**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** | **Ghana/University of Ghana School of Law (Prof Kwadwo Appiagyei-Atua)** |

**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.

*However, there is no particular charter or policy document that spells out the content of freedom, as is the case in some jurisdictions or institutions. Academic freedom is provided under article 21(1)(b) of the Fourth Republican Constitution of Ghana as follows: All persons shall have the right to freedom of thought, conscience and belief, which shall includeacademic freedom.*

*There has not been a direct reference on the subject before a court for it to provide a definitive pronouncement on how the freedom is supposed is defined and protected under the Constitution.*

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

*Yes, all are entitled to academic freedom, relying on article 21(1)(b) of the Constitution of Ghana. There is no specific law or court decision that deals with or has dealt with this question.*

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?

*(a) Governmental interference in the operation of universities through influencing decisions made by individual Vice Chancellors, the umbrella body for VCs in Ghana called Vice Chancellors Ghana (VCG), the Ghana Tertiary Education Commission, the Ministry of Education, and governing councils of universities. To a limited extent, the government seeks to influence the University Teachers Association of Ghana (UTAG) and Student Representative Councils (SRC) through divide and rule.*

*(b) The laws of the land generally seem to be protective of academic freedom. For example, apart from the specific recognition of academic freedom in the Constitution, the Constitution also provides that the President cannot be appointed as Chancellor while in office. Two, the chair of the governing council of each public university is to be appointed by the university. Three, the university council is not considered as*

*Each university is established as an autonomous institution with perpetual succession and the right to sue and be sued. The qualification of a Chancellor is provided for in the Constitution and the President is barred, while he continues in office as President,* *from holding the office of Chancellor or head of any university in Ghana (Article 68 (1) Constitution of Ghana, 1992).*

*However, the interpretation and application of Article 70 is controversial and illegal. The Act establishing each university gives the President the power to appoint the chairperson and other members of the Council “[i]n line with article 70 of the Constitution.” [[1]](#footnote-1) Article 70(d)(iv) of the Constitutions provides that:*

*The President shall, acting in consultation with the Council of State, appoint a National Council for Higher Education, howsoever described.*

*Yet, the National Council for Higher Education is a different body from a university council and is set up separately under the Education Regulatory Bodies Act, 2020 (Act 1023). The university council and how it goes about appointing its chair and membership, on the other hand, is regulated by article 195(3) of the same Constitution and provides that ‘[t]he power to appoint persons to hold or act in an office in a body of higher education, research or professional training, shall vest in the council or other governing body of that institution or body.*

**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.

*Generally, on the face of it, autonomy and self-governance exist at the university level. However, one can refer to the controversy surrounding the interpretation of article 70 of the Constitution mentioned above. The reference to governmental interference, direct and indirect, also indicates attempts by the State to compromise the autonomy and self-governance of the university.*

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

*Each university has statutes which spell out the level of respect for academic freedom. For example, at the University of Ghana, with respect to individual rights and freedoms for academics, there is specific reference to “academic freedom” in its statute. The application, though, only seems indirectly implied. Thus, under clause 42(1)(f)(iii) of the Statute, it is provided that: Without prejudice to the application of the national laws by the University, no member of the University shall engage in a course of vexatious conduct that is directed at one or more specific individuals, and that exceeds the bounds of freedom of expression or academic freedom as these are understood in University policies and accepted practices, including but not restricted to those explicitly adopted.[[2]](#footnote-2)*

*This statement connotes the meaning that academic freedom is recognised in the basic laws of the University, which is largely true. For example, the University recognises the right of every employee to freedom of association and of the right to demonstrate in order to protect his economic and social interests.[[3]](#footnote-3) Also, the university’s code of conduct for academic staff prohibits harassment or discrimination against a colleague on the basis of religion, gender, race, ethnicity, ideology or disability.[[4]](#footnote-4) The same code recognises respect for the dignity of others, and respect for their right to express different opinions.[[5]](#footnote-5) However, there is no particular charter or policy document that spells out the content of freedom, as is the case in some jurisdictions or institutions.*

**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?

*Each university has processes for accessing university funds for research outlined in its statutes or one of the basic laws of the university, with laid-down criteria to access such funds. Such funds are generally solicited for by the university itself. Research generally is not state-funded. Majority of lecturers write proposals to solicit for their own funding.*

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.

*None.*

**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?

*There are no specific laws to deal with this.*

**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?

*Yes, teachers and professors enjoy this freedom. However, the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021, for example, seeks to criminalise freedom of expression and academic freedom on LGBTQ issues in the classroom.*

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?

*There are no specific laws banning or restricting what materials teachers or professors can use in class. However, the proposed anti-LGBTQ Bill could impose such restrictions.*

**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. In line with article 70 of the Constitution of the Republic of Ghana: S. 8(1) of the University of Ghana Act, 2010 (Act 806). [↑](#footnote-ref-1)
2. Emphasis mine. [↑](#footnote-ref-2)
3. S. 51(1) of the University of Ghana Act, 2010 (Act 806). [↑](#footnote-ref-3)
4. Para 7.4 of Code of Conduct for Academic Staff of the University of Ghana, adopted in March 2011 and published in the University Of Ghana Special Reporter (No. 798 Friday, October 28 , 2011 Vol. 49 No. 4). [↑](#footnote-ref-4)
5. *Ibid*, para. 7.6. [↑](#footnote-ref-5)