

**COMMERCIAL ACADEMIC CHEATING FROM A KENYAN PERSPECTIVE: TACKLING THE
CHALLENGE OF IMPLEMENTING LEGAL AND INSTITUTIONAL REFORMS**

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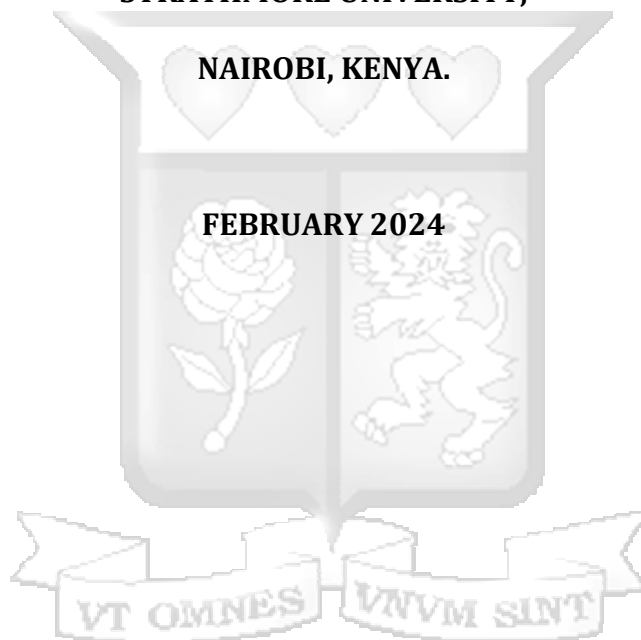
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Declaration

I declare that this work has not been previously submitted and approved for the award of a degree by this or any other University. To the best of my knowledge and belief, the dissertation contains no material previously published or written by another person except where due reference is made in the dissertation itself.

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Abstract

With a focus on Kenya and an analysis of the Australian context, this paper delves into the intricate issue of commercial academic cheating in the academic setting. The study carefully investigates the challenges posed by the blurred nature of acceptable academic assistance and commercial academic fraud. According to statistics, over 60% of students are likely to contract their work more than once, and roughly 3.52% of students engage in commercial academic cheating. In addressing the widespread prevalence of commercial academic cheating in Kenya, this paper draws attention to the absence of specific laws intended to address this type of academic dishonesty. Addressing this matter is essential to preserving academic integrity, maintaining the validity of educational credentials, and discouraging unethical behavior that diminishes the significance of education.

This paper's methodology, which focuses on evaluating current legislation and suggesting legislative changes to make commercial academic cheating illegal in Kenya, is based on doctrinal legal research. The Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020 of Australia influences this legislative approach. This method entails an analysis of statutes, case law, and institutional structures in order to formulate practical solutions for dealing with commercial academic cheating in the Kenyan context.

The findings emphasize how urgently Kenya needs specialized legislation to make commercial academic cheating illegal and effectively discourage academic fraud. It stresses the significance of precise definitions and severe sanctions to counter commercial academic cheating taking cues from Australia's legal system. The paper's conclusion urges relevant authorities in Kenya to adopt specific penal code measures in order to outlaw commercial academic cheating and preserve academic integrity. It also emphasizes on the need for capacity building and promotion of the orange economy to create employment opportunities. Overall the paper insists that the criminalisation of commercial academic cheating in Kenya requires effective legal and institutional reforms.

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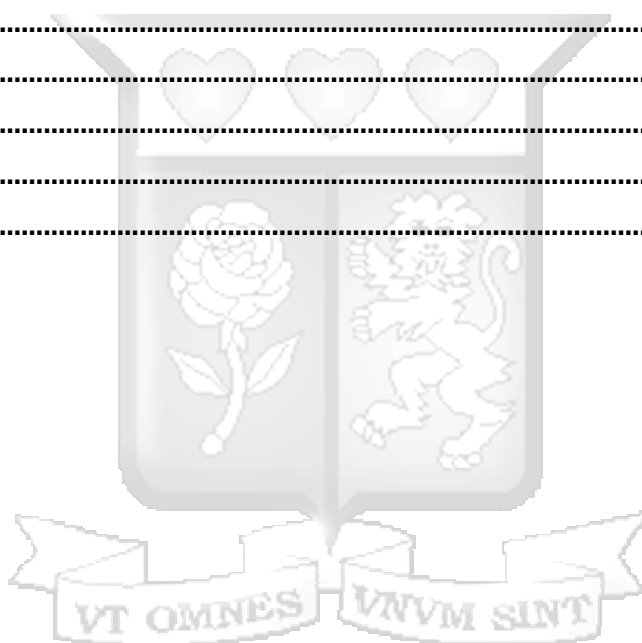


Table of statutes

Kenyan statute

Constitution of Kenya, 2010.

Leadership & Integrity Act (No 19 of 2012)

Australian statute

Crimes Act (1900) NSW

Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019.

Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

Irish statute

Quality and Qualifications Ireland (QQI). Qualifications and Quality Assurance Amendment Act, 2019



Table of case law

Kenyan case law

Dindi Oscar Okumu v Robert Pavel Oimeke & 5 others [2021]

Australian case law

DPP v Shaw (2013), *The State Circuit Court of Appeals*.

Duncan v Independent Commission against Corruption (2015), *High Court of Australia*

Gerakiteys v The Queen (1984), *Commonwealth Law Reports*.

Peters v R (1998), *Commonwealth Law Reports*.

R v Ho & Szeto (1989), *New South Wales Court of Appeal*.

R v Sewell (2001), *New South Wales Court of Criminal Appeal*.

R v Sultan (2008), *New South Wales Court of Criminal Appeal*.

Spies v R (2000), *Commonwealth Law Reports*.

Lithuanian case law

R.K. v Studium Generale (2012), *Marijampole District Court of Lithuania*



List of abbreviations

NSW	New South Wales
UNCTAD	United Nations Conference on Trade and Development
TEQSA	Tertiary Education Quality and Standards Agency Act
5G	Fifth Generation
CLR	Commonwealth Law Reports



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Dedication

To Christine Olang'o, my role model.



Chapter 1: Introduction

1.1 Background

Education significantly contributes to developing critical thinking and professional skills. Nonetheless, these attributes are non-achievable if students pay others to do their academic work. Although hiring someone to guarantee good grades may seem convenient, it damages the accurate evaluation of abilities and knowledge among students.¹ Commercial academic cheating is a form of academic dishonesty where students give out their assignments to online workers and submit the purchased coursework as their own.² It exists within the scope of commercial plagiarism.³

Thomas Lancaster and Robert Clarke discovered commercial academic cheating in 2006 during their research on identifying academic dishonesty in higher learning.⁴ They began their study in 2004 to assess the extent of commercial academic cheating when their assignments appeared on a website known as Rentacoder.⁵ Between 2004 and 2006, Clarke and Lancaster identified 912 cases of commercial academic cheating across six countries, with the United States of America having the highest number.⁶ Over the years, the practice has grown and threatens academic standards in higher education.

Commercial academic cheating appears in different forms, like seeking help from friends or family, downloading a paper from an essay website, and paying a third party to do an

¹Gorenko Y, 'Commercial academic cheating: Reasons Behind It and Ways to Stop It, Educational Technology,' 11 March 2020 [Commercial academic cheating: Reasons Behind It And Ways To Stop It - eLearning Industry](#) on 11 September 2023.

² Clarke R and Lancaster T, 'Eliminating the successor to plagiarism? Identifying the usage of commercial academic cheating sites,'2006,2.

³ Walker C, The white-collar hustle: Academic writing & the Kenyan Digital Labour Economy' Published Thesis, University of Oxford,2019,72.

⁴ Lancaster T and Culwin F, 'Preserving academic integrity – Fighting against non-originality agencies,'2006.

⁵ Lancaster T and Clarke R, 'Commercial academic cheating in UK higher education: Promoting a proactive approach,'2009,4.

⁶ Lancaster T and Clarke R, Commercial academic cheating in UK higher education, 9.

assignment.⁷ The final form of cheating is the most unethical, as it promotes the commercialization of academic qualifications through the creation of essay mills.⁸ Lancaster's research has discovered global hotspots of individuals who encourage commercial academic cheating. Between 2006 and 2016, Lancaster observed the rise of the essay-providing services in Kenya.⁹ He learned that the people bidding to work on low-level academic assignments on websites such as freelancer.com were mostly Kenyans, Indians, and Pakistanis. The number of Kenyan writers is unknown because workers are advised to disguise their locations and pretend, they are from more desirable regions such as America.¹⁰ Researchers' work shows the legitimate aspect of essay-writing services in Kenya. Participants feel they are being of service and see themselves as academic writers. With the high unemployment rate, even those who earn as little as \$2 per essay consider it a good source of income.¹¹

There have been attempts to tackle the issue via legal means, but there seems to be a disconnect during implementation. In most countries like Kenya, no law expressly combats commercial academic cheating. The Australian government passed a new law that renders essay-writing companies as avenues that encourage academic misconduct.¹² Whether the services are offered within the country or abroad, the penalty of two years imprisonment or a A\$100,000 fine applies.¹³ Despite the government's efforts, the demand for essay writing services is still high.

⁷ Newton P and Lang C, 'Freelancers and Other Paid Third Parties,' *Handbook of Academic Integrity*, 2016, 2.

⁸ Gorenko Y, Commercial academic cheating, para 2.

⁹ Lancaster T, 'How Kenya now leads the world in enabling Commercial academic cheating,' 2018, para 2. [How Kenya Now Leads the World in Enabling Commercial academic cheating – Thomas Lancaster's Blog](#) on 11 September 2023.

¹⁰ Lancaster T, 'How Kenya now leads the world in enabling Commercial academic cheating,' para 3.

¹¹ Lancaster T, 'Commercial academic cheating and Essay Mills 2017 Findings Part 2 – Inside the Commercial academic cheating Industry,' [Commercial academic cheating and Essay Mills 2017 Findings Part 2 – Inside the Commercial academic cheating Industry – Thomas Lancaster's Blog](#) on 11 September 2023.

¹² Cosenza E, 'New laws passed could see cheaters who sell services to university students jailed,' *The Australian*, September 2020 https://www.theaustralian.com.au/news/latest-news/new-laws-passed-could-see-cheaters-who-sell-services-to-university-students-jailed/news-story/599e268e4e5f39_e0766544688274092/ on 11 September 2023.

¹³ Australian Government, 'Tackling commercial academic cheating,' *Department of Education*, 2022 [Tackling commercial academic cheating - Department of Education, Australian Government](#)

Among all forms of academic dishonesty, commercial academic cheating is the most challenging to curb through a legal approach. Unlike plagiarism which may be investigated under copyright law, commercial academic cheating is regarded as a morality issue; hence challenging to prove in a law court.¹⁴ Although an agreement between a student and an essay service provider seems unethical, from a legal perspective, such a contract is not illegal. In a Lithuanian case, *R.K. v. Studium Generale*,¹⁵ the plaintiff terminated an agreement with the defendant for failure to complete a task. The plaintiff requested repayment of a pre-paid amount from the defendant. In the defendant's opinion, he had fulfilled his obligations to the plaintiff, yet he was not paid. He argued that the plaintiff submitted the work without his consent which resulted in damages to him. The court insisted that the general principle of law, *ex injuria jus non oritur*, should be applied and granted the plaintiff's request.

From the case above, it is clear that legislators find difficulty in addressing matters regarding commercial academic cheating especially since it is an illegitimate source of income. Most strategies proposed for eradicating academic dishonesty revolve around efforts made by the learning institutions, such as changing coursework regularly rather than addressing the problem from the supply end. The current legislative reforms seem theoretical and there is little research available on how to address the challenges faced during implementation.

1.2 Problem Statement

Commercial academic cheating undermines the learning process and ruins the reputation of academic institutions worldwide. Since essay writing service providers go as far as completing degrees for students, organizations and employers ultimately suffer the consequences of hiring unskilled personnel. The practice continues to thrive globally despite the detection measures and penalties by learning institutions to curb commercial academic cheating. Currently, no law in Kenya outlines the illegality of commercial academic cheating, making it difficult for institutions to act against it. There needs to be a law that criminalizes commercial academic cheating since it goes against Kenya's national values enshrined in

¹⁴ Saunders, 'Plagiarism and the law,' 23, *Learned publishing*, 4, 2010, 279.

¹⁵ Tauginiene L and Jurkevičius V, 'Ethical and legal observations on commercial academic cheating services as an agreement,' *International Journal for Education Integrity*, 13, 2017, 5.

Article 10 of the Constitution of Kenya. The study seeks to provide recommendations on the criminalization of commercial academic cheating in Kenya.

1.3 Research Objectives

1. To make a case for the illegalization of commercial academic cheating in Kenya.
2. To assess Australia's progress in criminalization of commercial academic cheating as a basis for Kenya's law reform.
3. To identify the legal reforms necessary to outlaw commercial academic cheating in Kenya.

1.4 Research Questions

1. What is the basis of illegalization of commercial academic cheating in Kenya?
2. What is Australia's progress in the criminalization of commercial academic cheating?
3. What legal reforms are necessary to criminalize commercial academic cheating in Kenya?

1.5 Hypothesis

Academic dishonesty is a global concern, especially with the overreliance on online learning, making it easier for students to employ third parties to do their assignments. Authors such as Clarke and Lancaster propose detection as a plausible solution to commercial academic cheating.¹⁶ Commercial academic cheating is nearly impossible to detect as the submitted work is often original, and the proposed detection strategies are often non-feasible. Preventive measures like redesigning assignments and creating clear-cut policies have also been unsuccessful since it places the burden of combating commercial academic cheating entirely on higher learning institutions. Some countries, such as Australia, have set laws which criminalize the activities of essay-writing companies but there seems to be a discord between the law and implementation.¹⁷ My hypothesis is that the current measures against

¹⁶ Clarke R and Lancaster T, 'Eliminating the successor to plagiarism? Identifying the usage of commercial academic cheating sites,' *Northumbria Learning Press*, 19 June 2006, 13.

¹⁷ Groves A and Nagy V, 'Meaningful crime prevention or just an 'act': discourse analysis of the criminalization of commercial academic cheating services in Australia,' 78, *Crime, Law, and Social Change*, 3, 2022, 297.

commercial academic cheating are impaired since they focus entirely on the institutions' efforts to prevent and detect academic dishonesty. Additionally, there is little research available on potential solutions towards tackling the challenges faced during legislation.¹⁸

1.6 Justification

Academic integrity is paramount to the reputation of any education system and, ultimately, the stability of any society. One major hindrance to academic integrity is the rise of commercial academic cheating which destroys the credibility of higher learning institutions. The commercial academic cheating industry operates as a white-collar hustle and its estimated value is \$15 Billion.¹⁹ In Kenya, there are over 20,000 active academic writing service providers hence viable solutions are urgently needed to curb the practice.²⁰ This study is thus essential to policymakers in the education sectors worldwide to assist them in adopting practical measures against commercial academic cheating.

Previous papers on the subject dwell on how academic institutions can detect and prevent commercial academic cheating. This study is unique because it focuses on solving the challenges that arise in implementing legal and institutional reforms against commercial academic cheating. This paper shall assist human resource firms and talent acquisition officers in gauging the credibility of applicants' academic qualifications by evaluating whether they are well-equipped for the jobs. Lastly, this study shall also be helpful to scholarship providers, especially those offering to sponsor postgraduate studies, as they assess the validity of the academic papers presented by their applicants.

¹⁸ Amigud A and Dawson P, 'The law and the outlaw: is legal prohibition a viable solution to the commercial academic cheating problem?' *Taylor & Francis Group*, 2019, 2.

¹⁹ Eaton S, 'Academic Integrity in Canadian Higher Education: The Impact of COVID-19 and a Call to Action,' Paper presented at the Canadian Society for the Study of Higher Education (CSSHE), University of Alberta, 1 June 2021, 166.

²⁰ Lancaster T, 'How Kenya now leads the world in enabling Commercial academic cheating,' para 5.

1.7 Theoretical Framework: Neutralization Theory

Neutralization theory emerged from criminology and deviant sociology research.²¹ Neutralizations, also referred to as rationalizations, are justifications for deviant behavior. Some authors believe neutralizations are important when explaining deviant practices such as fraud.²² In an attempt to understand how white-collar crime occurs, Edwin Sutherland suggests that rationalization is the main way offenders justify their actions.²³ They convince themselves through vocabularies of adjustment, such as “I didn’t hurt anybody”, which allows them to minimize the guilt of their behavior in light of existing norms.²⁴ Authors such as Sykes and Matza explain that people are naturally wired to abide by the law and refrain from committing illegitimate actions.²⁵ Hence, they argue that when a person commits an offence, they must adopt a mechanism to suppress the urge to follow moral obligations.²⁶ The theory is based on the fact that delinquents are not immune to guilt or conformity demands.²⁷

Researchers argue that a student is more likely to cheat depending on how well they can rationalize academic dishonesty depending on their circumstance.²⁸ Although the neutralization theory may explain why students violate moral codes, they naturally

²¹ Curasi and Carolyn F, ‘The Relative Influences of Neutralizing Behavior and Subcultural Values on Academic Dishonesty,’ 88, *Journal of Education for Business*, 3, 2013, 168.

²² Murphy, Pamela R and Tina D, ‘Psychological Pathways to Fraud: Understanding and Preventing Fraud in Organizations,’ *Journal of Business Ethics*, 101, 2011, 602.

²³ Sutherland, Edwin H, ‘Crime and Business,’ 1, *The Annals of the American Academy of Political and Social Science*, 217, 2016, 116.

²⁴ Kaptein M and Helvoort M, ‘A model of neutralization techniques,’ *Taylor & Francis*, 2019, 1261
<https://www.tandfonline.com/doi/full/10.1080/01639625.2018.1491696> on 12 September 2023.

²⁵ Sykes G and Matza D, ‘Techniques of neutralization: A theory of delinquency,’ *Jstor*, 666
https://ucilnica.fri.unilj.si/pluginfile.php/160463/mod_resource/content/1/Sykes%2C%20G.%20M.%20%20Matza%2C%20D.%20%281957%29.%20Techniques%20of%20Neutralization.pdf on 12 September 2023.

²⁶ Sykes G and Matza D, ‘Techniques of neutralization: A theory of delinquency author,’ 667.

²⁷ Topalli V, ‘The Seductive Nature of Autotelic Crime: How Neutralization Theory Serves as a Boundary Condition for Understanding Hardcore Street Offending,’ 2006, 477.

²⁸ Eisenberg J, ‘To cheat or not to cheat: Effects of moral perspective and situational variables on students’ attitudes,’ 33, *Journal of Moral Education*, 2, 2004, 165; Whitley, B. ‘Factors associated with cheating among college students: A review,’ *Research in Higher Education*, 39, 1998, 245.

support²⁹, Mathieu Bouville argues that its claims are non-substantial because theorists over-interpret their data and rely on non-contradictions rather than proving the theory.³⁰ According to him, more than pure empirical data is required because neutralization requires a concept of what consists of wrong behavior, which theorists fail to provide.

Bouville's argument is based on the fact that authors establish neutralization even before they carry out investigations.³¹ From his perspective, neutralization is more of a stylistic device since the authors claim that their results confirm the theory instead of finding a model that explains their observations. For example, Davy et al suggests that neutralization only occurs when one naturally supports a norm but opts to rationalize it to allow them to violate it.³² No evidence shows cheaters support the idea that cheating is wrong. Therefore, their research is impaired since it fails to prove their understanding of neutralization.

In an attempt to address such shortcomings in explaining delinquency, other scholars use different approaches. Travis Hirschi came up with the Social Control Theory after being dissatisfied with the Differential Association Theory and Strain Theory, which both suggested that one's environment influenced criminal habits.³³ Some authors claim that crime occurs when a person's affiliations to normative standards are nonexistent or frail.³⁴ Social Control Theory maintains that every individual is inherently bad from birth and must be controlled by rules to keep them in check.³⁵ It suggests that those with weak ties to societal norms indulge in deviant behavior such as academic cheating.

²⁹ McMullan P and Zito N, 'It's Not My Fault,' Using Neutralization Theory to Understand Cheating by Middle School Students,13, *Current Issues in Education*, 3,2011,12.

³⁰ Bouville M, 'Cheating and neutralization,' *ResearchGate*, January 2008, 1
https://www.researchgate.net/publication/267853478_Cheating_and_Neutralization on 12 September 2023.

³¹ Bouville M, 'Cheating and neutralization',1.

³² Davy J, Kincaid J, Smith K and Trawick, M,' An examination of the role of attitudinal characteristics and motivation on the cheating behavior of business students,' *Ethics and Behavior*, 17,2007, 287.

³³ Pratt T, Gau J and Franklin T, 'Key ideas in criminology and criminal justice,' 1st ed. Los Angeles: SAGE,2011.

³⁴ Bartol C and Bartol A, 'Criminal behavior (custom ed.) Upper Saddle River, NJ: Pearson Education/Prentice Hall,2011.

³⁵ Crawford M, 'Social Control Theory,' Walden University, July 2014,2
<http://dx.doi.org/10.13140/RG.2.1.2360.7847> on 12 September 2023.

Individuals develop four basic bonds that determine whether they shall condone criminal activity.³⁶ The Attachment Bond is the level of psychological consideration for social institutions. In contrast, the commitment bond shows the significance of valuing social relationships and refraining from jeopardizing them through deviant behavior.³⁷ Thirdly, the involvement bond explains the opportunity costs based on how people spend their time; hence, the adage of an idle mind is the devil's workshop. The belief bond is the degree to which an individual adheres to the values associated with lawful behaviors.³⁸ It insists that the more significant a person's principles are concerning a certain behavior, such as academic dishonesty, the less likely they are to participate.

Social Control Theory insists that people's conscience develops gradually through various interactions with rules and societal beliefs.³⁹ Children are taught morals by their parents, teachers, and churches. As adults, they learn laws through the police and courts. According to this theory, children without exposure to religious beliefs or morality ultimately indulge in deviant acts. Although biological factors highly contribute to a person's susceptibility to crime, the social control theory explains approximately 50% of engagement in deviant behavior.⁴⁰

This study shall use the neutralization theory to show why commercial academic cheating is difficult to eradicate because of the likelihood of students cheating and essay writing mills providing services. The social control theory provides a different perspective on deviant behavior. It is relevant to this study as it outlines the role of law in eliminating social problems such as academic dishonesty.

1.8 Literature Review

The issue of university students' indulgence in commercial academic cheating has caught the attention of many scholars. However, most literature surrounding commercial academic

³⁶ Pratt T, 'Key ideas in criminology and criminal justice,'57.

³⁷ Pratt T, 'Key ideas in criminology and criminal justice,'58.

³⁸ Pratt T, 'Key ideas in criminology and criminal justice,'59.

³⁹ Crawford M, 'Social Control Theory,'3.

⁴⁰ Crawford M, 'Social Control Theory,'3.

cheating revolves around identifying different types of commercial academic cheating, providing statistics, and implementing prevention strategies.⁴¹ A common characteristic in most articles is that the prevention measures rely on the efforts of the institutions to prevent assignment outsourcing and to act against the students. Only a few authors provide insight into how essay mills work which is a key element in coming up with viable solutions to the problem.⁴² Dr Chloe Walker, a lecturer at the University of the West Indies, focuses on commercial academic cheating in relation to youth unemployment.

Dr Chloe Walker's thesis is entirely based on her interactions with academic contract writers in Kenya.⁴³ Her study seeks to understand the place of academic writing in the lives of Kenyan youth. Cheating is presented as support and is legitimate work for the unemployed.⁴⁴ Kenyan academic writers have gained knowledge and skills to evade detection by plagiarism software which renders detection measures useless.⁴⁵ Walker's thesis shows how the youth are desperate for financial security and willing to compromise on academic integrity. Her research and analysis are a great starting point for tackling the challenges towards implementing laws against commercial academic cheating.

1.8.1 On the reasons why commercial academic cheating should be banned in Kenya

Several studies have revealed alarming cases of academic dishonesty in various countries including Kenya.⁴⁶ North American Surveys discovered that 7% of undergraduates and 3% of postgraduates admitted to submitting work done by another person as their own.⁴⁷ Curtis and Popal found that 3.5% of their sample had bought an essay and turned it in as their

⁴¹ Walker M and Townley C, 'Commercial academic cheating: A new challenge for academic honesty,'10, *Journal of Academic Ethics*, 1,2012; Jenkins T and Helmore S, 'Coursework for cash: the threat from on-line plagiarism,' In *Proceedings of 7th Annual Conference for Information and Computer Sciences*, 2006.

⁴² Ellis C, Zucker, I. M and Randall D, 'The Infernal Business of commercial academic cheating: Understanding the business processes and models of academic custom writing sites,' *International Journal for Educational Integrity Biomed Central*,2018,1-21.

⁴³ Walker C, 'The white-collar hustle: Academic writing & the Kenyan Digital Labour Economy,'15.

⁴⁴ Walker C, 'The white-collar hustle: Academic writing & the Kenyan Digital Labor Economy,'15.

⁴⁵ Walker C, 'The white-collar hustle: Academic writing & the Kenyan Digital labor Economy,'16.

⁴⁶ Curtis J and Clare J, 'How Prevalent Is Commercial academic cheating and to What Extent Are Students Repeat Offenders?,'15, *Journal of Academic Ethics*, 2, 20 April 2017,118. <https://doi.org/10.1007/s10805-017-9278-x>. on 27 September 2023.

⁴⁷ McCabe D, 'Cheating among college and university students: A north American perspective,' *International Journal for Educational Integrity*, 2005,1. <http://dx.doi.org/10.21913/IJEI.v1i1.14> on 27 September 2023.

own.⁴⁸ As the educational sector evolves through technological advancements, the need to address and ultimately ban commercial academic cheating in Kenya is more urgent to preserve morality as a country. Article 10(2) of the Constitution of Kenya highlights integrity as one of the national values and principles of governance.⁴⁹ It refers to the virtue of being steadfast and adhering to moral standards. Education is an important asset in propagating such desirable virtues in its citizens.

In reality, life is about people's choices and actions and not entirely what they know. In a world obsessed with utility and control, education systems focus on pumping ideas into the learner's heads, overlooking character development.⁵⁰ This forgotten moral sphere of education influences the quality of the citizens and, ultimately, the society.⁵¹ Over the years, commercial academic cheating has become a lucrative business among the Kenyan youth. More than a million unemployed youth are financially frustrated yet have Degrees.⁵² According to some, commercial academic cheating is the only way to earn a living without engaging in criminal activities. Although the Kenyan education system seems to spit out employees and not entrepreneurs, the lack of insistence on moral values makes the youth comfortable actively promoting academic dishonesty, contradicting the nation's values.

The International Labor Organization has created an agenda promoting decent work to achieve fair globalization and reduce poverty. Decent work involves job opportunities that are fair, safe, and mindful of the worker's rights.⁵³ In recent decades, flexible contracts have replaced structured and safe employment agreements.⁵⁴ Unstructured forms of employment

⁴⁸ Curtis G and Popal R, 'An examination of factors related to plagiarism and a five-year follow-up of plagiarism at an Australian university,'7, *International Journal for Educational Integrity*,1,2011, 32.

⁴⁹ Article 10(2), Constitution of Kenya (2010).

⁵⁰ Chang'ach J, 'The Centrality of Character and Integrity Education in Kenya's Institutions of Higher Learning,'2, *Asia Pacific Journal of Multidisciplinary Research*,1, February 2014,48.

⁵¹ Chang'ach J, 'The Centrality of Character and Integrity Education in Kenya's Institutions of Higher Learning,'48.

⁵² Gitonga S, 'Commercial academic cheating (from a Kenyan Youth's View),' *Medium*, 2 August 2021

<https://medium.com/@editorsamuelkariuki/contract-cheating-from-a-kenyan-youths-view-9ee2efc2cd72> on 28 September 2023.

⁵³ International Labour Organization, Decent work. <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm> on 28 September 2023.

⁵⁴ Eurofound and International Labour Organization, 'Working conditions in a global perspective. International Labour Organization and Publications Office of the European Union,'2018.

are prone to precarious risks due to less security and more social deprivation.⁵⁵ The global commercial academic cheating sphere is worth over \$1 billion, yet workers in Kenya get a minimal share despite doing all the work. Websites promoting essay writing services act as middlemen between students and writers. These sites can take more than 30% of the cut as commission, which is unfair to Kenyan workers.⁵⁶ Moreover, since there is no legal contract between the intermediaries and writers, the latter are prone to exploitation and unfair treatment contrary to the labor laws of Kenya.

1.8.2 On the legal attempts towards curbing commercial academic cheating focusing on Australia

Several jurisdictions, such as Ireland, parts of the United States and New Zealand, have enacted laws to respond to the commercial academic cheating problem.⁵⁷ Members of Parliament in the United Kingdom are analyzing how they may assist in amending existing laws to combat commercial academic cheating, especially its advertisement and provision.⁵⁸ New Zealand sought to address the matter in 2011 by amending its Education Act 1989 which imposed criminal charges on the supply or advertisement of essay writers.⁵⁹ Ireland has equally made legislative changes by establishing the Qualifications and Quality Assurance Act 2019 which establishes statutory powers to prosecute anyone encouraging commercial academic cheating.⁶⁰ However, no prosecutions have been made using this Act

⁵⁵ Kalleberg A and Hewison K, 'Precarious work and the challenge for Asia', *American Behavioral Scientist*, 3, 276.

⁵⁶ Gikandi, H, 'Doing Western Students' Homework Is Big Business in Kenya,' *The World from PRX*, January 24, 2020.

⁵⁷ Amigud, A., & Dawson, P. The law and the outlaw: Is legal prohibition a viable solution to the commercial academic cheating problem? *Assessment & Evaluation in Higher Education*, 45(1), 2020, 98–108.

⁵⁸ Turner, C. Cheating 'essay mills' could be criminalized, 2021 <https://www.telegraph.co.uk/news/2021/04/22/cheating-essay-mills-could-criminalised/>

⁵⁹ Draper M and Newton P, 'A legal approach to tackling commercial academic cheating?' 13, *International Journal for Educational Integrity*, 1, 2017, 13.

⁶⁰ Quality and Qualifications Ireland (QQI). Qualifications and Quality Assurance Amendment Act, 2019 <https://www.qqi.ie/Articles/Pages/Qualifications-and-Quality-Assurance-Amendment-Bill.aspx>

since its enactment.⁶¹ According to Draper and Newton, the attempts of some states to prevent commercial academic cheating through legislation have been ineffective.⁶²

Australia's approach towards commercial academic cheating is more aggressive compared to other jurisdictions. The Tertiary Education Quality and Standards Agency Act 2020 offers a series of provisions that address the various elements of commercial academic cheating and expand the responsibilities of TEQSA to include a vital prevention role.⁶³ TEQSA has the power to force internet service providers to block advertisements of essay mills. The legislation distinguishes between the provision of essay writing services and their advertisements, which acknowledges the ever-changing commercial academic cheating market.⁶⁴ Another significant element in the Australian Act is a strict liability clause. Intent has always been a contentious issue internationally, leading to delays in creating laws and challenges in implementing the current reforms.⁶⁵

1.8.3 On the potential solutions towards handling the challenges of legal and institutional implementation

Kenya is rich with highly educated individuals with limited employment opportunities, making it a big player in the academic cheating industry.⁶⁶ Although academic writers claim they have no alternatives, a potential argument is that people always have choices, such as emigrating to countries with plenty of jobs or providing legitimate educational assistance.⁶⁷ Cooperation from Kenyan authorities seems necessary to decrease supply although such

⁶¹ Irish Independent. Students should be wary of cheating their way into trouble,2020.

<https://www.independent.ie/irish-news/education/going-to-college/students-should-be-wary-of-cheating-their-way-into-trouble-39524106.html>

⁶² Draper M and Newton P, 'A legal approach to tackling commercial academic cheating?'24.

⁶³ Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

⁶⁴ Groves A and Nagy V, 'Meaningful crime prevention or just an 'act': discourse analysis of the criminalization of commercial academic cheating services in Australia,'5.

⁶⁵ Groves A and Nagy V, 'Meaningful crime prevention or just an 'act': discourse analysis of the criminalisation of commercial academic cheating services in Australia,'5.

⁶⁶ Gikandi H, 'Doing Western Students' Homework Is Big Business in Kenya,'2.

⁶⁷ Gallant T, 'A Bold Proposition: Withholding Foreign Aid to Tackle the Commercial academic cheating Problem,' ICAI, September 2019<https://academicintegrity.org/resources/blog/41-2019/september-2019/123-a-bold-proposition-withholding-foreign-aid-to-tackle-the-contract-cheating-problem> on 13th September 2023.

cooperation is nonexistent despite Kenyan authorities promising to crack down on academic writers several years ago.⁶⁸

One potential solution to eliminating commercial academic cheating is solving the unemployment crisis. According to census statistics, about 40% of the 13 million youth in Kenya are jobless.⁶⁹ The situation recently worsened due to the harsh economic climate and pervasive income inequality. Kenya's education system trains workers and prioritizes white-collar jobs. Even those who yearn to start their businesses lack adequate capital and support. The government should encourage skill-based professions and place less emphasis on office jobs. Creating awareness of the most favorable countries to emigrate to and promoting legitimate remote work shall help reduce unemployment, ultimately reducing commercial academic cheating.

As mentioned, the Kenyan education system focuses on imparting knowledge and overlooks character development. Morality greatly influences one's beliefs, habits, and attitudes towards life.⁷⁰ The role of a school is not only to make learners accumulate information but also to nurture them into well-cultured citizens.⁷¹ Writers in Kenya believe they are better off assisting students abroad to excel in their studies than indulging in criminal activities. Although the degree of damage is different, commercial academic cheating is still unethical. One writer states there is nothing the government or international bodies can do to curb commercial academic cheating, as writers are clever enough to bypass all restrictions.⁷² Learning institutions should promote character and integrity education to foster a morally upright society.

⁶⁸ Gallant T, 'A Bold Proposition: Withholding Foreign Aid to Tackle the Commercial academic cheating Problem'.

⁶⁹ Alushula P, 'Census: 39PC of Kenya Youth Are Unemployed,' Business Daily, 19 September 2020 <https://www.businessdailyafrica.com/bd/economy/census-39pc-of-kenya-youth-are-unemployed-2281430> on 13 September 2023.

⁷⁰ Chang'ach J, 'The Centrality of Character and Integrity Education in Kenya's Institutions of Higher Learning,'48.

⁷¹ Chang'ach J, The Centrality of Character and Integrity Education in Kenya's Institutions of Higher Learning,50.

⁷² Gitonga S, 'Commercial academic cheating (from a Kenyan Youth's View),'3.

1.9 Contribution

Previous researchers working on eliminating commercial academic cheating have focused on implementing detection methods and prevention strategies that may make it impossible for students to outsource assignments.⁷³ There needs to be more emphasis on why commercial academic cheating should be criminalized in the first place. Groves and Nagy suggest that meaningful change through a legal approach is only possible through a detailed exploration of wider influences and underlying motivations of commercial academic cheating.⁷⁴ This is currently underway, but more research is required. This study shall be a unique contribution as it focuses on identifying and solving the challenges faced during implementation of legal and institutional reforms. It shall assist policymakers in fully understanding the problem by providing a different perspective for legislative reforms and potential solutions. I expect this work to be useful in other fields, such as labor law and human rights agencies, especially United Nations Educational, Scientific and Cultural Organization.

1.10 Methodology

The study will consist of two main parts: the first outlining the dire need to criminalize commercial academic cheating in Kenya and the second detailing the limitations of the current legislative reforms and providing potential solutions. The qualitative research will primarily rely on secondary sources such as journal articles, working papers, book chapters, and other online websites. It will also focus on some primary sources, such as the TEQSA 2020.⁷⁵ I shall use a deductive approach to prove my hypothesis through the findings of my research questions. The first part shall outline the need to ban commercial academic cheating by focusing on its adverse effects on national values and individual labor rights,

⁷³ Clarke R and Lancaster T, 'Eliminating the successor to plagiarism? Identifying the usage of commercial academic cheating services,'12; Lancaster T and Clarke R, assessing commercial academic cheating through auction sites—a computing perspective,5; D'Souza, Daryl, Margaret Hamilton and Michael C. Harris, 'Software development marketplaces: Implications for plagiarism.'

⁷⁴ Groves A and Nagy V, 'Meaningful crime prevention or just an 'act': discourse analysis of the criminalisation of commercial academic cheating services in Australia,'21.

⁷⁵ Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

while the second part focuses on solving the challenges faced during implementation of legal reforms through solving the underlying issues behind commercial academic cheating.

In part one on the consequences of commercial academic cheating, this study will look into the impact of commercial academic cheating and why it needs to be criminalized in Kenya. I shall use an ethical approach to explain why academic writers are comfortable with the practice despite its threat to academic integrity. Another approach in this section shall be reflections on interviews that depict the depth of writers' perspectives and data collection to establish the prevalence of commercial academic cheating. Given the objectives, a qualitative case study method is the most appropriate.

The study will then examine the discord in implementing the existing laws regarding commercial academic cheating through a comparative analysis focusing on Australia. I shall combine interpretive policy analysis and political discourse analysis to explore parliamentary discussions on the criminalization of essay writing services. Paying attention to parliamentary debates as a discourse analysis avenue is essential in identifying the weaknesses of the current legislative reforms. Interpretive policy analysis focuses on the performative nature of the policy. Through this method, this study shall identify the challenges of implementing reforms in actual cases and propose viable solutions.

1.11 Chapter Breakdown

Chapter one of the study contains the research objectives, theoretical framework, and its justification, which is the foundation of the entire study.

Chapter two focuses on the impact of commercial academic cheating on national values outlined in the Constitution of Kenya and makes a case for its illegalization.

Chapter three examines the progress made by Australia in its legislative attempt to ban commercial academic cheating, including the successes and the challenges faced in this quest.

Chapter four provides recommendations on Kenya's legislative and institutional reform in outlawing commercial academic cheating.

Chapter five gives a summary of the findings, identify areas for further study and conclude the dissertation.



Chapter 2. A case for the illegalization of commercial academic cheating in Kenya

2.1 Introduction

Commercial academic cheating is a great detriment to academic integrity worldwide. It occurs when students give out their assignments to third parties, usually found online, and submit the work as their own.⁷⁶ This particular form of cheating poses significant harm to educational systems since it is difficult to detect, as verifying authorship of an assignment is nearly impossible.⁷⁷ Moreover, there needs to be more research available on the supply end of commercial academic cheating, contributing to the inefficiency of the strategies towards curbing it. Over the years, higher education has led to a significant increase in annual revenue.⁷⁸ However, the business has not only been propelled by publishing and software companies but also less licit ventures like commercial academic cheating.⁷⁹ Commercial academic cheating, colloquially referred to as academic writing in Kenya, combines commercial plagiarism with the advanced digital gig economy, improving the undetectable nature of essay mills.⁸⁰ This chapter explains why commercial academic cheating needs to be banned by outlining its adverse impact on Kenya's national values, youth employment, and digital labor.

⁷⁶ Walker M and Townley C, 'Commercial academic cheating: a new challenge for academic honesty?', *Journal of Academic Ethics*, Springer, 24 February 2012, 27 [Commercial academic cheating: a new challenge for academic honesty? | Journal of Academic Ethics \(springer.com\)](https://doi.org/10.1007/978-981-287-079-7) on 3 November 2023.

⁷⁷ Walker M and Townley C, 'Commercial academic cheating: a new challenge for academic honesty', 27.

⁷⁸ Walker C, 'Understanding the 'Supply End' of Commercial academic cheating: A Kenyan Youth (Un)Employment Perspective', *Handbook of Academic Integrity*, 3 June 2023, 1 [Understanding the 'Supply End' of Commercial academic cheating: A Kenyan Youth \(Un\)Employment Perspective | SpringerLink](https://doi.org/10.1007/978-981-287-079-7) on 3 November 2023.

⁷⁹ Comaroff J and Comaroff L, 'Theory from The South: Or, How Euro-America is Evolving toward Africa,' *Paradigm Publishers*, 2012.

⁸⁰ Newton P and Lang C, 'Custom essay writers, freelancers and other paid third parties', In T. Bretag (Ed.), *Handbook of Academic Integrity*, 2016, 2 [http://link.springer.com/10.1007/978-981-287-079-7](https://doi.org/10.1007/978-981-287-079-7) on 3 November 2023.

2.2 Commercial academic cheating context

Commercial academic cheating or ghostwriting involves a student procuring the services of a third party fully aware of the transaction's proceeds to produce academic work.⁸¹ The student then submits the job to their institution as their own. There is a widespread misconception that it is a new form of academic dishonesty; however, it is probably one of the oldest types of academic misconduct.⁸² Technological advancement and global connectedness online have made it much easier for students to contact and transact with "academic writer from all corners of the world. Studies reveal that approximately 3.52%⁸³ of students engage in it and over 60% of them are likely to contract their work multiple times.⁸⁴ A crucial aspect of commercial academic cheating is producing original work, therefore undetectable through standard plagiarism detection applications.

There are various ways in which commercial academic cheating transactions happen, which include discussion forums, auction sites, feed aggregators, and essay mills.⁸⁵ The basic structure of these platforms is one writer site accompanied by several client sites that share identical IP addresses, indicating the likelihood of them operating as a single entity.⁸⁶ Writer sites function and perform administrative roles such as order evaluation, payment processing, and customer service and support.⁸⁷ The cost of an assignment varies depending

⁸¹ Ellis C, Zucker M and Randall D, 'The infernal business of commercial academic cheating: understanding the business processes and models of academic custom writing sites', 14, *International Journal for Educational Integrity*, 1, 2018, 1.

⁸² Bertram T, 'Academic integrity in the twenty-first century: a teaching and learning imperative', ASHE High Educ Rep 33, 2008, 43 <https://doi.org/10.1002/aehe.3305> on 3 November 2023.

⁸³ Newton P, 'How common is commercial academic cheating in higher education and is it increasing?' A systematic review, *Frontiers in Education*, 3, 2018, 124.

⁸⁴ Curtis G and Clare J, 'How prevalent is commercial academic cheating and to what extent are students repeat offenders?' *Journal of Academic Ethics*, 15, 2017, 117 <https://doi.org/10.1007/s10805-017-9278-x> on 3 November 2023.

⁸⁵ Lancaster T, 'The Phenomena of Commercial academic cheating', *Imperial College of London*, January 2008, 2 <https://www.researchgate.net/publication/228492010> on 4 November 2023.

⁸⁶ Ellis C, Zucker M and Randall D, 'The infernal business of commercial academic cheating: understanding the business processes and models of academic custom writing sites', 5.

⁸⁷ Ellis C, Zucker M and Randall D, 'The infernal business of commercial academic cheating: understanding the business processes and models of academic custom writing sites', 5.

on the discipline, urgency, length, and academic level.⁸⁸ Academic writing sites can be categorized into three distinct business models. A business model is the style of transaction components, structure, and control aimed at value creation by exploring business opportunities.⁸⁹

Firstly, there is the instance where writers work as self-employed freelancers. Studies identify some writers as graduates residing in Kenya who claim to earn between \$5000 and \$14000 monthly.⁹⁰ These figures are favorable compared to public service salaries of \$500 per month and Kenya's gross national income per capita of \$1300.⁹¹ The second model is that of an account owner who establishes a marketable online presence and takes a portion, usually 50%, of the money generated through client orders.⁹² Finally, there are master site owners who build and combine both writer and client sites at a fee. They create value by selling pre-tested web applications equipped with in-built business procedures and guidelines for using them.⁹³ Understanding how commercial academic cheating occurs and is enabled through improved technology is crucial in understanding the issue's prevalence and why it needs to be mitigated as soon as possible.

2.3 Commercial academic cheating defying Kenya's national values

Commercial academic cheating raises a great deal of ethical concerns ranging from destroying the credibility of higher learning institutions and tarnishing the reputation of legitimate writing. Article 10 of the Constitution of Kenya outlines the national values and principles of governance which include integrity and sustainable development.⁹⁴ These values are binding to all state organs and persons. In Kenya, the Ethics and Anti-corruption

⁸⁸ Ellis C, Zucker M and Randall D, 'The infernal business of commercial academic cheating: understanding the business processes and models of academic custom writing sites', 10.

⁸⁹ Amit R and Zott C, 'Value creation in E-business', *Strateg Manag J*, 2001,495 <https://doi.org/10.1002/smj.187> on 3 November 2023

⁹⁰ Bu X, 'Commercial academic cheating's African Labor', *The Chronicle of higher education*, 28 August 2016 <https://www.chronicle.com/article/Contract-Cheating-s-African/237586> on 4 November 2023.

⁹¹ Bu X, 'Commercial academic cheating's African Labor', 1.

⁹² Wolverson B, 'The new cheating economy', *Chronicle of High Education*, 2016, 2.

⁹³ Ellis C, Zucker M and Randall D, 'The infernal business of commercial academic cheating: understanding the business processes and models of academic custom writing sites', 17.

⁹⁴ Article 10, Constitution of Kenya (2010).

commission's mandate is to combat and prevent unethical conduct in Kenya through promotion of standards and integral practices.⁹⁵ Commercial academic cheating is an antithesis to national values as it compromises the integrity of educational institutions and the youth who provide such services.

2.3.1 Integrity

Integrity, one of Kenya's national values enshrined in the Constitution refers to the trait of being honest and having firm ethical principles. In the Constitutional Petition 93 of 2020, the court discussed integrity in the public service context revolving around contraventions of relevant rights and freedoms relating to it.⁹⁶ The Leadership & Integrity Act refers to integrity as moral soundness and adherence to a moral code.⁹⁷ Ghostwriting violates the dignity of an integral person and education institution since a student receives credit for another person's effort.⁹⁸ Moreover, commercial academic cheating is expressly prohibited by institutional codes of conduct therefore it demands secrecy and minimizing the risk of getting caught.⁹⁹ By enabling students to submit work that is not their own, commercial academic cheating erodes the trust and credibility of educational institutions, jeopardizing the integrity of the Kenyan education system. The detrimental effects of commercial academic cheating on the nation's values are long term, potentially leading to a devaluation of academic qualifications.

2.3.2 Sustainable Development

According to the Brundtland Commission, sustainable development is development that satisfies the needs of the current society without compromising the ability of coming generations to achieve their goals.¹⁰⁰ The main objective of decent work is to achieve sustainable development highlighted under Sustainable Development Goal 8; promotion of

⁹⁵ National Ethic and Corruption Survey, EACC Research Report, 13 May 2022, 2.

⁹⁶ Dindi Oscar Okumu v Robert Pavel Oimeke & 5 others [2021] eKLR

⁹⁷ Section 3, Leadership & Integrity Act (No 19 of 2012).

⁹⁸ Makinda H, 'Ethical Concerns in Ghost Writing' in Obiora F and Mbae J (eds) Mainstreaming Ethics in Higher Education, 4ed, Global Ethics, Geneva, 2019, 421.

⁹⁹ Walker C, 'The white-collar hustle: Academic writing & the Kenyan Digital Labour Economy', 162.

¹⁰⁰ United Nations General Assembly, *Report of the world commission on environment and development: Our common future*, 1987, 43.

sustained and inclusive economic growth, wholesome and productive work for all.¹⁰¹ Chapter 3 of the Agenda 21 acknowledges the need to strengthen income generating schemes as a means of poverty eradication.¹⁰² It urges governments to establish direct and indirect structures for remunerative employment and productive job opportunities in line with the country's endowment factors, on a sufficient scale to cater for prospective labor force increase.¹⁰³ Academic writing is a risky affair which ultimately interferes with the concept sustainable development.

2.4 Commercial academic cheating as an antithesis to decent work

Decent work widely refers to the combination of access to productive employment and qualitative aspects of work such as social protection, promotion of social dialogue and employment rights.¹⁰⁴ The Constitution of Kenya provides for fair labor practices which are general ethical and equitable treatment of employees.¹⁰⁵ Both concepts aim at promoting a work environment that ensures worker's well-being and respects their dignity. Academic writing is regarded as a viable source of income in Kenya, with approximately 20,000 individuals actively participating.¹⁰⁶ It is part of an extensive network of digital work, including transcription and content writing.

The Kenyan government formally recognizes the proliferation of the digital economy through the Ajira Digital Platform launched in 2016.¹⁰⁷ Ajira's slogan, the future works online, seeks to establish Kenya as a labor choice destination for multi-national organizations to assist over a million youth in acquiring digital job slots. The prevalence of commercial academic cheating as a source of income may be attributed to improved access to higher learning without a proportionate increase in employment opportunities, leaving many educated youth jobless.¹⁰⁸ Kenya's developing economy has faced significant

¹⁰¹ United Nations, *Employment, decent work for all and social protection*, December 2022,1.

¹⁰² United Nations, *Employment, decent work for all and social protection*,1.

¹⁰³ United Nations, *Employment, decent work for all and social protection*, 1.

¹⁰⁴ Piasna A et al, 'Decent Work: Conceptualization and Policy Impact' *Springer*, 2020,1
https://doi.org/10.1007/978-3-319-71058-7_107-1 on 9 November 2023.

¹⁰⁵ Article 41, Constitution of Kenya (2010).

¹⁰⁶ Bu X, 'Commercial academic cheating's African Labor,' 2.

¹⁰⁷ Walker C, 'Understanding the 'Supply End' of Commercial academic cheating,'3.

¹⁰⁸ Walker C, Understanding the 'Supply End' of Commercial academic cheating,'3.

challenges absorbing the vast graduate population into the employment sector. This section highlights the dangers of commercial academic cheating in promoting decent work.

2.4.1 Digital Era in Africa

Over the years, states across the globe have strived to make the world a global village through network expansions. Several global technology organizations are investing resources toward providing 5G internet connectivity worldwide to assist African nations struggling to upgrade their networks.¹⁰⁹ This urgency stems from the probability that a considerable number of people in small economies lack the necessary opportunities to utilize their talents.¹¹⁰ Yet, there is a limited supply of such skills in developed nations. If global connectivity continues to develop, making interaction and communication across long distances easier, the volume of digital work shall increase expeditiously.¹¹¹

Online labor is a range of services provided through a digital forum with no specific ties to location consisting of micro tasks that last a few hours or days and yearlong contracts.¹¹² For most African countries, it involves transcribing, marketing, writing, and virtual assistance, mostly offered via platforms like Fiver and Upwork.¹¹³ These sites perform the same tasks as e-commerce platforms for goods; they bring together potential demanders and suppliers of certain services and take a share of the proceeds of the transactions taking place on the site.¹¹⁴ Online labor supply is more dispersed across low and lower-middle-income countries such as India, while demand is high in the West. Among African countries, Egypt and Kenya supplies the most labor, which is still a small percentage of India's supply.¹¹⁵ Around 50

¹⁰⁹ Melia E, 'African Jobs in the Digital Era: Export options with a focus on online labor' *German Development Institute*,3,2020,32 <https://African%20jobs%20in%20the%20digital%20era/> on 4 November 2023.

¹¹⁰ Pinker S, 'Enlightenment now: The case for reason, science, humanism, and progress', New York, 2018,1.

¹¹¹ Melia E, 'African Jobs in the Digital Era: Export options with a focus on online labor',32.

¹¹² Melia E, 'African Jobs in the Digital Era: Export options with a focus on online labor',32.

¹¹³ Kässi O and Lehdonvirta V, 'Online labour index: Measuring the online gig economy for policy and research. *Technological Forecasting and Social Change*', 137(C), 2018,243 <https://doi.org/10.1016/j.techfore.2018.07.056> on 8 November 2023.

¹¹⁴ Sundararajan A, 'The sharing economy: The end of employment and the rise of crowd-based capitalism' Cambridge, MA: MIT Press,2016,2.

¹¹⁵ Graham M et al, 'The Fairwork Foundation: Strategies for improving platform work,' In Proceedings of the Weizenbaum Conference, Berlin,2019,6.

million registered online labor site account owners and about 10% seem to generate revenue.¹¹⁶

Kenyan youth consider commercial academic cheating a viable source of income,¹¹⁷ and it fits the above description of an online job. Studies classify ghostwriters as those established in Western countries, providers who outsource their contracts, and former Western education students who reside in their native countries.¹¹⁸ Academic writers in Kenya form a new category of workers who are unemployed graduates who have never gone abroad. Employment is widely considered an assurance of adulthood in contemporary society.¹¹⁹ The common narrative is young people in underdeveloped countries miss out on their youth hood since it is difficult to secure well-paying jobs.¹²⁰ Educated youth have prestige reservations, which deters them from low-status jobs, inclining them towards micro-entrepreneurship and part-time employment.¹²¹ From this perspective, one can understand the attractiveness of digital labor, especially commercial academic cheating, where an individual can utilize their academic skills while receiving payment in a stronger currency.¹²²

2.4.2 Promotion of Decent Work

The International Labor Organisation defines decent work as one that delivers a fair and equitable income, under safe working conditions, promotes freedom of expression and prospects for personal growth.¹²³ Decent work was a manifestation of ILO's historical mandate of defending human and labor rights and the maintenance of newly created job

¹¹⁶ Graham M et al, 'The risks and rewards of online gig work at the global margins' Oxford, Oxford Internet Institute, 2017, 5 <https://www.oii.ox.ac.uk/publications/gigwork.pdf> on 8th November 2023.

¹¹⁷ Walker C, 'Understanding the 'Supply End' of Commercial academic cheating: A Kenyan Youth (Un)Employment Perspective', 7.

¹¹⁸ Sivasubramaniam et al, 'A close encounter with ghost-writers: an initial exploration study on background strategies, and attitudes of independent essay providers' 12, *International Journal of Educational Integrity*, 1, 2016, 219.

¹¹⁹ Walker C, 'Understanding the 'Supply End' of Commercial academic cheating: A Kenyan Youth (Un)Employment Perspective', 7.

¹²⁰ Honwana A, 'The time of youth: Work, social change, and politics in Africa' *Kumarian Press Pub*, 2012, 5.

¹²¹ Serneels P, 'The Nature of Unemployment in Urban Ethiopia. Development and Comp Systems' *University Library of Munich*, 2004, 3.

¹²² Walker C, 'Understanding the 'Supply End' of Commercial academic cheating: A Kenyan Youth (Un)Employment Perspective', 8.

¹²³ ILO, Report I-AI International labour conference, Decent work. Report of the Director General, Geneva, 1999, 2.

opportunities.¹²⁴ Globalization and market liberalization pose a great danger on employment conditions hence the need for prioritization of decent work. The broad definition of decent work was necessary in incorporating the interests of ILO'S tripartite body; governments, unions and employers.¹²⁵ Nonetheless, conflicts often arise when highlighting the elements of a good job.¹²⁶

From adulthood to retirement, decent work is paramount to every individual's wellbeing.¹²⁷ Through education, skills and proper training, it is the best route to escape poverty. Decent work opens up new opportunities to global development through investment and entrepreneurial support.¹²⁸ Moreover, it acknowledges human dignity as the center of work by guaranteeing adequate leisure time, safe working conditions, access to healthcare and compensation for loss.¹²⁹ Poverty is a hindrance to prosperity in all societies hence decent work promotes peace and security. Social dialogue, one of the pillars of decent work, is fundamental to conflict resolution and creating cohesive societies.¹³⁰

As mentioned above, defining a good job is often controversial. While higher wages are beneficial to workers, employers complain of limited employment generation. Some workers prefer stable jobs while others thrive on the flexibility of firing and hiring.¹³¹ However, in light of the constituents of decent work, ghost writing fails to fulfill the requirements. By its essence, commercial academic cheating demands secrecy; how then does a writer advance in their profession?¹³² George, a writer in Kenya, says that he has given 5 years to it and realizes the need to shift to something with growth opportunities rather than just money.¹³³ Academic writing involves risks such as not getting paid and the risk of getting caught.

¹²⁴ Piasna A et al, 'Decent Work: Conceptualization and Policy Impact' 2.

¹²⁵ Piasna A et al, 'Decent Work: Conceptualization and Policy Impact' 2.

¹²⁶ Sehnbruch K et al, 'Human development and decent work: why some concepts succeed and others fail to make an impact' 46, *Dev Chang*, 2,2015,199.

¹²⁷ International Labor Organisation, '*Partnerships for Decent Work*' 2009,5
https://www.ilo.org/wcmsp5/groups/public/---dgreports/---xrel/documents/publication/wcms_173437.pdf on 9 November 2023.

¹²⁸ International Labor Organisation, '*Partnerships for Decent Work*' 5.

¹²⁹ International Labor Organisation, '*Partnerships for Decent Work*' 5.

¹³⁰ International Labor Organisation, '*Partnerships for Decent Work*' 5.

¹³¹ Piasna A et al, 'Decent Work: Conceptualization and Policy Impact' 5.

¹³² Makinda H, 'Ethical Concerns in Ghost Writing' 419.

¹³³ Walker C, 'The white-collar hustle: Academic writing & the Kenyan Digital Labour Economy' 161.

Writers mention deception by scammers who disappear after submission of the work and others encounter clients that intentionally reject papers but still access them without payment.¹³⁴ Moreover, there is no platform to seek legal remedy when disputes arise between the client, the writer and the account owner. Such complications make academic writing a precarious job hindering ILO's goal of promoting decent work.

2.5 Tax Evasion

Tax evasion involves deliberately concealing and misrepresenting relevant information from tax authorities to reduce liability illegally.¹³⁵ It is different from tax avoidance which is a legitimate means of reducing tax liability. Tax evasion is a major source of inequality compromising the redistribution objective of any country.¹³⁶ When students engage in commercial academic cheating, they often make illicit payments to individuals or organizations offering academic ghostwriting services. These transactions typically go unreported, contributing to the underground economy and tax evasion. The consequences of such tax evasion are twofold: it deprives the government of essential tax revenue necessary for public services and infrastructure development, and it distorts the economy by fostering unfair competition among legitimate businesses that adhere to tax regulations.¹³⁷ Tax evasion is a pandemic in developing countries as it brings a significant loss for the nations' GDP.¹³⁸

2.6 Conclusion

Commercial academic cheating, commonly referred to as academic writing, happens when a student assigns their coursework to a third party and submits the purchased work as their

¹³⁴ Walker C, 'The white-collar hustle: Academic writing & the Kenyan Digital Labour Economy' 161.

¹³⁵ Kasibwa A, 'Tax Avoidance and Tax Evasion: A Tale of Two Errors' Kenya Revenue Authority, 2023, 1 [Tax Avoidance and Tax Evasion: A Tale of Two Errors - KRA](#) on 9 November 2023.

¹³⁶ Argentiero A et al, 'Tax evasion and inequality: Some theoretical and empirical insights' *Economics of Governance*, 2021, 309 <https://doi.org/10.1007/s10101-021-00261-y> on 9 November 2023.

¹³⁷ Nola A et al, 'The aggregate consequences of tax evasion' *Review of Economic Dynamics*, 40, 2021, 199.

¹³⁸ AlAdham M et al, 'Tax evasion and tax awareness evidence from Jordan' 9, *International Business Research*, 12, 2016, 4.

own.¹³⁹ Of all academic misconduct, it is the most dangerous as it is impossible to detect since the work is often plagiarism-free.¹⁴⁰ Moreover, it is considered a viable source of income for unemployed youth in low-income countries such as Kenya.¹⁴¹ Commercial academic cheating is a threat to integrity and sustainable development through the promotion of decent work; hence, it should be criminalized. The next chapter shall assess the current legal reforms against it, focusing on Australia's attempt.



¹³⁹ Ellis C, Zucker M and Randall D, 'The infernal business of commercial academic cheating: understanding the business processes and models of academic custom writing sites'1.

¹⁴⁰ Lancaster T and Clarke R, 'The Phenomena of Commercial academic cheating' in Roberts S (ed), *Student Plagiarism in an Online World: Problems and solutions*, Hershey, Pennsylvania, 2007,2.

¹⁴¹ Walker C, 'Understanding the 'Supply End' of Commercial academic cheating: A Kenyan Youth (Un)Employment Perspective',7.

Chapter 3. An assessment of Australia's progress in criminalization of commercial academic cheating as a basis for Kenya's Law reform

3.1 Introduction

University students often face immense pressure to balance school work and extra-curricular activities.¹⁴² Some students adopt commercial academic cheating as a coping mechanism, which involves a student contracting out or outsourcing their work to an outsider.¹⁴³ Commercial academic cheating jeopardizes the integrity of a university and poses severe consequences to the students if caught.¹⁴⁴ The Australian university system is known for its exceptional quality hence international students are drawn to Australia as a study-abroad location.¹⁴⁵ In 2017, the higher education sector was Australia's largest services export business with an economic contribution of \$20.7 billion.¹⁴⁶ Reputational harm to the Australian higher education sector may lead to a decline in foreign enrollment, a decline in the value of Australian degrees on the global job market, a reduction in the mobility of Australian graduates from higher education abroad and ultimately a significant loss to its national economy.¹⁴⁷ In light of this, Australia is among the few countries to enact concise laws criminalizing commercial academic cheating due to the increased reliance on

¹⁴² Winstone N, Balloo K, Gravett K, Jacobs D and Keen H, 'Who stands to benefit? Wellbeing, belonging and challenges to equity in engagement in extra-curricular activities at university,'23, *Active Learning in Higher Education*, 2,2022,82.

¹⁴³ Cortinhas C and Szabolcs D, 'Prevention and detection of plagiarism in higher education: Paper mills, online assessments and AI,' *The Handbook for Economic Lecturers*, 2023.

¹⁴⁴ Kaktiņš L, 'Commercial academic cheating advertisements: what they tell us about international students' attitudes to academic integrity,'13, *Ethics and Education*, 2,2018, 270.

¹⁴⁵ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019, 2.

¹⁴⁶ Australian Government Department of Education and Training, *Export income to Australia from international education activity in 2017*, June 2018,1.

¹⁴⁷ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019, 3.

essay mills globally.¹⁴⁸ This chapter outlines the various provisions combating commercial academic cheating and the relevant offenses, providing a basis for Kenya's Law Reform.

3.2 Australian Legislation

Students are now routinely targeted for cheating services through social media and on-campus advertisements.¹⁴⁹ Specific campaigns for cheating services are saturating higher education providers' student bodies worldwide placing emphasis on the services' accessibility, low cost, and low chance of detection.¹⁵⁰ The Panel pointed out that there was no legislation in Australia that forbids students from cheating on their coursework or that forbids companies from offering such services.¹⁵¹ The Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020 establishes the Australian's Government decision to introduce deterrents to higher education third party academic cheating services.¹⁵²

The Board, which advises the Commonwealth Minister of Education on issues pertaining to regulation and quality in higher education, suggested that legislation be enacted to make it illegal to arrange, provide, or advertise academic cheating services.¹⁵³ Its recommendation was based on New Zealand's policy for barring academic cheating services.¹⁵⁴ The Panel suggested that rather than focusing on students who may be using cheating services, regulations should address the behavior of those who offer such services although cheaters are still subject to the academic integrity policies and repercussions in their respective

¹⁴⁸ Crook C and Elizabeth N, 'How internet essay mill websites portray the student experience of higher education,' *The Internet and Higher Education*, 2021.

¹⁴⁹ Lancaster T, 'Social media enabled commercial academic cheating,' 2, *Canadian Perspectives on Academic Integrity*, 2, 2019, 9.

¹⁵⁰ Sivasubramaniam S, Kostelidou K and Ramachandran S, 'A Close Encounter with Ghost-writers: An Initial Exploration Study on Background, Strategies and Attitudes of Independent Essay Providers,' *International Journal for Educational Integrity*, 12, 2016, 2.

¹⁵¹ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019, 2.

¹⁵² Section 3, Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

¹⁵³ Bradley D, Peter N, Helen N and Bill Scales, 'Review of Australian higher education,' 2008.

¹⁵⁴ Section 292E, The Education Act 1989 NZ.

institutions.¹⁵⁵ However, higher education providers will find it simpler to demonstrate to students, academic cheating services, and other stakeholders that engaging in cheating is not just unethical but also unlawful with the help of the new offenses established in the Act.¹⁵⁶

3.2.1 Overview of the Act

The Act carries out the Government's determination to enact legislation to stop the promotion and supply of academic cheating services in higher education, as recommended by the Higher Education Standards Panel. It designates the Tertiary Education Quality and Standards Authority as the agency responsible for enforcing the new legislation and widens the scope of its current responsibilities to include information gathering and criminal investigation. According to the act, it is illegal for someone to offer, provide, or arrange for a third party to deliver academic fraud services to a person working with a higher education provider for profit either physically or online.¹⁵⁷ The maximum punishment for doing so is 500 penalty units, two years in prison, or both. Strong fines such as these are a necessary component of deterrence, which is a crucial element of the effectiveness of this legislation.

Although the exact amount of money made by companies that provide cheating services is unknown, a 2018 study conducted in the UK found that the price of an undergraduate final year essay ranged from £170 to £370.¹⁵⁸ A study from the University of Western Australia reveals that one in ten students purchase assignments or pay people to do online evaluations for them.¹⁵⁹ This explains the \$10 million to \$23 million market in Australia for purchased assignments.¹⁶⁰ In light of these statistics, it is imperative that the Bill imposes a significant

¹⁵⁵ Amigud A and Dawson P, 'The law and the outlaw: is legal prohibition a viable solution to the commercial academic cheating problem?' *Assessment & Evaluation in Higher Education*, 2019,99.

¹⁵⁶ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,3.

¹⁵⁷ Section 114A, Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

¹⁵⁸ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,13.

¹⁵⁹ Curtis G, '1 in 10 uni students submit assignments written by someone else and most are getting away with it,' *The Conversation*, 30 August 2021,1 [1 in 10 uni students submit assignments written by someone else — and most are getting away with it \(theconversation.com\)](https://theconversation.com/1-in-10-uni-students-submit-assignments-written-by-someone-else-and-most-are-getting-away-with-it-2021-08-30) on 12 December 2023.

¹⁶⁰ Bretag T, Harper R, Rundle K, Newton P, Ellis C, Saddiqui S and Haering K, 'Commercial academic cheating in Australian higher education: a comparison of non-university higher education providers and universities,' *Assessment & Evaluation in Higher Education*,2019,3.

financial penalty to sufficiently discourage essay mills or individual freelancers from offering academic cheating services.

The bill provides for strict liability and the physical element of circumstance in paragraphs (a) and (b) of section five's definition of an academic cheating service.¹⁶¹ This subsection eliminates any fault element that may be implied in the definition.¹⁶² Therefore, it suffices to show that an individual's conduct violated section 114A rather than proving they were at fault for breaking the law.¹⁶³ If proof of wrongdoing was necessary, companies that offer cheating services may add disclaimers to their services even if they are aware that their services will be used to enable students to cheat on assignments.¹⁶⁴ The business model of these companies already contains disclaimers of the kind that specify that the essay the customer has purchased is an example only or not to be submitted as the purchaser's own work.¹⁶⁵ Preventing these kinds of possible loopholes is guaranteed through the application of strict liability.

3.2.2 Possible Offences

Commercial academic cheating may be a violation of several laws, including those pertaining to fraud and proceeds of crime.¹⁶⁶ These are indictable offenses in NSW, where the maximum sentences range from three to fifteen years in prison or a fine of \$110,000.¹⁶⁷ Since students are increasingly signing up for online programs or degrees that may be offered internationally it is common that the website where the contracts are established and the

¹⁶¹ Section 114A (2), Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

¹⁶² Section 114A(1)(a) and (b), Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

¹⁶³ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,14.

¹⁶⁴ Sutherland-Smith W and Kevin D, 'You don't always get what you pay for: User experiences of engaging with commercial academic cheating sites,' *Assessment & Evaluation in Higher Education*,2019,1150.

¹⁶⁵ Draper J, Victoria I and Philip M, 'Are Essay Mills committing fraud? An analysis of their behaviours vs the 2006 Fraud Act (UK),'13, *International Journal for Educational Integrity*,1,2017,2.

¹⁶⁶ Steel A, 'Commercial academic cheating: Will students pay for serious criminal consequences,' 42, *Alternative Law Journal*, 2,2017, 125.

¹⁶⁷ David B, 'Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales', *Federation Press*, 2015, 963.

participants are in separate jurisdictions.¹⁶⁸ Like other Australian jurisdictions, NSW resolves this problem by classifying any action that is forbidden as criminally punished by NSW courts if it is partially committed in the state or has an impact on the state.¹⁶⁹ This covers anyone who offers assignment completion services internationally even if commercial academic cheating is not an offence in the recipient jurisdiction.

Fraud which involves financial benefit from deception is the easiest offence to prove regarding criminalizing commercial academic cheating.¹⁷⁰ It is likely that only the student could be charged with fraud since the preliminary requirement for establishing liability is the University's belief that the work submitted was actually done by the Student.¹⁷¹ Essay writing sites often have disclaimers such as no refund for undesirable grades and limited use of the entire assignment to ensure they receive payment regardless of any unprecedented occurrence.¹⁷² This undermines the casual link between financial advantage and the Institution's deception meaning causation has to lie in a more questionable position such as the student financial gain by decreasing the chances of failing a course.¹⁷³ In *Duncan v ICAC* concealing the involvement of corrupt politicians in acquiring a mining lease was necessary to prevent the risk of shares dropping.¹⁷⁴ In commercial academic cheating, submitting a low standard assignment or failing to submit at all leads to financial loss of retaking the unit hence the deception is necessary to avoid such.¹⁷⁵

Forgery is another potential offense which is the creation or use of a fraudulent document with the goal to gain financially.¹⁷⁶ Since the document is a commissioned assessment, it cannot be fraudulently created by the Operator or the Contractor. However, when the student includes their student number and name, the paper might then purport to be entirely

¹⁶⁸ Newton P and Lang C, 'Freelancers and Other Paid Third Parties,'3.

¹⁶⁹ Steel A, 'Commercial academic cheating: Will students pay for serious criminal consequences,'125.

¹⁷⁰ Section 192D and 192E, Crimes Act (1900) NSW.

¹⁷¹ Section 192B(I)(b), Crimes Act (1900) NSW.

¹⁷² Steel A, 'Money for Nothing, Cheques for Free? The Meaning of "Financial Advantage" in Fraud Offences,'31, *Melbourne University Law Review*,1, 201,2007,1.

¹⁷³ R v Ho & Szeto (1989), New South Wales Court of Appeal.

¹⁷⁴ *Duncan v Independent Commission against Corruption* (2015), High Court of Australia.

¹⁷⁵ Steel A, 'Commercial academic cheating: Will students pay for serious criminal consequences,'125.

¹⁷⁶ R v Sewell (2001), New South Wales Court of Criminal Appeal.

created by the student.¹⁷⁷ Even in situations where the student creates the submitted document themselves by printing it, it is arguable that the contents of the paper amount to forgery since it relies on a third party's efforts.¹⁷⁸ The prosecution would additionally have to prove that the student created or utilized the false document with the knowledge that the university would accept it as authentically written by the student in addition to proving this.¹⁷⁹

Another offense is conspiracy to defraud which is proven when individuals agree to deliberately use dishonest tactics to achieve a specific outcome that jeopardizes fulfilling a public duty, the economic interests of the parties involved, or their existing legal rights.¹⁸⁰ There is no need for evidence of deceit to be proven, and the conspirators' planned objective can be entirely lawful establishing the basis for criminal responsibility as the deliberate and broadly defined employment of dishonest means.¹⁸¹ The courts recognize the possibility of a conspiracy even when the parties are strangers.¹⁸² Arguably, all parties understand that the work will be or is likely to be submitted to a University, despite any contractual provisions claiming to avoid liability.¹⁸³ Additionally, the submission would compromise the university's interests in fairly and rigorously evaluating its students' performance to award degrees accordingly.¹⁸⁴

3.3 Conclusion

In conclusion, Penalties, including fines, academic and legal repercussions might serve as a disincentive to prevent commercial academic cheating.¹⁸⁵ Kenya may consider adopting strict responsibility, which would hold people responsible for commercial academic cheating

¹⁷⁷ Steel A, 'Commercial academic cheating: Will students pay for serious criminal consequences,'126.

¹⁷⁸ Attorney General's Reference (No 1 of 2000), WLR.

¹⁷⁹ R v Sultan (2008), New South Wales Court of Criminal Appeal.

¹⁸⁰ Peters v R (1998), Commonwealth Law Reports.

¹⁸¹ Spies v R (2000), Commonwealth Law Reports.

¹⁸² Gerakiteys v The Queen (1984), Commonwealth Law Reports.

¹⁸³ Steel A, 'Commercial academic cheating: Will students pay for serious criminal consequences,'127.

¹⁸⁴ DPP v Shaw (2013), The State Circuit Court of Appeals.

¹⁸⁵ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,13.

regardless of their intention, after taking inspiration from Australia's legal system.¹⁸⁶ This legal idea, which is reflected in Australian laws, simplifies the judicial system and increases the deterrent effect by placing the burden of proof on individuals engaging in commercial academic cheating rather than higher learning institutions.¹⁸⁷ Kenya can enhance its measures against commercial academic cheating and preserve the quality of its education system by borrowing elements from Australia's well-established legislation. The next chapter shall elaborate on the reforms necessary to outlaw commercial academic cheating in Kenya.



¹⁸⁶ Section 114A (2), Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

¹⁸⁷ Ellis C, Van Haeringen K, and David H, 'Technology, policy and research: establishing evidentiary standards for managing commercial academic cheating cases,' *A Research Agenda for Academic Integrity*, 2020, 138.

Chapter 4. Legal and Institutional reforms necessary to curb commercial academic cheating in Kenya.

4.1 Introduction

Unlike nations such as Australia, Kenya does not yet have a legislation that specifically forbids commercial academic cheating.¹⁸⁸ Kenya would find it helpful to take into account clauses similar to those found in Australian laws prohibiting commercial academic cheating such as a precise and all-encompassing definition of commercial academic cheating, specifying acts like purchasing or selling academic work, turning in someone else's work, or engaging in dishonest collaboration activities.¹⁸⁹ Commercial academic cheating remains a growing global concern, which stems from the inability of higher learning institutions to verify the authorship of an assignment and the ease of access to academic writing services.¹⁹⁰ Routine marking techniques are ineffective in detecting commercial academic cheating, and there is a reluctance to report it as many claim it is impossible to prove, making it too time-consuming.¹⁹¹ Several jurisdictions, such as Australia, have actively responded to the dire nature of the situation by enacting laws rendering commercial academic cheating illegal.¹⁹² The rationale behind a legal approach is that many essay mills are operating in plain sight, and they could be discouraged from thriving if there were legal provisions in place.¹⁹³ This

¹⁸⁸ Xu Y and Li W, 'The causes and prevention of commercial academic cheating in the era of digital education: a systematic & critical review,' 21, *Journal of Academic Ethics*, 2, 2023, 305.

¹⁸⁹ Section 5, Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

¹⁹⁰ Amigud A and Dawson P, 'The law and the outlaw: is legal prohibition a viable solution to the commercial academic cheating problem?', 1.

¹⁹¹ Harper R, T Bretag, C Ellis, P Newton, P Rozenberg, S Saddiqui, and K. van Haeringen, 'Commercial academic cheating: A Survey of Australian University Staff', 2.

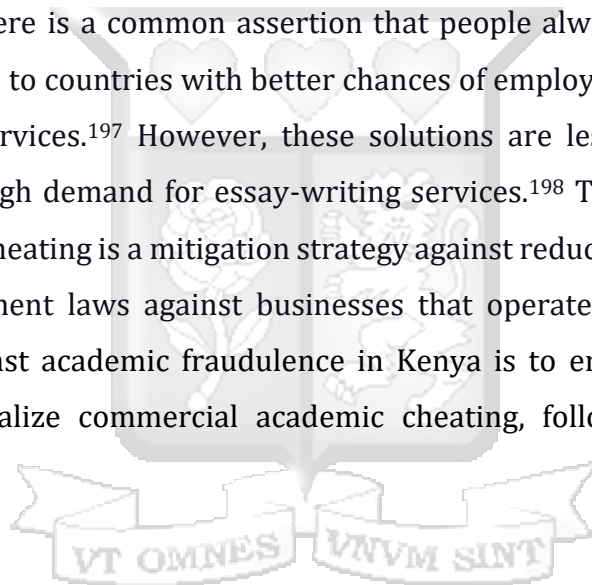
¹⁹² McCormick M and H Whaley, 'Term paper mills: Statutes and legislative information,' *Florida State University College of Law Research Center website*, 2014 <https://guides.law.fsu.edu/termpapermills> on 18 December 2023.

¹⁹³ Draper M, and P Newton, 'A Legal Approach to Tackling Commercial academic cheating?' 11

chapter shall outline potential legal and institutional reforms against commercial academic cheating that may mitigate the situation in Kenya.

4.2 Proposal for Legislation

Kenya is a significant player in the commercial academic cheating industry as there are many highly educated people with scarce job opportunities.¹⁹⁴ It is easy to justify commercial academic cheating when basic needs are at stake, especially since the workers in Kenya claim to have no other choice. They need a source of income, and there is demand for their services.¹⁹⁵ The Heinz dilemma neutralizes the ethical dilemma of choosing integrity over food and shelter.¹⁹⁶ There is a common assertion that people always have choices. These workers could emigrate to countries with better chances of employment or offer legitimate academic assistance services.¹⁹⁷ However, these solutions are less applicable in reality, especially due to the high demand for essay-writing services.¹⁹⁸ The idea of criminalizing commercial academic cheating is a mitigation strategy against reducing the supply, although it is difficult to implement laws against businesses that operate globally.¹⁹⁹ One of the potential reforms against academic fraudulence in Kenya is to enact specific penal code provisions that criminalize commercial academic cheating, following inspiration from



¹⁹⁴ Gallant T, 'A Bold Proposition: Withholding Foreign Aid to Tackle the Commercial academic cheating Problem,' para 1.

¹⁹⁵ Stockman F and Mureithi C, 'Cheating Inc: How Writing Papers for American College Students Has Become a Lucrative Profession Overseas,' *The New York Times*, 7 September 2019 [Cheating, Inc.: How Writing Papers for American College Students Has Become a Lucrative Profession Overseas - The New York Times \(nytimes.com\)](https://www.nytimes.com/2019/09/07/us/college-cheating.html) on 18 December 2023.

¹⁹⁶ Giancola M, Bringsjord S and Govindarajulu, N.S., 'A solution to an ethical super dilemma via a relaxation of the doctrine of triple effect in S. Bringsjord, MO Tokhi, M Ferreira, N Govindarajulu and M Silva (Eds.), *Life-world for Artificial and Natural Systems*, International Conference on Robot Ethics and Standards, London, 2021, 24.

¹⁹⁷ Gallant T, 'A Bold Proposition: Withholding Foreign Aid to Tackle the Commercial academic cheating Problem,' para 7.

¹⁹⁸ Amigud A and Lancaster T, 'I will pay someone to do my assignment: an analysis of market demand for commercial academic cheating services on twitter,' *45, Assessment & Evaluation in higher education*, 4, 542.

¹⁹⁹ McKie A, 'Can universities beat commercial academic cheating?', *Times Higher Education*, 13 September 2018 <https://www.timeshighereducation.com/features/can-universities-beat-contract-cheating> on 19 December 2023.

Australia's approach which shall give authorities the required legal framework to investigate and prosecute perpetrators.²⁰⁰

4.2.1 Criminalisation of commercial academic cheating

4.2.1.1 Components of the offence

The common phrase contract cheating should be substituted with more precise terms such as academic fraudulence or commercial academic cheating to ensure clarity.²⁰¹ This is essential in easing enforcement guaranteeing consistency across other jurisdictions.²⁰² Specifying precise penalties, such as a Ksh 300,000 fine or twelve months in imprisonment, outlines the severity of the crime and acts as a disincentive.²⁰³ Such punishments could be adjustable based on the nature of the crime, considering elements such as the degree of education and the possible harm.²⁰⁴

It is often difficult to distinguish between legitimate academic support and non-education content distribution from commercial academic dishonesty.²⁰⁵ Such ambiguity creates room for essay writing service providers to evade liability by stating that they are simply creating model answers that should serve as a guide.²⁰⁶ The provision should include a concise definition of what constitutes commercial academic cheating and the various elements involved as stipulated in Australia's example.²⁰⁷ Academic cheating service is the

²⁰⁰ Curtis G, 'Commercial academic cheating: Introduction,' In *Handbook of Academic Integrity*, Springer International Publishing, 2023,650.

²⁰¹ Newton P, 'How common is commercial academic cheating in higher education and is it increasing? A systematic review,' 3, In *Frontiers in Education*,2018, 67.

²⁰² Pistor, K, 'Standardization of Law and Its Effect on Developing Economies,' *Am. J. Comp. L.*,50,2002, 97.

²⁰³ Wilson P, 'Academic Fraud: Solving the crisis in modern academia,'7, *Exchanges: The Interdisciplinary Research Journal*, 3 ,2020, 16.

²⁰⁴ Headley J, 'Proportionality Between Crimes, Offenses, and Punishments,'17, *Thomas L. Rev*,2004, 247.

²⁰⁵ Amigud A and Dawson P, 'The law and the outlaw: is legal prohibition a viable solution to the commercial academic cheating problem?'3.

²⁰⁶ Dennehy D, 'View from an 'essay mill: the best offer legitimate support for struggling students,' *Times Higher Education*, 10 September 2016 <https://www.timeshighereducation.com/blog/view-essay-mill-best-offer-legitimate-support-struggling-students> on 18 December 2023.

²⁰⁷ Section 5, Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

undertaking of a student's work where it could be reasonably concluded that the student was required to do and complete the work themselves excluding any activity such as editing which does not interfere with the content.²⁰⁸ The work refers to an essay, assignment project or any evaluative part of a course.²⁰⁹

If a student is unable to write their papers due to disability or injury, then a third party is allowed to write on their behalf as long as they are directly putting down the student's ideas.²¹⁰ If an institution allows its students to use editorial services in their thesis, then a student has the liberty to employ the services of a professional editor.²¹¹ A student using another person's references as a template for their research paper does not amount to academic cheating.²¹² Lastly, a student can seek the assistance of another student in using computer software or application as long as they personally perform the task.²¹³

4.2.1.2 Strict Liability Clause

Commercial academic cheating involves a myriad of offenses, including fraud, forgery, and conspiracy to defraud.²¹⁴ The provision needs to include a strict liability clause in light of the offenses above, as demanding proof of fault would undermine the deterrent effect of the law.²¹⁵ Academic cheating service providers often attach disclaimers to their work even though they are fully aware that the student shall submit the purchased assignment.²¹⁶ Such warnings like the student should only use the essay as a guide and not submit their work are

²⁰⁸ Draper M and Newton P, 'A legal approach to tackling commercial academic cheating?'6.

²⁰⁹ Section 5, Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

²¹⁰ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,15.

²¹¹ Kamler B,'Rethinking doctoral publication practices: Writing from and beyond the thesis,'33, *Studies in higher education*, 3,2008, 285.

²¹² McCabe D, Butterfield K and Trevino L,'Academic dishonesty in graduate business programs: Prevalence, causes, and proposed action,5, *Academy of Management Learning & Education*,3, 2006,300.

²¹³ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,16.

²¹⁴ Steel A, 'Commercial academic cheating: Will students pay for serious criminal consequences,' 124.

²¹⁵ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,14.

²¹⁶ Lancaster T, 'Profiling the international academic ghost writers who are providing low-cost essays and assignments for the commercial academic cheating industry,' *Journal of Information, Communication and Ethics in Society*, 1,2019,76.

part of the business structure already.²¹⁷ The application of strict liability hinders academic writers from exploring any loopholes to avoid legal consequences.²¹⁸ Moreover, it establishes that the student and the contractor, whether they know each other or not,²¹⁹ both agreed to the undertaking of an assignment and was likely to be submitted to a higher learning institution, which would undermine the institution's interests in evaluating student progress and awarding degrees.²²⁰

4.3 Institutional reforms

4.3.1 Pan-African lobby against commercial academic cheating

The obvious solution to deter academic cheating in Kenya would be international collaboration with other jurisdictions, especially where the demand for such services is high.²²¹ Despite the promises issued by Kenyan authorities several years ago to deal with essay writers, significant action has yet to be taken place to establish the lack of cooperation.²²² A bold proposition by countries experiencing the damage of commercial academic cheating would be to withhold foreign aid to Kenya until the Kenyan government enacts proper legislation against commercial academic cheating.²²³ Between 2016 and 2018, the United States, the UK, and Canada gave Kenya approximately \$1 billion, 134 million pounds,²²⁴ and \$83.4 million in aid.²²⁵ It may be an unethical solution to withhold support, but there seems to be limited options to tackle the situation realistically.²²⁶

²¹⁷ Sutherland-Smith W and Dullaghan K, 'You don't always get what you pay for: User experiences of engaging with commercial academic cheating sites',1150.

²¹⁸ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,14.

²¹⁹ *Gerakiteys v The Queen* (1984), Commonwealth Law Reports.

²²⁰ Steel A, 'Commercial academic cheating: Will students pay for serious criminal consequences,'127.

²²¹ Gallant T, 'A Bold Proposition: Withholding Foreign Aid to Tackle the Commercial academic cheating Problem', para 7.

²²² Simons J, 'Inside the African essay factories that churn out university coursework for 115,000 cheating British students every year' *Mail online*, 23 August 2019 [Inside the African essay factories producing essays for cheating UK and US students | Daily Mail Online](#) on 18 December 2023.

²²³ Gallant T, 'A Bold Proposition: Withholding Foreign Aid to Tackle the Commercial academic cheating Problem', para 8.

²²⁴ UK aid, 'Statistics on International Development' *Department for International Development*, 2017,4.

²²⁵ Canadian International Development Platform, 'Canada's Foreign Aid,' 2019 [Canada's Foreign Aid – CIDP | Canadian International Development Platform \(cidpnsi.ca\)](#) on 19 December 2023.

²²⁶ Gallant T, 'A Bold Proposition: Withholding Foreign Aid to Tackle the Commercial academic cheating Problem', para 10.

Kenya could take the lead in initiating a regional convention under the African Union to deal with the growing menace of commercial academic cheating.²²⁷ This convention would function as a unified framework for policy, including common definitions and categories of commercial academic dishonesty to ensure uniform implementation among various jurisdictions.²²⁸ It should also establish minimal requirements for academic integrity policies, giving universities a baseline against which to build strong internal prevention and detection systems.²²⁹ The implementation of a Pan-African approach yields concrete advantages such as joint efforts to tackle a global issue, exchange of knowledge, and enhancement of investigative and prosecuting capacities among member states.²³⁰

4.3.2 Capacity Building

Kenya needs to prioritize capacity building for key authorities and prosecutors in order to prosecute cases of academic fraud efficiently.²³¹ Cooperation with academics, forensic analysts, and cybercrime experts increases the efficacy of training programs.²³² Furthermore, the deployment of resources is of utmost importance, necessitating the availability of specific investigative resources such as cutting edge digital forensic equipment to address academic fraud.²³³ Lastly, inter-agency collaboration is vital fostering coordination and communication between regulatory agencies, educational institutions, and prosecution authorities which ultimately creates a more reliable response system towards curbing academic fraudulence.²³⁴ The concept of sensitization plays a significant role in

²²⁷ Kiptoo J, 'Corruption Menace in Kenya: are legislations and policies the answer to internationalized corruption?' 4, *Africa Nazarene University Law Journal*, 2, 2016, 108.

²²⁸ Sutherland-Smith W, 'Plagiarism, the Internet, and student learning: Improving academic integrity,' *Routledge*, 2008, 1.

²²⁹ Kirya M, 'Corruption in universities: Paths to integrity in the higher education subsector,' *U4: Anti-Corruption Resource Centre*, 2019, 10.

²³⁰ Olowu D, 'Cyber-Crimes and the Boundaries of Domestic Legal Responses: Case for an Inclusionary Framework for Africa', *Journal of Information, Law & Technology*, 1, 2009, 2.

²³¹ Nyaga I, K Ng'etich, Bor K, and Theuri M, 'The prioritization of the three-pronged anti-corruption strategy in Nairobi County, Kenya (2003-2011),' 1, *International Journal of Social Sciences and Entrepreneurship*, 11, 2014, 68.

²³² Jahankhani H and Amin H, 'Digital forensics education, training and awareness,' *In Cyber Crime and Cyber Terrorism Investigator's Handbook*, 2014, 93.

²³³ Prakash V, Alex W, Lalit G, Claudio S and Seema B, 'Cloud and edge computing-based computer forensics: Challenges and open problems,' 10, *Electronics*, 11, 2021, 1229.

²³⁴ Jenkins M, 'Interagency coordination mechanisms,' *Transparency International*, 18 January 2019, 5.

shaping behavior and fostering compliance with the law.²³⁵ Sensitization efforts aim to raise awareness about the negative consequences of engaging in academic fraud and emphasize the importance of upholding academic integrity. By educating individuals about the ethical implications and societal impact of commercial academic cheating, people are more likely to refrain from participating in such activities and adhere to legal regulations.²³⁶

4.3.3 Media and Platform Accountability

The Australian bill stipulates a penalty of 2 years imprisonment when a person advertises commercial academic cheating services for commercial purposes.²³⁷ Advertisement is a vital element of academic service business models since papers need to be constantly distributed to ensure maximum profit realization.²³⁸ It often includes casual approaches such as the distribution of flyers, other students recommending such services in person, and more complex campaigns through social media sites.²³⁹ Academic cheating services thrive on social media platforms as they have low operating costs and are separable from personal accounts which is helpful in evading legal consequences.²⁴⁰ Such campaigns appeal to students' circumstances, such as fear of failing and risking their student visas.²⁴¹ Considering the significant role social media plays in enabling commercial academic cheating, the Kenyan law should include a provision necessitating e-commerce services, freelance marketplaces, and social media sites to ban academic writers from advertising their work on their

²³⁵ Sonjaya Y, 'The Influence of Corporate Culture on Audit Practices and Ethics,'4, *Golden Ratio of Auditing Research*, 2 ,2024,108.

²³⁶ Dewi E and Alam A, 'Transformation model for character education of students,'15, *Cypriot Journal of Educational Sciences*, 5, 2020, 1228.

²³⁷ Section 114B (1), Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020.

²³⁸ Amigud A, 'Cheaters on Twitter: An Analysis of Engagement Approaches of Commercial academic cheating Services,' *Studies in Higher Education*,2019,3.

²³⁹ Explanatory Memorandum of Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019,17.

²⁴⁰ Amigud A and Dawson P, 'The law and the outlaw: is legal prohibition a viable solution to the commercial academic cheating problem?'3.

²⁴¹ Simkin G and Alexander M, 'Why do college students cheat?' *Journal of business ethics*,2010,443.

platforms.²⁴² There should be strict penalties in place to hold such sites accountable if they fail to take adequate measures to prevent the advertisement of academic writing services.²⁴³

4.3.4 Promoting the Orange Economy

Over 20,000 Kenyans engage in commercial academic dishonesty therefore criminalization of such activities may have an adverse effect on unemployment.²⁴⁴ A viable source of income for affected individuals would be to venture into the orange economy which includes artistic, cultural, and creative endeavors that depend on skill and intellectual property.²⁴⁵ The orange economy is a distinct and varied contributor to the economy, combining both modern, technology-driven industries like software development and graphic design, as well as traditional handcraft manufacture.²⁴⁶ Moreover, there seems to be an automation challenge where creativity is vital making it a relatively stable source of income.²⁴⁷

Targeted policies are necessary for the formal establishment of the Orange Economy to integrate creative networks into existing circuits.²⁴⁸ To increase productivity and stability, business development policies, market accessibility, and financial support are essential.²⁴⁹ Since e-commerce and online distribution will play a major role in the future of work in the orange economy, formalization, and sustainable growth will depend on digital skill development, technical training, and human capital-supporting policies.²⁵⁰ Particularly in developing nations, the Orange Economy, which is basically freelancing and self-employment, offers a substantial chance for social and economic advancement.²⁵¹ Kenya can

²⁴² Amigud A and Dawson P, 'The law and the outlaw: is legal prohibition a viable solution to the commercial academic cheating problem?' 8.

²⁴³ Gillespie T, *Custodians of the Internet: Platforms, content moderation, and the hidden decisions that shape social media*, Yale University Press, 2018.

²⁴⁴ Lancaster T, 'How Kenya now leads the world in enabling Commercial academic cheating,' 2018, para 8.

²⁴⁵ Golman M and Ernst C, 'Future of Work, Emerging Sectors and the Potential for Transition to Formality,' *International Labour Organization*, 2022, 29.

²⁴⁶ United Nations Development Programme and United Nations Educational, Scientific and Cultural Organization, *Creative Economy Report 2013 Special Edition: Widening Local Development Pathways*, 2013.

²⁴⁷ Autor D, 'Why are there still so many jobs? The history and future of workplace automation,' 29, *Journal of economic perspectives*, 3, 2015, 7.

²⁴⁸ Stone D, 'Transfer and translation of policy,' 33, *Policy studies*, 6, 2012, 487.

²⁴⁹ Golman M and Ernst C, 'Future of Work, Emerging Sectors and the Potential for Transition to Formality,' 31.

²⁵⁰ Daramola O and Ernest E, 'Affordances of digital platforms in sub-Saharan Africa: An analytical review,' 88, *The Electronic Journal of Information Systems in Developing Countries*, 4, 2022, e12213.

²⁵¹ International Labour Organization, *Global Employment Trends for Youth 2022: Investing in transforming futures for young people*, 2022, 161.

foster entrepreneurship through exploring creative talent and digital potential to create a thriving job market in a bid to promote decent work.²⁵²



²⁵² Kende, M, *ICTs for inclusive growth: e-entrepreneurship on the open Internet,* *The Global Information Technology Report*, 2015, 52.

Chapter 5. Conclusion and areas for further study

5.1 Introduction

This paper discusses the prevalent and severe issue of academic cheating focusing on Kenya's contribution to the matter. The act of students contracting out their work to outside parties, which is frequently made possible by internet platforms, seriously jeopardizes the quality of education. Higher education establishments' incapacity to successfully confirm the authorship of assignments has fostered a climate conducive to commercial academic cheating, eroding the core values of academic integrity and impartial assessment. Moreover, the problem has become more difficult to identify and manage due to the accessibility of academic writing services. This paper highlights the urgency of taking comprehensive action to stop commercial academic cheating as it jeopardizes the credibility of academic credentials. The purpose of this paper is to make stakeholders aware of the severity of this problem and the urgent need for institutional and legislative reform in order to protect Kenya's reputation for academic integrity.

The paper's comparative analysis is essential as it provides a detailed knowledge of the realities and difficulties related to legislative measures intended to combat commercial academic cheating. It sheds light on the practical ramifications of the legal reforms that have been put in place in Australia providing a foundation for well-informed suggestions ideal for the Kenyan context. Moreover, the analysis provides a framework for recognizing optimal approaches and possible obstacles in executing legislative actions. Ultimately, the comparative analysis offers a reliable roadmap towards the formulation of a law that expressly prohibits provision of academic cheating services in Kenya.

Overall, the paper outlines the dire need for legislative and institutional reforms towards curbing commercial academic cheating in Kenya. The study suggests creating a law to make commercial academic cheating illegal under Kenya's penal code, giving authorities a solid legal foundation to prosecute those who assist in academic dishonesty. It also highlights the necessity of media and platform accountability, lobbying for a regional convention and adequate capacity building for relevant stakeholders to adequately tackle academic

fraudulence cases. The paper suggests the orange economy as a viable alternative to mitigate the adverse implications of criminalizing commercial academic cheating on unemployment. It discusses the potential for creative and cultural endeavors to provide sustainable sources of income and employment.

5.2 Possible obstacles towards legal and institutional reforms

Although the study offers insightful suggestions for institutional and legislative adjustments to address the problem of commercial academic cheating in Kenya, several potential roadblocks may delay implementation. Fiscal and time constraints during capacity building, pose a significant barrier as the process demands comprehensive training programs and state-of-the-art digital forensic tools which the government may find difficult to prioritize in light of competing priorities. Persuading participants in the commercial, academic dishonesty sector to pursue relatively new and unexpected occupations in the orange economy poses another possible roadblock. It can be challenging to persuade people to move into the artistic and cultural industries since they might need to be more steady and profitable than the contract-cheating sector. Moreover, the absence of official frameworks and regulations to facilitate the growth of the orange economy could deter people from pursuing these professions even more.

One of the challenges in implementing media and platform accountability measures to combat commercial academic cheating is the continuous emergence of new accounts once some are closed. This cycle makes it difficult to hold platforms and media outlets accountable for facilitating academic fraud, as perpetrators can easily create new channels to advertise their services. Additionally, a significant aspect contributing to the complexity of controlling commercial academic cheating is the transition of writers from part-time to full-time workers. Many writers start engaging in academic fraud as part-time employees, often students looking to earn extra income. However, due to limited employment opportunities, they eventually shift to working full time. This shift in the profile of writers complicates efforts to regulate and control commercial academic cheating effectively.

There are several hurdles to creating a regional convention within the African Union to combat commercial academic cheating. Due to varying legal systems and jurisdictional distinctions across member states, harmonizing penalties and investigative techniques may

prove problematic. Certain member states with limited resources may face challenges in implementing the convention effectively, as it requires specialized resources and infrastructure. It will take persistent diplomatic efforts to overcome leadership obstacles and political will to get agreement and commitment from AU member states. To overcome these obstacles, stakeholders from the government, higher education institutions, and civil society organizations must work together to offer the resources and assistance required to guarantee the implementation of institutional and legislative reforms.

5.3 Further areas of study

Although this work offers insightful information about the supply side of commercial academic cheating, additional research is required to examine the demand aspect of the issue. Several authors discuss the incentives behind commercial academic cheating among students such as the influence of peer pressure, poor time management abilities, and the allure of academic achievement. There is need for further study to determine potential solutions to these aspects. Furthermore, research is required to determine how cultural and sociological elements, such as the impact of overemphasis of academic achievement in most households on the frequency of commercial academic cheating.

Additionally, more study is required to determine the best strategies for deterring persons from offering commercial academic cheating services which may involve outlining the detriments of commercial academic cheating such as lack of credentials and career development. In the end, additional study in these fields will offer a more thorough grasp of the difficulties in dealing with academic cheating and guide the creation of efficient remedies against it.

It is crucial to acknowledge the emergence of advanced technologies such as ChatGPT and other AI models that offer academic assistance. These AI-powered tools have the capability to generate essays, reports, and other academic content with remarkable speed and accuracy. While these technologies present opportunities for enhancing productivity and efficiency in academic tasks, they also pose a significant challenge in terms of academic integrity hence more research is needed to mitigate the effects of such websites.

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