universities.

The institutional administrative justice structure of Kenya's public universities consists of a University Council, which determines administrative justice rules and policy. Below the council is the senate, which is responsible for the various academic and administrative tribunals of the university. Under the Senate are University Colleges, faculty boards and departments which are responsible for academic and administrative affairs within their respective domains. These institutions operate within the regulations developed by the university to guide their operations, including administrative justice processes. The legal and governance regime for public universities in Kenya theoretically guarantees a level of autonomy in making decisions about fundamental policies and practices in several areas including on the number and location of campuses, enrolment size of students, academic performance quality standards, appointment of staff, internal organisational structure and budgeting (Sifuna D. , 1998). Practically, though, government overreach and influence in these mandates is a common feature of government-university relations.

Administrative justice within the University of Nairobi is executed through prescribed tribunals, constituted as Committees that are tasked with various administrative, disciplinary responsibilities and mandates. These include the Student/staff Disciplinary Committee, The Examination Irregularities Committee, respective College Disciplinary Committees and respective Halls Disciplinary Committees. The right to legal representation is however not allowed to students appearing in these tribunals. The tribunals have various powers which are either confirmed or otherwise, by the University Vice Chancellor. These powers include the power to recommend suspension or expulsion of a student. Where a student is aggrieved with

the decision of a tribunal, the Universities Act and Regulations allows for the right of appeal within the available structures (Oladejo, 2016).

Student disciplinary rules and regulations at the University of Nairobi are contained in several university information documents including the *University of Nairobi Information to New Students*, the *Joining Instructions Manual of respective Academic Years*, The *Declaration* Form *JI/13B* (That students sign to signify that that have read and understood the content and meaning of the rules and regulations governing their conduct) and *the Manual of Rules and Regulations Governing the Organization, Conduct and Discipline of Students*. Upon receiving a letter of invitation to join the university (and as a condition for joining), all students are required to sign a declaration, that they have read and understood the rules and regulations and undertaken to abide by them. The Rules specifically are structured to govern the general, academic and residential conduct of the students.

Writing on the balance of administrative justice obligations between the university institution and the student, Mupangavanhu and Y (2011) argues on whether there is contractual relationship that comes into force when students pay fees and registers and students therefore agree to be bound by university rules and regulations.

All student disciplinary offenses at the university are, in the first instance, reported and dealt with by either College Disciplinary Committee or the Halls Disciplinary Committee. In matters related to examination offences, student representation is excluded. This is significant because (Kamvounias & Varnhaim, 2010) have identified a jurisprudence whereby courts are reluctant to intervene on adjudicating upon examination and academic judgment related cases brought about by students. They usually opt to defer these cases by to the authority of the university academia. The Hall Disciplinary Committee is constituted by the Halls Warden and consists of the Dean of Students, the Director of the Student Welfare Authority, a representative of the Faculty of the Student concerned, the Head Custodian of the Hall, the Student Hall Chairperson and the Hall Administrator as the Committee Secretary.

The College Disciplinary Committee is constituted by the College Principal and consists of the Dean/Director and the Chairperson of respective school/department (where appropriate) of the affected student , a representative of the College Student's Organization, a representative of the Student's Hall of residence and the College Registrar acting as the Secretary of the Committee. The Committees have powers to recommend administrative and disciplinary decisions including expulsion and suspension of a student.

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After the Disciplinary proceedings, the penalties proposed by either College or Halls Disciplinary Committee are placed before the Senate for approval before communication to the Student while appeals against the said decisions go to the Senate Students Disciplinary Committee which is convened by a Deputy Vice Chancellor, and consists of representatives from the student union, the college in which the affected student is studying, Registrar of Student Affairs, Student Welfare Authority, the Dean of Students and the Warden. At the Senate Student Disciplinary Committee level, all persons who have previously participated in the administrative justice process are theoretically excluded from making an administrative decision at an appellate stage. The practice is however different and this has been a specific prayer of aggrieved students who opt to challenge administrative decisions in courts of law.

2.5 Critique of Existing Literature and Research Gaps

A lot of research has been done on University governance and institutional framework and how it conforms to various influences by dominant stakeholders. These include works by Mulinge and Arasa (2017), Sifuna 1998, 2013) and Mwiria (1998). These studies have identified structural, processes and stakeholder characteristics of institutions of higher learning without examining the underlying influences of these characteristics.

On internal institutional structures for dispensing fair administrative action, the studies available do not clearly indicate how internal institutional structures hinder the process of delivering fair-administrative-action (examples include; Mulinge and Arasa, 2017; Mupangavanhu and Mupangavanhu, 2011; Patty and Sally, 2010). Other studies have mostly focused on how the political system and the interference by the government. For example, Bosire and Ngware (2008); Oladejo (2016); Sifuna, (2012) and Varghese (2016) found that universities operating in a more open society were prone to less State interference and manipulation in their internal affairs than those operating in autocratic systems. These studies did not show how political/external influence affects delivery of fair administrative justice within the university sector. Literature reviewed also indicates that much research has been carried out on government strategies towards university education. These include World Bank, (2004); Varghese, (2006) and Sifuna, (2013). However, these studies do not indicate the relationship between those strategies and administrative justice regime within respective universities.

Kamvounias and Varnhaim, (2010) and Mupangavanhu and Mupangavanhu, (2011) touch on university student knowledge and awareness on delivery of fair administrative but do not state how knowledge can affect administrative justice within the universities. Moreover, these

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studies are focused on Australia and South Africa, respectively. The review did not find studies done in Kenya that focus on student knowledge, awareness and perceptions.

Bosire and Ngware (2008); Kamvounias and Varnhaim (2010 and Mupamgavanhu and Mupangavanhu (2011) focus on the relationship between institutional framework and administrative justice at the university, but only focus on the experience of student leaders. They also do not and do not show the institutional framework variables which can then individually be related to administrative justice to students in public universities.

2.6   Theories

This section describes the theory upon which this study is based. This research will be underpinned on Institutional Isomorphism Theory as presented below:

2.6.1   Institutional Isomorphism Theory

This study is posited Paul J. DiMaggio and Walter W. Powell 's institutional model of isomorphic change that describes institutions operating in a similar sector as social structures composed of elements that, by definition, connote stability and identity of the institution (DiMaggio & Powell, 1983). These elements (including rules, regulations, beliefs and norms) conform towards certain homogeneity overtime, often influenced by key stakeholders within the sector. DiMaggio and Powell identified the state and professionals as dominant stakeholders in influencing similarities and expectations in public institutions. The rules, regulations, beliefs and norms become established and appear legitimate to their broader constituencies and stakeholders who therefore have to conform, or be seen to conform. This conformity towards homogeneity imposes constrains on stakeholders who interact with the institution by defining what is acceptable and unacceptable. In the case of public universities in Kenya, public universities face strong institutional pressures and operate in highly structured organisational formation characterised by a myriad of influence and leverage interplay between Professionals (university administrators) and the state. This phenomenon can influence the full expression of dignity, rights and freedoms within the institution.

Because public universities in Kenya operate under similar regulatory and institutional arrangement influenced by state and professionals, it is easy to predict their institutional mannerism by studying the manner in which one of them engages with its stakeholders. This theoretical model is able to provide an understanding of the dynamics under which universities to conform and converge on certain administrative justice practices, structures and policies.

2.6.2 Conceptual Framework

Figure 2.1 is the study conceptual framework. It highlights how the study aims at contributing towards enhanced delivery of fair administrative action to students at the University of Nairobi. It shows the relations between variables and factors that influence the delivery of administrative justice to students in Kenya's public universities. These factors are derived from institutional arrangements and include internal institutional structures for dispensing fair administrative action, policies for delivery of administrative justice and knowledge of public university students to the internal institutional arrangements in the public universities.

Figure 2.1: A conceptual Model for enhancing institutional arrangements for dispensing fair administrative action to students at the University of Nairobi (Source: Author, 2018)
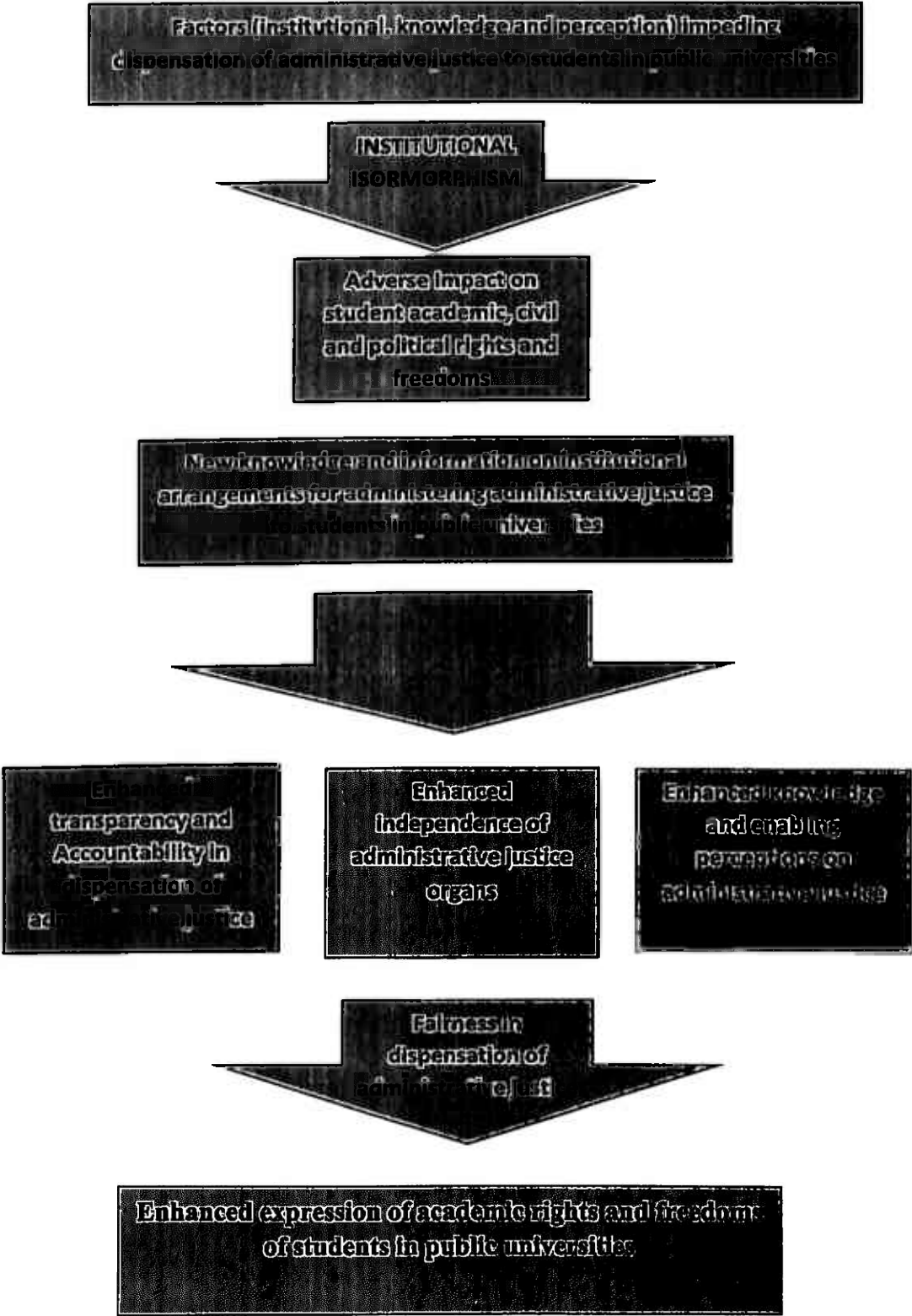
CHAPTER THREE
RESEARCH METHODOLOGY

3.1 Introduction

This chapter presents the methodology for the study. It describes the study site and design, study population, sampling, data collection procedure and instruments, validity and reliability.

3.2 Research Site

This study was conducted at the University of Nairobi. Specifically, it focused on the University of Nairobi's Main Campus. University of Nairobi's Main Campus is located at Nairobi's central business district at it hosts the College of Humanities and Social Sciences and College of Architecture and Engineering.

Latitude: -1° 16' 46.80" S

Longitude: 36° 48' 59.39" E

Map showing the Study Site Source; Google Maps

3.3 Research Design

This was a case study and adopted an exploratory research design aimed at gaining insights into administrative justice situation pertaining to students at the University of Nairobi.

The study used desktop analysis, questionnaires and interviews with key targeted individuals. Descriptive approach was used to integrate the components of the study for coherence and logic. Secondary qualitative and quantitative data was collected and triangulated with the primary survey data for the purpose of validating the result.

3.4 Study Population

The target population comprised of all the students at the University of Nairobi. The unit of analysis was an individual student.

3.5 Data Collection Methods

Primary data was obtained using the survey questionnaires and key informant interview guide and Focus Group Discussion Guide tools. The survey questionnaire was administered to individual students as the main source of primary data. The questionnaire was semi-structured to capture both quantitative and qualitative data. A Key Informant Interview Guide was developed to guide the interviews with identified key informants. Individual representatives from the following offices that perform administrative justice mandates of the university were targeted for purposes of participating in key informant interviews;

1. The Vice Chancellor's Office
2. The Deputy Vice Chancellor, Student Affairs
3. Various Faculty Deans
4. Dean of Students
5. Student Welfare Authority
6. Student's Union

The Focus Group Discussion Guide was targeted at guiding the FGDs that which were held with the students. The study adopted a mixed survey research methodology composed of both qualitative and quantitative research methods. Numerical and non-numerical data was analysed using statistical tools that allowed the measurement of variables, relationships and patterns between them. Data was presented using graphs and tables and descriptive analysis.

Structured questionnaires were used to obtain information from targeted participants. The questionnaires were structured to enable participants not only to respond in confidence but also as honestly as possible to avoid the researcher drawing false conclusions from the study. The questionnaire was structured to incorporate multiple choice questions, attitude scales, closed questions and open-ended questions. The questionnaires was administered in person.

Key informant interviews were also carried out through a semi-structured approach (through a Key Informant Interview Guide) that only enabled the interviewee to speak relatively freely, but also allow the researcher to ensure that certain issues were covered.

3.6 Sample Size Determination

Random sampling was used to select respondents. Each respondent had an equal and known chance of being selected to the study. The study sample size was determined based on the following statistical formulae by Fisher et al (1998):

$$4 \quad n = \frac{z^2 p q D}{d^2}$$

Where: n = the desired sample size (if the target population is greater than 10,000); Z = the standard normal deviation, (i.e. 1.96) which corresponds to the 95% confidence interval; P = the proportion of the target population estimated to have a particular characteristic (p=estimated area of operation. 0.5 is a good value to use in a normal livelihood settlement; Q=1-P =0.5; D=the design effect (i.e. 1.0 was used); and d=the degree of accuracy, which is 0.05.

Therefore:

$$5 \quad n = \frac{z^2 p d D}{d^2} = \frac{(1.96^2 * 0.5 * 0.5) * 1.0}{0.05^2} = 384 \text{ respondents}$$

In order to have a provision for non-response, a representative sample size of 400 respondents was used.

The study sampled a total of 276 respondents in the four clusters students of main campus of the University of Nairobi. However, the targeted number was 400, giving a response rate of 69%.

3.7 Pilot Study

Before the main research, the study pre-tested the questionnaire to gauge its usefulness and enhance its validity and reliability. A small sample of 37 respondents was chosen from the population to contribute to the pilot study. This population was not included in the sample chosen for the main study. Appropriate changes, informed by the pilot study, were made to correct the instruments before the actual research.

3.8 Data Analysis

The data collected was coded, quantified and analysed quantitatively. Quantitative data was analysed by the computation of various descriptive statistics and inferential statistics where appropriate. The data was presented in tables, graphs and pie charts. This provided for an easier interpretation of the data inputted. Qualitative data was analysed thematically and presented in anecdotal quotes.

3.9 Ethical Considerations

Before undertaking the field study, permission was sought from both The University of Nairobi and the National Commission for Science Technology and Innovation, the state department that regulates research activities. Before the onset of any interview with target respondents, the researcher undertook to explain the research purpose and mission to respective target respondents before seeking their consent and permission to participate. Assurance on confidentiality of responses and identity was also given to each respondent who participated in the study.

CHAPTER FOUR

PRESENTATION AND DISCUSSION OF FINDINGS

4.1 Introduction

The research findings presented in this chapter are based on inclusive analysis, as well as analysis per variable and comparisons among and between them the information and data received through the data collection instruments and meetings and observations. The demographic attributes of the respondents to the study are presented after which the other findings are presented according to the study objectives.

4.2 Demographic Information

The study targeted 384 respondents of which 276 respondents were obtained from University of Nairobi student fraternity. The response rate was 72%. As illustrated in the table below, male respondents were slightly higher (59%) than female (41%). Majority of the respondents were below the age of 25 years and undertaking their undergraduate studies. As Table 4-1 indicates there were 163 male students representing 59% of the sample while there were 113 female students, representing 41% of those sampled. In regard to age, those below 25 were 251 (90%) while those between 26 and 35 years were 21 (8%) and those aged 36-45 years were 4 (2%). The students were also distributed along the level of study in which case those undertaking Diploma or Certificate were 12 (4%) while those undertaking their first degree accounted for 239 (87%) and post-graduates were 25 (9%)

Table 4-1: Student distribution according to demographic information of the respondents.

	Variables	Frequency	Percentage
Gender	Male	163	59%
	Female	113	41%
Age	Below 25 years	251	90%
	26-35 years	21	8%
	36-45 years	4	2%
Level of study	Certificate/Diploma	12	4%
	Undergraduate	239	87%
	Postgraduate	25	9%

The Graph below presents of the undergraduate respondents indicating their particular year of study. Majority of respondents who participated in the study are in their 2nd and third years of study at the university.

Level of study

Sixth year ☐ 1%

Fifth year ☐ 2%

Fourth year ☐ 2%

Third year ☐ 35%

Second year ☐ 56%

First year ☐ 4%

0%   10%   20%   30%   40%   50%   60%
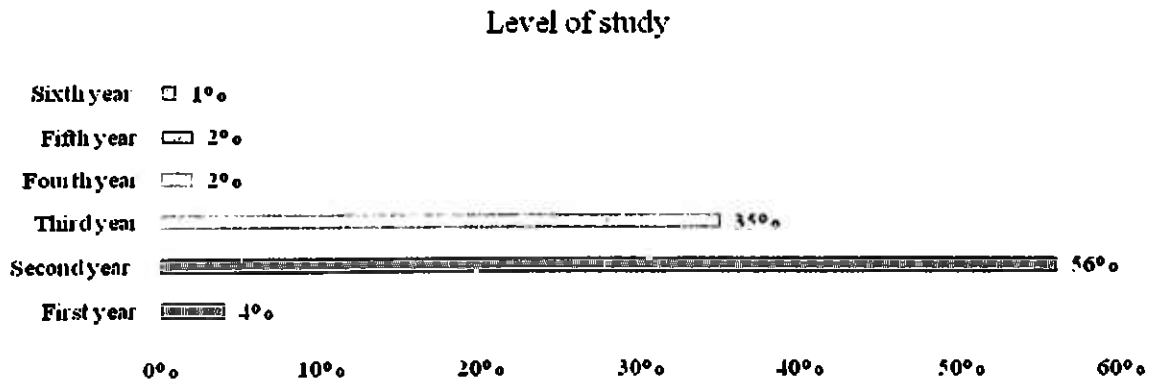
Figure 4-1: Student distribution according to year of study at the university

As depicted by both Table 4-1 and Figure 4-1 above, the study established that undergraduate students are more willing to participate in the study and discuss university administrative justice structures and processes than post graduate students. Mid-level undergraduate students (2nd and 3rd years) were also participated more in the study than 1st years and final year students. This finding confirmed a key informant apparent advice as quoted below;

'You will not get any information from 1st years. They still do not know anything, they are still experimenting with the system....they become tough headed as the years go by......'

The above quote also seems to contradict findings from the key informant which portrayed the university as an open and accommodating intellectual and social environment where students are empowered to engage in all manner of discussions. This finding is indicative of an environment of cautious engagement and is in itself a reflection of the intra-institutional norms[13], that are a result of the effect of the influence of the interactions and interplay between the state and professionals (administrators) in the university environment and thereby contribute to coercive institutional isomorphism.

(Soiferman, 2017) undertook a study which identified that 1st year university student's challenges in engaging with university structures and processes were perceptive, social and technical. Most of these issues were caused by institutional inadequacies in providing a conducive orientation and adaptation environment for the students. (Nair & Mertova, 2008) suggest that students were more likely to participate in campus-based surveys if they felt that their feedback would potentially add value.

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[13] identified as elements by DeMaggio and Powell

4.3 Student Knowledge and Awareness on university Administrative Justice Structures

The table below illustrates student knowledge and awareness on administrative justice related information documents of the university

Table 4-2: Student knowledge and awareness on administrative justice information documents

Documents	Frequency		Percentage response
	Yes	No	
University Information Handbook	263	11	71%
University Joining Instructions Manual	270	2	70%
Form J1/13A	233	42	71%
Declaration FORM J1/13B	238	37	71%
University Examination Rules, Processes and Procedures	241	31	70%
University Rules and Regulations Governing Students Elections	219	52	70%

As illustrated in table 4-2 above, majority of respondents indicated knowledge and awareness of university documents espousing institutional structures and processes for administrative justice. Respondents indicated highest familiarity with 'Joining Instructions' document. 'The rules and regulations governing student elections' is the document that most respondents were least familiar with.

The FGD established that all students ideally receive and are aware of the several university information documents that are distributed to new students and which espouse the universities applicable disciplinary and student conduct requirements. Discussions at the FGD, however, found that it is the norm for students to sign the declaration without actually reading or understanding the implication of their signature. This finding relates to and corroborates another finding of the low level of knowledge and awareness about university administrative justice structures and processes. This is one of the norms (as prescribed in the Institutional Isomorphism Theory) which has become established and appears legitimate to both the students and the administration who therefore have to conform, or be seen to conform.

The University of Nairobi Rules and Regulations Governing Students Elections, 2017 is the document that most respondents were least familiar with. This is significant because it relates to the integrity of student elections which was one of the identified sources of breaches that lead to administrative justice processes for students at the university. Discussions at the FGD

established that a significant number of disciplinary cases that led to expulsion of students relate to student-election related breaches.

The study established that the rules and regulations governing student conduct and discipline document is undergoing a review process facilitated by a select Senate subcommittee, a factor that is unknown to the student fraternity who will be subjected to the policy document. This is indicative of what the Theory of Institutional Isomorphism would describe as a conspiracy by the professionals (university administrators) to maintain a certain institutional status quo (described by Demmagio and Powell as stability and identity) by ensuring that internal processes and procedures conform to certain expectations and similarities. (Mulinge & Arasa, 2017) identified a trending phenomenon of low student involvement in university governance matters and suggested enhanced student involvement as a key ingredient in validation and acceptance of university programmes.

4.3.1 Student knowledge and awareness on internal administrative justice structures

The table below illustrates findings on student knowledge and awareness on university internal administrative justice structures.

Table 4-3: Student knowledge and awareness on internal administrative justice structures

Structure	Yes	No	Percentage of response
1. College Disciplinary Committee	112	141	66%
2. The Senate Student Disciplinary Committee	260	13	71%
3. The Senate Examination Irregularity Committee	164	107	70%
4. Halls Disciplinary Committee	156	115	70%

As illustrated in the table 4-3 above, the least familiar internal administrative justice structure is are the College Disciplinary Committee and the Halls Disciplinary Committee. The most familiar internal structure is the Senate-based disciplinary Committees (Student Disciplinary Committee and the University Examination Irregularity Committee). This finding was not corroborated by the FGD where the student leaders were knowledgeable and awareness of all the structures. This finding is, however, significant because it indicates ignorance (by regular students) of the hierarchy of administrative justice processes through the established structures at the university. It also indicates a gap of knowledge and awareness on these structures among student leaders and regular students at the university.

The constitution of these committees have remained relatively unchanged even with the legislative amalgamation what was experienced in the higher education sector with the coming into force of the Universities Act 2012. This phenomenon confirms DiMaggio & Powell (1983)'s argument that while organisations change towards homogeinity, their bureaucratic tendencies remains relatively unchanged and connote their common organizational form.

4.3.2 Cross-tabulation by gender, on student knowledge and awareness on internal administrative justice structures

The graph and table below are a representation of the findings of student knowledge and awareness of university internal administrative justice structures cross-tabulated by gender

Figure 4-2: Student knowledge and awareness of university internal administrative justice structures Cross-tabulated by Gender

Knowledge and awareness of University internal structures (YES)
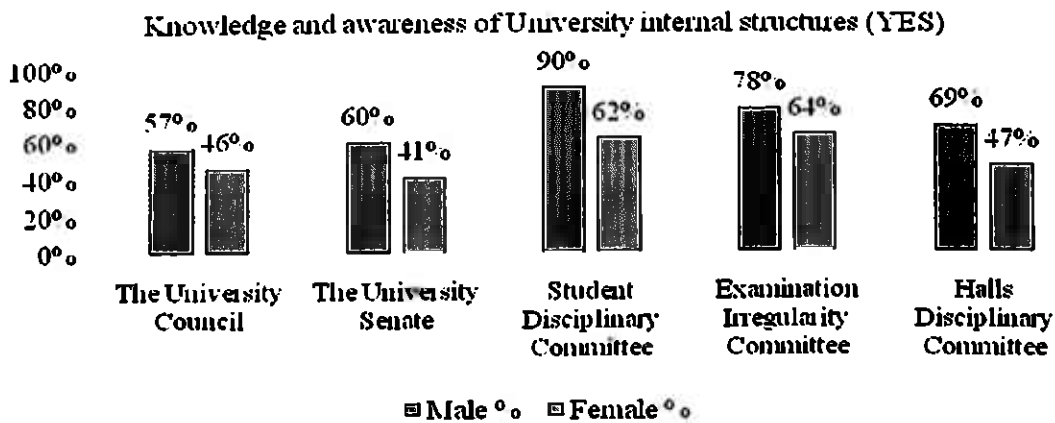
Table 4-4: Analysis of on gender verses knowledge and awareness of students on university internal administrative justice structures

		Yes	No	
Gender	Male	57.9%	42.1%	100.0%
	Female	38.9%	61.1%	100.0%
Total		50.2%	49.8%	100.0%

As presented in figure 4-2 and Table 4-4 above, the study established gender inequity in respondent knowledge and awareness and interactions with university administrative justice structures and processes. The highest level of gender disparity in knowledge and awareness of university internal structures for dispensing administrative justice is attributed to the University Halls Disciplinary Committee and The Student Disciplinary Committee where

most respondents were male. Female students are least aware of the Halls Disciplinary Committee. This finding tallies with (Hossain, 2015) who identified gender-disparity in student participation in university governance.

4.3.3 Cross tabulation, by gender, of respondents who did NOT indicate knowledge and awareness on university internal administrative justice structures

The graph below is a representation of the findings of students who don't know the university internal administrative justice structures, cross-tabulated by gender.

Figure 4-3: analysis of by gender, against indication of no knowledge and awareness of university internal administrative justice structures

Knowledge and awareness of University internal structures (No)
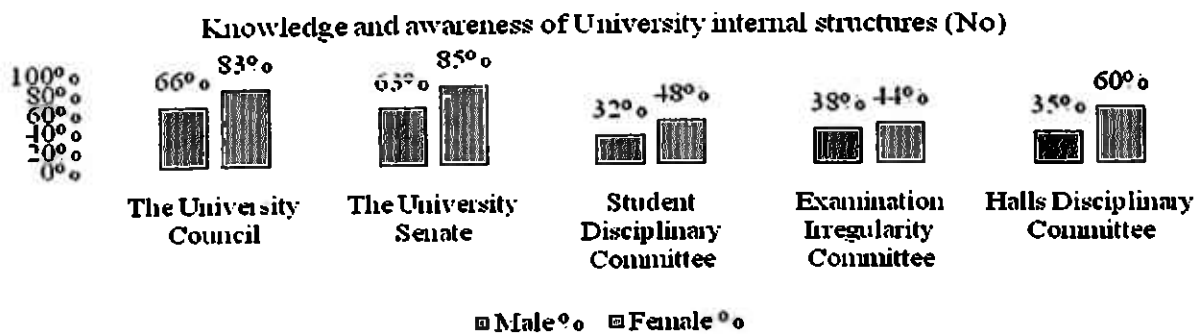
As represented in the graph figure 4-3 above, the highest level of gender disparity of respondents concerning knowledge and awareness of university internal structures for dispensing administrative justice is attributed to the University Halls Disciplinary Committee and The University Council and The University Senate Committees where the greater majority of respondents who indicated no knowledge were female.

The study established that students are more familiar with the higher-ranking Senate-based Disciplinary Committees (Student Disciplinary Committee and the Examination Irregularity Committee), despite being apex appellate administrative justice structures. Student are least familiar with the College Disciplinary Committee and the Halls Disciplinary Committee despite them being originating structures that deal with student administrative justice. This is significant because the College and Hall based committees are the originating tribunals for administrative justice to students at the university. This finding is an indicator of the low level of awareness of the hierarchy of administrative justice structures at the university. The study also established that there exists a significant gender disparity in the knowledge of university administrative justice structures with the greatest majority of respondents who indicated knowledge and awareness are male. The study however established that female student

awareness on examination related structures for administrative justice rank higher than their awareness on non-examination related structures.

4.3.4 Cross tabulation, by year of study of respondent's knowledge and awareness on university internal administrative justice structures

The table below is a cross-tabulation representation of the study finding pertaining to the relationship between student knowledge and awareness on university internal structures and their year of study at the university

Table 4-5: Cross tabulation of Year of study verses knowledge and awareness of students on university internal structures

		Yes	No	Total
Year of study	First year	62.5%	37.5%	100.0%
	Second year	50.9%	49.1%	100.0%
	Third year	48.6%	51.4%	100.0%
	Fourth year	50.0%	50.0%	100.0%
	Fifth year	100.0%		100.0%
	Sixth year	100.0%		100.0%
Total		52.0%	48.0%	100.0%

The findings show that knowledge and awareness is least among 1st year students who participated in the study. This finding contradicts the sentiments of a key informant who envisaged that all students would ideally exhibit comprehensive knowledge and awareness on administrative structures and processes.

'We provide comprehensive orientation, on university structures and processes, to joining students ....so all students ought to be knowledgeable and aware given that they all went through the orientation and we expect them to be confident and knowledgeable to participate in university processes and structures' Quote by an administrator who participated as a key informant

The quoted response from a university administrator is symptomatic of the prevailing attitudes and confirm DeMaggio and Powell's Theory that describe the transformation towards norms that connote and conform to certain institutional identity and stability. These norms conform the professional's conditions and methods of work, to control.

4.4 Student Interaction with University Administrative Justice Structures

The table below represents findings on student interaction with university administrative justice structures.

Table 4-6: Student interaction with University administrative justice Structures.

Variables	Total	Male	Female
Respondents who have interacted with University Institutional Structures for dispensing Administrative Justice	33	27	6
Respondents who have Never Interacted with University Institutional Structures for dispensing Administrative Justice	243	136	107
Total	276	163	113

As illustrated in the table 4-6 above, most respondents (88%) have never interacted with the university's internal structures for dispensing fair administrative justice. Of the 12% respondents who indicated having interacted with the administrative justice structures, females constitute only 2%.

The study established that there is low level of student interaction with the university's internal administrative justice structures with a corresponding low level of satisfaction for those who have interacted with the structures. This is related to a finding of the study that students in the university are not empowered to interact with the institutional structures and processes for administrative justice. Perhaps this can be attributed to three other findings of the study whereby most respondents perceive that the university does not have the right structures and processes to administer fair administrative justice to its students and those university administrators are perceived to lack adequate knowledge on the administration of justice to students at the institution.

4.4.1 Student experience interacting with university administrative justice structures and processes

The findings indicate that students' experiences when dealing with university administrative structures vary. As Table 4-7 shows, most of those who have encountered the structures are dissatisfied with the structures and processes.

Table 4-7: Student experience interacting with university administrative justice structures and processes

Experience	Structure of administrative justice	Process of administrative justice
Satisfied	6	7
Do not know	9	8
Not satisfied	18	17

As illustrated in the table below, majority (54%) of respondents who have interacted with the University's administrative structures and processes indicated that they are not satisfied with these structures and processes to dispense administrative justice. This finding was confirmed at the FGD where participants generally indicated their lack of trust on the university administration in general. A quote from a KII participant who is a university administrator demonstrates the perception attached to this finding;

> *'The relationship between university students and the administration has historically always been that of distrust...they do not understand that we act in their best interest':* Quote by a University administrator who participated in the study as a KII

These findings conform with the Theory of Institutional Isomorphism that describes institutional norms, rules and regulations dictated by dominant stakeholders within the institution and which are targeted towards control of other stakeholders.

Mulinge & Arasa (2017) revealed that Kenyan universities have only in principle embraced inclusivity in their governance structures, not in practice. Students interaction with university governance structures and processes is inadequate and undermined trust and confidence issues and interference by university authorities and external actors.

Contrary to the prevailing perspective in earlier research, our study suggests that virtually every type of interaction between faculty and students can have positive effects. While our findings confirm the value of functional interaction, they also indicate that incidental contacts, personal interactions, and mentoring can be meaningful to students

4.4.2 Student perception on university administrative justice structures and processes

The chart below is a representation of the findings on student perception towards university administrative justice structures and processes.

Figure 4-4: Student perception on university administrative justice structures and processes.

- Respondents who Agree %   ◦ Respondents who don't know %
- Respondents who Disagree %
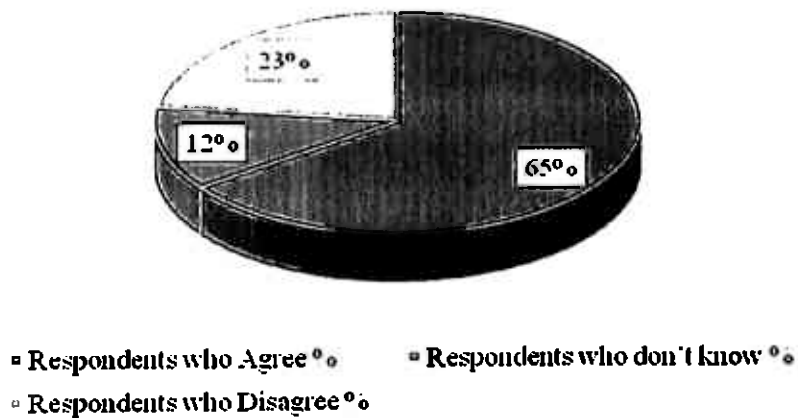
As presented in figure 4-4 above, most respondents perceive that the university does not have the right structures and processes to administer fair administrative justice to its students. A vast majority of the respondents, who agree, are male. A vast majority of respondents who indicated that they do not know are females. The FGD established that where respondents have negative perceptions of administrative justice structures and processes, these do not match their expectations of what the university should provide to support and enable their participation and enjoyment of these processes and structures.

The FGD also identified denial of the right to legal representation as one of the limitations that contributes to their negative perception of the administrative justice processes of the university. These findings align to the ideology prescribed by the Theory especially because they are indicative of the prevailing norms and beliefs that has been brought about by institutional transformation to conform to certain expectations and similarities as dictated by both the administrators and the state who influence and leverage upon student life and involvement in university governance.

While Kenya's Universities Act 2012 and respective university rules and regulations do not provide for legal representation, Mupangavanhu (2011) have noted that South Africa's administrative law system, implicitly recognises a student's right to legal representation in University administrative proceedings. (Hossain, 2015)'s study also found biases linked to perception on assumptions about universities, student life and student involvement in university governance.

4.4.3 Student perception on fellow student knowledge and awareness on administrative justice at the university

Below is a presentations Figure 4-5 and Table 4-8 are findings pertaining to student perception on fellow student's administrative justice knowledge and awareness

Figure 4-5: Student perception on fellow student administrative justice knowledge and awareness

☐ Respondents who Agree % ☐ Respondents who don't know %
☐ Respondents who Disagree %
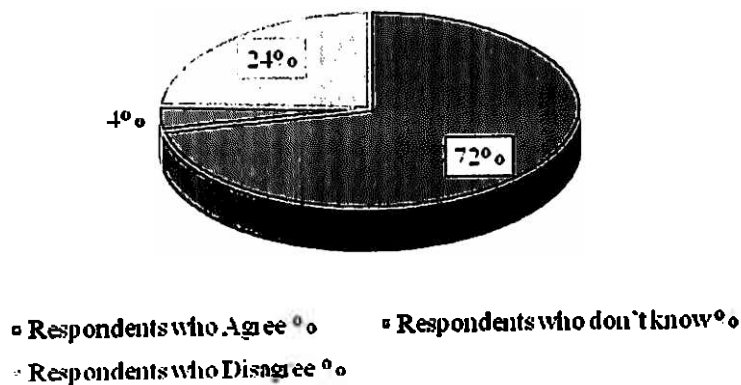
Table 4-8: Crosstabulation, by gender, of student perception on fellow student administrative justice knowledge and awareness

	Number of Respondents	Respondents who Agree %	Respondents who don't know %	Respondents who Disagree %
Male Respondents	136	55	25	52
Female Respondents	131	45	75	48

As presented above, majority of respondents perceive that students in the universities lack adequate knowledge and awareness on administrative justice structures and activities at the university. There is a near equal gender distribution of respondents who agree and those who disagree. Most respondents, who indicated that they do not know, are female. Confirming a general finding of the study on the low level of knowledge, awareness and interest by female students on matters pertaining to university structures and processes. The study also established that majority of respondents perceive that students in the universities lack adequate knowledge and awareness on administrative justice structures and activities at the university.

This finding was confirmed at the FGD where discussants generally expressed concern at the level of student knowledge and awareness on human rights issues in general. A KII respondent confirmed this finding, even suggested that human rights should be taught as a core-unit at the university. This, however contradicts the dictates of the theory on Institutional Isomorphism whose attributes would disqualify students as being perceived as dominant stakeholders in a university. DeMaggio and Powell identified the state and professionals as the usual dominant stakeholders within public institutions. The significance of student influence and leverage in the interplay between Professionals and the state is probably what Akomolafe and Ibijola (2014) envisioned when recommending for enhanced student participation in governance structures. Akomolafe and Ibijola found that the perceived level of students' participation has a relationship with university governance effectiveness.

4.4.4 Student perception that fellow student do not have adequate capacity to interact with university administrative justice structures and processes

Figure 4-6: Student perception that fellow students do not have adequate capacity interact with University administrative justice structures and processes
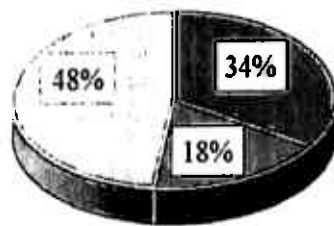
□ Respondents who Agree %   □ Respondents who don't know %
┘ Respondents who Disagree %

As presented in table 4-6 above, majority of respondents perceive that students in the university are not empowered to interact with the institutional structures and processes for administrative justice. This was confirmed by the FGD which where discussants generally indicated that they do not remember anything from orientation process. Discussants at the FGD also generally agreed to the suggestion that these structures and processes should by elaborately presented at the student orientation, including through illustrated form. A discussant made the below quote in emphasis;

> 'these guys (administrators) usually just don't get it, If they present these administrative justice things in the form of a video or even a cartoon, that can be

shared on WhatsApp.... we will definitely remember': A quote by a student discussant at the FGD.

These findings could be resultant of the scenario painted by DeMaggio and Powell's Theory, of an institution's conformity to the expectations and similarities prescribed by the interplay between administrators and the state for whom the empowerment of another stakeholder would disrupt the modus operandi.

(Ground, Analytics, & Peace, 2014) found that students perceive fellow students as inadequately empowered to interact in university governance systems. The survey also found that student attitudes toward student leaders were mostly negative. This is significant with a dinding of this study that relates to a perception of a wide the interest-disconnect between student leaders and mainstream students on matters pertaining to administrative justice at the university. Discussants at the FGD felt that their interests are usually not reflected or advanced by student leaders who are supposed to be their representatives at the various administrative justive structures and processes.

4.4.5 Crosstabulation, by gender, of student perception on capacity of fellow students to interact with University Administrative justice structures and processes

The table below is a representation of the findings pertaining to student perception of fellow students' capacity to interact with the administrative justice structures and processes, cross-tabulated by gender.

Table 4-7: Crosstabulation, by gender, of student perception on capacity of fellow students to interact with university administrative justice structures and processes.

	Number of Respondents	Respondents who Agree %	Respondents who don't know %	Respondents who Disagree %
Male Respondents	135	61	25	52
Female Respondents	131	39	75	48

As illustrated in the table 4-9 above, majority of those who agree and those who disagree are male respondents. Most respondents who indicated that they do not know, are female. Majority of respondents who indicated no knowledge or interaction with university administrative justice are female. This confirms the discussions at the FGD in which discussants agreed that female students are particularly inadequately capacitated and able to interact with the university in a manner that protects their rights, this will be a barrier to

justice and reinforces exclusion. The FGD also agreed that the university has not facilitate a gender-friendly environment where students who interact with it are enabled to protect their rights against infringement by other people or the institution itself.

The findings of the situation of gender dynamics in administrative justice confirms the norms and beliefs identified in the Institutional Isomorphism theory as being prevalent. They however do not connote any expectation on the part of the the the dominant stakeholder because response from a KII who is a university administrator, however, contradicts this finding. He stated that the university's students are equally oriented and therefore, have equal capacity to interact with university structures and processes. The quote below, by the KII emphasises his position:

> '..Don't you see that the UNSA leader is a lady....doesn't this show the capacity and confidence of our female students to interact with our established structures and processes?'

Both Teoha et all (2012) and Jillian (2007)'s studies, however, found that female students are more active than male students, but on academic activities in campus.

4.4.6 Student perception on fairness of university administrative justice structures and processes

Below presentations in Figure 4-7 and Table 4-10 are findings pertaining to student perception on fairness of university administrative justice structures and processes.

Figure 4-7: Student perception on fairness of university administrative justice structures and processes
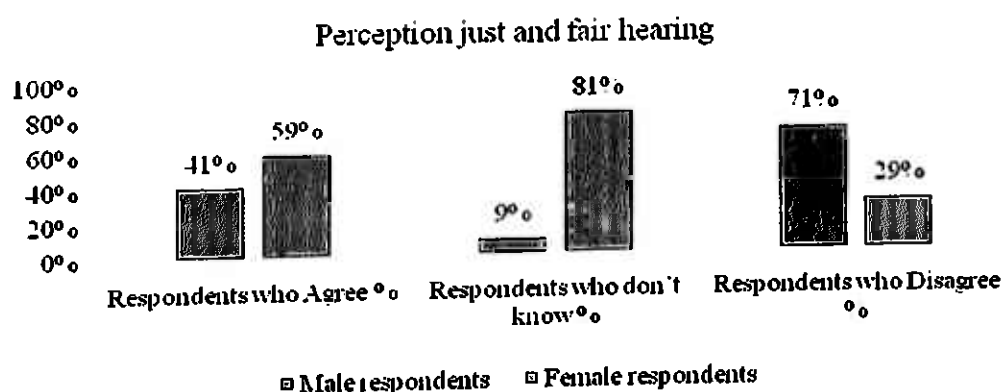
As the findings in Figure 4-9 indicate, male students generally view the administrative structures as unjust and unfair, while most the female respondents do not know whether the structures are just or unjust. Discussions at the FGD attributed the low confidence of male

students in the fairness of the administrative justice processes to their affinity to be victims of these structures and processes. Female students have low contact with structures and processes beyond core academic. The discussions attributed this to cultural and societal dynamics and perceptions around girlchild engagement in governance issues. The quote below from the FGD emphasises;

'........Ladies in campus usually just focus on passing the exams.......even when a lecturer does not come to teach, it is male students who gather the courage to confront the lecturer or the administration.... we are the ones who focus on the circumstances under which we can pass the exams....' Source: FGD Participant

This finding was confirmed by a KII who is an administrator who indicated that it is male students who are usually proactive in confronting faculty and administration about quality standards at the university.

(Ground, Analytics, & Peace, 2014) found that there is a gender perspective to student perceptions on governance structures and processes at the university. Though their study was limited to assessing student leader participation within the governance structures and processes.

This finding aligns with the Theory of Institutional Isomorphism that predicates the stability, identity, expectations and similarities within universities to certain norms and beliefs.

Table 4-10: Crosstabulation, by gender, of student perception of fairness of university administrative justice structures and processes

	Respondents who Agree %	Respondents who don't know %	Respondents who Disagree %	Total Number of Respondents
Male Respondents	41	9	71	135
Female Respondents	59	81	29	131

As presented in figure 4-9 and Table 4-10 above, majority of respondents perceive that a student against whom there is a complaint, is not given a just and fair hearing through the university administrative justice structures and processes. The study also established that students have low trust on the ability of university administrative justice structures and processes to deliver a just and fair hearing and outcome to students. As illustrated in figure 4-10 above, majority of those who disagree are male respondents. Most respondents who indicated that they do not know, are female. The study established that male students have lower perception of the administrative justice processes that female students.

This is further buttressed by the finding that student perceive that external interferences influence delivery of administrative justice to students at the university. Respondents also perceive that the right to a fair trial and a fair hearing is concerned with procedural fairness, rather than with the substantive decisions of the tribunal.

This perception was reinforced the FGD where students generally indicated that they do not know of any student who has gone through the administrative justice processes without a verdict of sanction from the university. A KII respondent who is an administrator, however, contradicts this finding. He was able to enumerate several instances where university administrative justice processes have returned a innocent verdict.

The FGD in confirming this finding attributed it to the higher likelihood of male students falling foul of the university rules and regulation. The quote below by a female discussant emphasises this;

'we are only caught sometimes on exam related crimes...but men are caught everyday for all manner of crimes at the university': Quote from a Female Discussant at the FGD

Mupangavanhu (2011) recommend that university administrative justice structures should be free from any influences that will interfere with their objectivity. Maiese(2003) avers that stakeholders within an administrative justice process judge fairness from a perception of their experience of being treated with respect and dignity within the process. Positive perceptions can result in the affirmation, support and engagement with the process and structures. Student perceptions therefore influence the legitimacy of decisions reached and students' acceptance of those decisions.

Even as Bosire & Ngware (2008) found a trend towards greater student leadership participation in university management, they also identify existing institutional rigidities, student perceptions and low participation rates by female students as among the challenges grappling student participation in institutional structures and processes. Kamvounias & Varnhaim (2010) Identify enhanced female student participation as one of the recent dramatic changes that is crucial in the governance of the global university sector.

4.4.7 Student perception on external influence to university administrative justice processes

Below is a presentations Figure 4-8 and Table 4-11 are findings pertaining to student perception of external influences to university administrative justice processes.

Figure 4-8: Student perception on external influence to university administrative justive processes

□ Respondents who Agree %   □ Respondents who don't know %
□ Respondents who Disagree %

Table 4-11: Crosstabulation, by gender, of student perception on external influence to university administrative justice processes

	Respondents who Agree %	Respondents who don't know %	Respondents who Disagree %	Number of Respondents
Male Respondents	61	15	35	135
Female Respondents	39	85	65	131

As presented in figure 4-10 above, the study established that majority of students perceive that there exist external interferences that influence delivery of administrative justice to students. Majority of respondents who agree to the existence of external influences are male respondents; most respondents who indicated that they do not know, are female. This was confirmed at the FGD where discussants indicated that administrative justice processes involving student leaders are usually decided outside of the university and that they have zero chance to procure an innocent verdict from the proceedings. A student leader KII indicated that his movements and communications are monitored by the state even when outside campus.

A KII respondent who is an administrator in contradicting this finding states that external interference with university administrative justice processes was the case in the KANU regime era, before the 2002 elections. He indicated that the university has progressively broke loose from such interference. DiMaggio & Powell (1983) argue that institutional change processes have made organizations more similar without necessarily making them more efficient. Greif & Kingston (2011) argue that institutions are responsive to the interests and needs of their creators (the law and the State).

4.4.8 Student perception on internal influences to university administrative justice processes

The below presentations, Figure 4-9 and Figure 4-10 are findings pertaining to student perceptions on internal influences to university administrative justice processes

Figure 4-9: Student perception on internal influences to university administrative justice processes
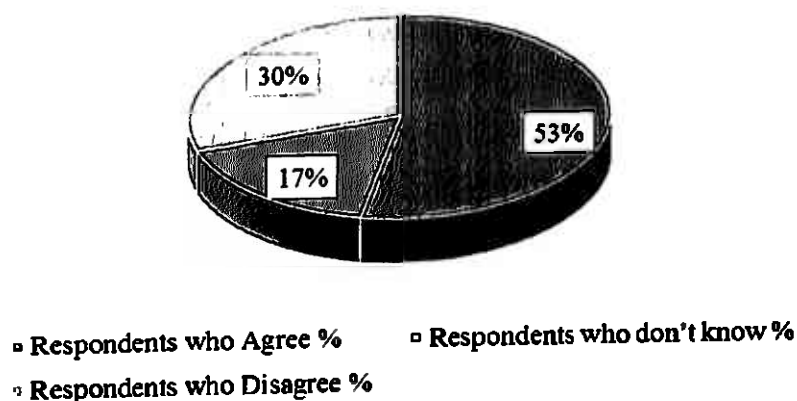

- Respondents who Agree %
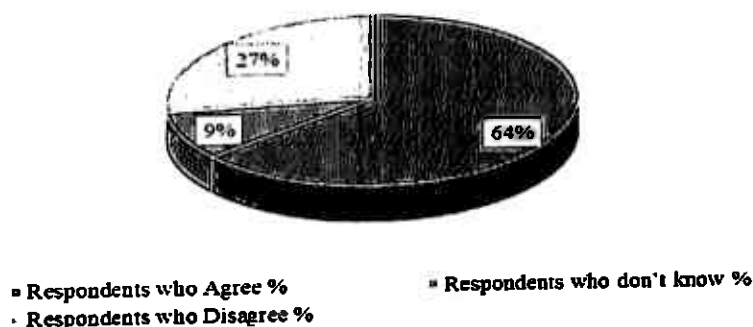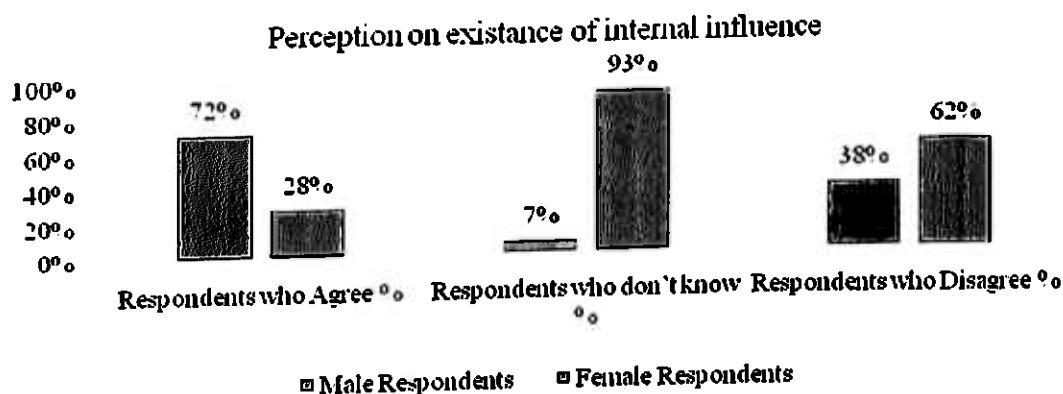- Respondents who Disagree %
- Respondents who don't know %

Figure 4-10: Crosstabulation, by gender, of student perception on internal influences to university administrative justice processes

Perception on existance of internal influence

Male Respondents   Female Respondents

39

As presented in the findings above, majority of respondents perceive that there exist internal interferences that influence delivery of administrative justice to students. Also, majority of those who agree to the existence of internal influences are male respondents; most respondents who indicated that they do not know, are female.

Respondents indicated that the established administrative justice structures and susceptible and vulnerable to external influence and do not allow for maximum autonomy or self-government and academic freedom as key ingredients. The structure allows for control in their constitution, deliberation and decisions, by both internal (higher hierarchy officials) and external (State) agencies and individuals.

The study established that there exists macro-level influences and relationships through which the administrative justice frameworks and policies for tertiary education operate and unduly interfere with internal administrative justice processes at the university. While the state plays a regulatory and oversight role in the broader management of the university, it often overreaches itself through inappropriate intervention in internal university administrative justice processes, especially those involving student activists and student leaders. This thereby limits the university's internal institutional arrangements for delivery of administrative justice. Adler, M. (2003) suggests that in proposing solutions to the power relationships between the internal and external influences to administrative justice in any institution, there should be a complementary approach that emphasises internal influences in the resulting balance or a trade-off situation that. Kamvounias, P., & Varnhaim, S. (2010) aver recognises the need for   public interest needs to be reconciled with the benefits of institutional autonomy. This finding attests to the Theory of Institutional Isomorphism's ascription that public institutions are managed and administered within a myriad of influence and leverage interplay between Professionals and the state who define the conditions and operational environment

CHAPTER FIVE

FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter summarizes the key points and significant outcomes of the study in relation to the aims. The study sought to evaluate the institutional framework for delivering administrative justice to students in Kenya's public universities.

5.2 Summary of major Findings

The study established that student gender and level of study are determinants of the level of knowledge and awareness on administrative justice structures at the university. The study has also established that the nature and process of student orientation has not optimally translated to their levels of knowledge, awareness and interaction with university administrative justice structures and processes. Students are therefore not sufficiently empowered to interact with the institutional administrative justice structures and processes.

The study also established that where students have positive perceptions of administrative justice structures and processes, these do not match their expectations of what the university should provide to support and enable their participation and enjoyment of these processes and structures.

The study established that students generally perceive administrative justice structures and susceptible and vulnerable to internal and external influences.

5.3 Conclusions

The study concludes that the bureaucratic environment at the university does not promote efficiency and effective delivery of administrative justice to students within the university. The composition, structure and proceedings of various administrative justice structures do not promote competence, independence and impartiality nor do they facilitate optimal interaction with students to enable justice to be done and to be seen to be done. Institutional Theory describes a similar environment process-savvy and structural environment in which institutions operate and which can constrain the degree of freedoms therein. DiMaggio and Powell's (1983) write of the coercive and normative forces that stem from state and political influence and professionalism that influence institutional character. The composition of the various tribunals sometimes contravenes the principle of independence and impartiality especially because inadequate separation of roles and functions at different stages thereby

disadvantaging accused persons against institutional officers in the proceedings. Also, the process does not prescribe standards and obligations of university staff while taking administrative action.

The study also concludes that students are inadequately aware and knowledgeable on the way university administrative justice institutions and processes relate to the enjoyment of their rights to fair trial and a fair hearing. The student orientation programme is weak in embedding administrative justice knowledge and awareness among students. The programme focuses more on introducing students to University services which will support their educational and personal goals (e.g registration, course selection, accommodation, library, information technology, academic and sports and entertainment) and falls short in familiarizing students on administrative justice scenarios, structures and processes and on creating an atmosphere that promotes confidence and positive attitudes in engaging with university administrative justice structures and processes. Woodall, Hillerx & Resnick (2012) have written on the importance of student knowledge and awareness on institutional processes. They describe students as consumers of education who are entitled to participatory rights in managerial processes and practices at the institutions, and this can only be enabled if they are adequately empowered through knowledge and awareness.

There is a gender dimension in the knowledge, awareness and perception of administrative justice structures and processes by students at the university. Male students have a higher affinity to engage with the structures and processes than female students. This is significant because in this scenario, potentially student's access to and interaction with key administrative justice institutions and processes is shaped by gender dynamics that can potentially result in furthering inequality and marginalisation of students. This is despite a female student leading the student representative organisation at the time of the study. (Bosire, Chemnjor, & Ngware, 2008) identify a gender dimension on student knowledge ang awareness on their study on student leadership in public universities.

Students generally have a negative perception on the Administrative justice structures and process at the university. Students perceive that the structures and processes nearly always result in predictable and most severe sanction against student litigants. They perceive that the option of expulsion nearly always applies as the outcome of administrative justice processes.

5.4 Recommendations

The study makes the following recommendations to enhance the dispensation of administrative justice to students at the university;

- Review the Universities Act 2012 to incorporate overarching principles and standards to guide the dispensation of administrative justice in universities in Kenya.
- Review the University's rules and regulations governing student conduct and discipline's object and purpose which puts emphasis on providing for control, governance and administration as key aspects, without any mention of participatory governance and inclusion.
- Review the pre-orientation requirement for students to sign the declaration that they have understood the contents and meaning of the rules and regulations and replace with a mandatory requirement for students to attend the orientation programme before signing the form. This will enable a better understanding and appreciation of the rules and regulations, including the structures and processes for administrative justice at the university.
- Review the Vice Chancellor's arbitrary and prerogative powers to vary the list of offences specified in the rules and regulation. This runs against a student's right to be tried for an offence known in law.
- Apply a time limitation to the Vice Chancellor's prerogative to suspend a student pending disciplinary action.
- The exclusion of student representatives from tribunals related to examination and other academic offences should be reviewed.
- Enhance participatory governance within the university's administrative justice structures and processes beyond student leaders especially through the adoption of a participatory monitoring, feedback and evaluation and review process that benefits from student participation. (Mupangavanhu & Y, 2011) have written about South Africa's Higher Education Act which provides for student participation in both disciplinary processes and in developing legislation and rules governing administrative justice targeted at students.
- The university can also consider establishing an office of the internal ombudsman (akin to those in Australian universities) whose function would be to independently review university administrative justice decision-making to ensure that there has been adherence to best practice and standards including university processes and procedures.

- Facilitate greater stakeholder scrutiny of respective tribunal proceedings especially by adopting an open proceedings policy as the default option especially in circumstances where the privacy of the parties or publicity would not prejudice the interests of justice.

- University statutes should also be reviewed to enhance inclusion and diversity in the composition of the various administrative justice structures targeted at students. The structures (especially at the appellate level) could also consider recruiting external convenors (chairpersons), on a case-to-case basis. The Senate-based appellate committees could, for example, benefit from greater objectivity if it was composed with a member of the University Alumni Association as ex-officio.

- engender the student orientation programme by adopting strategies and scenarios that are gender targeted and sensitive. The orientation programme should also be reviewed so that it can focus more on familiarizing students on administrative justice scenarios, structures and processes.

- The university should ensure that members constituting respective administrative justice structures undergo routine orientation on administrative justice principles and best standards to enhance their knowledge and appreciation of the task, process and expectations and enable them offer more effective outcomes.

- The study recommends further research on how internal institutional structures hinder the process of delivering fair-administrative-action and to what extent the composition of various structures affects the delivery of fair justice.

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APPENDICES

APPENDIX I: QUESTIONNAIRE

This questionnaire aims at collecting information and data for academic use by the researcher. Your kind participation will go a long way in providing useful information required to complete this research. The information provided will be treated in confidence. You need not indicate your name. Please answer the questions precisely and objectively; the information will be treated confidentially

SECTION A: DEMOGRAPHIC INFORMATION

1. What is your gender?

   Male   [ ]   Female   [ ]

2. Indicate your age

   Below 25 years   [ ]   26-35 years   [ ]

   36-45 years   [ ]   Beyond 46 years   [ ]

3. At what level of study are you? (specify)

   Certificate/Diploma [ ] Undergraduate [ ]   Post Graduate   [ ]

4. At what year of study are you? (specify)

   First year [ ]   Second Year   [ ]   Third Year [ ]   Fourth Year [ ]

   Fifth Year [ ]   Sixth Year   [ ]

SECTION B: STUDENT KNOWLEDGE AND AWARENESS ON ADMINISTRATIVE JUSTICE AND INSTITUTIONAL STRUCTURES FOR DISPENSING FAIR ADMINISTRATIVE ACTION

5. Which of the following University documents pertaining to the dispensation of administrative justice to students, can you relate to?

Document	Yes	No
University of Nairobi Information Handbook		
University of Nairobi Information to New Students and the Joining Instructions Manual		
Form JI/13A: University of Nairobi's Rules and Regulations Governing Conduct and Discipline of Students		
Declaration FORM JI/13B signifying understanding and acceptance the content and meaning of the Rules and Regulations Governing the Conduct and Discipline of Students		
FORM JI/ 15 examination rules, processes and procedures		
The University of Nairobi Rules and Regulations Governing Students Elections, 2017		

6. Which of the following internal structures for dispensing administrative justice are you aware of?

Structure	Yes	No
The University Council		
The University Senate		
Student Disciplinary Committee		
Examination Irregularity Committee		
Halls Disciplinary Committee		

7. To what extent do you agree that the right to administrative justice dispensation at the university has an impact on your academic and student rights and freedoms at the university?

Totally agree	
Agree to some extent	
Neither agree nor disagree	
Disagree to some extent	
Don't agree at all	

SECTION C: INTERNAL INSTITUTIONAL STRUCTURES FOR DISPENSING FAIR ADMINISTRATIVE ACTION

8. Have you ever interacted with the University Institutional Structures for Administrative Justice?

    Yes   [ ]   No   [ ]

9. If Yes to No. 7 above, in what capacity did you interact?

    Witness   [ ]

    Defendant   [ ]

    Monitor   [ ]

    Member   [ ]

10. If yes to No. 7 above, which of the following internal structures for dispensing administrative justice have you interacted with?

Structure	
The University Council	
The University Senate	
Student Disciplinary Committee	
Examination Irregularity Committee	
Halls Disciplinary Committee	

11. How would you describe the following pertaining to your experience interacting with university administrative justice structures and processes?

Experience	Structure of administrative justice	Process of administrative justice
Satisfied		
Do not know		
Not satisfied		

12. To what extent do you agree/disagree with the following statements pertaining to the University of Nairobi's institutional arrangements for dispensing administrative justice to students at the university.

	Statements	Agree	Do not know	Don't agree
1.	The University of Nairobi does not have the right structures to administer fair administrative action to its students			
2.	University administrators lack adequate knowledge on the administration of justice to students at the institution			
3.	Students in the universities lack adequate knowledge and awareness on administrative justice structures and activities at the university			
4.	Students are empowered to interact with the institutional structures and processes for administrative justice at the university			
5.	A student against whom there is a complaint, is given a just and fair hearing through the university administrative justice structures and processes			
6.	There exist external interferences that influence delivery of administrative justice to students			
7.	There exist internal interferences that influence delivery of administrative justice to students			

END

THANK YOU

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APPENDIX II: KEY INFORMANT INTERVIEW GUIDE

KEY INFORMANT INTERVIEW GUIDE FOR KEY UNIVERSITY STAKEHOLDERS DIRECTLY INVOLVED IN THE PROCESS OF DISPENSING ADMINISTRATIVE JUSTICE TO STUDENTS AT THE UNIVERSITY OF NAIROBI

Introduce yourself and your mission.... remember to state that the information/data collected, including identities of respondents will be kept confidential at all times;

Have a general discussion of the human rights and administrative justice situation at the university (as pertains to students).

Have a general discussion revolving around the below topical issues;

1. The University's present constituting legislative framework and how it enables and/or inhibits effective dispensation of administrative justice to students at the university ...? Can it be improved......how?

2. Whether the University's administrative justice structures and processes are sufficiently empowered to dispense over their mandate effectively to students;

3. internal/external (if any) factors that influence effective dispensation of administrative justice to students at the university

APPENDIX III: RESEARCH PERMIT/CERTIFICATE