**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.

|  |  |
| --- | --- |
| **Name of the country/entity submitting information** | **Middle East Studies Association of North America** |

**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.

***Response to Question 1***

1. In higher education of the United States of America (US), academic freedom is generally defined as freedom of inquiry and research; freedom of teaching within a university or college; and freedom of extramural speech and association. Thus, it is connected to the educational contexts of teaching, learning and research, for faculty and students alike, both inside and outside of the classroom. The legal protection of academic freedom is tied to the constitutional protection of freedom of speech in the United States under the First Amendment, which applies to public universities and colleges. The First Amendment restricts the right of public colleges and universities to regulate the speech and expressive activity of their employees and students. Private universities and colleges typically adopt speech codes for their students, staff and faculty that broadly correspond to the First Amendment’s protections, but may be more restrictive than the constitutional standard. The Supreme Court has consistently interpreted the First Amendment as providing constitutional protection for academic freedom. In addition, there are a range of contractual rights protected by law for faculty, staff and students on university campuses in connection to their rights of freedom of expression, freedom of speech and freedom of association.

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

***Response to Question 2***

1. While most academic freedom issues in the US concern the speech rights of faculty and undergraduate and graduate students, all academic staff, including librarians, research staff, lecturers, post-doctoral fellows and administrators are typically entitled to protection of rights to freedom of speech and freedom of expression — in accordance with campus speech policies at private institutions and under state and federal law at public institutions — on university and college campuses in the United States.

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?

***Response to Question 3 (a)***

1. (a) Over the years, as a scholarly organization focused on the study of the Middle East-North Africa (MENA) region, MESA and its members have experienced a range of challenges to academic freedom, some related to long-standing anti-intellectualism and hostility to scholarly work and debates at institutions of higher education in the US, but more recently as a result of efforts by right-wing politicians and aligned activists to overturn efforts aimed at promoting diversity in our academic institutions and in the broader curriculum. However, such challenges also derive in no small part from the role in the domestic politics of the US, and to a lesser extent Canada, of some of the MENA region’s most contentious issues. In our responses that follow, we focus specifically on the alarming increase in such challenges since the beginning of the Israel-Gaza war on 7 October 2023. Campuses across the country have seen spikes in anti-Palestinian, anti-Arab, Islamophobic and antisemitic acts and incidents.
2. One source of challenges to academic freedom during this period has been university administrations and administrators. We have seen cases of administrators denying permission for a range of legitimate campus events, perhaps in some cases out of concern for potential disruption, but more often out of fear of retaliation from wealthy donors or of the levelling of charges (in the case of Palestine solidarity demonstrations or events) of antisemitism by external organizations, including on-line attacks and other forms of doxing. By doxing, we mean third parties publishing identifying information about an individual online, or private communications by an individual, typically with the intent to embarrass, persecute or endanger the affected individual. Such doxing has targeted university administrators, faculty, staff and students. In addition, there have been numerous episodes of direct physical violence by university security, but more often by other members of the university community or third parties entering the campus, including most recently the use of “skunk gas” against Palestine solidarity protestors at Columbia University in New York. There are examples of faculty and students being suspended, teaching assistants and graduate students losing their posts, and student groups being shut down. Untenured, part-time and other contingent faculty have felt particularly threatened. There have also been instances in which university administrators have interfered with the curricular choices, course offerings and syllabi of faculty teaching subjects related to Israel-Palestine.
3. The atmosphere created by the various types and levels of harassment and intimidation has had a chilling effect at all levels. Reports of feelings of insecurity in the classroom and elsewhere on campus, by students and [faculty](https://criticalissues.umd.edu/sites/criticalissues.umd.edu/files/November%202023%20MESB%20Results.pdf), are all too common.
4. In addition, the risk of government investigation of campuses based on complaints by alumni, donors and current students about alleged discrimination and antisemitism has exacerbated the repressive atmosphere on campuses across the United States The Department of Education of the federal government in the US has initiated several such investigations of universities and colleges in response to the media scrutiny of campus speech and particularly Palestine solidarity activism or criticisms of Israel since 7 October.

***Response to Question 3 (b)***

1. (b) As a preliminary matter, the challenge in the US legal framework is less about gaps, though they exist, and more about the limited applicability of federal and state constitutional protections of academic freedom on private college and university campuses, given the very large proportion of the higher education sector that is privately funded in the United States. A second problem is the weakness of labor protections under US employment law that leaves many faculty, academics and researchers employed at institutions of higher education with limited protection against wrongful termination and facing very high costs to bring any legal action to challenge wrongful termination when it occurs. As a consequence, the principal available recourse in most circumstances is internal, university-designed grievance procedures.
2. Outside of the context of post-7 October restrictions, many of these episodes of harassment of faculty and students or denial of permission for events would have been handled by the various university offices dealing with student life or through established grievance procedures. However, in the current climate, university administrators have often unilaterally and arbitrarily, and in violation of established institutional policies, shut down events, imposed ad hoc measures, or issued statements generally supporting pro-Israel students and activists while much less frequently expressing concern about Islamophobia or for Palestinian, Arab and/or Muslim students. Such actions have contributed to the atmosphere of repression.
3. Currently, aside from university grievance mechanisms, which are often inadequate and almost always slow, students, faculty, and staff have little recourse other than seeking outside legal counsel for redress. But such redress in individual cases has little impact on the overall climate of intimidation and discrimination on campuses.

**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.

***Response to Question 4***

1. The higher educational sector in the United States is diverse and decentralized: it includes both public and private institutions, and a broad range of research universities, other universities, four-year colleges, and community colleges. In the case of public institutions, there are both state laws as well as university handbooks that regulate the degree of autonomy. In private universities, there is greater autonomy from state interference. Most campuses have some type of campus security force, which may or may not be armed. Unless military personnel are attending classes (or the institution is a military academy) there is no role for the military on campus. Local police do not enter university campuses, although depending upon circumstances they may be called upon to do so.

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

***Response to Question 5***

1. The most common reference guiding universities’ approach to academic freedom in the US is the 1940 Statement on Principles on Academic Freedom and Tenure of the American Association of University [Professors](https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure). Beyond this statement, post-secondary institutions each have their own policies which, among other elements, tend to address academic freedom, either implicitly or explicitly, and how it is to be upheld by the institution.

**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?

***Response to Question 6***

1. There are many sources of potential funding for post-secondary research in the US. For all educational institutions in the US there are prohibitions on funding from Iran. There is also periodically media reporting and congressional scrutiny focused on funding that comes from states such as Saudi Arabia, Qatar, Kuwait, and the United Arab Emirates, with concerns raised about purported corruption or negative political influence that monies from such states may involve. While external monies can certainly play a negative role in shaping research, the tendency to attribute malevolent intent to Arab states should be seen in the context of anti-Arab or anti-Muslim sentiment in the US and its relationship to the long-standing support for Israel in domestic US politics. In the US as a whole, public universities and colleges have regulations regarding external funding specified by the individual state that (partially) funds them. All universities have guidelines of some sort regarding ethics in funding, use of funding, conflicts of interest, etc.
2. Since October 7 we have seen numerous high-level cases at US universities of the cancelation of pending multi-million dollar gifts or threats to do so by pro-Israel donors angered by what they feel is too permissive an attitude toward Palestine solidarity activism or alleged antisemitism on campus. Unfortunately, the climate prior to October 7 saw increasing efforts by pro-Israel advocates to conflate antisemitism and criticism of Israel, the most obvious vehicle of which was urging the adoption by universities (and other institutions such as state governments) of the IHRA [definition of anti-semitism](https://mesana.org/advocacy/letters-from-the-board/2021/03/31/mesa-board-statement-regarding-the-ihra-working-definition-of-antisemitism-and-contemporary-examples) and its accompanying examples. These efforts have only intensified since the beginning of the war, as some groups, such as the Anti-Defamation League, have counted any Palestine solidarity demonstration or event (on campuses or elsewhere) as an episode of anti-semitism.

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.

***Response to Question 7***

1. Such rules vary widely, and donors (or potential donors) often have an outsized influence on the policies of some universities. In one particularly egregious recent example, the presidents of Harvard University, the Massachusetts Institute of Technology and the University of Pennsylvania were called to testify before a committee of the US Congress because of contentious events related to the Israel-Gaza war on their campuses. Following their testimony, the presidents of Harvard and the University of Pennsylvania were forced to resign, in no small part owing to threats of cancellation of major gifts to these two universities because of what donors perceived as a climate of rampant antisemitism on campus. Attempts to force out other university presidents and administrators owing to outside pressures in the fraught climate since October 7 continue.

**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?

***Response to Question 8***

1. In the United States faculty at public universities and colleges have no guarantee of privacy for correspondence using their university e-mail accounts. Otherwise, there is at least the presumption of privacy. However, recently, at New York University (NYU), a private research university in New York City, faculty reported instances relating to the current crisis in Palestine/Israel in which university administrators employed email filters that restricted the free flow of information, and increased surveillance on campus. As a [statement](https://academeblog.org/2023/12/18/nyu-aaup-statement-on-academic-freedom-in-the-current-crisis/) issued on 18 December 2023 by the NYU chapter of the American Association of University Professors put it, this “narrowed the space of free and open inquiry at our global university located in the most diverse city in the world.”

**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?

***Response to Question 9***

1. The short answer to the first question is that there can be significant obstacles to such freedom. Over the years, MENA scholars have often reported feeling the need to self-censor, whether in choosing materials for syllabi, in presenting material on sensitive issues—particularly those related to Israel/Palestine—in classroom lectures, in choosing research topics, and in public interviews and commentaries. Since October 7 we have documented numerous cases of the narrowing or prejudicing of such freedoms. We cite here just a few: the case of Prof. Ahlam Muhtaseb, who was prevented from giving her speech at the annual convention of the National Communication Association because of the inclusion of the word “genocide” in the [title](https://mesana.org/advocacy/committee-on-academic-freedom/2023/12/18/letter-to-california-state-university-san-bernadino-regarding-professor-ahlam-muhtaseb); the case of Prof. Nina Farnia, whose dean interfered in her proposed syllabus reading [choices](https://mesana.org/advocacy/committee-on-academic-freedom/2023/12/13/letter-to-albany-law-school-regarding-professor-nina-farnia); and the case of two faculty members at the University of Arizona who were put on administrative leave following complaints about the content of class [discussions](https://mesana.org/advocacy/committee-on-academic-freedom/2023/12/08/letter-to-the-president-of-the-university-of-arizona-expressing-concern-about-the-college-of-educations-treatment-of-two-faculty-members).
2. In response to the second question, there are continuing pressures, sometimes from inside, but often from outside the university, to limit the boundaries of expression in the guise of promoting “neutrality” or avoiding “bias”. As we have seen since October 7, attempts by scholars of the region to place the Hamas attack in historical context have been labelled as constituting support for terrorism. The use of the word “intifada” and expressions such as “From the River to the Sea,” have been alleged to constitute incitement to violence or support for genocide.

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?

***Response to Q uestion 10***

1. According to the generally agreed upon principles of academic freedom, faculty are presumed to be sovereign over decisions regarding what materials they choose for their syllabi. However, as we noted above, this is not always the case, as there are examples of university administrators interfering or trying to interfere in the selection of materials for syllabi. That said, we are not aware of specific books or articles having been banned or others imposed as mandatory at the post-secondary level (institutions of higher education).

**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.