

Mandate of the Special Rapporteur on the right to education

ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION IN EDUCATIONAL INSTITUTIONS

CONTRIBUTION

Name of the country/entity submitting information	Aula Abierta, contribution with a regional perspective on The Americas
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Questions

For the purpose of this contribution, Aula Abierta provides its answer focusing on the right to academic freedom in the context of the higher education system.

General framework

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.

1. This contribution provides a view of the work performed by Aula Abierta in the framework of the 35 States members of the Organization of American States, incorporated in the report “Academic freedom in the legal framework of the States party of the Organization of American States”¹.
2. .Despite the existence of the Inter-American Principles on Academic Freedom and University Autonomy adopted in 2021 by the Inter-American Commission on Human Rights (IACHR), there is a lack of recognition of the right to academic freedom in national norms in The Americas, for example, of the 35 member states of the OAS, only Ecuador expressly recognizes academic freedom at the constitutional level and only the Bahamas, Bolivia, Canada, Chile, the Dominican Republic, Ecuador, Mexico and the Bahamas expressly recognize it at the legal level. To access a full compilation and analysis of each normative text, please

¹ Aula Abierta. La libertad académica en los ordenamientos jurídicos de los Estados Americanos: Retos para la implementación de los Principios Interamericanos. Available in: <https://aulaabiervenezuela.org/wp-content/uploads/2023/07/LIBRO-FINAL.-La-libertad-academica-en-los-ordenamientos-juridicos-de-los-Estados-Americanos-Copy.docx.pdf>

access to the report “Academic freedom in the legal framework of the States party of the Organization of American States”².

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

3. **A)**Some of these practices refer to arbitrary detentions, arbitrary dismissals of positions as researchers and/or professors, budget reductions as punishment for critical positions in the academy, arbitrary deprivation of nationality, cancellation of the legal status of universities, political indoctrination practices in the classroom, among other worrisome situations. To find a detailed description of the cases, organized by countries and types of attacks, please visit our report “Academic Freedom, university autonomy and other human rights of the members of the university community in The Americas”³.
4. **B)**In addition, the lack of a uniform approach to the legal nature, concept and scope of academic freedom is both one of the main challenges to academic freedom and implies one of the gaps in the current international law legal framework. As an example, we can see the caselaw and analysis reviewed by the coordinator of research and international advocacy department, Ricardo Villalobos Fontalvo, in his work “Is Academic Freedom a human right? An assessment within the human rights framework”, which Aula Abierta shares:

“Regarding the United Nations system for the protection of human rights, the UN Special Rapporteurship on freedom of expression (UNSRFOE) issued a report in which it held that academic freedom finds protection in the normative content of Article 10 of the ICCPR related to freedom of expression and opinion.⁴ Most notably, the Rapporteurship’s report calls international human rights bodies to address academic freedom violations as autonomous violations, not a derivation of freedom of expression.⁵

In a less clear way than the UNSRFOE, the European Court of Human Rights (ECtHR) has addressed academic freedom violations within its case law. In *Sorguc v Turkey*, the ECtHR underlined ‘the importance of academic freedom’⁶ but its argument was that Turkish authorities violated the ‘freedom of expression that should normally be enjoyed by an academic in a public debate’⁷, therefore, a

²Ibidem

³ Available in:

<https://drive.google.com/file/d/12L9S1coAYDfNwl7rxT0ccmzVbJMisV25/view?usp=sharing>

⁴ UN Human Rights Council (UNHRC), Report of the United Nations Special Rapporteur for the promotion and protection of the Rights to Freedom of Opinion and Expression (28 July of 2020) UN Doc. A/75/261, para 4

⁵ Ibid. para 57

⁶ *Sorguç v. Turkey* App No. 17089/03 (ECtHR 23 June 2009), para 35

⁷ Ibid. para 34

room for the interpretation of academic freedom merely as a dimension of freedom of expression was left by the Court.

In the case of *Mustafa Erdogan v Turkey* of the ECtHR, Judges Sajó et Al. held in their concurring opinion that ‘The meaning, rationale and scope of academic freedom are not obvious, as the legal concept of that freedom is not settled’.⁸ In addition, they criticized that the Court relied only on general concepts applicable to freedom of expression to adjudicate on the case, without setting clear indicators to identify whether academic freedom, and not only freedom of expression as an “umbrella concept”, has been impeded’.⁹

The lack of uniformity to approach academic freedom is also tangible in other regional systems. In *Good v Botswana*, related to a scholar expelled from Botswana for publishing an academic paper criticizing the government’s succession rules¹⁰The African Commission on Human and Peoples right only mentioned academic freedom one time in its decision, without elaborating on it as the main issue of the controversy, focusing solely on freedom of expression and opinion dimensions of the case.¹¹

Within the Inter-American System for the protection of human rights, two trends can be identified. (...) The Inter-American Court of Human Rights (IACtHR) in the case of *Urrutia Laubreaux v Chile* omitted to address academic freedom within its merit decision, despite the facts of the case were related to a Judge who was dismissed from the Chilean Judiciary because he wrote, in his condition as a student, an academic report criticizing the role of the Judiciary in the Pinochet’s dictatorship¹². ”

5. After the publication of the in comento work, on 6 December 2021 the Inter-American Commission on Human Rights adopted the Inter-American Principles on Academic Freedom and University Autonomy, which recognises Academic Freedom as a self standing human right¹³.

Autonomy of educational institutions

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.

⁸ Joint concurring opinion of judges Sajó, Vučinič and Kūris in *Mustafa Erdoğan and Others v. Turkey* App Nos 346/04 and 39779/04 (ECtHR 27 May 2014), para 4.

⁹ *Ibid.* para 7,

¹⁰ *Good v Botswana*, Communication No. 313/05 (African Commission on Human and People’s rights 26 May 2010), paras 2-4.

¹¹ *Ibid.* para 199

¹² Inter-American Court of Human Rights (IACtHR) *Case Urritia Laubreaux v Chile* (2020), para 89

¹³ Inter-American Principles on Academic Freedom and University Autonomy. Available in: <https://www.udem.edu.mx/sites/default/files/2023-02/CIDH-%20Principios%20Libertad%20Acad%C3%A9mica%20Mayo%202022-%20English.pdf>

6. As mentioned before, for the purpose of this contribution, Aula Abierta provides its answer focusing on the right to academic freedom in the context of the higher education system. In this regard, during the drafting process of the above mentioned Principles, it was proposed that the autonomy of the higher education institutions encompasses the following attributes, taking inspiration from a Law proposal on the human rights in the framework of the higher education system elaborated by Aula Abierta in consultation with scholars and university human rights centers in Venezuela.
7. Modalities for exercising university autonomy:
 - A) Normative autonomy: The university has the right to create the norms to regulate its organization and functioning. In this sense, the university authorities have the legitimacy to issue the aforementioned norms, since they are an expression of the will of the university community, so that when these authorities elaborate the legal instruments, it is the university community itself that participates in their elaboration. When these authorities elaborate the legal instruments, it is the same university community that participates in their elaboration.
 - B) Organizational autonomy: Organizational autonomy refers to the power of the autonomous universities to create, modify and extinguish their own administrative bodies and dependencies, as well as to establish their competencies and delineate the discipline related to personnel, goods and services. The procedures related to the election of university authorities, as well as faculty and student representatives to the University Co-Government shall be substantiated in accordance with the norms created by the universities for such purpose. State interference shall not be permitted in the development of the referred processes.
 - C) Budgetary Autonomy: The universities have their own budget, which is distinct from the State budget.
 - D) Financial Autonomy: Financial autonomy includes the power to receive proceeds from its own activity to administer them automatically, or resources received from other entities, all of which is administered by the universities in accordance with their own budget.
 - E) Electoral and administrative autonomy: Derived from their independence, the autonomous universities enjoy autonomy to determine by means of norms with the rank of law, the electoral processes by which they may elect their authorities through democratic processes and under the principle of proportional representation, determine the duration of their mandate and the subjective requirements demanded for their election, considering that one of the core aspects of autonomy of the universities is related to the election and appointment of their authorities, the admission and appointment of their teaching, research and administrative personnel.

Finally, we are of the opinion that the physical access by public security forces to the educational institutions should be as a general rule forbidden, being an extraordinary

measure that should be coordinated with the university authorities and preceded by a judicial order. This criteria rests on the evidence gathered by Aula Abierta on the relevance of free campuses to foster the exchange of critical ideas among the academic community. As a reference, during the period of public demonstrations in Venezuela in 2017, Aula Abierta documented 21 attacks of public security forces against university campuses in which the students and professors were criticizing the human rights situation at the time in the mentioned country.

Freedom of expression in teaching and access to books

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?

7. Aula Abierta has documented that in some countries in The Americas, there are limitations imposed on lecturers in the manner that they are prevented from developing the content and discussions within their classes freely. In 2022, after the cancellation of several universities and the harassment of the academic community in Nicaragua, Aula Abierta have documented testimonies of students who warned that within the campus the university authorities promote practices of indoctrination and pro-sandinism (the ideology of the president Nicaragua and its political party). For instance, a student of the Universidad Nacional Politécnica (UPN), formerly Universidad Politécnica de Nicaragua (UPOLI), told Aula Abierta that in her school, on several occasions "they held conferences with the students to talk about the good work of the government and how we could contribute and help them by facilitating their work ". She added that, in the classroom, which should be a free center for thought, debate and the acquisition of knowledge, topics of public interest have been censored "a professor did not allow anyone to ask questions about the context of 2018 (massive demonstrations and human rights violations in Nicaragua), no matter how much we wanted to, we would not talk about what happened in April of that year "6 , which is evidence of the restrictive context in the classroom, where academic freedom should prevail¹⁴.

-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?

8. Aula Abierta has registered cases of censorship of lecturers by the State in public universities regarding the dissemination and discussion of material critical to governmental policies. In October 2019, the 36th Criminal Court of Caracas, Venezuela, issued an order prohibiting the screening of a documentary entitled

¹⁴ Aula Abierta. INFORME: ADOCTRINAMIENTO Y PROSELITISMO POLÍTICO EN LAS UNIVERSIDADES EN NICARAGUA COMO VIOLACIÓN A LA LIBERTAD ACADÉMICA. https://derechosuniversitarios.org/wp-content/uploads/2023/02/INFORME_-ADOCTRINAMIENTO-Y-PROSELITISMO-POLITICO-EN-LAS-UNIVERSIDADES-EN-NICARAGUA-COMO-VIOLACION-A-LA-LIBERTAD-ACADEMICA.docx.pdf

"Chavismo: The Plague of the 21st Century" at the Simon Bolivar University, as well as in any other public space¹⁵. Similar cases have been documented in countries such as Cuba and Nicaragua.

¹⁵ Aula Abierta. INFORME PRELIMINAR: VIOLACIONES A LA LIBERTAD ACADÉMICA, AUTONOMÍA UNIVERSITARIA Y OTROS DERECHOS DE LOS UNIVERSITARIOS EN VENEZUELA. para 33. Available in: <https://aulaabiertavenezuela.org/wp-content/uploads/2020/01/INFORME-PRELIMINAR-VIOLACIONES-A-LA-LIBERTAD-ACAD%C3%89MICA-AUTONOM%C3%8DA-UNIVERSITARIA-Y-OTROS-DERECHOS-DE-LOS-UNIVERSITARIOS-EN-VENEZUELA-1.pdf>