BEFORE

**UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

**In the Matter of**

Call for Submissions: Academic Freedom and the Freedom of Opinion and Expression

And

**In the Matter of**

Submission

By Muhammad Muzahidul Islam

Date: 01 April, 2020

**Author**

**Muhammad Muzahidul Islam:** Is a barrister, human rights activist and practicing advocate of the supreme court of Bangladesh. Obtained LL.B(Hons) from University of London. Completed Bar Vocational Course from Inns of Court School of Law, City University, London. Obtained LL.B(Hons), and LL.M from University of Rajshahi. Earned Barrister-at-Law from the Honourable Society of Lincoln’s Inn, London. Has been practising law in Bangladesh since 1998. Is a member of Bangladesh Supreme Court Bar Association (From 2009 to date). Was cited by the Inter-American Court of Human Rights (IACtHR) as an Amicus Curiae in the judgment of V.R.P., V.P.C. and another Versus Nicaragua case (available at the webpage of the Court). Filed written observations (available at the webpage of the court) as an amicus curiae in a request for an Advisory Opinion submitted by the Republic of Colombia before the same Court (IACtHR). Is a member of the Roster of Experts [(United Nations Security Council Affairs Division, From March 2018 to date), and the areas of expertise are: International law and Human Rights), the details of the Roster of Experts are available at the webpage of Security Council (the highest diplomatic forum of the world)]. Has publications (articles) in the areas of international law. Has a chamber at the following address:

Chamber:

‘The Liberty Law’

Nakshi Homes, Third Floor,

6/1/A Topkhana Road, Segunbagicha, Dhaka 1000

Bangladesh.

Please Note: The observations expressed herein are his own and do not necessarily represent the observations of any institution.

1. **Introduction**
2. Academic Freedom has always been felt to be a right and important. However, both the international and regional communities have failed, so far, to bring “academic freedom” explicitly, as an independent right, in any binding human rights instruments. And their failure has caused the academic freedom as component of other independent rights, namely right to freedom of opinion and expression, right to education for which State-Parties owe duties and obligations. There are many questions that have been left open as to how States’ duty to respect, protect and promote the freedom of expression applies to academic freedom. How does this duty protect academics as a class of professionals? How does it protect students, scholars and teachers? Institutions of learning and research? Scholars outside their institutions, when they are targeted for their research or their non-academic activities? What is the scope of the duty to promote academic freedom? The UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression is studying the scope and protection of academic freedom as a component of the right to freedom of opinion and expression. And as a part of this study UN Special Rapporteur invited, through an open call, the interested parties to provide information on certain areas and as a response to this call I take an effort, as a human rights activist, to provide information focusing most part of the following areas:
3. Information concerning the international and regional legal framework regulating academic freedom: 1. International and regional treaties that regulate the duty of the State to respect, protect and fulfil the right to academic freedom. 2. Practice by global and regional bodies that shed light on the scope of the duty of the State to respect, protect and fulfil the right to academic freedom, including resolutions, decisions and views by judicial, quasi-judicial and non-judicial bodies.
4. Information concerning the domestic regulatory frameworks that are applicable to the protections of, or restrictions on academic freedom, such as: 1. Laws, administrative regulations, judicial decisions, or other policies and measures that specifically protect and promote the freedom of academics, students, scholars, etc. 2. Laws, regulations, policies or practice that adversely affect academic freedom as a component of the right to freedom of opinion and expression, including university standards or policies used to monitor students and academics.
5. Information concerning the impact of restrictions on academic freedom: 1. Emblematic cases of state or institutional restrictions, constraints or influence on academic freedom. 2. Policies to ensure that restrictions on academic freedom meet human rights standards. 3. Remedies available in the event of improper restrictions on academics, students, and similar categories of individuals.
6. **Information concerning the international and regional legal framework regulating academic freedom**

Origin, Definition and Development: Academic Freedom

1. Before jumping to the information concerning the international and regional legal framework regulating academic freedom, it would be pertinent to provide information on its origin, definition and development. An article on academic freedom written by the editors of Encyclopaedia Britannica[[1]](#footnote-1) would provide the following information:
2. **Academic freedom**, the freedom of teachers and students to teach, study, and pursue knowledge and research without unreasonable interference or restriction from law, institutional regulations, or public pressure. Its basic elements include the freedom of teachers to inquire into any subject that evokes their [intellectual](https://www.merriam-webster.com/dictionary/intellectual) concern; to present their findings to their students, colleagues, and others; to publish their data and conclusions without control or censorship; and to teach in the manner they consider professionally appropriate. For students, the basic elements include the freedom to study subjects that concern them and to form conclusions for themselves and express their opinions.
3. According to its proponents, the justification for academic freedom thus defined lies not in the comfort or convenience of teachers and students but in the benefits to society; i.e., the long-term interests of a society are best served when the educational process leads to the advancement of knowledge, and knowledge is best advanced when inquiry is free from restraints by the state, by the church or other institutions, or by special-interest groups.
4. The foundation for academic freedom was laid by the [medieval](https://www.merriam-webster.com/dictionary/medieval) European universities, even though their faculties met periodically to condemn on religious grounds colleagues’ writings. Protected by papal bulls and royal charters, the universities became legally self-governing corporations with the freedom to organize their own faculties, control admissions, and establish standards for graduation.
5. Until the 18th century the Roman Catholic church and, in some areas, its Protestant successors exerted [censorship](https://www.britannica.com/topic/censorship) over universities or certain members of their faculties. Similarly, in the 18th and 19th centuries the newly emerged nation-states of Europe [constituted](https://www.merriam-webster.com/dictionary/constituted) the chief threat to universities’ [autonomy](https://www.merriam-webster.com/dictionary/autonomy). Professors were subject to governmental authority and were liable to be allowed to teach only what was acceptable to the government in power. Thus began a tension that has continued to the present. Some states permitted or encouraged academic freedom and set an example for subsequent emulation. For example, the University of Leiden in the Netherlands (founded in 1575) provided great freedom from religious and political restraints for its teachers and students. The [University of Göttingen](https://www.britannica.com/topic/University-of-Gottingen) in Germany became a beacon of academic freedom in the 18th century, and, with the founding of the [University of Berlin](https://www.britannica.com/topic/Humboldt-University-of-Berlin) in 1811, the basic principles of Lehrfreiheit (“freedom to teach”) and Lernfreiheit (“freedom to learn”) were firmly established and became the model that inspired universities elsewhere throughout Europe and the Americas.
6. Academic freedom is never unlimited. The general laws of society, including those concerning obscenity, pornography, and libel, apply also to academic discourse and publication. Teachers are freer within than outside their [disciplines](https://www.merriam-webster.com/dictionary/disciplines). The more highly trained teachers are, the more freedom they are likely afforded: university professors tend to be less restricted than elementary-school teachers. Similarly, students usually gain freedom as they move through the academic system. Teachers in small towns can usually expect more interference in their [teaching](https://www.britannica.com/topic/teaching) than teachers in large cities. Academic freedom is liable to contract in times of war, economic depression, or political instability.
7. In countries without democratic traditions, academic freedom may be unreliably granted and unevenly distributed. In [communist](https://www.britannica.com/topic/communism) countries in the 20th century, when academic freedom did exist at the university level, it was usually in such fields as mathematics, the physical and biological sciences, linguistics, and archaeology; it was largely absent in the social sciences, arts, and humanities. The collapse of communist rule in eastern Europe and the breakup of the [Soviet Union](https://www.britannica.com/place/Soviet-Union) in 1989–91 allowed the tentative reappearance of academic freedom in many of those countries. Despite its strong traditions of academic freedom, Germany experienced a virtually complete eclipse of such freedom during the period of Nazi rule (1933–45). At the end of the 20th century, academic freedom seemed strongest in Europe and [North America](https://www.britannica.com/place/North-America) and weakest under various dictatorial regimes in Africa, Asia, and the [Middle East](https://www.britannica.com/place/Middle-East).
8. Since the establishment of the [American Association of University Professors](https://www.britannica.com/topic/American-Association-of-University-Professors) in 1915 and its 1944 statement of principles on academic freedom and [tenure](https://www.merriam-webster.com/dictionary/tenure), the [United States](https://www.britannica.com/place/United-States) has generally been a [bastion](https://www.merriam-webster.com/dictionary/bastion) of academic freedom. This history occasionally has been marred, however. From the 1930s, state legislatures sometimes required teachers to take “[loyalty](https://www.britannica.com/topic/loyalty-oath)” oaths in order to prevent them from engaging in left-wing (and particularly communist) political activities. During the anticommunist [hysteria](https://www.merriam-webster.com/dictionary/hysteria) of the 1950s, the use of loyalty oaths was widespread, and many teachers who refused to take them were dismissed without [due process](https://www.britannica.com/topic/due-process).
9. In the 1980s and ’90s, many universities in the United States adopted regulations aimed at proscribing speech and writing that was deemed [discriminatory](https://www.britannica.com/topic/discrimination-society) against, or injurious or offensive to, individuals or groups on the basis of their [race](https://www.britannica.com/topic/race-human), [ethnicity](https://www.merriam-webster.com/dictionary/ethnicity), gender, religion, [sexual orientation](https://www.britannica.com/topic/sexuality), or physical disability. Whereas supporters of the measures, known as “speech codes,” defended them as necessary to protect minorities and women against [discrimination](https://www.merriam-webster.com/dictionary/discrimination) and harassment, opponents contended that they unconstitutionally infringed the free-speech rights of students and teachers and effectively undermined academic freedom. Many of these mostly [conservative](https://www.merriam-webster.com/dictionary/conservative) critics charged that the codes amounted to the legal enforcement of a narrow range of “politically correct” ideas and expressions.
10. In the 1990s, [distance learning](https://www.britannica.com/topic/distance-learning) through electronic information technologies raised new questions about infringements on academic freedom: What role do individual scholars have on teams preparing prepackaged courses, and who owns the rights to those courses? Who is responsible for the academic and social outcomes of this teaching method? Other questions concerned the university’s role in controversial public issues. Training programs with nongovernmental organizations and the introduction of community-service [learning](https://www.britannica.com/science/learning) caused interest groups to challenge the university’s implied sponsorship of various social and political causes. Despite these challenges, academic freedom in the United States continued to be strongly supported by Supreme Court interpretations of the [constitutional](https://www.merriam-webster.com/dictionary/constitutional) freedoms of speech, press, and assembly.

Other Initiatives: Definition and Standards

1. I would like to mention here articles 3 and 6 of the Lima Declaration on Academic Freedom and Autonomy of Higher Education Institutions of 1988. It was adopted by the World University Service after consultation with over fifty specialist organizations. Article 3[[2]](#footnote-2) defines academic freedom as “an essential precondition for those education, research, administrative, and service functions with which universities and other institutions of higher education are entrusted. All members of the academic community have the right to fulfill their functions without discrimination of any kind and without fear of interference or repression from the State or any other source.” According to article 6[[3]](#footnote-3) members of the academic community also have the right “to communicate the conclusions of their research freely to others and to publish them without censorship.”
2. In order to assess the status of academic freedom, the following paragraphs of the UNESCO Recommendations of 1997[[4]](#footnote-4) may be considered as guidelines:
3. Institutional autonomy

Paragraph 17[[5]](#footnote-5): The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved.

1. Individual rights and freedoms: civil rights, academic freedom, publication rights, and the international exchange of information  
     
   Paragraph 25[[6]](#footnote-6): Access to the higher education academic profession should be based solely on appropriate academic qualifications, competence and experience and be equal for all members of society without any discrimination.  
     
   Paragraph 26[[7]](#footnote-7): Higher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens. Therefore, all higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They should not suffer any penalties simply because of the exercise of such rights. Higher-education teaching personnel should not be subject to arbitrary arrest or detention, nor to torture, nor to cruel, inhuman or degrading treatment. In cases of gross violation of their rights, higher-education teaching personnel should have the right to appeal to the relevant national, regional or international bodies such as the agencies of the United Nations, and organizations representing higher-education teaching personnel should extend full support in such cases.  
     
   Paragraph 27[[8]](#footnote-8): The maintaining of the above international standards should be upheld in the interest of higher education internationally and within the country. To do so, the principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source. Higher-education teaching personnel can effectively do justice to this principle if the environment in which they operate is conducive, which requires a democratic atmosphere; hence the challenge for all of developing a democratic society.  
     
   Paragraph 28[[9]](#footnote-9): Higher-education teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching. Higher-education teaching personnel should not be forced to instruct against their own best knowledge and conscience or be forced to use curricula and methods contrary to national and international human rights standards. Higher education teaching personnel should play a significant role in determining the curriculum.  
     
   Paragraph 29[[10]](#footnote-10): Higher-education teaching personnel have a right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics. They should also have the right to publish and communicate the conclusions of the research of which they are authors or co-authors, as stated in paragraph 12 of this Recommendation.  
     
   Paragraph 30[[11]](#footnote-11): Higher-education teaching personnel have a right to undertake professional activities outside of their employment, particularly those that enhance their professional skills or allow for the application of knowledge to the problems of the community, provided such activities do not interfere with their primary commitments to their home institutions in accordance with institutional policies and regulations or national laws and practice where they exist.
2. Self-governance and collegiality  
     
   Paragraph 31[[12]](#footnote-12): Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution.  
     
   Paragraph 32[[13]](#footnote-13): The principles of collegiality include academic freedom, shared responsibility, the policy of participation of all concerned in internal decision making structures and practices, and the development of consultative mechanisms. Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities, in order to improve academic excellence and quality for the benefit of society at large.
3. Security of employment  
     
   Paragraph 46[[14]](#footnote-14): Security of employment in the profession, including tenure or its functional equivalent, where applicable, should be safeguarded as it is essential to the interests of higher education as well as those of higher-education teaching personnel. It ensures that higher-education teaching personnel who secure continuing employment following rigorous evaluation can only be dismissed on professional grounds and in accordance with due process. They may also be released for bona fide financial reasons, provided that all the financial accounts are open to public inspection, that the institution has taken all reasonable alternative steps to prevent termination of employment, and that there are legal safeguards against bias in any termination of employment procedure. Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education.

International Legal Frameworks: Academic Freedom

1. There is no clear mention of the words “academic freedom” in any international legally binding human rights instruments. However, interpreting article 13 (right to education) of the International Covenant on the Economic, Social and Cultural Rights, the expert body naming UN Committee on Economic, Social and Cultural Rights made comment no-13 that suggests academic freedom as a component to other rights. I would take an opportunity to share the relevant paragraphs of Comment No-13[[15]](#footnote-15) below:
2. Paragraph 38: In the light of its examination of numerous States parties’ reports, the Committee has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, even though the issue is not explicitly mentioned in article 13, it is appropriate and necessary for the Committee to make some observations about academic freedom. The following remarks give particular attention to institutions of higher education because, in the Committee’s experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The Committee wishes to emphasize, however, that staff and students throughout the education sector are entitled to academic freedom and many of the following observations have general application.
3. Paragraph 39: Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds.
4. Paragraph 40: The enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public accountability, especially in respect of funding provided by the State. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.
5. The Committee also made observations on the general and specific obligations of the States on article 13 and I would mention below the relevant ones only:
6. Paragraph 43: While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” (art. 2 (2)) and the obligation “to take steps” (art. 2 (1)) towards the full realization of article 13. Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education.
7. Paragraph 44: The realization of the right to education over time, that is “progressively”, should not be interpreted as depriving States parties’ obligations of all meaningful content. Progressive realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 13.
8. Paragraph 49: States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1).23 They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13 (1).
9. Paragraph 50: In relation to article 13 (2), States have obligations to respect, protect and fulfil each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of education by not closing private schools; protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school; fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world; and fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries.
10. There are three provisions in the international covenants that, comprehensively, purport to conceive the academic freedom as right and those are: article 19 of ICCPR, articles 13 and 15 of ICESCR of 1966. Article 19 of ICCPR[[16]](#footnote-16) provides that 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.
11. Article 13 of ICESCR[[17]](#footnote-17) provides that 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.
12. Article 15 of ICESCR[[18]](#footnote-18) provides that 1. The States Parties to the present Covenant recognize the right of everyone:(a) To take part in cultural life;(b) To enjoy the benefits of scientific progress and its applications;(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.
13. There are four international human rights instruments that, even though not explicitly, conceive the particular aspects of academic freedom and they are- ICCPR and its Optional Protocol[[19]](#footnote-19), ICESCR and its Optional Protocol[[20]](#footnote-20). It would be pertinent to mention here the ratification status of those instruments. Record[[21]](#footnote-21) shows that, as of 26 March 2020, ICCPR has been ratified by 173 States when no action has been taken by18. With regard to the Optional Protocol to ICCPR,116 States have ratified it when no action has been taken by 78. With regard to ICESCR, 170 States have ratified it when no action has been taken by 23 and with regard to its Optional Protocol only 24 States have ratified it when no action has been taken by 149.
14. One could argue, on the basis of the statistics of the preceding paragraph, that the high- rate of ratification would be considered as an ‘indicator’ of implementation of the instrument concerned at domestic levels. And on the other hand, the rate of ‘no action’ would be considered to be an indicator of non-implementation of the instrument concerned at domestic levels.

Regional Legal Frameworks: Academic Freedom

1. I would take an opportunity to mention below the regional legal frameworks that recognize the particular aspects of academic freedom:
2. American Convention on Human Rights, Article 13[[22]](#footnote-22): Freedom of Thought and Expression: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2.The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals. 3.The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.
3. European Convention on Human Rights, Article 10[[23]](#footnote-23): Freedom of expression: 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
4. African Charter on Human and Peoples' Rights, Article 9[[24]](#footnote-24): 1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

Regional Judicial and Quasi-Judicial Mechanisms: Academic Freedom

1. American, European and African regional mechanisms have already recognized the particular aspects of academic freedom under their regional legal instruments. I would simply quote below the relevant portions of the judgment from particular cases:
2. Inter-American Court of Human Rights (Case of Ivcher-Bronstein v. Peru Judgment of February 6, 2001)[[25]](#footnote-25): Paragraph 147: With regard to the first dimension of the right embodied in the said article, the individual right, freedom of expression is not exhausted in the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate method to disseminate thought and allow it to reach the greatest number of persons. In this respect, the expression and dissemination of thought and information are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to free expression.

Paragraph 148: Regarding the second dimension of the right embodied in Article 13 of the Convention, the social element, we should indicate that freedom of expression is a medium for the exchange of ideas and information between persons; it includes the right to try and communicate one’s points of view to others, but it implies also everyone’s right to know opinions, reports and news. For the ordinary citizen, the right to know about other opinions and the information that others have is as important as the right to impart their own.

1. **African Commission on Human and Peoples’ Forty-Seventh Ordinary Session,12-26 May 2010 (**Kenneth Good v Republic of Botswana)[[26]](#footnote-26): Paragraph199: In the opinion of the Commission the article that was published by the victim is a purely academic work which criticizes the political system, particularly presidential succession in Botswana. There is nothing in the article that has the potential to cause instability, unrest or any kind of violence in the country. It is not defamatory, disparaging or inflammatory. The opinions and views expressed in the article are just critical comments that are expected from an academician of the field; but even if the government, for one reason or another, considers the comments to be offensive, they are the type that can and should be tolerated. In an open and democratic society like Botswana, dissenting views must be allowed to flourish, even if they emanate from non-nationals.

Paragraph 200: The lack of any tangible response from the State on how the article poses a threat to the State or Government leaves the Commission with no choice but to concur with the Complainants that the said article posed no national security threat and the action of the Respondent State was unnecessary, disproportionate and incompatible with the practices of democratic societies, international human rights norms and the African Charter in particular. The expulsion of a non-national legally resident in a country, for simply expressing their views, especially within the course of their profession, is a flagrant violation of Article 9(2) of the Charter.

1. European Court of Human Rights (case of Sorguc v, Turkey)**,** (Application no. [17089/03](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2217089/03%22]}))[[27]](#footnote-27): Paragraph 34: The Court notes that the Court of Cassation attached greater importance to the reputation of an unnamed person than to the freedom of expression that should normally be enjoyed by an academic in a public debate. Nor did it explain why the reputation of the plaintiff, whose name was not even mentioned in the paper, outweighed the applicant's freedom of expression that was recognised by the first instance court as being his constitutional right.

Paragraph 35: In this connection, the Court underlines 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.

1. **Information concerning the domestic regulatory frameworks that are applicable to the protections of, or restrictions on academic freedom**

Domestic Legislative Measures For and Against: Academic Freedom

1. States of the different regions of the globe enacted legislations that are applicable to the protections of academic freedom and there are also legislations that are contrary to it. With regard to the African region I would quote the following relevant information from an article[[28]](#footnote-28): “..Finally, for the first time in the history of African constitutional law, “academic freedom” has been enshrined in the constitutions of some of these states, either explicitly or directly. Currently, 1415 (25.45%) of the 55 total African countries specifically reference or explicitly recognize “academic freedom” in their constitutions.16 In most of these constitutions, “academic freedom” is linked with freedom of expression and incorporated in the chapter on fundamental rights and freedoms. For example, article 16(1) of the South African Constitution provides that “everyone has the right to freedom of expression, which includes . . . freedom to receive or impart information or ideas, . . . freedom of artistic creativity; and . . . academic freedom and freedom of scientific research.” In all these situations, “academic freedom” refers to the broad definitional type. Consequently, it can be said that all other laws enacted to establish or regulate the establishment and functioning of the university should respect academic freedom, especially with regard to the four delineated indicators. Among countries that do not explicitly recognize academic freedom, 8 (12.7%) refer to or recognize academic freedom directly in their constitutions. Direct recognition of academic freedom includes reference to constituent elements of academic freedom (such as “scientific research” or “artistic creativity”) in the constitution. For example, article 49 of the Constitution of the Republic of Cape Verde stipulates: 1. Everyone shall have the freedom to learn, educate, and teach. 2. Freedom of learning, educating, and teaching shall include: (a) The right to attend teaching and educational establishments and to teach without discrimination, as provided by law. (b) The right to choose the type of education and training. (c) The prohibition of the state to program education and tuition according to any philosophical, aesthetic, political, ideological, or religious directives. The constitutions of the 34 remaining African countries (61.8%), refer only indirectly to academic freedom. In these cases, reference to academic freedom can only be inferred from freedom of expression. Table 1. Recognition of Academic Freedom in the Constitutions of African States: Explicit Recognition: The Gambia, Ghana, Kenya, Liberia, Libya, Malawi, Namibia, Sierra Leone, South Africa, South Sudan, Sudan, Tunisia, Uganda, Zimbabwe. Direct Recognition: Algeria, Burkina Faso, Cape Verde, Central African Republic, Egypt, Ethiopia, Gabon, São Tomé and Príncipe. Indirect Recognition: Angola, Benin, Botswana, Burundi, Chad, Comoros, Côte d’Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Morocco, Mozambique, Niger, Nigeria, Republic of the Congo, Rwanda, Saharawi Arab Democratic Republic, Senegal, Seychelles, Somalia, Swaziland, Tanzania, Togo, Zambia”.
2. With regard to European region I would like to inform the Special Rapporteur of the following information[[29]](#footnote-29): “--Express provisions on the right to academic freedom (Indicator A.2.2.) – in the form of a right to freedom of science – may be found in the constitutions of 18 countries. These protect the right either as part of provisions (also) addressing the right to freedom of expression (Germany and Spain), the right to education/educational rights (Austria, Finland, Greece, Italy, and Sweden), rights related to science, arts, culture, universities and research institutions (Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia), the right to freedom of thought, conscience, and religion (Czech Republic), or both the right to education/educational rights and rights related to science, arts, and culture (Portugal). The provisions contained in the Czech, Greek, and Hungarian Constitutions may be considered to be problematic (‘partial compliance’). Regarding the Czech Charter of Fundamental Rights and Freedoms 1992, it is submitted that the right to freedom of thought, conscience, and religion in Article 15 provides too narrow a basis as to cover all aspects of the right to academic freedom (Art. 15(2)). Article 16(8) of the Greek Constitution 1975 prohibits the establishment of private universities, thereby also preventing opportunities for diversified notions of academic freedom to flourish in different contexts. Although academic freedom does require regulation, the provisions of Article x(1) of the Hungarian Fundamental Law 2011 – also in the light of the Constitution’s generally paternalistic, even authoritarian, stance – to the effect that the right to academic freedom is ensured ‘within the framework laid down in an Act’ does not augur too well for the protection of that right”.
3. With regard to Asian States the following information[[30]](#footnote-30) would be relevant: “--On the one hand, the present Constitution of Thailand, redrafted in 1992 contains an article guaranteeing academic freedom; the Indian Constitution also safeguards freedom of expression and thought . The Parliamentary Act of Bangladesh ensures academic freedom. On the other hand, many countries passed laws that allow governments to intervene in matters which are in the sphere of academic freedom. For instance, University and university College Act 1971 of Malaysia gives full authority to the government over student enrolments, staff appointment, educational programs, and financing. The 1975 amendment provides basis for government to forbid academics and students from involvement in any political activities or affiliation to any political party or trade union. They are discouraged to express their views publicly in shaping public discourses and national debates. Government decrees restricted public release of scientific studies on the health consequences of the air pollution and dense haze that were blanketing much of the country. Evidences from many countries indicate that with or without explicit statements in the laws, infringement on academic freedom depends very much on the manner of law enforcement and judicial practices in that country”.
4. **Information concerning the impact of restrictions on academic freedom**
5. I would like to provide information on restrictions, constraints and influences that are taking place around the globe and impact on academic freedom. The “Scholars At Risk” Network[[31]](#footnote-31) published an article providing the following information – ‘Free to Think 2019: Distressing phenomenon of attacks on higher education demands global action’, Posted November 19, 2019, New York, NY — Scholars at Risk announces the release of Free to Think 2019, a report analyzing 324 attacks on higher education communities in 56 countries between September 1, 2018 and August 31, 2019. “Attacks on higher education communities — regardless of their location, scale, or scope — hold consequences for societies everywhere,” says SAR’s Executive Director, Robert Quinn. “In our increasingly interconnected world, these attacks erode an essential, global space where academics, students, and the public at large can come together to understand and solve the complex problems that are affecting us all.”  *Free to Think 2019*draws on data from SAR’s[Academic Freedom Monitoring Project](https://www.scholarsatrisk.org/monitoringproject) to identify trends related to violent attacks on higher education communities, including a series of deadly bombings targeting scholars and students in Afghanistan; wrongful imprisonments and prosecutions of scholars, particularly in Turkey and Sudan; pressures on studentexpressioninvolving more than one hundred documented incidents around the world; and restrictions on academic travel, deployed most prominently by authorities in the U.S., Israel, and China. The report provides detailed analysis of national pressures on higher education communities, including: Political tensions in India that have led to violent altercations between students, security forces, and off-campus groups, and have driven legal actions and disciplinary measures against scholars critical of those in power; Ongoing attackson scholars in Turkey, who continued to face arrest, prosecution, and bans on public employment and foreign travel for signing a peace petition or for being associated with groups or individuals disfavored by the government; Violent crackdowns on dissent in Sudan, where state authorities shuttered universities and security services used arrests and even lethal violence to quell dissent among students and scholars amid nationwide protests; Heightened assaults on academic freedom in China**,**where scholars and students are punished for being out of step with CCP ideology and where so-called “re-education camps” are being used to imprison minority scholars and students; and  A surge in politically-motivated pressures on Brazil’s universities, including raids on campuses, threats against and attacks on minority students, and legislation that threatens universities’ activities and core values. “Since 2011, SAR has reported over fourteen hundred attacks on higher education in over one hundred countries. These attacks challenge everybody’s freedom to raise difficult questions and share ideas,” says Clare Robinson, SAR’s Advocacy Director. “*Free to Think*demands urgent action from governments, higher education leaders, and civil society to actively protect higher education communities and defend academic freedom.”
6. **Conclusion and Recommendations**
7. It is humbly submitted that the information provided above would help UN Special Rapporteur hold an idea on the position of academic freedom in law and also on its, *de facto*, position of dishonour in the regions of the globe. And UN Special Rapporteur is sincerely requested to consider the information mentioned above and make such recommendations as are deemed to be fit and proper.
8. UN Special Rapporteur may kindly note that at the time of this writing, the whole world has been captured by the serious threat of COVID -19. There is no effective vaccine and its widespread dissemination. The facts of invention of vaccine and its widespread dissemination are related to the effective implementation of the right on academic freedom. States may, thus, be encouraged, it is submitted, to take effective measures giving full implementation of academic freedom at domestic levels.
9. States may be encouraged to ratify the Optional Protocol to ICESCR; because a national of a ratifying State can bring the allegation of breach of rights before the Committee under this Protocol. It has been mentioned above that as of 26 March 2020, only 24 States have ratified it when no action has been taken by 149. And this very fact may bear an indicator of non- implementation of academic freedom at domestic levels.
10. It is humbly submitted that States may be encouraged to frame an international legally binding instrument on academic freedom. Or, they may be inspired to frame Declarations regionally on this very matter. With regard to Asian region, it is submitted that States should be encouraged to frame a regional judicial or quasi-judicial mechanism mandating the adjudicatory and advisory functions on human rights. And lack of which has made the inhabitants of Asian region very vulnerable. Unlike the European, African and Inter-American regions there is no regional mechanism in Asia where a national could raise an issue of State’s obligations under a particular human rights instrument.
11. It is submitted that the stakeholders to the SDGs may be encouraged to bring particular goals and gender perspectives into the institution levels by effective implementation of academic freedom at domestic levels.
12. It is finally submitted that States may be encouraged to be sincere and honest in the observance of ‘three-part-test’ given by article 19(3) of ICCPR in relation to imposition of restrictions on the freedom of expression.

All of which is respectfully submitted,



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Muhammad Muzahidul Islam, 01 April, 2020

1. Available at <https://www.britannica.com/topic/academic-freedom> [↑](#footnote-ref-1)
2. Available at <https://www.wusgermany.de/sites/wusgermany.de/files/userfiles/WUS-Internationales/wus-lima-englisch.pdf> [↑](#footnote-ref-2)
3. Ibid [↑](#footnote-ref-3)
4. Recommendation concerning the Status of Higher-Education Teaching Personnel  
   11 November 1997, available at <http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html> [↑](#footnote-ref-4)
5. Ibid [↑](#footnote-ref-5)
6. Ibid [↑](#footnote-ref-6)
7. Ibid [↑](#footnote-ref-7)
8. Ibid [↑](#footnote-ref-8)
9. Ibid [↑](#footnote-ref-9)
10. Ibid [↑](#footnote-ref-10)
11. Ibid [↑](#footnote-ref-11)
12. Ibid [↑](#footnote-ref-12)
13. Ibid [↑](#footnote-ref-13)
14. Ibid [↑](#footnote-ref-14)
15. CESCR General Comment No. 13: The Right to Education (Art. 13) Adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (Contained in Document E/C.12/1999/10), available at <https://www.refworld.org/pdfid/4538838c22.pdf>, visited 26.03.2020 [↑](#footnote-ref-15)
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    entry into force 23 March 1976, in accordance with Article 49, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, visited 26.03.2020 [↑](#footnote-ref-16)
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18. Ibid [↑](#footnote-ref-18)
19. Optional Protocol to the International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI)  
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22. AMERICAN CONVENTION ON HUMAN RIGHTS,(Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969), available at <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>, visited 26.03.2020 [↑](#footnote-ref-22)
23. Available at <https://www.echr.coe.int/Documents/Convention_ENG.pdf>, visited 26.03.2020 [↑](#footnote-ref-23)
24. Available at <https://www.achpr.org/legalinstruments/detail?id=49>, visited 27.03.2020 [↑](#footnote-ref-24)
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