



Summary of Expert Consultation on Academic Freedom and Freedom of Expression

by UCI Law International Justice Clinic

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I. Introduction

1. The United Nations Special Rapporteur on freedom of opinion and expression organized and participated in a 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.
2. The consultation was organized over three days, with three general areas of discussion: (1) defining the scope of the freedom of expression aspects of academic freedom; (2) describing the challenges and threats posed to academic freedom by States as well as other actors; (3) specific challenges of the digital age. The consultation concluded with a roundtable of comments and recommendations.
3. The consultation was conducted under the Chatham House Rule.
4. Over forty participants (in addition to the Special Rapporteur, his legal advisor, and student-rapporteurs from the University of California, Irvine) attended the workshop over Zoom. The participants included representatives from civil society organizations, academia, and international organizations.
5. This report reflects points raised during the consultations but does not necessarily reflect the views of the Special Rapporteur or all participants. The Special Rapporteur intends to integrate these discussions into his upcoming report to the UN General Assembly in October 2020 to be presented by his predecessor.
6. This report was compiled 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. Scope of Academic Freedom

7. Determining the scope of academic freedom was the guiding topic for the first day. Due to the complexity of the topic, it continued to be discussed throughout the consultation. 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.
8. Article 19 of the ICCPR recognizes the right “to seek, receive and impart information and ideas of all kinds,” highlighting the need for freedom of expression within academic freedom. The right to academic freedom is stated very clearly in UNESCO Recommendation of November 11, 1997 concerning the status of higher-education teaching personnel. Civil society also has also expressed strong support of academic freedom, such as in the “Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education.” Though defining the limits of academic freedom may be challenging, ultimately it is a right grounded in human rights law expanding beyond Article 19 of the ICCPR.
9. Experts emphasized that we must be careful not to pigeonhole academic freedom as a subset of freedom of expression when discussing its scope and definition. Academic freedom cannot be narrowly defined or implemented. 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 expands past those boundaries.
10. The scope of Academic freedom is broad: it included the right of students to seek knowledge, even if it is considered controversial; it is a right that protects institutions from governmental control so it can create the space for others to pursue knowledge; it is also 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.
11. Participants highlighted that all free societies must recognize the core of academic freedom. That is, the ability to pursue, create, and disseminate knowledge as a central component of the right. While there are clearly issues at the margins of academic freedom that pose challenges to defining the limits of this right, the core of the right should not be doubted.

USEFUL THEORETICAL TOOLS FOR UNDERSTANDING THE SCOPE OF ACADEMIC FREEDOM

- 12.** A helpful way to begin to define the boundaries of academic freedom is through the analysis of intramural, extramural, and off-topic conduct. Intramural activities encompass those activities most traditionally associated with academic freedom (i.e. a teacher determining what to lecture on, a student selecting a thesis topic). Extramural activities encompass those actions one undertakes under one's professional title outside the classroom (i.e. speaking on television on a topic in your field). Lastly, off-topic are activities one takes as an individual citizen (i.e. a personal twitter). Off-topic activities retain all freedom of expression protections.
- 13.** While using the intramural, extramural, off-topic framework is helpful, some participants warned that it can create a trap. These labels must be properly defined, with a special focus on the extramural label which is often confused with off-topic. This confusion may lead to the improper belief that academics only have academic freedom protections inside the boundaries of the classroom and not in other fora such as television or publications. Some commentators raised concerns about the tension between recognizing the full scope of academic freedom while also acknowledging that there is a limit to this freedom. Academic freedom is not meant to be a blanket protection, for example a professor expressing a political preference may not be an exercise of academic freedom. Determining where these boundaries lie can be challenging and should be undertaken with care.
- 14.** A concern to highlight is the trap of conceptualizing academic freedom spatially. While activities within a classroom certainly possess academic freedom, the right expands far beyond those walls. Whether it is a researcher in a lab or a lecturer in a classroom, the pursuit and dissemination of knowledge is a right under academic freedom.
- 15.** The individual and collective notions of freedom of expression are similar to academic freedom and may be another helpful tool to conceptualize this freedom. An individual dimension consisting of the right of each person to express his/her own thoughts/ideas/information, and a collective or social dimension consisting of society's right to obtain/receive information and to know the thoughts/ideas/information of others. Academic freedom further consists of one's right to pursue ideas and knowledge for the benefit of society.
- 16.** A few commentators raised an analogy between academic freedom and the protections surrounding journalists. They highlighted that the framework related to violence against journalists and standards on combating impunity for those crimes could be a reference point for analyzing threats against academics. The guidelines that determine the scope of journalistic freedom and protections may be useful in determining the necessary protections and limits for academics as well.

LEGITIMATE RESTRICTIONS TO ACADEMIC FREEDOM

17. Academic freedom is not an absolute right, and it may be subject to restrictions. Participants highlighted Article 19 of the ICCPR as well as the General Comment 13 issued by Committee on Economic, Social and Cultural Rights provide the necessary guidelines to address the limits to academic freedom.
18. Standards determined by the profession should define the distinction between intramural, extramural, and off-topic. Thus, some participants argued that those in academia should be the ones determining the limits, rather than purely having administrators or politicians determine these bounds. Other attendees commented that because academic freedom is a right all in society possess -not only academics- the determination of the limits of academic freedom should include actors from civil society. While academics should remain involved, recognizing the expansiveness of the various stakeholders may be beneficial as well. Academic freedom must not be limited only to those who possess the title of 'academic.'
19. Participants stated that academics themselves should be the ones defining who is and who is not considered and academic. Participants once again analogized to journalists and the work that has been done to expand the definition of journalist beyond the traditional definition as a potential reference point for expanding the definition of academic.
20. Expanding academic freedom beyond the traditional notion of a right only within a classroom is important to allow researchers who may work in labs or other facilities to be able to develop and then disseminate their knowledge.

INSTITUTIONAL AUTONOMY AND ITS RELATION TO FREEDOM OF EXPRESSION

21. Some aspects of academic freedom are clear and must be recognized. This includes institutional autonomy, which is required to allow space for academic freedom. Within an institution, both teachers and students must have the freedom to pursue topics and research of one's choosing. People pursuing knowledge should have the ability to keep research confidential if need be. Upon completing research, one must have the freedom to publish and disseminate knowledge to the larger public. All of these rights come with State obligations to ensure their fulfillment and cannot be infringed through regulations imposed by the state upon institutions of education.
22. While the pressures upon academic freedom may vary between public and private institutions due to who controls the flow of money, all institutions must take steps to ensure and protect the academic freedom of all of its members.
23. Some speakers considered that there are excessive restrictions placed on institutions. Interference by the government affects leadership as well as admissions. This is seen in countries such as Hungary. There are restrictions on the expression of views, research, curricula, teaching, and travel. Enabled by a legislative framework, a lack of institutional autonomy leads to a culture of self-censorship. A clear definition of

institutional autonomy within academic freedom would need to speak to the line between permissible restrictions and oppression.

ROLE OF ACADEMIC FREEDOM IN SOCIETY: TRUTH SEEKING AND DEMOCRACY

- 24.** A common concern arose regarding how to define what is 'academic freedom'. Some argued that academic freedom is not just having an opinion, but it is also about truth seeking. To note, truth should not be tied to science, for defining academic freedom as only accessible to those researching the hard sciences is a trap. Part of academic freedom as an aspect of freedom of expression is the ability to debate openly the various ideas of society to pursue the idea of truth. Educational institutions must strive to create space for these debates to occur in a productive and open manner.
- 25.** Academic freedom must be recognized in this broad manner to allow productive discourses within society to develop and grow. Proliferation and discussion of knowledge supports the goals of individual self-realization as well as develops the moral character of society.
- 26.** Academics play a unique and important role in society. Some participants argued that academic freedom is distinguished from freedom of expression because it is a freedom with a purpose, for the public good and benefit of society. Experts highlighted that academic freedom comes also with a responsibility to use it well, not to corrupt society but rather to be responsive to society. There is a spectrum of academics and how they work. Some work by academics is very distant from the needs of society, some work is directly for the benefit of society. An aspect of academic freedom is the right to make the choice of pursuing academic work, regardless of where it falls on the spectrum. To define academic freedom as only for public good creates a space where the government will want to define what is permissible academic work, which violates academic freedom and emphasizes once again how important institutional autonomy is to protect academic freedom.
- 27.** There was a broader concern for how violation of other rights infringes on one's academic freedom. Some argued that higher education institutions would better fulfill their core academic functions, including advancing knowledge, teaching, and learning, if they focused on improving conditions in their societies (particularly their local communities).

III. Challenges and Threats

28. Many States and institutions have posed challenges to academic freedom through threatening and destructive actions. There are some common tools utilized across the world, as a part of the same phenomenon of repression. Self-censorship is universal and makes it difficult to quantify the effects of restrictions.
29. There are broad categories of challenges to academic freedom that can be seen around the world. It is important to note the sociocultural and historical context of any given place will inherently define the challenges within that space in unique ways. Academic freedom also intersects with gender and religious based violence as well as discrimination.

REPRESSIVE LEGAL FRAMEWORK

30. 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. There has been a weaponization of the judiciary in different parts of the world.
31. Turkey entered a State of Emergency after coup attempts in 2016. This national crisis was then used as justification for the enactment of restrictive and regulatory laws that limited academic freedom in educational institutions. Many institutions of higher education were privatized, which placed great control in the hands of administrators and reduced institutional autonomy significantly. Turkey's privatization of higher education increased censorship. Furthermore, participants stated that institutions have declared publicly that they do not accept court's holdings.
32. There have been reports of SLAPP suits in many States, including Poland, the United States, and Chile.

DIRECT VIOLENCE, THREATS AND RETALIATION

33. Participants highlighted that the situation in Venezuela and Nicaragua shows the relationship between academic freedom and other rights.
34. In Venezuela, the President of the National Constituent Assembly threatened members of the Academy of Physics, Mathematics, and Natural sciences for their academic report on COVID-19 and the increase in cases. The President activated repressive revolutionary forces against these academics. In March, a governor also threatened a university professor and director of the Graduate School of Medicine for speaking about COVID-19. The professor was forced out of the country. Others have been detained for publishing articles related to the economic situation in the country. In 2019, the National Council of Universities requested a criminal inquiry against the members of the Universities Rectors Association for not recognizing Nicolas Maduro government.

35. In Nicaragua, in 2020 a professor was dismissed from his University possibly because of an interview he gave on BBC Mundo where he discussed concerns regarding COVID-19.
36. The relationship between academic freedom and other rights is not limited to scientific research on COVID-19. Other areas of scientific research are also threatened. An Ecuadorian Supreme Court judge and university professor was banned from hearing a constitutional case regarding mining in the Azuay province because of his scientific research papers against extractivism. In August, Cuban Vice-Minister of Higher Education threatened all professors who “don’t follow Party’s revolutionary policies, morality and ideology of the Cuban Revolution.”
37. Reprisals against university students and professors have been documented. In Venezuela in 2019, a medical student was expelled for criticizing his professor. The student criticized the professor’s claim that the students should swear a new “socialist oath supporting Nicolas Maduro” instead of the Hippocratic Oath. In Colombia, a professor was fired from the University of Ibaguè in 2017 for reporting violence against women. Fortunately, the Colombian Constitutional Court ruled supporting the professor’s human rights.
38. Other participants argued that the religious intolerance in Pakistan is a direct threat contributing to the attack on academic freedom. 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. Specially, the fear of attack from girls who are part of Shi’a families have often had to leave school.
39. Some participants also argued that no-platforming should also be considered a type of direct threat. For example, the University of Buenos Aires disinvited a judge speaker due to student league protests and threat of resignation of other professors. Participants argued that the role of the professor and the university must be considered in this context.

RESTRICTIONS TO INSTITUTIONAL AUTONOMY

40. Following the coup in Turkey in 2016, more than 100,000 civil servants were fired and/or banned from public service. Most Turkish universities were public, with tenure tracks. During the state of emergency, that structure was lost, as was job security. Fifteen universities were closed, and one out of seven academics lost their jobs. Growing fears of job loss caused knowledge and research to fall behind because survival rather than knowledge became the primary goal. Pressure grew as academics were placed under constantly renewed assignments for promotion. Participants argued that academics are currently pessimistic about their careers and futures in Turkey.
41. The difference between public and private universities was also addressed. Reports indicate that private universities face a lot of pressure and there should be an analysis of budget cuts to institutions as well as how decision-making power is allocated.

42. In the European context, public universities are financed through public funds (as are private universities, however, not to the same extent). Yet, the distinction between public and private is not big. Public money is based on the number of students and the research done as well as other factors.
43. One speaker compared internal versus external autonomy. Internal autonomy is where the university must have control. This includes rules and regulations regarding appointments, promotions, assessment of academic quality. Whereas, the external portion includes funds given to the university for a specific duration of time, or under specific conditions. This creates another significant issue because the funders have expectations.
44. Multiple speakers agreed that finances play a large role and funding is a real problem to be examined. For example, in the United States, the government is trying to use COVID-19 to undercut funding to universities. Educational funding is the first thing on the chopping block. The constitutional Court in Ecuador held that the protection of university funding is key to academic freedom and freedom of expression. Therefore, policies meant to cut university funding were stopped. The Ghana Public University Bill claimed finance impropriety in a university, contending blatant attempts to invade the university space by proposing an increase in government on the council. This is an active threat to academic freedom and an example of financial accountability in determining autonomy.
45. Participants argued that Governments understand the role which academics play in shaping opinion and informing the public. Therefore, government officials strategically target academics in their public discourse, fueling a loss of trust in academics, as well as between students and professors. Governmental discourse has created vilification of institutions and academics, and an environment that is hostile to academic freedom.

RESTRICTIONS TO PEACEFUL PROTEST AND FREEDOM OF ASSEMBLY

46. Participants highlighted some common trends among those countries who attempt to restrict peaceful protests and freedom of assembly. Commonalities in these repressive tactics can be seen in Turkey, Pakistan, and some countries in Latin America.
47. In 2016, more than 2,000 Turkish academics signed a Peace petition demanding a ceasefire and negotiations for the ongoing conflicts in the Kurdish territory of eastern Turkey. Those who signed the petition were accused of treason, investigated, and prosecuted by both the Government and University Administration. 500 of these signatories were dismissed and banned from public service.
48. A participant highlighted that between 2017 and 2020, over 450 university students were arbitrarily detained during protests in Bolivia, Colombia, Cuba, Honduras, Nicaragua, and Venezuela. Additionally, over 100 students were expelled and at least 30 murdered in this context. Many more were wounded, tortured, subjected to cruel, inhuman and degrading treatment for exercising their right to protest.

49. Another participant highlighted that most Pakistani universities do not allow political expression on campus. In 1984, a ban was imposed which banned all student unions. 2019 saw demonstrations put on to repeal this ban. The students participating in these demonstrations were criminally charged (often with sedition).
50. Other examples of restrictions on peaceful protest and freedom of assembly include Hong Kong and Delhi.

CONTENT-BASED RESTRICTIONS

51. A variety of repressive tactics have been used to limit the dissemination of various topics including gender, religion, and critical political views, and consequently creating a culture of self-censorship.
52. Academics in Turkey must refrain to reference blacklisted people in their bibliographies or they themselves could be blacklisted. Participants argued that it is commonly known that a thesis on the topic of the Kurdish people will be rejected. Other taboo topics include religion and gender. Additionally, in Turkey, academics are targeted directly by politicians and the media, prompting students to denounce their professors.
53. In 2019 a criminal court in Caracas, Venezuela prohibited the dissemination of documentary film “Chavism: Plague of 21st Century” within the University Simon Bolivar or any other public space. Discussions of the documentary were restricted to academic dissertations.
54. It was argued that in Pakistan, education became an important target for the military dictatorship. This included the use of textbooks for indoctrination, the suppression of academic freedom to align with regime approved ideas, and patronage given to those supporting the regime. Even privately-run universities are forced to avoid discussion of topics regarding human rights violations, such as disappearances in Balochistan. Historically, scholars and academics have been important to resistance of authoritarian regimes. Because of this, they were always viewed as a threat, an outsider shaping opinion.

DIGITAL RIGHTS CHALLENGES

55. One speaker commented on intellectual property issues implicated and a concern over the degree of control that certain websites maintain (such as JSTOR).
56. In Pakistan, social media campaigns are used to target scholars. For example, the photos of two academics and one activist were uploaded to a website and many called for their lynching.
57. There was some debate as to whether employee’s social media use should be included under the umbrella of academic freedom. Often, attacks on faculty for social media commentary is not just about the posts themselves. Rather, it is about removing these viewpoints from the classroom entirely because speech outside of the classroom can impact what is said inside the classroom.

- 58.** One participant highlighted examples at various US colleges and universities. On December 24, Drexel University professor tweeted, “all I want for Christmas is white genocide.” The participant explained that clearly this tweet was meant as a mockery of white supremacy. However, its rapid spread caused it to lose context. The professor was investigated and then barred from campus due to threats to his safety. Eventually, he was compelled to resign. The participant highlighted that the underlying issue here is how outspoken faculty members are used as bait for political wars. A UC Davis English professor was investigated for years old anti-police posts. Protected under the first amendment of the US Constitution, he did not pose a real threat. However, the participant argued that due to the efforts of a local assemblyman using the situation to elevate their own political gains, the professor was terminated.
- 59.** A participant noted that public universities in the US regulate what people can and cannot say on social media. In Turkey, 33% of academics stopped using social media from fear of being targeted by politicians or students.
- 60.** In Germany, speech inside of the classroom is considered private. Clear legislation says that recordings made without prior authorization from the professor will be punished by fines or jail time. Students will record lectures anyway and professors have developed a laissez-faire approach. In the UK, professors are recorded unless they opt out. Often, they do not even know that they are being recorded.
- 61.** In Bangladesh, a 2018 security act allows for the government to use cyber surveillance to move against and arrest scholars based on their social media posts.

III. Concluding Observations

62. Participants argued that it is important to consider a strategic approach to academic freedom and not to dilute the definition. It is not the mandate of the Special Rapporteur to discuss everything. Participants recommended for the report to clearly address the underlying human rights involved in academic freedom; provide guidance where academic freedom ends, and freedom of speech begins; consider the different political repressions in the academic sector and how are these is this institutionalized; highlight the issue of self-censorship in academia; include considerations related to research funding as part of restrictions on academic freedom.
63. Suggestion for the report in general also included addressing issues of no-platforming, intellectual versus dignity safety and universities' obligations related to anti-discrimination.
64. One speaker recommended that academic freedom should be distinguished from freedom of expression. Another highlighted that the production and dissemination of information is protected under freedom of expression standards. The specific protection of production and transfer of scientific knowledge is required and necessary to protect democracy.
65. One participant suggested the it is important to have recommendations to governments, university leaders, presidents, and deans. However, it is also important to have recommendations for mid-level officials.

RECOMMENDATIONS: STATES

66. Participants suggested that there must be an acknowledgement that States have both positive and negative obligations regarding the protection of academic freedom.
67. Academics should never suffer violent or coercive consequences for exercising their academic freedom. Such violent or coercive restrictions on expression of academic freedoms must always be presumed to be suspect.
68. We must combat any sense of impunity that exists (especially regarding physical violence and attacks on student protestors).
69. While there is regional and human rights law regarding academic freedom, it needs to be more clearly addressed. There are no clear standards and guidelines. This creates a real risk because it prevents an adequate response. Therefore, participants suggested that there is a need for a solid set of laws that protect academic freedom on a national level.

RECOMMENDATIONS: INSTITUTIONS

- 70.** The relationship between institutional autonomy and individual academic freedom for students is crucial because institutional autonomy affects individual academic freedom. Institutions should take steps to enshrine academic freedom and institutional autonomy in their policies.
- 71.** Universities should draft and publicize strong policies regarding investigation and punishment of speech protected by law. They must protect needs without threatening rights. It is important that universities stop giving in to political campaigns.
- 72.** Some speakers proposed the development of clear international standards for higher education autonomy that supports clarity and what it means in practice to be an autonomous institution. International standards should be clearly stated in national education laws and higher education institutions themselves should have policies. It should be made clear what actions are necessary for autonomy.
- 73.** There should be engagement by UN treaty bodies, which has so far been rarely seen.
- 74.** Additionally, there needs to be a specific gender focus to show the impact on women. There are documented low rates of women in positions of leadership. Sexist environments restrict women from choosing their areas of teaching as well as research.
- 75.** The responsibilities of universities with outpost campuses must also be considered.
- 76.** One of the speakers suggested that organizations which undertake ratings need to take academic freedom more seriously. Currently, the rankings do not consider it.