

**The Faculty Senate Hearing Committee Report  
Regarding the Appeal of the Tenure Revocation of Dr. Yusuf Kalyango  
Submitted to President M. Duane Nellis by the Hearing Committee:  
Dr. Robin Muhammad, Chair and Drs. Mark Franz, Sheryl House, Charles Lowery,  
Lauren McMills, Vladimir Marchenkov, and Yehong Shao-Lucas  
Ohio University  
December 29, 2020**

The hearing committee having reviewed the documents submitted by and heard the testimonies of witnesses from both the University's representative and the faculty member, Dr. Yusuf Kalyango, conclude that the revocation of Dr. Kalyango's tenure was not warranted and strongly recommend his reinstatement without delay as a tenured (full) Professor with all the rights and privileges accorded thereto.

Following the two-day hearing held on December 10 and December 11, the hearing committee met four times in closed deliberations: December 11 (immediately following the adjournment of the hearing), December 12, December 13, and December 17. The vote was 5 votes in favor and 1 vote against the appeal of the tenure revocation. The following details provide a summary of the committee's deliberations and recommendations. In addition, the hearing committee will provide the Executive Committee with a recommendation for a procedural review of relevant passages in the Faculty Handbook.

**Findings of Fact on the Counts of Sexual Harassment and Sexual Harassment by the creation of a hostile work environment**

The hearing committee was charged with reviewing Dr. Kalyango's appeal of tenure revocation, including the presentation of testimonies in the two-day hearing. The loss of tenure in this case rested on a finding of moral turpitude by Dr. Kalyango's Department and College. The decision to revoke tenure rested on the underlying cases of sexual harassment and sexual harassment by the creation of a hostile work environment was based on the investigation by the Office of Equity & Civil Rights Compliance (ECRC) and the findings of the subsequent two University Professional Ethics Committees (UPEC).

The case of L.B. was filed in 2018 and is based on events, alleged and/or documented in 2011 and 2012. The hearing committee did not hear or read clear and convincing evidence of sexual harassment. L.B. testified that she had originally lied during a previous investigation and that she came forward recently when she was contacted by faculty from Dr. Kalyango's department. The evidence was not clear and convincing, and it appears that L.B.'s testimony was sought to build a case against Dr. Kalyango outside the normal procedures of an ECRC investigation.

The case of T.H. was filed in 2017 and is based on events, alleged and/or documented in the same year. The hearing committee, as in the related case of L.B., did not hear or

read clear and convincing evidence of sexual harassment or sexual harassment by the creation of a hostile work environment. T.H.'s role in the investigation of her own case crossed the line between what is appropriate and professional and can damage the integrity of an ECRC or any other investigation of fact. Moreover, testimony provided by a faculty member who was also T.H.'s neighbor indicated that he did not recall the mentioning of Dr. Kalyango by name. Nevertheless, the ECRC report indicates that there was a clear identification of Dr. Kalyango. The hearing committee heard several testimonies like this one that directly contradicted or in some other way found holes in the ECRC report. Thus, clear and convincing evidence was not provided.

Several witnesses called by both sides gave testimony that reflected a deeply divided department and college. The graduate admissions committee became drawn into interpersonal conflicts among several faculty members. The hearing committee was gravely concerned that in the name of protecting graduate students, faculty members were using current students and alumni to pursue a case against Dr. Kalyango.

### **Findings on the Process of Dismissal of the Faculty Member and Due Process**

While the hearing committee recognizes and commends the university's efforts at various levels to hear the accusations of complainants in regard to allegations of sexual harassment brought against a faculty member, we hold that it is important to note that this is only half of the university's duty as an agent of the state. Accusations of sexual harassment and of violations of moral turpitude are severe and should be given the utmost attention and consideration. However, a legal (and ethical) responsibility exists for the university as an agent of the state to also ensure that the individual accused of the allegations be given due process.

Due process is a constitutional right of all citizens, with the 14<sup>th</sup> Amendment securing this as a legal obligation of all states and agents operating as extensions of the state. This legal obligation requires that not only the promise of legality be upheld but also that the entity follow fair and equitable procedures. The committee recognizes that rulings and definitions allow for variability of procedural requirements and that there is no definitive list of required procedures. However, in a case where the most severe of consequences are at stake—e.g., the detouring of an academic—we believe it is critical to ensure that more than the minimum policy requirements be followed. When a consultation of faculty is required, it should at least be documented and reflect a meaningful assessment of faculty input. A fair and equitable, as well as unbiased, procedure must be respected. The evidence brought to the committee has called this into question.

The hearing committee did not find clear and convincing evidence related to the facts that the faculty member's department and college ensured such due process. We sought but could not find nor heard testimony that addressed some fundamental questions:

1) Where is the evidence of arbitration?

2) At what points during the investigation did the faculty member have the opportunity to respond to allegations, to state his case fully or his argument against accusations completely, or to have legal counsel or advocates present?

3) Were other measures of disciplinary action taken into account prior to detouring?

We have concluded that the efforts to find evidence on both sides of the case were not thorough, consistent, nor equitable. Additionally, we do not see clear and convincing evidence that the faculty member was provided sufficient opportunity to be heard in a hearing by his superiors or peers at the department or college level. Therefore, this brings due process into question.

### **Recommendations**

1. It is recommended that ECRC include transcribed witness interviews in the evidence files. This will allow full disclosure of witness statements during the investigation process.

2. It is recommended that, if ECRC investigations are going to be delayed beyond a 90-day time period, all involved in the investigation (especially the complainant and respondent) be informed of the delay, reason for the delay and anticipated date of the investigation conclusion.

3. It is recommended that staffing levels of ECRC be reviewed to ensure complaints can be investigated in a timely manner.

4. It is also recommended that a review and reassessment of University faculty and student sexual harassment training be conducted as soon as possible.

cc: Yusuf Kalyango; Gregory Beck; Mel Lute; Andrea Ziarko

Executive Vice-President and Provost Elizabeth Sayrs; Barbara Nalazek; Adam Loukx;  
Michael Courtney