**Mandate of the Special Rapporteur on the right to education**

**ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION**

**IN EDUCATIONAL INSTITUTIONS**

**Call for CONTRIBUTIONs**

For her upcoming report to the Human Rights Council to be presented in June 2024, the United Nations Special Rapporteur on the right to education, Ms. Farida Shaheed, will consider academic freedom and freedom of expression in educational institutions.

The report will build on previous work achieved by other United Nations human rights mechanisms on the topic, particularly the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Committee on Economic, Social and Cultural Rights. While recognizing that there is no single, exclusive international human rights framework for the subject, Ms. Shaheed will consider academic freedom through the right to education framework. More precisely, the report intends to consider academic freedom as part of the entitlement to receive and provide quality education, at all levels of education.

The Special Rapporteur intends to take stock of setbacks and progress both under international human rights law and in domestic legislation and practice with respect to defining academic freedom, ensuring its enjoyment by all relevant actors and protecting it from attacks and interferences.

The report will examine existing legal frameworks and normative content of academic freedom as a human right. It will consider subjects and duty bearers of this right. It will also analyze, from a human rights perspective, direct and indirect attacks on and interferences with respect to academic freedom of staff and students, including through commercialization, online surveillance, funding, conditions of work and studies and other pertinent issues.

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| **Name of the country/entity submitting information** | **Terence Karran, Chavan Kissoon, University of Lincoln U.K.** |

**Questions**

**General framework**

1. How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.

2. Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.

3. What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the legal framework for protecting academic freedom?

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| Unlike most states, the U.K. lacks a written constitution, which might protect academic freedom as occurs e.g., in Spain where the Constitution states: “Art. 20 ‘The following rights are recognised and protected: c) the right to academic freedom’” In the UK academic freedom isn’t protected in a bespoke law, as occurs in the Irish 1997 Universities Act which states: “(2) A member of the academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom”. In the UK, academic freedom is protected by Section 2(8) of the Higher Education and Research Act 2017, which draws on section 202 (2) of the 1988 Education Reform Act (ERA)  The ERA removed tenure (job security) for university staff, so the government added the Higher and Further Education Section 202 to the Act which states (1) “There shall be a body of Commissioners known as the University Commissioners who shall exercise, in accordance with subsection (2) below, in relation to qualifying institutions, the functions assigned othem by those sections.( 2) In exercising those functions, the Commissioners shall have regard to the need (a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions; (b) to enable qualifying institutions to provide education, promote learning, and engage in research efficiently and economically; and (c) to apply the principles of justice and fairness.”  To ensure staff could appeal if their tenure was revoked without due cause, University Commissioners were created to assess the validity of claims brought on the grounds of academic freedom, when an individual academic claims that s/he has been made redundant on grounds other than “just cause”. However, this protection has been nullified. The 1988 ERA established the duties and powers of the Commissioners, and their continuing work was confirmed annually via a statutory instrument, signed by the higher education Minister. The last confirmatory signature was on 1st April 1995, so that the Commissioners’ duties ceased on 1st April 1996. Thus the legal protection for academic freedom in the UK is at a lower level than the majority of EU nations. The ERA provides the right to retrospective redress for the loss of employment, on academic freedom grounds. Unlike legislation elsewhere, the ERA does not protect the academic freedom of university staff in employment.  Within universities in most nations, teachers and researchers are granted academic freedom. The research on students’ academic freedom is limited but indicates that students possess freedom of speech, but not academic freedom. For example, Peter Byrne (an eminent academic freedom scholar) argues that: “The term ‘academic freedom’ should be reserved for those rights necessary for the preservation of the unique functions of the university, particularly the goals of disinterested scholarship and teaching . . . . [Accordingly,] no recognized student rights of free speech are properly part of constitutional academic freedom, because none of them has anything to do with scholarship or systematic learning.”[[1]](#footnote-1) However, it is agreed that an important aspect of academic freedom is the duty of care that academic staff have towards their students,[[2]](#footnote-2) In the USA, primary and secondary school teachers are granted academic freedom for teaching, but in the UK academic freedom is confined to university teachers.  The main challenges to academic freedom in the UK are two fold. First, the absence of constitutional/legal protection for academic freedom, and the non-existance of tenure means that staff can be removed from office. Second, the increasing ‘marketisation’ of higher education, driven by greater managerialism in universities and by the widespread use of New Public Management teachniques, has undermined the original “truth seeking” and research disemination rationale for the university as a public good. |

**Autonomy of educational institutions**

4. Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. Are there restrictions on police or military personnel entering educational institutions? If so, please share the rules.

5. Please provide examples of institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors.

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| Autonomy, self- governance and tenure are the supportive elements of academic freedom, while freedom to teach and freedom to research are the substantative elements. These three supportive elements acting in tandem are necessary for academic freedom, but each is insufficient for academic freedom to flourish. Hence, single elements are less individually important than the fact that they mesh together. Where one of the mutually supportive elements falters, it undermines the other two, and thereby weakens substantive academic freedom for research and teaching. For example, if tenure is absent, academics are unable to enjoy autonomy or participate in shared governance and make objective decisions on (inter alia) institutional research priorities or subject teaching methods, for fear of losing their jobs.  it is important to distinguish self- governance from institutional autonomy. The former concerns who is best qualified to govern such institutions; the latter relates to the independence of higher education institutions vis-à-vis outside actors. There is a tendency to overemphasise autonomy at the expense of academic freedom as an individual right. While autonomy makes compliance with academic freedom much easier, a high degree of academic freedom could potentially be enjoyed in institutions with low levels of autonomy. Conversely, a low degree of academic freedom might exist in institutions with a high level of autonomy.  The autonomy and self governance enjoyed by educational institutions at primary, secondary, and further tiers of education are irrelevant to a discussion of academic freedom, which only exists in tertiary education.  Institutional Autonomy in England is protected under the Higher Education and Research Act 2017, viz.:  (8) ‘ “the institutional autonomy of English higher education providers” means—  (a) the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way,  (b) the freedom of English higher education providers—  (i) to determine the content of particular courses and the manner in which they are taught, supervised and assessed,  (ii) to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and  (iii) to determine the criteria for the admission of students and apply those criteria in particular cases,  Hence this law removes many of the individual elements of academic freedom for teaching from the subject academics, and places them within the remit of the universities and their managers.  Individual autonomy and institutional autonomy are often conflated under the heading of ‘academic freedom’. Indeed, Rabban[[3]](#footnote-3) notes that academic freedom is used to refer to ‘both the freedom of the academy to pursue its ends without interference from the government... and the freedom of the individual teacher (or in some versions – indeed in most cases – the student)’. These two concepts are linked, but are different. Wolff’s study makes this distinction explicit, viz. ‘academic freedom is the privilege individual academics may claim as the freedom to question and test received wisdom, to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing the jobs or privileges they may have at their institutions. Academic autonomy applies to the institution. It may be defined as the right of academic institutions to decide freely and independently how to perform their tasks’[[4]](#footnote-4).  The UNESCO 1997 *Recommendation on the Status of Higher Educational Teaching Personnel* makes it clear that autonomy refers to the self-governance necessary for effective decision-making by universities regarding their academic work, management, and respect for academic freedom. It also states “Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this Recommendation or in other international standards set out in the appendix.” [[5]](#footnote-5)  In the UK there are two university governance types. The first comprises all institutions founded before 1992, more usually by Royal Charter, and includes medieval universities (e.g., Oxford), 19th century civic ‘redbrick’ universities (Manchester), and 20th century (so-called) ‘plate-glass’ universities (Warwick). The charter specifies the university’s powers to: grant and confer degrees; institute professorships, readerships, lectureships; appoint university staff (the chancellor, pro-chancellors; deputy pro-chancellors and the vice-chancellor); establish regulatory and administrative bodies (the university court, council, senate); create statutes and ordinances, which specify the detail of these powers. As Taylor notes, ‘the standard model of UK governance of most UK universities during the twentieth and twenty-first centuries has been a bicameral system consisting of an academic body, usually called the senate, comprised largely of academics, and a governing body, usually called the council and with a preponderance of non-academic lay members’[[6]](#footnote-6).  The second group comprises those institutions (predominantly polytechnics) granted university status under the 1992 Further and Higher Education Act. Before this, the Polytechnics were removed from local authority control to become higher education corporations, by the 1988 ERA. This group includes all the English ex-polytechnics and providers of technical and vocational education in Scotland, plus smaller specialist colleges that have been given university status.The governance structures of these institutions were specified in a ministerial memorandum (the Government and Academic Organisation of Polytechnics, *DES Administrative Memorandum* 8/67) at the time of their creation, and received endorsement by the 1988 Education Reform Act (Part II Higher and Further Education, Chapter II Reorganisation of Provision and Funding of Higher Education). Assessing these specific acts of parliament, Farrington noted ‘[i]n those institutions with an instrument of government made under this legislation the extraordinary situation has arisen in which there is no legal requirement for any staff or student governors’[[7]](#footnote-7). Hall and Hyams[[8]](#footnote-8) note that ‘it has been suggested that the constitutional structure of the statutory universities, with its stress on corporate managerialism, a mainly ‘lay’ board and optional staff and student board members, make those institutions particularly susceptible to misgovernance’.  There are no restrictions on police entering university premises, provided they have reasons to believe a crime has been committed, but they would need the appropriate legal documentation (e.g. a warrant) to enter and search university accommodation.  Many universities have internal documentation concerning academic freedom, which acknowledges the 1988 Education Reform Act. Rarely, will UK universities have information drawn from other sources, such as the 1997 UNESCO *Recommendation on the Status of Higher Education Teaching Personnel* or the Magna Charta Universitatum (see at: <https://www.magna-charta.org/magna-charta-universitatum/mcu2020> The largest professional association of UK academics is the University and College Union (UCU), and its website has a Statement on Academic Freedom (at: https://www.ucu.org.uk/academicfreedom). |

**Funding**

6. How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?

7. Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.

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| Individual universities in the UK have established processes of granting ethical approval via scrutiny by internal, and sometimes external experts. The UK national research funding bodies adhere to a national Framework for Research Ethics, (available at: <https://www.ukri.org/councils/esrc/guidance-for-applicants/research-ethics-guidance/framework-for-research-ethics/>). In addition, Universities UK, an advocacy organisation for UK universities, has issued a Concordat to Support Research Integrity. [see at: <https://www.universitiesuk.ac.uk/sites/default/files/field/downloads/2021-08/Updated%20FINAL-the-concordat-to-support-research-integrity.pdf>] which “recognises that academic freedom is fundamental to the production of excellent research.” |

**Surveillance**

8. Please explain whether and the extent to which academic staff and students, at all levels of education, are subject to surveillance by public authorities, for example through on-site cameras or online scrutiny. Has this led to undue restrictions to academic freedom and freedom of expression in educational institutions?

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| Chavan Kissoon and Terence Karran conducted collaborative research with the UCU in 2021 on the relationship link between academic worker surveillance and academic freedom. The research explored ways in which university managers use digital technology to monitor multiple aspects of their academic employees’ work. Over 2,100+ UCU members completed the ‘Academic Freedom in the Digital University’ survey.  The aim of the study was to explore how metrics and the contemporary culture of continuous evaluation in all aspects of academic work can mediate power relations between those academic staff being measured, and their h.e. institution managers doing the measuring/performance management. The public report will be released soon and can be provided upon request.  Ths study has key findings relevant to this call, viz.:   * Freedom for teaching is declining due to UK universities making use of the surveillance affordances of digital technologies to monitor all key aspects of how academic staff teach. This includes monitoring of how and what academics teach, via ‘lecture capture’ technologies (e.g. Panopto and Echo 360, the main vendors in this space), combined with university policies specifying mandatory lecture recording, which may allow academics to opt out, but to do so requires line manager approval, so that the option is not designed to be taken advantage of (see, e.g. <https://www.liverpool.ac.uk/media/livacuk/tqsd/quality-and-enhancement-framework/Lecture-capture-policy.pdf>). Lecture recording is notionally for the benefit of students, but lecture recording can also be used for performance management, and the fact of the lecture being recorded, can lead to academics feeling the need to self-censor. Additionally, universities gather back-end usage data on the ways academics use the ‘virtual learning environment’ (VLE), and this is used for performance management (see <https://data.blackboard.com/> for an example of the surveillance affordances of the Blackboard Learn VLE, the most popular learning system in the UK higher education sector). This back-end data can be used to monitor staff and student engagement with the online aspects of teaching, and to profile academic staff in terms of usage. Also, digital module evaluation systems enable universities to gather institution-wide data on the satisfaction level of students with the teaching they received. The surveillance aspect of this is such that it is often carried out without lecturer involvement or consent. This has been linked to wellbeing issues (see <https://www.timeshighereducation.com/news/tide-turns-inherently-biased-student-evaluations-teaching>) * Freedom for research is also declining, due to universities making use of the surveillance affordances of digital technologies to monitor all key aspects of academic staff research activities (what they research, how they research, choice of dissemination outlets, citation count in relation to others). The most pertinent manifestation of university managers digitally monitoring the research of university staff concerns the alignment of employees’ academic research with universities’ priority research areas. In the UK, these are often referred to as ‘research themes’ (e.g. <https://www.surrey.ac.uk/research/themes> or <https://www.bradford.ac.uk/research/themes>) and prioritise research in the Science Technology Engineering Maths (STEM) subjects rather than in the arts, or social sciences, although practical business orientated research is also valued. The findings from the Academic Freedom in the Digital University study show that academics who don’t align their research to these areas can be marginalised when it comes to promotion. There have been news reports of universities removing staff and resources from research areawhich don’t align with institutional research themes (<https://eaa-online.org/arc/blog/2021/03/29/academic-freedom-under-attack-case-leicester-and-beyond>), which is possible because of the absence of tenure in the UK h.e. system, * the main technology used in UK universities for the monitoring and profiling of academics is Elsevier’s SciVal (<https://www.elsevier.com/products/scival>) which allows universities to visualise the entire research output landscape of the institution, and profile individuals, faculties and research groups. * Academic freedom of speech via social media is also subject to digital surveillance. Academic freedom of speech is routinely monitored by universities for corporate reputation management purposes. The data gathered revealed that academics in the UK are self-censoring on social media to avoid their comments being picked up and used against them by the university employer. Academics’ uses of social media tends to be on their own devices and the posts tend to be posted outside working hours. Respondents to the survey report that they know of colleagues whose social media postings had attracted the interest of the university marketing team, with subsequent encroachment of their freedom of speech.   In sum, whether it was universities digital surveillance of teaching practice, research practice or academics’ broader engagement with the public via social media, the culminative impact is the same. Namely, academics are aware they are being monitored and are thus incentivised to self-censor and not speak, teach or research with freedom. Over time, this self-censorship has become normalised.  Respondent data revealed that:   * protection for academic freedom is in decline, in terms of individual academic freedom for teaching and for research, individual autonomy, university self-governance and employment protection. * digitally enabled changes in performance management introduced over the last decade are reducing academic freedom. * digitally enabled measurements of the student experience introduced in the last decade are reducing academic freedom. * the trajectory of digital monitoring and performance management is anticipated to lead to lower academic freedom, greater institutional oversight of academic activities and greater power for student (consumer) voice. * digital workloading systems and the use of unrealistic tariffs (for controlling academic time) are leading to worsening working conditions, employee overwork, students receiving lower quality feedback and disincentivising staff from the taking of an ambitious approach to teaching and research * awareness of the institutional ability to digitally monitor different and multiple aspects of staff teaching performance reduces the subjective sense of academic freedom, impacts on many aspects of academic work, including the design of assessments and academic judgement when awarding grades. * universities’ online corporate reputation management activities are seen as restricting academic freedom and/or freedom of speech in relation to online communication. * awareness of institutional monitoring of research activities for performance management was higher than awareness of institutional monitoring of teaching activities. Awareness of social media monitoring of academic voices was high. * being subject to continuous performance assessment (e.g. subject committees, online module evaluations, student satisfaction surveys, NSS) is reducing academic freedom.   Overall, academic monitoring through digital systems is seen as increasing institutional control and reducing academic freedom but is also recognised as a tool for increasing student (consumer) voice.  Our forthcoming report puts forward a range of recommendations for universities, unions and other policy makers to implement to push back against the encroachment on academic freedom of the surveillance capabilities of institutional digital technologies. |

**Freedom of expression in teaching and access to books**

9. Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining “neutral” or forwarding a particular perspective, e.g. on religious and political matters?

10. Please explain the extent to which teachers and professors at different education levels can chose school manuals and other books/resources for teaching, and the reasons for any restriction in this regard. Have any specific books/materials been banned, including from school libraries, and alternatively is some material mandatory? If so, why?

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| In principle UK university teachers have freedom of expression in their own teaching, and no formal limitations are imposed. However, a large scale survey of academic freedom in the UK commissioned by the UCU revealed de facto abuses of academic freedom - 23.1% of UCU respondents reported being bullied on account of their academic views, 26.6% reported being subjected to psychological pressure while 35.5% admitted to self-censorship, for fear of negative repercussions, such as loss of privileges, demotion, physical harm, etc.  There are no formal academic limitations on choices of learning materials made by university staff, although choices may be limited on the basis of costs. For example the use of computer programs for research may be limited on the grounds of cost. |

**How to submit information**

Submissions should be sent electronically no later than **2 February 2024 to** [hrc-sr-education@un.org](mailto:hrc-sr-education@un.org), using the email title: “Contribution: Academic freedom”.

Please select and answer the questions most relevant for your agency. Kindly limit your responses to **3,000 words** and attach annexes where necessary. To facilitate their consideration, please send responses in a Word document, and in English, French, or Spanish. **Please clearly specify the entity making the contribution on the document itself and add paragraph numbers**.

All inputs received will be posted on the OHCHR website. Please indicate if you have any objections regarding to your reply being posted on the OHCHR website.

1. Byrne, J. Peter, (1989) “Academic Freedom: a Special Concern of the First Amendment”, *Yale Law Journal*, 99(2): 251-340 [↑](#footnote-ref-1)
2. Kennedy, David, (1999) *Academic Duty*, Harvard: Harvard University Press [↑](#footnote-ref-2)
3. Rabban, D., (2001) ‘‘Academic Freedom, Individual or Institutional?’’, *Academe* 87(6): 16–20. [↑](#footnote-ref-3)
4. Wolff, K., (2000) ‘‘Academic Freedom and University Autonomy’’, in G. Neave (ed.) *The Universities’ Responsibilities to Society: International Perspectives*, Oxford: Elsevier Science, pp. 196–205 [↑](#footnote-ref-4)
5. UNESCO, (1997) “Recommendation concerning the Status of Higher-Education Teaching Personnel”, Records of the General Conference, Twenty-ninth Session, 21 October to 12 November 1997, Volume 1 *Resolutions*, Paris: UNESCO, p.26-36. [↑](#footnote-ref-5)
6. Taylor, M. (2013) “Shared Governance in the Modern University” *Higher Education Quarterly*, 67(1) 80-94 [↑](#footnote-ref-6)
7. Farrington, D., (1995) ‘Universities and Corporate Governance: a model for the future’, *Corporate Governance: Hume Papers on Public Policy* Volume 3, Edinburgh: Edinburgh University Press [↑](#footnote-ref-7)
8. Hall, J. & Hyams, O., (1998) ‘Governance in an Era of Accountability and Potential Liability’, in D. Palfreyman and D. Warner (eds.) *Higher Education and the Law. A Guide for Managers,* Buckingham: SHE/OU Press [↑](#footnote-ref-8)