

**Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression aspects of academic freedom**

**Overview of submissions received in preparation of the Report of the Special Rapporteur**

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## I. Overview of Submissions Received in Preparation of A/75/50351

1. This supplemental annex accompanies the 2020 thematic report to the 75th Session of the General Assembly of the Special Rapporteur on the protection and promotion of the freedom of opinion and expression. The report examines the national and international protections for academic freedom and the current threats to academic freedom. The Special Rapporteur highlights state and institutional actions that restrict academic freedom and discusses the necessity of academic freedom for the benefit of individuals as well as society as a whole. The Special Rapporteur argues that academic freedom should be understood to include the freedom of individuals, as members of academic communities or in their solo pursuits, to conduct activities involving the discovery and transmission of information and ideas, and to do so with the full protection of human rights law. States are under a positive obligation to create a general enabling environment for seeking, receiving, and imparting information and ideas.

2. A call for submissions was issued on February 27, 2020<sup>1</sup> and invited all interested stakeholders to submit comments. The Special Rapporteur focused the comments on three main areas of academic freedom: (1) information on international and regional legal frameworks; (2) information on domestic regulatory frameworks, and; (3) information on the impact of restrictions on academic freedom. 15 members of civil society, universities and other educational institutions<sup>2</sup>, submitted comments to the Special Rapporteur. No State responded to the call for submissions.

3. This annex highlights concerns raised by civil society and other stakeholders in these submissions by highlighting trends. Readers are encouraged to look at the submissions themselves for more detailed information. This annex is designed to be read in conjunction with the Special Rapporteur's report highlighting main concerns regarding academic freedom and the principles he believes should guide State and institutional protection of academic freedom. Finally, this annex reflects only the submissions received and should not be understood as a broader literature review of academic freedom.<sup>3</sup>

4. The Special Rapporteur expresses sincere gratitude to those who participated in the process leading to this report. The submissions referenced in this annex and the main report may be found at the website of the mandate (<https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>) or at <https://freedex.org>.

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<sup>1</sup> <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/CallAcademicFreedom.aspx>

<sup>2</sup> The Special Rapporteur received the following submissions from civil society, academia, and others: Article 19; Aula Abierta; Elizka Relief Foundation (“Elizka”); Foundation for Individual Rights in Education (“FIRE”); Hasan Aydin, Viktor Mak and Kristina Andrews (“Aydin/Mak/ Andrews”); Human Rights Research and Education Centre (“HRREC”); Inan Özdemir Taştan & Aydın Ördök (“IHO, Taştan/ Ördök”); İnsan Hakları Okulu, Ülku Doğanay & Ozan Değer (“IHO, Doğanay/ Değer”); International Center for Non-profit Law (“ICNL”); LGB Alliance (“LGB”); Media Matters for Democracy (“MMfD”); Matthew Hedges (“Hedges”); Maat for Peace, Development and Human Rights (“Maat”); Muhammad Muzahidul Islam; Nandini Sundar (“Sundar”); Scholars at Risk Network (“SAR”); The Free Speech Union (“FSU”).

<sup>3</sup> The Overview of the Submission was prepared by Margaret Hinson and Rae Utterback of the UCI School of Law International Justice Clinic, and Sofia Jaramillo Otoy, Legal Advisor to the Special Rapporteur.

## II. Legal Framework

5. Various submissions discussed the legal framework applicable to academic freedom. While Muhammad Muzahidul Islam acknowledges that “there is no clear mention of the words ‘academic freedom’ in any international legally binding human rights instrument,” (Muhammad Muzahidul Islam, p.9), many international human rights instruments have provisions that protect and indicate the importance of academic freedom. When considered together, Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”) along with Article 13 and Article 15 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) outline the concept of academic freedom. (Muhammad Muzahidul Islam, p.11). Article 19 of ICCPR describes everyone’s right to hold an opinion without interference and to seek, receive, and impart information freely. Article 15 of ICESCR guarantees all people the ability “to enjoy the benefits of scientific progress and its applications.” Article 13 of ICESCR guarantees a right to education, as does Article 26 of the Universal Declaration of Human Rights. Notably, the Committee on Economic, Social and Cultural Rights in its General Comment No. 13 to Article 13 of ICESCR “suggests academic freedom as a component to other rights.” (Muhammad Muzahidul Islam, p.9). Though academic freedom is protected by existing international human rights standards, academic freedom violations are rarely presented to international bodies. For example, an academic imprisoned for the publication of a paper may raise a claim of violation of freedom of expression or arbitrary detention yet may fail to raise the academic freedom claim. (SAR, I(6)). This obscures the ability to analyze threats to academic freedom, for they are often labeled under a different category that does not fully highlight the harmful effects of the violation on academic society and the production of knowledge. (*Id.*).

6. Taştan and Örddek recalled UNESCO’s 1997 recommendation concerning the Status of Higher-Education Teaching Personnel, and highlighted that it defines academic freedom as the right “without constriction by prescribed doctrine, to freedom of teaching and discussion without being restricted by the dominant ideology, freedom to conduct research and disseminate and publish its results, freedom from institutional censorship, freedom to express opinions about the institution or system studied, and freedom to participate in professional or representative academic bodies.” (IHO, Taştan/ Örddek, p.14). The UNESCO recommendation also states that “the autonomy of institutions of higher education” is required in order to have “proper enjoyment of academic freedom.” (ICNL, p.4 quoting UNESCO).

7. The Lima Declaration drafted by the World Universities Service also provides a useful definition of academic freedom as “freedoms acquired, developed and communicated by means of creating, teaching, expressing and writing knowledge.” (IHO, Taştan/ Örddek, quoting the Lima Declaration, p.15).

8. The regional mechanisms for the promotion and protection of human rights have also recognized academic freedom. Article 13 of the Charter of Fundamental Rights of the European Union provides protection for arts and scientific research (ICNL Executive Summary, p.4), Article 13 of the American Convention on Human Rights, Article 10 of the European Convention on Human Rights; and Article 9 of the African Charter on Human and Peoples’ Rights all recognize a right to seek and impart information. (Muhammad Muzahidul Islam, p.14-15).

9. Regional jurisprudence likewise has increasingly recognized the right of academic freedom, particularly in cases analyzed within the context of the right to free opinion and expression (SAR, 10). SAR highlighted some cases at the European Court of Human Rights, and stated that it has the largest body of regional caselaw on this issue: In *Kula v. Turkey*, the European Court of Human Rights emphasized how a professor's academic freedom was infringed upon when the professor's institution took action against him for speaking on a television show; in *Mustafa Erdoğan and Others v. Turkey*, the Court affirmed the principle that academic freedom is to be broadly and not narrowly implemented. In *Sorguç v. Turkey*, the Court "underline[d] the importance of academic freedom, which comprises the academics' freedom to express freely their opinion about the institution or system in which they work and freedom to distribute knowledge and truth without restriction." And in *Aksu v. Turkey*, the Court stated that its case law required it "to submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings." (SAR, 11-12). The African Commission on Human and People's Rights explicitly recognized a violation of academic freedom in the case of *Kenneth Good v. Botswana*. In this case an Australian professor criticized Botswana's presidential succession, and was then summarily deported without the chance to contest the order (SAR, 13-14).

10. Sundar provides two bases to understand academic freedom. The first, based on the Academic Freedom Index which highlights five areas of major concern to academic freedom: "(1) freedom to research and teach; (2) freedom of academic exchange and dissemination; (3) institutional autonomy; (4) campus integrity, and (5) freedom of academic and cultural expression." (Sundar, p.5-6). Another way to conceptualize academic freedom is as intramural conduct, which is seen as the more traditional classroom-based conduct (teaching and studying), and extramural conduct, which encompasses academics expressing their opinions as members of that academic field but in spaces outside the teacher-student dynamic. (*Id.*).

11. SAR states that the scope of academic freedom intersects with, but is distinct from, various rights including freedom of opinion and expression. They highlight that the core right of academic freedom includes expressive activities or conducts of members the education sector, acting as such, within or related to their area expertise, field of study, or institution. This conducts or activities are protected "regardless of whether it takes place within the higher education sector, known as 'intramural expression,' or in venues or with persons outside the higher education sector, known as 'extramural expression,' including with members of the public. Expressive activity or conduct of members of the higher education sector, acting not as such but in a general capacity and outside the individual's expertise, field of study, or institution, may be protected by the right of freedom of opinion and expression, but is outside of the direct protection of academic freedom." (SAR, 6).

### **A. Institutional autonomy and its relationship to freedom of expression**

12. ICNL asserts academic freedom of a university's staff and students requires institutional autonomy, as stated in CESCR General Comment No. 13. (ICNL, p.3). In Turkey, Doğanay and Değer analyze how the loss of institutional autonomy during the State of Emergency negatively impacted academics' ability to pursue topics freely and promoted self-censorship. (IHO, Doğanay/ Değer, p.52). In contrast, academics working within universities who respect academic freedom and retained autonomy continued to pursue their areas of

research without self-censorship. (*Id.* p.53). Maat provides an example of the reduction of institutional autonomy through their analysis of how the Turkish government directly controls academics via the Higher Education Law no. 2547 and the Turkish Higher Education Council. (Maat, p.6). Similarly, in India the University Grants Commission (UGC) controls funds for universities and regulates qualifications for professors and curriculum. As UGC increasingly perpetuates the values of the politically powerful, autonomy within academic institutions decreases to the point where UGC is providing recommended syllabi to all faculty to ensure a uniform education. (Sundar, p.6-8).

13. While government interference in universities certainly reduces institutional autonomy, investors in universities can also impose limitations on universities and should be regarded with a critical eye. Matthew Hedges describes concerns over the power the United Arab Emirates can exert over academic institutions, whether through their administration (New York University's board has UAE politicians as members) or through direct funds (UAE has exchanged at least \$213 million with U.S. educational institutions). (Hedges, p.4). The UAE does not protect all academics' freedoms, as exemplified by Hedges' own experience being detained in UAE for his research into its security force system. (*Id.* p.1).

## **B. Role of academic freedom in society: truth seeking and democracy**

14. Many submissions emphasized the need to respect other human rights in order to fully assert one's academic freedom. Maat emphasizes "Academic freedom is a measure of how much governments respect basic human rights" (Maat, p.1). "Any analysis of the interaction between academia and human rights in Turkey is only possible by taking the development of human rights as a basis since the presence or absence of the concept can render the examination of its place within the academia possible." (IHO, Doğanay/Değer, p.7). Elizka recognizes it is challenging to exercise academic freedom when other rights, such as freedom from harm and identity-based discrimination, are lacking. (Elizka, p.2).

15. Academic freedom plays a role in supporting democracy and seeking truth within society. Doganay and Deger claim "human rights decline as democracy disappears," emphasizing the interconnected nature of rights and the importance of academic freedom. (IHO, Doğanay/Değer, p.54). Article 19 discusses how Article 206 of the Brazilian Constitution guarantees freedom of teaching and learning as well as pluralism of pedagogical ideas and conceptions. Article 19 describes this as "the result of the construction of democracy..." and explains how it is currently under threat from a number of conservative movements. (Article 19 Executive Summary, p.1). Likewise, FIRE emphasizes "the vital role in a democracy that is played by those who guide and train our youth." (quoting *Sweezy v. New Hampshire*, p.2). Aydin, Mak and Andrews explain that when there is a threat to academic freedom, there is a threat to research and scholarship, which stops the growth of knowledge and impacts society. Thus, academic freedom "is imperative for the scholarship of academics as well as for the promotion of progressive societies." (Aydin/Mak/Andrews, p.1). These conceptions of academic freedom's connection to democracy are often connected to the idea of pursuing 'the truth' for the betterment of society. Free Speech Union cautions that we should be aware of who gets to define what truth is to ensure it is not biased by ideological pursuits. (FSU, p.6,11). A telling example of academic freedom's importance from current times is the COVID-19 outbreak - without academic freedom, researchers will struggle to convey ideas

and possible solutions (such as vaccines) to each other as well as larger society. (Muhammad Muzahidul Islam, p.20).

### **III. Challenges and Threats to Academic Freedom**

16. Though academic freedom is vast and should be protected, Muhammad Muzahidul Islam recognizes “academic freedom is never unlimited.” (Muhammad Muzahidul Islam, p.4). While not unlimited, FIRE provides the important balancing point that “Academic freedom allows for, and even requires, faculty to be insulated from the halls of legislatures and pressure to conform with public opinion.” (FIRE, p.3). Taştan and Ördek propose the “establishment of an academic tradition” that can self-regulate and determine the bounds of academic freedom. (IHO, Taştan/ Ördek, p.9). Scientific fields were established within academia with principles of autonomy and academic freedom in place because “the scientist’s freedom in research and education is accepted as a condition for the university to fulfill its function especially.” (IHO, Taştan/Ördek, p.4). Thus, these fields may have stronger protections for academic freedom in place. (*Id.*). Maat also encourages recognizing a limit on academic freedom at the bounds of professional standards of academia. (Maat, p.1-2).

17. Scholars at Risk (SAR) encourages academics to balance self-governance with social responsibility. SAR defines social responsibility as “the duty to use the freedoms and opportunities afforded by state and public respect for academic freedom and institutional autonomy in a manner consistent with the obligation to seek and impart truth, according to ethical and professional standards, and to respond to contemporary problems and needs of all members of society.”(II.f.25).

18. Scholars at Risk warns that “attacks on higher education and erosions of academic freedom... shrink everyone’s space to think, question, and share ideas freely and safely, impairing public discourse.” (SAR, I(3)). Challenges and threats to academic freedom come in various forms. These pressures can be political, financial, ideological, and/or cultural. (IHO, Taştan/ Ördek Executive Summary, p.1). Scholars at Risk notes “while such attacks range in severity from lethal violence to more subtle actions, such as restrictions on academic travel, they share a common motivation: to control or silence higher education institutions and personnel, including scholars, students, and staff.” (SAR, VI(41)). There are several trends around the world, as a way to recognize pressures on academic freedom. First, there are greater restrictions to academic spaces. This can take shape by limiting university autonomy, or reducing higher education funding. Second, “violent repression and intimidation of student voices using aggressive means to suppress protests.” Third, “frequent cases of sexual violence on campuses that put women’s safety at risk in academic scenarios.” (HRREC, p.11).

19. In countries such as Turkey, which are experiencing a State of Emergency, the most obvious effect of threats to academic freedom is an increase in self-censorship. Academic freedom becomes challenged for either political or ideological reasons, but also due to self-censorship. (IHO, Taştan/ Ördek Executive Summary, p.1-2).

20. While some harms, such as greater abuse directed at women academics, are more universal, a state’s socio-historical context defines the types of threats and harms perpetuated in efforts to reduce academic freedom. For example, in India, a historical conflict with the Kashmir region has led to the abuse and silencing of Kashmir academics. (Sundar, p.17). In

Turkey, academics who belong to a religion other than Islam are the target of persecution. (IHO, Taştan/ Ördek, p.120).

#### **A. Legality of the restrictions: “provided by Law”**

21. The alteration of legislative frameworks allows for governments to intervene in academia and even detain academics. (Hedges, p.1). Legislative frameworks and the passage of oppressive laws have enormous impact on institutions. This includes harm to university autonomy and the politicization of appointments. In 2017, a Hungarian law forced the Central European University to relocate to Vienna. (ICNL, p.45). In 2019, President Bolsonaro’s administration in Brazil published Decree No. 9,794, which allowed for the executive branch to have veto power regarding university authority nominations. (HRREC, p.5). Article 130 of the Turkish Constitution provides that ““Universities, members of the teaching staff, and their assistants may freely engage in all kinds of scientific research and publication.”” (IHO, Taştan/ Ördek, p.117, quoting the Constitution of Turkey). However, this shall not include the liberty to engage in activities directed against the existence of the state or activities that threaten the state’s sovereignty. Furthermore, these activities are not defined. (Maat, p.6). More than 800 accusations against academics have been documented with the judiciary since 2016. (*Id.* p.8).

22. When countries experience a state of emergency, ethnic and religious tensions manifest on campuses in violence among students. Governments sometimes use the existence of on campus violence to pass laws that control and monitor students which limits academic freedom, as was the case in Turkey and Ethiopia. (IHO, Taştan/Ördek, p.10; Elizka, p.3). While action should be taken to address violence students may face on campus, these actions must be proportional and respect academic freedom.

23. In 2015, Pakistan re-established its military courts. These courts were then used to convict and execute alleged anti-state elements. This included students and professors. (MMfD, p.12).

24. There are direct effects due to challenges and threats to the legal framework surrounding academic freedom. According to ICNL, “excessive state interference” can lead to the development of state-run structures and institutions. This in turn removes institutional autonomy. (ICNL Executive Summary, p.9). These changed legal frameworks lead to accusations against professors which in turn leads to shortages in specific departments. (Maat, p.13).

25. Notably, even if there is no direct effect on the legal framework, and if bills are not approved or passed, their mere suggestion can have a chilling effect and professors begin to self-censor. (Article 19 Executive Summary, p.3).

26. A survey documented by İnsan Hakları Okulu notes growing anxieties among academics in Turkey. 92% of academics surveyed replied that they feel anxious that they will be the target of an investigation. 71% of those surveyed said they felt anxious that they will be detained or arrested. (IHO, Doğanay/ Değer, p.64).

## **B. Legitimacy of the restriction**

### **Restrictions to Institutional Autonomy**

27. Indirect means to restrict academic freedom, could be considered a violation of both the legality and legitimacy requirements of Article 19. Among the restrictions observed are those on the expression of views; repressive practices such as restrictions on research, discussion, programs, and curricula; mandatory training for faculty; and practices restricting student expression. (ICNL, p.11). In this sense, academic freedom implicates “the activities of academics and students,” the “arrangements affecting the autonomy of educational institutions,” and “the conduciveness of the broader environment to free participation” in academia. (ICNL Executive Summary, p.5). Restrictions regarding institutional autonomy include “changes to higher education laws; interference with governance structures universities; regulatory restrictions; interference in the selection, appointment and dismissal of the leadership of institutions; changes to financial conditions for universities; and the use of national emergency laws.” (*Id.* p.1). These restrictions could also be considered under the evaluation of the general obligation of States to guarantee an environment that allows for academic freedom to flourish.

28. Much of the action and rhetoric against academics is fueled by an ideology against them that works to undermine their legitimacy in society. Negative public discourse by governments is a leading way to undermine the legitimacy of educational institutions. (ICNL, p.11 and104). Politicians in Turkey, for example, motivate hatred against academics which in turn creates a culture of oppression against them. (Maat, p.14). There is evidence of this in surveys, where 44% indicated that politicians were a source of threat to them. (IHO, Doğanay/ Değer, p.57). In 2019, Cuban Vice-Minister of Higher Education “threatened all professors who ‘don’t follow Party’s revolutionary policies, morality, and ideology of the Cuban Revolution’.” (Aula Abierta, p.2). In Venezuela, a medical student was arbitrarily expelled because of his in-class critique of his professor’s claim that all students should “swear a new ‘socialist oath supporting Nicolas Maduro’” in place of the Hippocratic Oath. (*Id.* p.3).

29. Certain subjects have become challenging for academia to tackle. As subjects are criminalized and terrorized, labeled as morally degenerate, they are closed for discussion and rendered taboo by the state. (IHO, Doğanay/ Değer, p.30). For example, in Bangladesh, government approval is required for certain historical publications. (ICNL, p.79). In Turkey, topics such as gender studies and the LGBTQI community are often considered taboo by the academic administration. (IHO, Taştan/ Örddek, p.61). Additionally, restrictions on certain research topics may entail “limited access to libraries, restrictions on the publication of and research about certain topics, intellectual property restrictions and limitations on the ability of academics to collaborate internationally.” (ICNL, p.10).

30. A noted trend is mandatory training for faculty at universities regarding the advancement of ideological frameworks. This functions as a general promotion of nationalist and anti-cultural norms. This advancement is displayed in different ways. In Pakistan there is condemnation of any discussion that is deemed “anti-Pakistan” or “anti-cultural.” (MMfD, p.7). In Venezuela, the state controls policies that ensure programs which support “state-sanctioned socialist ideological frameworks.” (ICNL, p.84).

31. Institutional autonomy and academic freedom are also eroded when there is interference in and politicization of school programs and curricula. These restrictions take

various forms and are seen across many countries. In Venezuela, both public as well as private universities face government restrictions regarding the creation of new academic programs. (ICNL, p.12). Typically, these interventions include a promotion of ideological views as part of the academic programs (seen in China, Cuba, and Belarus). (ICNL Executive Summary, p.7). These bans on disfavored subjects are used to impose specific political agendas. (IHO, Taştan/ Ördek, p.111).

32. The battle for control over content is often implemented through textbook indoctrination, which is used in countries such as Pakistan. Most Pakistani textbooks are published under government supervision and display a distorted picture of history meant to reinforce “a particular Islamized ideology and exclusionary national identity.” (MMfD, p.2).

33. Classrooms are controlled in many ways, including control over the media that is shown and other materials used for teaching. In India, teacher Sandeep Pandey was fired for showing anti-national films in class. (Sundar, p.12). In Jordan, the university administration needs to get approval for all “research papers, forums, readings materials, movies, [and] seminars.” (ICNL Executive Summary, p.6-7). In Venezuela, the documentary “Chavism: Plague of the 21<sup>st</sup> Century” was banned from all public spaces by the Criminal Court in Caracas. (Aula Abierta, p.3).

34. Some countries, such as Venezuela, have seen ideological indoctrination go as far as the creation of universities for the purpose of social control. The Bolivarian University of Venezuela is just such an entity, with a government ministry controlling all appointments and content of curricula. (HRREC, p.5-6).

35. Other than the direct passage of oppressive laws, there are also examples of retaliatory lawsuits against both academics and students. In Pakistan, blasphemy charges are used against both progressive students and university professors, and as a consequence they face the death penalty and have little recourse. For example, when university professors, such as Junaid Hafeez, are “falsely accused of blasphemy and have been sentenced to death, it has also often been extremely difficult to find a lawyer willing to defend them because of the risks involved.” (MMfD, p.5). “The murder of lawyer Rashid Rehman in May 2014, as a result of his defence of Junaid, is likely to make it even more difficult to obtain a fair trial when blasphemy laws are involved.” (*Id.*). Lawyers rarely want to take on blasphemy cases because of the implied risks and dangers associated with them.

36. Universities' willingness to cave to public pressure erodes academic freedom as well as freedom of expression. (FIRE, p.3). There are some examples of this in the United States that led to disciplinary reviews of academics and in some instances even resulting in barring professors from campus (*Id.* p.4).

37. Restrictions regarding institutional autonomy and academic freedom also include interference in the selection, appointment, and dismissal of leadership and professors in institutions. In Hungary, there is now a state-controlled system of appointing senior academics. The Prime Minister-appointed chancellor controls staffing as well as appointments. These appointments “are validated by the ministry and confirmed by the President of the Republic.” (ICNL, p.70). Similarly in Turkey, autonomy was removed when the election of school administrators was delegated to the Higher Education Council (“HEC”). The HEC has the power to both employ and terminate faculty members. This resulted in the complete reorganization of universities, an erosion of job security, and the commercialization of

university and faculty members. (IHO, Taştan/ Ördek, p.9). The new hiring criteria erodes the “academic traditions” of Turkey by employing those who “follow a certain ideolog[y]” without necessarily “having any academic qualifications.” (IHO, Taştan/ Ördek, p.124). In Pakistan, faculty members considered either politically outspoken or sympathetic to student causes are dismissed. (MMfD, p.8). Dismissals have also been found to be based on religious as well as political affiliations in countries such as Azerbaijan, Egypt, and Iran. (ICNL Executive Summary, p.8).

38. Management of admissions, scholarship distribution, and curricula also constitutes institutional interference and restrictions to autonomy. Notably, these trends seem to overlap with the targeting of religious groups and gender. In Bahrain, scholarship distribution has been linked to membership of the religious Shia population. (ICNL, p.90). Religious association and its importance in school applications is seen elsewhere as well. Pakistan requires a declaration of religious affiliation on school application forms for both public and private institutions. Muslim students have to declare their belief in the Prophet Muhammad and non-Muslim students must receive verification of their religious affiliation from the local community. (MMfD, p.8). Political interference in admissions has been seen across the board in other countries (Uzbekistan, Nigeria, among others.) as well. This control over the size as well as composition of student bodies “affects the range of views expressed at universities.” (ICNL Executive Summary, p.8).

#### **Penalties and disciplinary action**

39. The criminalization of academics for their activities “can have a serious chilling effect on the autonomy of higher education institutions.” (ICNL, p.13). Those who continue at universities under threat of a loss of autonomy lose belief in their work. (IHO, Doğanay/Değer, Executive Summary, p.2). Dismissals of those academics who continue their work leads to a “shrinking of research areas.” (*Id.* p.2). For example, in Turkey, discussion of Kurdish conflicts led to getting blacklisted. The “psychological terror” during the state of emergency in Turkey included security investigations of academics during times of contract renewal. Those who failed the investigation once, were blacklisted from any future University positions. Thus, most academic work in this area was halted. (IHO, Taştan/ Ördek, p.72). Blacklisting in turn bars academics in Turkey from publishing research, attending conferences, and from foreign travel. (*Id.* p.67-69).

40. A further concern to job security is how social media campaigns can sway college campuses to not support the work of academics or even fire them. While most academic institutions make some level of commitment to freedom of speech, a concern to avoid public disrepute may motivate a college or university to take action against an academic which violates their rights. (FSU p. 7-8). For example, a Professor was offered a tenured faculty job with the University of Illinois at Urbana-Champaign, but then he tweeted negatively about Israel’s prime minister and the tweet gained significant public attention. According to FIRE, this motivated UIUC to revoke its offer of employment. (FIRE, p.4).

#### **Direct violence, threats, and retaliation**

41. Students and academics alike are vulnerable to threats, direct violence, and retaliation. One of these methods of violence is detentib. Matthew Hedges, a UK citizen and

PhD student was detained by the UAE for seven months as a result of his fieldwork research. (Hedges, p.1). He falsely admitted to espionage as a result of torture, coercion, and solitary confinement. (*Id.* p.1). The US State Department and Freedom House conducted a report in 2017 which documented an Iranian-Canadian scholar imprisoned in Iran for four months “after trying to leave the country.” (ICNL, p.100). An Italian PhD student was found dead in Egypt after being detained, and “in Syria, some professors have ‘been killed for supporting regime opponents’.” (*Id.*) In Cuba, a professor and biologist, Ariel Urquiola, was imprisoned following their investigation into the illegal hunting of sea turtles. (Aula Abierta, p.1).

42. In Pakistan, Intelligence agents demanded that the student council at the University of Management Sciences cancel their “Unsilencing Balochistan” panel. The order was followed but the same event was later held in Karachi. Sabeen Mahmud, a prominent social activist, was shot dead on her way home from this event. (MMfD, p.6). In 2014, Shakeel Auj was killed at Karachi University because one of their lectures was deemed blasphemous. (*Id.* p.14). Fear of direct and violent retaliation for written work or language inside the classroom is real in many countries (including India and Bangladesh). (ICNL, p.87).

43. There are noted trends of physical consequences to internet activity. Doğanay & Değer noted that 62% of academics are worried about retaliation for their social media posts, which has led a majority of them to reduce their posts and avoid sharing personal opinions digitally. (IHO, Doğanay/Değer, p.49-50). Physical consequences for content posted online have included murder. Such as in the case of Mashal Khan from Abdul Wali Khan University in Pakistan. A progressive student, who was falsely accused of blasphemy for posting content online was murdered in 2017 by being stripped, beaten, and shot by a mob of students. (MMfD, p.5).

### **Discriminatory treatment**

44. In Pakistan, “access to primary education for girls... is restricted due to conservative sociocultural and religious practices that perpetuate gender inequality.” (MMfD, p.2). An example of this is seen in the assassination attempt on Malala Yousafzai by the Taliban in 2012.

45. Specific targeting of those belonging to certain religious populations is a trend noted in societies that limit academic freedom. For example, those who are a part of the Hazara Shi’a Muslim population in Balochistan have experienced difficulty in accessing education. There is also “a chilling effect on the ability of girls and women to access education.” (MMfD, p.5). Those girls who are part of Shi’a families have often had to leave school.

46. Intervention inside the classroom seems to disproportionately affect minority religious groups as well as women and the LGBTQ+ community. In Hungary, a decree issued by the Prime Minister, effectively removed gender studies from the approved list of academic programs. (ICNL, p.81). An academic invited to teach Queer Theory was targeted on social media, in the daily *Yeni Akit*, and began to worry for his own safety. (IHO, Taştan/ Ördek, p.32).

47. In Venezuela, those expressing their political opinions have been excluded from scholarships and their financial support relinquished. (ICNL, p.8 and 95). Monica Godoy in Colombia was fired from her position at the University of Ibagué “for reporting violence

against women.” (Aula Abierta, p.3). Likewise, students in India have been expelled from or excluded from scholarships as retaliation against dissent. (Sundar, p.11). During the state of emergency in Turkey, 406 academics who were signatories to Academics for Peace were dismissed from their positions at universities through decree. Their passports were cancelled, and they were also banned from public service and performing their professions. 150 of the academic signatories to Academics for Peace were put on trial. (IHO, Doğanay/ Değer, p.28). Internet activity is also used as a form of retaliation. The “School Without Party” movement in Brazil “encourages students to film teachers, seeking to hold accountable the teachers who approach gender and sexuality education or ‘ideological’ topics in class.” (Article 19 Executive Summary, p.3). In Pakistan women are supposedly obligated to comply with a strict dress code in the name of promotion of culture and ethics. Schools have also been known to base performance reports on modesty and reputation rather than on academic performance. (MMfD, p.11).

### **C. Necessary and Proportionate**

#### **Surveillance and monitoring**

48. Surveillance and monitoring of speech and movement leads to restrictions on academic freedom and a culture of self-censorship. Random monitoring of reading materials and research causes academics not to pursue their necessary work. (IHO, Taştan/ Ördek, p.117). These restrictions include “restrictions on the expression of views...[and] restrictions on research and the discussion of specific topics.” (ICNL, p.10). There is often additional monitoring of those belonging to specific religious populations, as well as gendered surveillance. Broadly, the maintenance of specific ideologies within countries often result in surveillance and monitoring of opinions about the government.

49. Religious political parties recruited and militarized students in Pakistan to monitor their colleagues on campus. (MMfD, p.5). One such group, The Jamiat, imposes their views on campuses and monitors the intermingling of male and female students. (*Id.* p.9).

50. Surveillance of speech regarding government criticism is another form of academic censorship. The goal seems to be furthering and promoting the ideology created by the government. In Vietnam, professors are monitored and “must refrain from criticising government policies and adhere to party views when teaching or writing on political topics.” (ICNL, p.78).

51. Pakistani hostel surveillance led to the expulsion of more than 300 women, following the leak of a video in which some students were being reprimanded for demanding relaxation of the curfew. (MMfD, p.8). This monitoring also extends to blackmail of students with videos of women sitting in class or talking to a man through the use of CCTV footage. Often sexual favors or money are demanded in return for not sharing videos with families. (*Id.* p.11).

#### **Internet Access**

52. The internet itself can be a form of censorship of academia and academics. The freedom to hold opinions without interference is not upheld when corporate enterprises

(Google, Twitter, Facebook, Medium, WordPress, etc.) control freedom of expression. They do so by controlling what is allowed on social media and what is removed from their pages via the use of algorithms that prioritize certain viewpoints. The end effect of this is digital de-platforming. (LGB Alliance, p.1-2). The general effects of retaliations against those academics and students who use the internet and social media, has led to a general unease regarding sharing posts. This unease transfers into self-censorship which in turn limits what is available online. (IHO, Taştan/ Ördek Executive Summary, p.2-3).

53. In Kashmir, communication and information networks are “regularly disrupted by the state on the excuse of fighting ‘terror’ or to contain ‘external threats’.” (Sundar, p.18). Communication and information sources include internet access. Therefore, as communication and information sources increased throughout the 1990s, so did the state’s control. In 2019, the state imposed a five-month complete internet blackout. This affected the education system, as well as research scholars. Following a Supreme Court ruling, the government was left to restore the internet, but only brought back 2G. This in turn had a negative effect when combined with COVID-19, where 4G became a necessity for academic research. (*Id.* p.18). Much like Kashmir, the Ethiopian government has also limited internet access by imposing blackouts under the guise of national security, (Elizka, p.3), and has threatened to cut off the internet “forever” due to unrest. (*Id.* p.4).

### **Restriction on the right to protest**

54. A form of restriction to academic freedom is the restriction or suppression of peaceful protests. This can take the form of “restrictions on students related to the expression of political opinions...exclusion from scholarships; criminalization of protests; the physical presence and interventions of security forces on university campuses; arrest, detention, ill-treatment of students; extrajudicial killings; and the trial of students in military courts.” (ICNL, p.8).

55. The physical presence and interventions of security forces on university campuses has been documented across many countries. The India Status Report noted police presence on university campuses. (Sundar, p.15). In Pakistan, there is a history of police presence. In the 1950s the police opened fire on peaceful protesters at Dhaka University, resulting in the death of several students. (MMfD, p.6). More recently, physical obstructions have been put in place, such as the closing of hostel gates to prevent students from participating in the Student Solidarity March. (MMfD, p.12-14). Honduras documented the use of tear gas against students in May 2018. (HRREC, p.6). In 2009, Hugo Chavez ordered the use of powerful tear-gas (“gas del bueno”) to repress students protesting in the streets of Venezuela. (Aula Abierta, p.2).

56. Other than restrictions to protest, there are also retaliatory measures used to limit academic freedom. The right to expression and association are directly tied and connected with academic freedom. In Turkey, about one third of the 1,128 signatories to the 2016 peace petition were dismissed from their positions. (ICNL, p.5-6). Other signatories were prosecuted, arrested, banned from public employment, and 26 were banned from foreign travel. (*Id.* p.6; Maat, p.7-8). Most were somehow targeted. (IHO, Taştan/ Ördek, p.11). 9 student protesters in Turkey were detained and investigated for “terrorism” charges in April 2018. (Maat, p.9). In Egypt, thousands of students were imprisoned following a protest in reaction to the 2013 coup. (ICNL, p.8). In Venezuela, those expressing their political opinions have been excluded

from scholarships. (ICNL, p.8). Likewise, students in India have been expelled or excluded from scholarships as retaliation against dissent. (Sundar, p.11). 450 university students were arbitrarily detained during social protests documented in Bolivia, Colombia, Cuba, Honduras, Nicaragua, and Venezuela. A further 30 were murdered and others subjected to torture. (Aula Abierta, p.2).

57. Restrictions on expression also reaches student organizations and activities. The closure of organizations serves as a means to prevent students from speaking out. (IHO, Taştan/Ördek, p.130). In 1984, Pakistan placed a ban on student unions as well as bans on “political activity and association with political parties.” (MMfD, p.5, 8).

### **Travel Restrictions**

58. Travel restrictions are seen in various countries. Travel restrictions form a constraint on freedom of expression, freedom of movement, and freedom to share knowledge and collaborate with others. Examples include Egyptian faculty members requiring security clearances and approval from the Ministry of Foreign Affairs and Ministry of Higher Education to travel abroad. (ICNL, p.84). Likewise, in India, there are difficulties obtaining research visas. For example, Indian faculty must “apply for ‘permission to leave the country,’ at least six weeks in advance” in order to attend conferences abroad, even if these conferences take place during their vacation time. (Sundar, p.16). In Uganda, an academic that criticized the government was then kept from attending a conference in the Netherlands, and Eritrea often denies exit visas for research trips. (ICNL, p.85). Travel restrictions placed on academics are also seen in Malaysia, China, Thailand, and Cuba. (Id.).

## **IV. Recommendations**

### **A. International community**

59. At the international level, Muhammad Muzahidul Islam encourages states to work to create legally binding instruments. Particularly the Asian region would benefit from a regional judicial mechanism to help mandate and regulate human rights such as academic freedom. (Muhammad Muzahidul Islam, p.20). Article 19 encourages existing international bodies to implement measures to strengthen collaboration and coordination between various UN bodies and other regional intergovernmental organizations, including at the local level. (Article 19 Executive Summary, p.4). To ensure the active recognition and protection of academic freedom, Scholars at Risk recommends the UN Office of the High Commissioner of Human Rights should establish a procedure, including perhaps a Special Rapporteur, to respond to violations of academic freedom. (VII(45)(b)).

### **B. States**

60. While the support of international bodies is valuable, academic freedom must be supported by domestic state action. (Muhammad Muzahidul Islam, p.21). States have both positive duties to actively ensure all peoples’ freedom and protection in academia as well as negative duties to refrain from using state power to suppress academic freedom. (SAR, II(e)(18)). States need to take clear and decisive action to endorse and protect academic

freedom for their citizens. Legislation prohibiting physical violence against academics should be passed. (MMfD, p.15). Governments must ensure access to the internet for all of its citizens. (Elizka, p.5). Free Speech Union recommends laws that define which speech is legally unacceptable to provide clear boundaries both for academics and institutions, but FIRE cautions against definitions that are too limiting. (FSU, p.12; FIRE, p.10). States should “work with post-secondary institutions in the adoption of safe mechanisms to protect women from sexual harassment...” (HRREC, p.12). To ensure effective prevention of academic freedom threats, states should actively analyze and track potential incidents affecting academic freedom to ensure its steps are effective. (*Id.* p.12).

61. Maat advises states to carefully construct laws that allow infringements of rights under times of threats by being narrow and clearly defined. (Maat, p.13). This goal may be supported by states’ sincere observance of the three part test of Article 19(3) of the ICCPR. (Muhammad Muzahidul Islam, p.21).

### **C. Academic Institutions**

62. Academic institutions can also take steps to ensure the protection of academic freedom within their walls. Taştan and Örddek suggest educating all staff, faculty, and students on their academic freedom rights, and inform them of what steps to take if they should encounter a violation. (IHO, Taştan/ Örddek, p.141). FIRE encourages academic institutions to clearly state any speech protected for citizens generally is protected on campus. FIRE also suggests creating protocol within the institution for when someone on campus is threatened by external entities for exercising their academic freedom rights. (FIRE, p.9). Scholars at Risk recommend educational institutions create protocols to actively protect and ensure academic freedom. (SAR, VII(51)(a)). Finally, FIRE encourages administrators and academic institutions to use their freedoms and right to speak out against harms. (FIRE, p.9).

## **V. Summary of Expert Consultation<sup>4</sup>**

63. The Special Rapporteur organized and participated in an expert consultation held on May 27-29, 2020. The workshop was held over Zoom and organized together with the Office of the High Commissioner for Human Rights. The purpose of the workshop was to discuss the meaning of and challenges posed to academic freedom. Determining the scope of academic freedom was the guiding topic for the first day. The scope of academic freedom does not have perfectly solid borders, but for most of the participants it does have a clear core. While academic freedom encompasses aspects of many human rights, this consultation focused on the freedom of expression and opinion aspects of academic freedom. Though defining the limits of academic freedom may be challenging, ultimately it is a right grounded in human rights law which expands beyond Article 19 of the ICCPR. Many commentators expressed concern that academic freedom should not be conflated or subsumed by freedom of expression. While aspects of freedom of expression are of great importance to academic freedom, it also cannot be confined to those boundaries. Academics play a unique and important role in society.

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<sup>4</sup> For a detailed Summary of the Expert Consultation see: <https://freedex.org/wp-content/blogs.dir/2015/files/2020/08/Academic-Freedom-Expert-Consultation-Summary.pdf>

Academic freedom is distinguished from freedom of expression because it is a freedom with a purpose, for the public good and benefit of society.

64. This is a right for all citizens - it is a right for students to seek knowledge, even knowledge society may not approve of. It is a right that institutions must exercise free from governmental intervention in order to create a space for the pursuit of knowledge. It is a right that benefits society as a whole through the dissemination and access to knowledge. Academics often act as truth seekers and warn society of the dangers to come; thus, it is necessary that protections be enacted to prevent governments from suppressing academic freedom.

65. There are legitimate limits to academic freedom. Commentators argued that they should follow the three-part test described in Article 19 of the ICCPR. Academics should play a significant role in determining who is considered academic and in analyzing what may constitute academic freedom or not.

66. On day two, the consultation focused on challenges and threats to academic freedom. States use their national legal framework to create laws to suppress academic freedom or to pursue strategic litigation against public participation (SLAPP) to suppress their academic freedom. Direct violence and retaliation against university students and professors have been documented. These violent tactics restrict academic freedom.

67. The third day of the consultation focused on recommendations. Many recommendations cautioned the Special Rapporteur to continue to approach academic freedom with care as the goal is not to limit academic freedom by defining it in narrow bounds, thereby trapping it, but rather highlight aspects of academic freedom that are already clearly defined and which aspects merit further investigation.

68. Participants at the consultation recommended that States clearly recognize both their positive and negative obligations related to academic freedom. Notably that an academic should never suffer violence or threats of violence for their work. It was recommended that academic institutions should publicize policies stating the strong protection academic freedom must have in any institution, including institutional autonomy. It was proposed that the inclusion of academic freedom in education rating systems could motivate institutional reform.