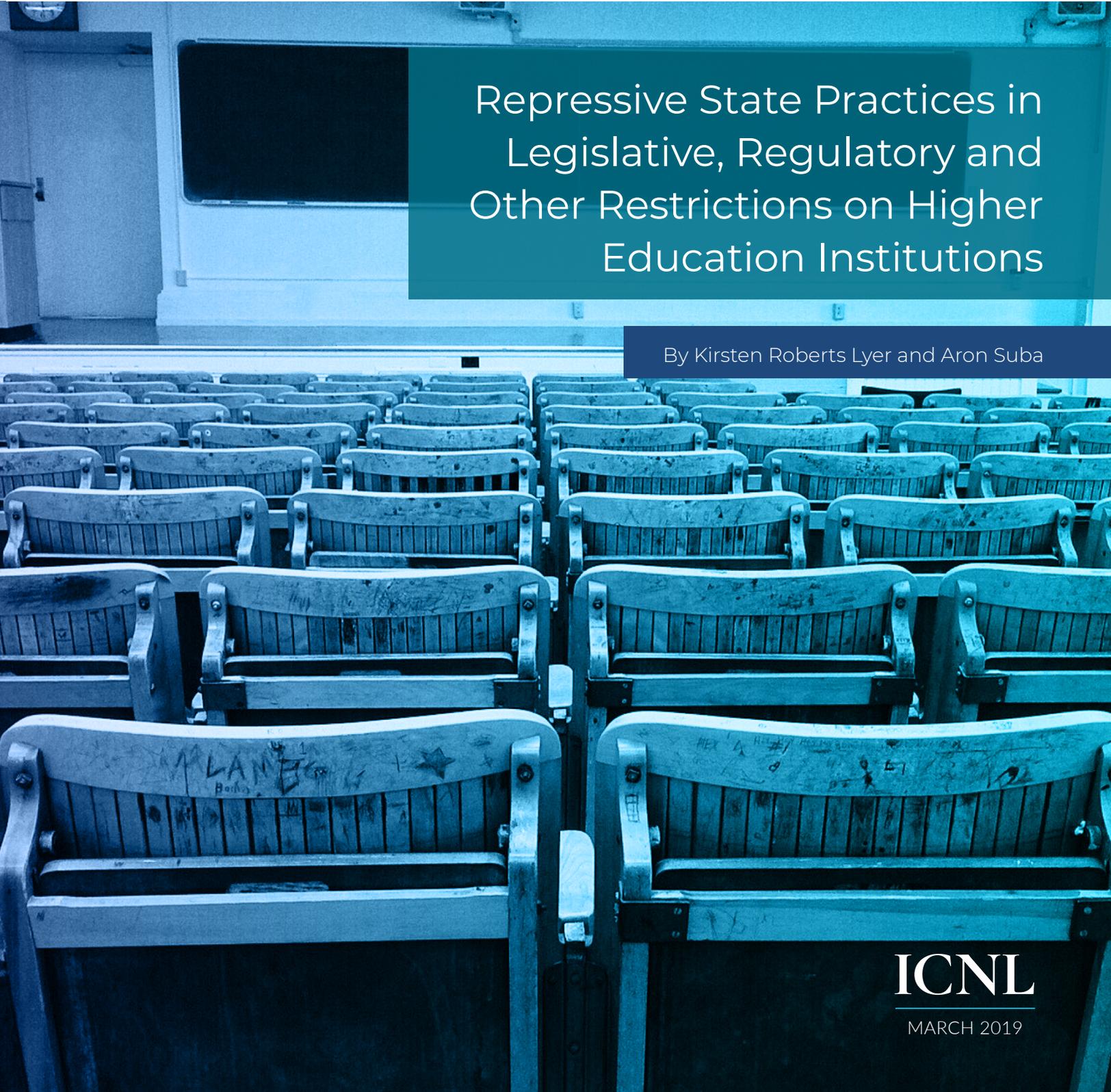


CLOSING ACADEMIC SPACE



Repressive State Practices in
Legislative, Regulatory and
Other Restrictions on Higher
Education Institutions

By Kirsten Roberts Lyer and Aron Suba

ICNL

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By Kirsten Roberts Lyer and Aron Suba*



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LIST OF ABBREVIATIONS

CESCR	UN Committee on Economic, Social and Cultural Rights
CODESIRA	Council for the Development of Social Science Research in Africa
EEA	European Economic Area
EU	European Union
EUA	European University Association
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
IACHR	Inter American Commission on Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICNL	International Center for Not-for-Profit Law
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OECD	Organization for Economic Co-operation and Development
UN	United Nations
UNESCO	United Nations Economic and Social Council
UDHR	Universal Declaration of Human Rights

EXECUTIVE SUMMARY

Universities and higher education institutions around the world are facing an increasing array of repressive legislative, regulatory and administrative restrictions to their autonomy. These range from interference with governance structures, staffing and leadership, and excessive financial control, to restrictions on academic engagement and programmes to, at the extreme end, the criminalisation of academics and militarisation of campuses. These types of interferences often severely undermine the ability of universities to freely conduct teaching and research and undertake critical inquiry. As university autonomy is closely related to the healthy functioning of democratic societies, the importance of understanding the extent of repressive state practices extends beyond just what might be important for universities themselves. While autonomous higher education institutions are a critical feature of democratic, rule of law-based societies, as is clear from our findings in this report, they are also institutions that can come under serious pressure from the state.

The purpose of this report is to identify the scope of repressive practices against university autonomy around the world, in order to enhance understanding of both the extent of state practice, and the ways in which restrictions are applied. Its aim is to support stakeholders in ultimately reducing repressive government interference to help universities to maintain their autonomy. We have found that there is a need for increased stakeholder monitoring of legislative and administrative restrictions placed on university autonomy and the development of clear international standards supporting university autonomy. In order to increase monitoring and stakeholder engagement on a set of international standards, agreement needs to be reached on the parameters of university autonomy. We propose that the 1993 UN Paris Principles may serve as a useful guidance for developing both a monitoring framework and set of international standards (see further below).

About the Report

This report, commissioned by the International Center for Not-For-Profit Law (ICNL), examines excessive, damaging or ‘repressive’ restrictions, seeking to understand the extent to which governments around the world are actively repressing university autonomy and closing the academic space. Having examined international and regional definitions of university autonomy, this report utilises the definition set by the UN Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 13 whereby autonomy is “that degree of self-governance necessary for effective de-

cision-making by institutions of higher education in relation to their academic work, standards, management and related activities”.¹

UNIVERSITY AUTONOMY AND ACADEMIC FREEDOM

Much focus is given in scholarship and professional literature on universities to the issue of academic freedom. While this report focuses on university autonomy, this cannot be entirely separated from academic freedom. Academic freedom is often classified as an individual right, compared to the institutional nature of university autonomy.² It is defined by the CESCR as the freedom “to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing” and 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 ...”³ University autonomy is essential to operationalise and protect the right to academic freedom. Governmental interference in areas that may more usually be classified as ‘academic freedom’, such as censorship of materials or research, clearly fall also within the scope of interference with institutional autonomy as they limit the institution’s ability to determine its academic programmes and what it will teach. In examining repressive practices against institutions, and whether there is a ‘closing academic space’, it is therefore important to consider not just specific national legislative or regulatory provisions, but also examples of repressive practices against individual institutions, academics and students. Further, repressive practices may be much more subtle than provisions placed in a law or regulation. As Altbach notes, where “[g]overnment authorities make it clear to university officials that continued good relations, budgetary allocations, and research funds de-



University autonomy is essential to operationalise and protect the right to academic freedom.

1 General Comment No. 13: The Right to Education (Art. 13), Adopted by the Committee on Economic, Social and Cultural Rights at the Twenty-first Session, E/C.12/1999/10, 8 December 1999, para. 17 (hereafter, CESCR General Comment No. 13). This language is also reflected in the 1997 UNESCO *Recommendation concerning the Status of Higher-Education Teaching Personnel* adopted by the General Conference at its 29th Session, Paris, 21 October – 12 November 1997 (hereinafter the 1997 UNESCO Recommendation), para 17.

2 See for example, Jogchum Vrieling, Paul Lemmens, Stephan Parmentier and the LERU Working Group on Human Rights Academic Freedom as a Fundamental Right, *Procedia Social and Behavioral Sciences* 13 (2011) 117–141, p. 139.

3 CESCR General Comment No. 13, para. 39.

pend on the appropriate academic and political behaviour on the part of the faculty.⁷⁴ We found numerous examples of this type of repressive national environment in our research.

SUBJECT MATTER & METHOD OF ANALYSIS

Understanding the scope, type and level of restrictions can help to create better legislative and regulatory environments for higher education institutions. To this end, the report reviews; 1) existing international standards on university autonomy and the interrelated issue of academic freedom, 2) existing efforts to measure institutional autonomy, and 3) examples of restrictions in countries around the world. The report was prepared primarily through desk research on the situation of higher education institutions. This was undertaken through a review of academic and professional articles and publications on institutional autonomy and academic freedom to understand existing approaches and standards. Country-specific research was then undertaken using academic and human rights publications and materials, media articles, as well as a limited number of interviews with academics from Hungary, Turkey, Russia and Venezuela, where there have been particularly extreme examples of governmental interference with universities in recent years.⁵ The country-specific research was primarily focused on recent examples⁶ to reflect as closely as possible the current state of affairs.

This report is particularly interested in what we term ‘excessive’ restrictive practices. That is, interference in university autonomy that goes beyond what could be regarded as permissible interference by the state for legitimate purposes such as oversight of the use of public monies or regulation of the system of higher education.

All universities need permission to operate in the states in which they exist, and public universities also require state-funding to operate. Therefore, all universities are reliant to some extent on the state. In this relationship, the question is what degree of state interference is permissible. As a framework for analysis, we utilised the 1993 United Nations Principles Relating to the Status of National Institutions (the Paris Principles), which provide a structure for the independent and effective functioning of National Human Rights Institutions (NHRIs).⁷ These are state-established, state-funded institutions that aim to operate independently for the promotion and protection of human rights. The Paris Principles are a useful model through which university institutional autonomy can be examined, as universities also often rely on state funding and operate as part of state-established national higher education frameworks. The Principles broadly set out requirements for independent functioning of NHRIs relating to their

4 Philip G. Altbach, Academic freedom: International realities and challenges, *Higher Education* 41: 205–219, 2001, p. 213.

5 The authors would like to thank Central European University (CEU) President and Rector, Michael Ignatieff, Professor Hugo Pérez Hernáiz, former professor at Universidad Central de Venezuela, Norbert Sabic PhD, CEU, as well as those interviewed academics who asked not to be identified, for their time and valuable insights.

6 The majority of the research for this report was done prior to July 2018, some updates to November 2018 have been added during the editing process.

7 Principles relating to the status of national institutions (the Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

enabling laws, appointment procedures, security of tenure, availability of sufficient resources and financial autonomy.⁸ These principles overlap with notions of autonomy and therefore offer some useful guidance for examining the autonomy of higher education institutions, although the report also recognises their limitations of applicability to universities, which have more diverse goals and methods of operation compared to NHRIs.

Key Findings on International Standards and Measurements

INTERNATIONAL STANDARDS

Reviewing existing international standards on institutional autonomy for higher education institutions, it is clear that there is a lack of explicit protection in the main UN human rights treaties. Autonomy is however protected under the right to education and is elaborated on in General Comment No. 13 of the CESCR. International soft-law standards on higher education institutions include the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, which echoes the CESCR definition on institutional autonomy but also goes further in highlighting the obligation of states to protect the autonomy of higher education institutions. Regional standards on autonomy include recommendations from the Council of Europe on the responsibility of universities and national authorities for upholding institutional autonomy.⁹ EU standards such as the EU Charter of Fundamental Rights¹⁰ focus on the right to education and academic freedom, rather than on institutional autonomy per se, as do the Statement of Principles on Academic Freedom by the American Association of University Professors.¹¹ Standards from other professional bodies that discuss autonomy include the 1988 Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education,¹² the Kampala Declaration on Intellectual Freedom and Social Responsibility and the subsequent 2007 Juba Declaration on Academic Freedom and University Autonomy of the pan-African Council for the Development of Social Science Research in Africa (CODESRIA).¹³ While providing a basis for states obligations

8 The Paris Principles have been elaborated through a peer-review process undertaken by the Sub-Committee on Accreditation of the Global Alliance of NHRIs and the publication of a set of 'general observations'. Global Alliance of National Human Rights Institutions (GANHRI), General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 21 February 2018, (Hereinafter, GANHRI Sub-Committee on Accreditation General Observations), para 1. See generally, K Roberts Lyer, 'National Human Rights Institutions', in Gerd Oberleitner & Steven Hoadley eds., *Human Rights Institutions, Tribunals and Courts – Legacy and Promise*, Springer Major Reference Works handbook series (2018).

9 Council of Europe Parliamentary Assembly Recommendation 1762(2006) on *Academic Freedom and University Autonomy*, 30 June 2006; Council of Europe Recommendation CM/Rec(2012)7

10 Charter of Fundamental Rights of the European Union, (2012)/C 326/020, OJ C 326, 26.10.2012, pp. 391–407, Article 13.

11 American Association of University Professor's Statement of Principles on Academic Freedom and Tenure, 1970.

12 Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education of the World University Service, 1988, para 15.

13 Council for the Development of Social Science Research in Africa (CODESRIA), Juba Declaration on Academic Freedom and University Autonomy, 26-27 February 2007, Khartoum, Sudan.

to protect university autonomy, as well as elements of a definition, the absence of clearly elaborated international standards may contribute to the current protection gap.

MEASUREMENTS OF INSTITUTIONAL AUTONOMY

This report also reviews how academic and professional bodies have proposed measuring institutional autonomy. The European University Association (EUA) has been the most active in operationalizing the definition of autonomy into a ‘scoring’ system by breaking the concept down to different elements and scoring the “health” of autonomy in public universities in European countries against a number of criteria.¹⁴ It categorizes autonomy to four main areas; organisational, academic, financial and staffing. Scholars primarily focused on academic freedom also discuss the concept of autonomy and indicators that can be used for measuring it, mostly using similar categories to the EUA. However, it also emerges from the literature that “autonomy” be differently understood in different parts of the world, and no widely accepted criteria for or measurement of the concept exists.

The report finds that most of the international standards and literature on universities in relation to autonomy focuses on state-funded public universities, although we have clearly identified that repressive practices also extend to private institutions. While private universities generally enjoy more autonomy from the state because they have lower financial ties to the government (receiving little or no state funding), they can be still subject to excessive restrictions, as examples in this report demonstrate, and therefore should be included in any examination of restrictive practices towards higher education institutions.

LIMITATIONS OF THE REPORT

A number of challenges arise when seeking to determine the scope of repressive state practices that impact university autonomy. First is determining the limit of permissible state interference. It cannot be suggested that universities – particularly public universities – have no ties to or responsibilities to



While private universities generally enjoy more autonomy from the state ... they can be still subject to excessive restrictions, as examples in this report demonstrate.

¹⁴ Thomas Estermann and Terhi Nokkala, University Autonomy in Europe I Exploratory Study, European University Association, 2009. (Hereafter EUA exploratory Study, 2009); Thomas Estermann, Terhi Nokkala and Monika Steinel, University Autonomy in Europe II The Scorecard, European University Association, 2011. (Hereafter University Autonomy in Europe II 2011); European University Association, University Autonomy in Europe III - The Scorecard, 2017.

the state, and there is a legitimate purpose in ensuring that some oversight in terms of financial management (where universities are in receipt of public funds) and academic standards in line with national higher education policies are met. Closely connected to this, the scope of university autonomy – that is, to what extent can universities take decisions on standards and management independent of the state – is also not universally agreed, as noted above. Second, there is a wide range of different university governance models, some of which may naturally promote more autonomy than others. To deal with these limitations, the report focuses on ‘excessive’ restrictions; that is, those that could not be considered as necessary, proportionate, transparent and foreseeable in a democratic society. The report also does not examine university governance models per se, but rather looks at examples of excessive state interference in university governance irrespective of the model.

As regards the scope of the research, this report seeks to avoid duplication with reports covering violent attacks against academics and students, such as those covered by Scholars At Risk,¹⁵ however, some examples of such incidents are included where these are relevant to the environment in which universities are operating and illustrate the extent to which governments are seeking to repress and control academic freedom and institutional autonomy.

Finally, the rapid pace of change in this area also makes a report of this nature challenging. Research reports from just a few years ago may no longer be valid due to legislative changes or a changing national environment, and new research on such changes may not yet be available. The rapidly deteriorating academic landscape in Hungary, which was developing throughout the writing of this report, is just one such example. We have therefore focused primarily on the most up to date information available at time of undertaking the research, and have used the US State Department¹⁶ and Freedom House reports from 2017¹⁷ in particular as they provide an overview of university issues from countries around the world.

Key Findings on Restrictions on University Autonomy

To better understand the type and scale of restrictions to university autonomy, the report reviews restrictions across four broad areas: 1) restrictions on higher education institutions, 2) restrictions on academic engagement and free expression, 3) restrictions on students and, 4) other measures aimed at undermining the legitimacy of universities. Here we set out a summary of our findings.

15 Scholars at Risk, 'Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project' (2017).

16 US State Department Human Rights Reports 2017, Available online at <<https://www.state.gov/j/drl/rls/hrrpt/>>.

17 Freedom House, 'Freedom in the World': individual country reports; Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'.

RESTRICTIONS ON INSTITUTIONS

Restrictions on institutions can include changes to higher education laws, interference with governance structures of universities, regulatory restrictions, interference in the selection, appointment and dismissal of the leadership of institutions, changes to financial conditions for universities and restrictions on faculty and staffing. In particular, we found the following:

- Universities require a **stable legislative basis** on which to operate. Examples from Hungary, Russia and Venezuela show how governments can seriously restrict autonomy, and in cases even hamper universities ability to function entirely, through changes to enabling laws, especially if they are targeted at specific institutions, are not preceded by consultations and where amendment procedures are fast-tracked and adopted in non-transparent ways. For example, the Hungarian legislation changing the fundamental conditions of operation for the Budapest-based Central European University, which at time of writing was likely to be forced to move out of the country as a result.¹⁸
- Excessive state interference in **governance structures** can result in ‘state-run’ institutions, removing the ability of universities to operate autonomously. Restrictions here can include government influence in appointment procedures for governance bodies, the curtailment of autonomous powers, and limiting the role university faculty have in such bodies. While the type of governance structures can vary between countries, the issue of autonomy restrictions should be examined where they are co-opted, or majority controlled by governmental actors. Examples about the negative impact of governmental interference include Hungary, where the government introduced a government-appointed chancellor system, impacting the ability of universities to self-govern.¹⁹
- Interference in **leadership** by the government can also lead to state-controlled institutions. Restrictions on autonomy related to the selection and appointment of leadership can include the direct or indirect appointment of the leaders of higher education institutions by the government, for example in Turkey, the president can directly appoint university rectors.²⁰
- Changes to **financial conditions** may make it impossible for universities to operate, and to plan for teaching and research. Restrictions here can include excessive budget cuts to universities and decision-making being allocated to governmental actors and appointees on financial issues. In Venezuela and Russia for example, the government has control of budgetary decisions for state universities, limiting their ability to function autonomously.²¹

18 Report section 3(a).

19 Report section 3(b).

20 Report section 3(d).

21 Report section 3(e).

- **Faculty and staff** also require job stability and merit-based appointments, and protection from arbitrary dismissal for an institution to be able to function properly. Restrictions imposed by the government on faculty and staffing particularly relate to the security of tenure and the ability of universities to recruit, set salaries for, promote and dismiss faculty and staff on their own. For example, in Bosnia and Herzegovina, a regional government reportedly passed a law in 2016 giving hiring and firing powers on university personnel to elected municipal officials.²²

RESTRICTIONS ON ACADEMIC ENGAGEMENT

Closely related to institutional and governance issues are academic freedom and free speech restrictions. As academic freedom and institutional autonomy are closely related concepts, restrictions on the ability of academics to freely teach, research and publish also impacts the ability of institutions to function autonomously as centres of research, teaching and critical inquiry. Within this category are restrictions on the expression of views, restrictions on research and the discussion of specific topics, restrictions on academic programmes, curricula and teaching, mandatory training for faculty, travel restrictions, and a national environment that fosters self-censorship. In particular, we found the following:

- Academics, as all other citizens, should not be impeded in their right to **freedom of expression** as part of or outside of their work. This is particularly important for the free exchange of ideas and critical inquiry in academia. Repressive practices related to free speech for higher education faculty and staff were identified in this report in a range of countries. Examples included Vietnam, where professors reportedly had to refrain from criticising government policies, and Brunei where government authorities reportedly had approval over public lectures and academic conferences.²³
- Closely connected to repressive practices on the expression of views of academics are **restrictions on particular research topics**, which may entail limited access to libraries, restrictions on the publication of and research about certain topics, intellectual property restrictions and the limitations on the ability of academics to collaborate internationally. Examples ranged from the discouragement of research on particular topics in Bangladesh, to reports of reprisals against academics for criticism of Communist Party policies in China. Other examples included censorship of books in Qatar and requirement for approval of research papers in Jordan.²⁴
- Excessive state interference in **academic programmes, curriculum and teaching** impacts both individual academics and higher education institutions as

²² Report section 3(f).

²³ Report section 4(a).

²⁴ Report section 4(b).

a whole. The ability to introduce and design the content of academic programs by universities is a fundamental aspect of their autonomy. One particularly stark example of excessive government interference in this area was the Hungarian government's banning of gender studies programmes in the country, impacting both public and private institutions providing courses in this field.²⁵ Also included here is the requirement *to* teach certain compulsory subjects that promote a particular government agenda, such as state-sanctioned political ideology courses in China, as well as excessive interference in curricula such as in Uzbekistan where a 2014 study found that curricula were centrally approved as were grading structures, and 95% of all subjects were mandatory.

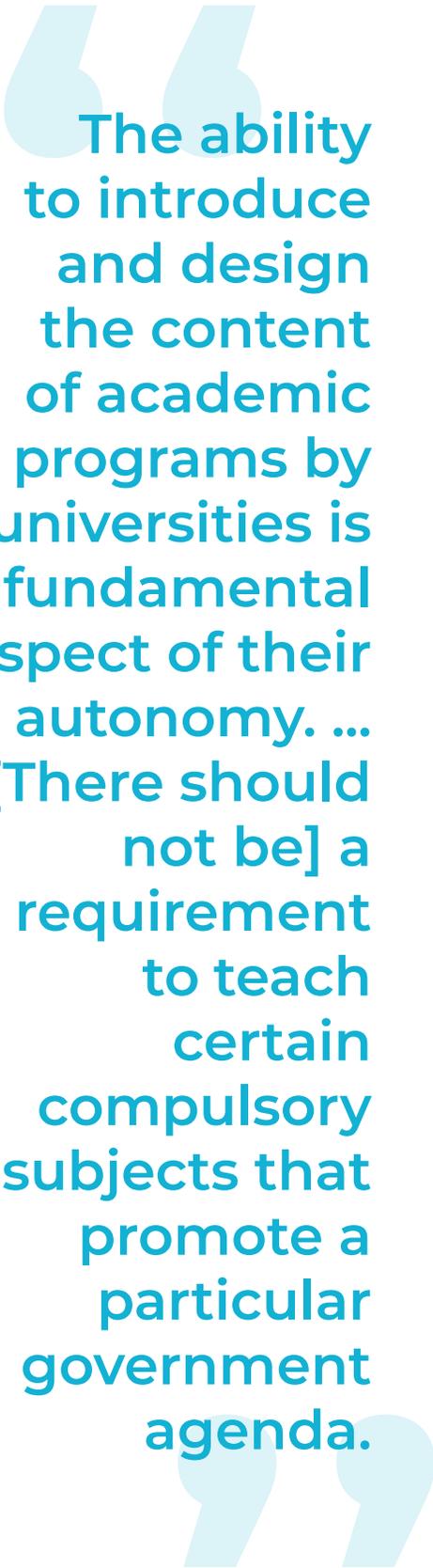
- Another form of excessive restrictions related to curriculum and academic programs is state-sanctioned **mandatory training for faculty**, designed to advance certain ideological frameworks among higher education personnel found in Venezuela.²⁶
- **Travel restrictions** on academics constrain their freedom of movement, expression and ability to share knowledge and collaborate, which is essential to fostering critical inquiry. Excessive restrictions such as ministerial approval for the travel of vice chancellors in Malaysia, to the denial of exit visas to academics in Thailand were identified.²⁷
- **Self-censorship** by higher education personnel is fostered by a national environment where the state does not sufficiently protect the free expression of views and publication of research by academics. This in turn impacts institutional autonomy as it damages the ability of universities to freely chose its programs, curricula and research activities. Widespread examples of academics reporting self-censorship were identified in more than 24 countries.²⁸

25 Report section 4(c).

26 Report section 4(d).

27 Report section 4(e).

28 Report section 4(f).



The ability to introduce and design the content of academic programs by universities is a fundamental aspect of their autonomy. ... [There should not be] a requirement to teach certain compulsory subjects that promote a particular government agenda.

RESTRICTIONS ON STUDENTS

Interference with the autonomy of higher education institutions can also include excessive restrictions on students. As the backbone of universities, restrictions on students have a notable impact on institutional autonomy. Restrictions found related to the setting of admission policies, the politicisation of admissions, scholarships, grades, the dismissal of students, and repressive practices related to their expression of views. In particular, we found the following:

- Universities require autonomy in setting their own **admission policies** so that they are not restricted in their decisions on who they teach. While governments may legitimately influence overall admissions policies for public universities (for example, admissions numbers), complete governmental control and politicization of admission decisions negatively impacts universities' institutional autonomy. For example, in Venezuela, a governmental body allocates quotas for incoming students for both public and private institutions, despite a law providing that universities should be in control of this.²⁹
- The **politicization of admissions, awarding of scholarships and grades, and dismissal** of students can seriously impact the ability of universities to freely decide on their policies and practice. Examples included the preferential treatment on the basis of membership of a particular group, such as Shia in Bahrain, or on the basis of connection to the ruling party such as in Burundi. We also found examples of the denial of admissions of students based on their parents political affiliation in the Seychelles, and prevention of graduation of human rights activists and pressure for their expulsion in Vietnam.³⁰
- Students also frequently experience disproportionate responses from the state when they express their views. For example, students in Egypt have been imprisoned for exercising their **freedom of expression**, association and assembly and in Belarus, students may be expelled for engaging in 'unsanctioned political activity'.³¹

UNDERMINING UNIVERSITY LEGITIMACY

Measures that paint universities as “dangerous” institutions that act against the state can undermine their legitimacy as autonomous centres of learning and thus compromise their ability to function. Repressive actions by the state here can include the criminalization of academics, the use of ‘foreign agent’ or anti-terrorism laws, the securitisation and militarisation of campuses, negative public discourse by governments and (mis)use of national emergency laws. In particular, we found:

29 Report section 5(a).

30 Report section 5(b).

31 Report section 5(c).

- **Criminalizing academics** for their professional activities can have a serious chilling effect on the autonomy of higher education institutions and academic discourse generally in a country. One of the most excessive and repressive examples is the extensive criminalisation undertaken in Turkey following the attempted coup in 2016, where hundreds of scholars and staff of higher education institutions were arrested or detained.³²
- Repressive measures for undermining the legitimacy of institutions and academics may also take the form of using **‘foreign agent’ and anti-terrorism laws**. For example, in Russia, a research institution was required to register as a ‘foreign agent’, stigmatising the institution and undermining its activities.³³
- Practices related to the **militarisation and securitisation of campuses** are also at the extreme end of repressive state practices. Laws in Egypt and Venezuela permit the use of armed forces on university campuses. In Jordan, Togo, Yemen and Uganda, security services were believed to maintain surveillance presences on university campuses.³⁴
- **Negative public discourse** by governments and governmental affiliated actors can also undermine the legitimacy of higher education institutions to operate as centres of learning. The governmental discourse in Hungary against Central European University in particular, accusing it of ‘cheating’, as well as negative public discourse against the wider academic community in the country is one stark example.³⁵
- Finally, **situations of national emergency** can be used by governments to impose excessive restrictions on universities in the context of framing them as ‘dangerous’ institutions, which in turn can notably curtail their autonomy. In Turkey, a state of emergency has underscored the dismissal and arrest of thousands of academics.³⁶

Conclusions & Summary of Recommendations

The report identifies repressive and potentially repressive state practices against higher education institutions including against their academics and students in over 60 countries. While many of these repressive practices are exercised through legal instruments and regulatory regimes, the report also shows that restrictions often do not have a legal basis, but are a matter of state policy and practice.

Our main finding and recommendation for stakeholders is that there is a gap in mon-

32 Report section 6(a).

33 Report section 6(b).

34 Report section 6(c).

35 Report section 6(d).

36 Report section 6(e).

itoring the range of repressive state practices against higher education institutions. While there are some existing initiatives – including the work of the EUA, and those focusing on physical integrity rights (such as Scholars at Risk³⁷), there is currently no systematic global monitoring of the situation of university autonomy. There is a particular need to monitor how legislative and regulatory environments constrain autonomy, for example in relation to financial autonomy, curricula development, appointment and dismissals and other issues addressed in this report. As universities play a crucial role in driving evidence-based social change and contributing to fostering democratic practices through critical inquiry, research, teaching, learning and the free exchange of ideas, excessive restrictions on them also impact rule of law, democratic institutions and human rights more broadly. This underscores the need to address the protection gap and introduce better monitoring of how legal and regulatory regimes and state practice constrain the institutional autonomy of higher education institutions. Such monitoring by stakeholders would be an important contribution for rule of law and human rights globally. We further recommend that stakeholders encourage UN Treaty Bodies, particularly the CESCR, to engage in more systematic examinations of the situation of universities in their reviews of states.

We propose a framework through which restrictions on the autonomy of higher education institutions can be categorized and examined by stakeholders. Noting that there is relatively little attention paid by stakeholders in the human rights field on the topic, this framework may be used for monitoring how legal environments and state practices constrain or enable the institutional autonomy of higher education institutions. Due to certain similarities between higher education institutions and NHRIs as state-established autonomous institutions, the Paris Principles can provide some guidance for examining the health of autonomy of higher education institutions. Incorporating this, the report proposes how institutional autonomy issues may be examined including in the field of enabling laws, governance and leadership, organisation and financing, government oversight, academic autonomy, faculty, students, and considerations for extreme cases. We consider that the approach taken to NHRIs provides a useful framework through which institutional autonomy might be considered with a view to identifying potentially repressive state interference against universities. The Paris Principles provide guidance for institutions that are independent in their functioning, but receive state funding (necessitating accountability towards the state). Taking into account the Paris Principles, and the examples of repressive state practices found in this report, the following table suggests how institutional autonomy issues might be examined:

37 However, the authors note that in its most recent (at time of writing) annual report from October 2018, Scholars At Risk have included a new section on 'Threats to Institutional Autonomy'.

IDENTIFYING REPRESSIVE STATE PRACTICES AGAINST HIGHER EDUCATION INSTITUTIONS

Area	Autonomy Requirements
1. Enabling Law	<ul style="list-style-type: none"> • Is there clear constitutional or legislative provision for academic freedom and institutional autonomy? • Are any material legislative or regulatory changes impacting universities made through a transparent process, with sufficient time for consultation and debate? • Are changes to funding, higher education policies, and the higher education framework made in consultation with relevant higher education institutions, faculty and student bodies? • Are changes impacting higher education institutions made only where necessary, proportionate and in keeping with international standards including on the right to education?
2. Governance & Leadership	<ul style="list-style-type: none"> • Is there open, transparent merits-based appointment process for leadership and the board? • Is there a transparent, consultative recruitment process for leadership with appointments decided by the institution or an independent external authority (as appropriate)? • What level of (direct and indirect) government representation is there in the governance structures? • Do faculty meaningfully participate in governance structures? • Are students represented within governance structures?
3. Organisation & Financing	<ul style="list-style-type: none"> • Does the university choose its own internal structures that are not subject to closure or arbitrary alteration by the government or government-run agencies? • Is the university able to decide on the use of its own budget without government interference? • Is funding predictable and stable? • Is there evidence of significant budget cuts or budgetary retaliation against one or more institutions? • Are financial accountability mechanisms proportionate, similar across independent state bodies, and in keeping with the principle of autonomy? • Is research funding administered through a peer-review process?
4. Government Oversight	<ul style="list-style-type: none"> • Does a government-run body or government appointed individual(s) exercise control over higher education institutions' academic or operational decisions? • Are regulatory requirements excessive, or unfairly applied (e.g. between universities)? • Is the national environment one in which academics feel pressured to practice self-censorship? • Is engagement with higher education institutions by the government collaborative and in a spirit of partnership?
5. Substance (academic autonomy)	<ul style="list-style-type: none"> • Are curricula faculty-built without government interference? • Is there censorship in accessing research materials? • Is there a requirement for government/state-body approval for publications and/or censorship of publications and research outputs? • Is there a requirement for mandatory political or ideological courses? • Are faculty de facto free to choose their research topics? • Are faculty free to travel for academic collaboration and conferences? • Do academic conferences and events require government approval?

IDENTIFYING REPRESSIVE STATE PRACTICES AGAINST HIGHER EDUCATION INSTITUTIONS (CONTINUED)

Area	Autonomy Requirements
6. Faculty	<ul style="list-style-type: none"> • Is there an open, transparent, merits-based academic appointment process with appointment decisions taken by the university? • Is there a clear, transparent, merits-based promotions/tenure process based on recognised academic requirements? • Is there evidence of promotions/tenure based on political or other affiliation? • Is there government involvement in the appointment of senior academics (e.g. professors)? • Are academics 'punished' for expressing their views such as by demotions/lack of promotions/suspension or other measures? • Can national authorities fire or demote (or promote) faculty, including having university authorities do this at their request? • Are academics prevented from accessing certain research materials and from publishing and discussing certain topics?
7. Students	<ul style="list-style-type: none"> • Can universities set their own admissions policies and procedures or are admissions government controlled? • Are admissions, scholarships or other awards distributed on merit and not based on political or ideological considerations? • Can students be arbitrarily expelled by state bodies or university leadership for the expression of their views? • Is there evidence of discriminatory practices in admissions, awards or expulsions (particularly on the basis of political affiliation)? • Are there excessive or arbitrary restrictions on visas for incoming students?
8. Extreme cases	<ul style="list-style-type: none"> • Do governmental actors repeatedly engage in discourse that portray universities, their students or academics, as illegitimate or 'dangerous'? • Is there securitisation or militarisation of campuses? • Is there evidence of state security 'spying' or other government security monitoring of campuses? • Is there evidence that the state disproportionately uses security focused legislation and practices (such as foreign agent or anti-terrorism laws) to restrict universities operations and/or the work of academics? • Is national emergency legislation used by governments to impose disproportionate restrictions on higher education institutions? • Is there criminalisation of academics for acts undertaken as part of their work, expression of views or participation in conferences or other performance of their duties? • Is there criminalisation of students for expression of views and peaceful protests?

This list is not comprehensive, and would benefit from discussion and refinement by stakeholders (for example, through an international conference or workshop). Further, the report focuses on governmental interference, but the question to what extent universities in some contexts may also curtail academic freedom should not be ignored, particularly where the university is acting as an instrument of the state.

One equally important component of the Paris Principles framework for NHRIs worth mentioning here, is that their compliance with the Principles is periodically assessed, based on which, the institutions are graded.³⁸ While such grading would be an enormous task to apply to individual universities, the potential monitoring of country-level legislation, regulations and national environments on institutional autonomy and academic freedom might learn from the field of monitoring compliance with the Paris Principles for state-funded NHRIs. Particularly where a set of international standards on university autonomy could be agreed, monitoring against these standards would be particularly valuable.

Finally, although many of repressive state practices reviewed in this report cannot be categorized as legitimate, a question still remains; what is a permissible state of governmental interference for universities given that they operate as part of national higher education frameworks and often rely on state funding? University governance models and country contexts differ considerably, and there is no universally agreed concept or agreed set of international standards for institutional autonomy for higher education institutions. Repressive state practices that curtail autonomy, however, show that there may be a demand for the setting of such standards and for a more widely accepted concept of what institutional autonomy is and what it entails. Such standards should incorporate restrictions on academic freedom, as this also impacts the ability of universities to function autonomously. We therefore recommend that consideration be given by stakeholders to the development and adoption of a set of standards specifically focussed on university autonomy.

Higher education institutions, faculty and students are likely to see increasing restrictions and repressive state practices in the coming years as the global environment for human rights and rule of law continues to decline. Examples from Hungary, Venezuela, Turkey and Russia, as well as over 50 other countries, suggest that state practice in this area is becoming more repressive. At present, the scarcity of international standards and lack of monitoring of repressive practices leaves higher education institutions, faculty and students vulnerable. Monitoring of higher education institutions for repressive state interference, particularly where it is against a set of agreed international standards, would seem a positive and valuable contribution to rule of law and human rights globally.

38 This is undertaken by the Sub-Committee on Accreditation of the Global Alliance of NHRIs. See the Sub-Committee's accreditation procedures, available through the website of the Global Alliance of NHRIs. <<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>> accessed 29 November 2018. See generally, K Roberts Lyer, 'National Human Rights Institutions', in Gerd Oberleitner & Steven Hoadley eds., *Human Rights Institutions, Tribunals and Courts – Legacy and Promise*, Springer Major Reference Works handbook series (2018).

INTRODUCTION

Universities and other higher education institutions³⁹ are fundamental components of societies. Their very nature as institutions of learning, research and critical enquiry mean that they need to be able to operate with a high degree of institutional autonomy. Yet around the world, higher education institutions, and the individual academics that comprise them, face significant repressive practices from governments. As Beiter et al found; “[t]he academic community has traditionally been – and in many parts of the world continues to be – a particularly vulnerable target of direct state repression.”⁴⁰ This report, prepared for the International Center for Not-for-Profit Law (ICNL), examines some of the legal, regulatory⁴¹ and administrative restrictions on higher education institutions that have been put in place in recent years, with a view to identifying repressive state practices. It is intended for use by stakeholders in higher education institutions, governments and governmental institutions, intergovernmental organisations, international donors, non-governmental organisations and generally for actors interested in higher education and advancing human rights and rule of law globally.

This report focuses on government-imposed restrictions that interfere with the freedom of higher education institutions to operate as autonomous academic institutions. In particular, it looks at excessive, damaging or repressive restrictions, seeking to understand the extent to which governments around the world are constraining university autonomy. The report defines ‘excessive’ restrictions as those that go beyond what could be regarded as permissible interference by the state for legitimate purposes such as oversight of the use of public monies or regulation of the system of higher education. As will be discussed in more detail in the first section of the report, the definition of institutional autonomy used here 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”.⁴² We have found interference with the autonomy of higher education institutions in over 60 countries. The types of interference includes restrictive changes to higher education laws, interference in gov-

39 Higher education institutions are defined here as per the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel as “universities, other educational establishments, centres and structures of higher education, and centres of research and culture associated with any of the above, public or private, that are approved as such either through recognized accreditation systems or by the competent state authorities” (para 1 (e)). UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, adopted by the General Conference at its 29th Session, Paris, 21 October – 12 November 1997. (Hereafter, 1997 UNESCO Recommendation).

40 Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua, Academic Freedom and its Protection in the Law of European States, *European Journal of Comparative Law and Governance* 3 (2016) 254-345, p. 333.

41 For the purpose of the present report, the following definition of regulation is used: “Regulation refers to government’s authority in setting conditions that allow or forbid institutions to act in certain ways.” OECD, *The State of Higher Education 2015-16*, Claudia Sarrico, Andrew McQueen and Shane Samuelson eds. p. 50.

42 General Comment No. 13: The Right to Education (Art. 13), Adopted by the Committee on Economic, Social and Cultural Rights at the Twenty-first Session, E/C.12/1999/10, 8 December 1999, para. 40 (hereafter, CESCR General Comment No. 13). This language is also reflected in the 1997 UNESCO Recommendation, para 17.

ernance structures and in university leadership selection and appointment procedures, restrictive changes to financial conditions, excessive state interference in faculty and staffing, restrictions on academic engagement, repressive measures towards university students, attempts to undermine the legitimacy of higher education institutions including at the extreme end, the criminalisation of academics and students and the policing and militarisation of campuses.

While the report includes examples from more than 60 countries, Turkey, Egypt, Venezuela, Hungary, and to a lesser extent Russia, feature as focus countries for examining repressive state practices. The rationale for this selection is manifold; in some of these countries, restrictions are among the most repressive and often include criminalisation (such as in Turkey, Egypt and Venezuela); while in others, restrictions are primarily legislative and administrative, but still severe (such as in Russia and Hungary) in their impact on university autonomy. The case selection of Hungary also shows that excessive restrictions on higher education institutions can take place within the relative democracy of a European Union member state, and therefore the findings of this report also have applicability in such a context. Lastly, these countries also had an increased availability of resources on the topic of university autonomy.

The report was prepared using extensive desk research on the situation of higher education institutions in countries around the world. This was undertaken primarily through a review of academic and professional articles and publications on institutional autonomy and academic freedom to understand existing approaches and standards. Country-specific research was then undertaken using human rights publications and materials, media articles, as well as a limited number of interviews with academics from Hungary, Turkey, Russia and Venezuela.⁴³

In examining repressive practices against the academic community, the focus of much of the available literature is on academic freedom violations. In this regard, there are some excellent sources of information, including Scholars At Risk, the Global Coalition to Protect Education from Attack, and reports of major human rights organisations such as Human Rights Watch and Freedom House, as well as the US State Department Human Rights Reports that contain a specific section on academic freedom. This report seeks to avoid duplication with reports covering violent attacks against academics and students, such as those covered by Scholars At Risk⁴⁴, however, some examples are included where these are relevant to the environment in which universities are operating and illustrate the extent to which governments are seeking to repress and control academic freedom and institutional autonomy. The rationale for this inclusion is highlighted in the 2017 Scholars At Risk report *Freedom to Think*; “[w]hile [attacks] differ across

43 The authors would like to thank Central European University (CEU) President and Rector, Michael Ignatieff, Professor Hugo Pérez Hernáiz, former professor at Universidad Central de Venezuela, Norbert Sabic PhD, CEU, as well as those interviewed academics who asked not to be identified, for their time and valuable insights.

44 After the finalisation of the desk research for this report, the 2018 annual Scholars at Risk “Free to Think” report was published. It is of note that the 2018 report contains a new section on ‘institutional autonomy’.

states and regions and by severity and type, these attacks all share a common motivation: to control or silence higher education institutions and personnel”.⁴⁵ Although the focus of this report is not on individual academic freedom, the two topics are closely interconnected. As will be discussed, restrictions on what might be traditionally more closely categorised as academic freedom are widespread, and these restrictions often also amount to interference with institutional autonomy.

A number of challenges arise when seeking to determine the scope of repressive state practices against higher education institutions. A central issue is understanding the scope of *permissible* interferences with higher education institutional autonomy. Public universities must legitimately account for the use of public funds. Both public and private universities must also operate within the national education framework, and be subject to some degree of governmental oversight. The scope of institutional autonomy and the requirements of accountability are the subject of extensive academic scholarship, but are neither clearly agreed nor self-evident. The report does not seek to examine the range of restrictions that may be considered permissible in a democratic society and which meet general requirements of proportionality, necessity, legal certainty, transparency and foreseeability. This report also does not discuss university governance models *per se* or consider the merits of different models. Given universities’ connection to the state through funding and national higher education policy, and the complexity of their missions, the issue of when state involvement in universities becomes restrictive interference is much less easily delineated than, for example, in relation to the independence of the judiciary or National Human Rights Institutions (NHRIs). What is clear, however, is that while autonomous higher education institutions are a critical feature of democratic, rule of law-based societies, they are also institutions that can come under serious pressure from the state.

A further challenge to preparing a report on the current situation of institutional autonomy in any country is the rapid pace of change of higher education law and policy. Research reports from just a few years ago may no longer be valid due to legislative changes, and new research on such changes may not yet



While autonomous higher education institutions are a critical feature of democratic, rule of law-based societies, they are also institutions that can come under serious pressure from the state.

⁴⁵ Scholars at Risk, 'Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project' (2017), p. 4.

be available. One reason for the use of the US State Department and Freedom House reports from 2017 in this report, is that they provide a relatively up-to-date overview of university issues across countries. Somewhat surprisingly for the authors, reports from United Nations human rights mechanisms rarely deal with higher education issues, and particularly university autonomy, in their country assessments.

In seeking to approach the analysis of university autonomy, we propose a potential framework for examining repressive state practices using the 1993 United Nations principles relating to the status of national institutions (the Paris Principles).⁴⁶ These standards for the independent functioning of state-funded human rights institutions cover areas such as enabling legislation, the appointment of leadership and decision-making bodies, provision of funding, and staffing. As universities also often receive state funding and operate within a national system, these standards provide a useful lens through which to consider some of these aspects of the state relationship with autonomous higher education institutions.

This report first considers the definition of institutional autonomy, the international standards relating to autonomy and academic freedom and efforts to measure university autonomy. It then considers specific examples of restrictions against higher education institutions, beginning with restrictions on the institutions, such as changes to enabling laws, governance structures and financial provisions. It examines restrictions on academic engagement and freedom of expression, including restrictions against individual academics and restrictions on research and curricula, before considering restrictions against students, including in admissions and in the expression of their views. The last section of the report considers some of the most severe examples of restrictions such as the criminalisation of academics and securitisation of campuses. Finally, taking into account the Paris Principles, we propose a framework for examining repressive state practices on higher education institutions, with recommendations for how stakeholders should respond on this issue moving forward.

⁴⁶ Principles relating to the status of national institutions (the Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

DEFINING INSTITUTIONAL AUTONOMY

This section examines the main international and regional standards on the autonomy of higher education institutions, considers some of the current research on measurements of autonomy, and discusses a potential framework through which autonomy can be examined. It should be noted that it is not possible within the space limitation of this report to provide a detailed analysis of the extensive literature on academic freedom. Nonetheless, given the complexity of defining and identifying the scope of autonomy, some elaboration is required. Standards are additionally discussed in the specific sections of the report, as relevant.

a. International Standards

While there is no explicit protection for institutional autonomy or academic freedom in the text of the core UN human rights treaties, international standards relevant to autonomy and academic freedom⁴⁷ are rooted in the right to education. The most detailed provision in the core UN human rights treaties on the right to education is contained in article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This article provides for the right to education, and the purpose of education.⁴⁸ In terms of higher education, it states that it “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”.⁴⁹ The UN Committee on Economic, Social and Cultural Rights (CESCR), in its interpretation of article 13 through its General Comment No. 13, notes that article 13(3) and (4) relate to the right to educational freedom, with article 13(4) specifically providing for “the liberty of individuals and bodies to establish and direct educational institutions” provided the institutions “conform to the educational

47 For more see, Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua, *Yearning to belong: finding a “home” for the right to academic freedom in the U.N. human rights covenants*, 11 *Intercultural Hum. Rts. L. Rev.* 107 (2016), and Beiter, et. al, *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, p. 261-264 for a list of rights under which aspects of academic freedom may be protected.

48 The Committee on Economic Social and Cultural Rights has described the phrase in UDHR Article 26(2) and ICESCR 13(1) that “education shall be directed to the full development of the human personality” as “perhaps the most fundamental” of the educational objectives in the ICESCR and UDHR. CESCR General Comment No. 13, para. 4.

49 International Covenant on Economic, Social and Cultural Rights, Article 13.

objectives set out in article 13(1) and certain minimum standards”, such as in relation to admission, curricula and recognition of certificates.⁵⁰

In its General Comment, the Committee connects the right to education and academic freedom, noting “the right to education can only be enjoyed if accompanied by the academic freedom of staff and students” and that “in the Committee’s experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom”.⁵¹ The Committee provided the following definition of academic freedom:

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 ...⁵²

The General Comment also highlights the responsibility of academics “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.”⁵³

The General Comment also provides a definition of institutional autonomy. According to the CESCR, 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”.⁵⁴ The CESCR further connects autonomy to academic freedom by stating that “[t]he enjoyment of academic freedom requires the autonomy of institutions of higher education.”⁵⁵ However, it also notes that autonomy comes with responsibilities:

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 accountabili-

50 CESCR General Comment No. 13, para. 40. Article 13(4) provides “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 1 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.”

51 CESCR General Comment No. 13, para. 38.

52 CESCR General Comment No. 13, para. 39.

53 CESCR General Comment No. 13, para. 39.

54 CESCR General Comment No. 13, para. 40.

55 CESCR General Comment No. 13, para. 40.

ty. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.⁵⁶

As regards the duty on states pursuant to the right to education, in addition to ensuring non-discrimination, the Committee noted that “[t]here is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education.” Further:

If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party’s maximum available resources.⁵⁷

Violations of article 13 include “the failure to maintain a transparent and effective system to monitor conformity with article 13 (1)”, as well as “the denial of academic freedom of staff and students” and “the closure of educational institutions in times of political tension in non-conformity with article 4.”⁵⁸ Limitations on article 13 are permitted where they are determined by law, but “only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.⁵⁹ Furthermore, article 13 is “primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State.”⁶⁰ Therefore, “a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4”.⁶¹

An important set of soft-law standards on higher education institutions are the 1997 UNESCO *Recommendation concerning the Status of Higher-Education Teaching Personnel* (hereinafter the 1997 UNESCO Recommendation) gives one of the most detailed considerations of academic freedom and institutional autonomy. The Recommendation provides a definition of institutional autonomy that echoes the CESCR definition, above:

Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic

56 CESCR General Comment No. 13, para. 40. This language is also reflected in the 1997 UNESCO Recommendation para 17.

57 CESCR General Comment No. 13, para. 45. Footnotes omitted.

58 CESCR General Comment No. 13, para. 59. See also CESCR General Comment No. 13, para. 47. Under the ICESCR, rights may be subject ‘only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’ (art. 4).

59 CESCR General Comment No. 13, para. 42.

60 CESCR General Comment No. 13, para. 42.

61 CESCR General Comment No. 13, para. 42. Emphasis added. Article 15 ICESCR is also relevant here. It provides for the right to take part in cultural life, enjoy the benefits of scientific progress. States are required to take steps “necessary for the conservation, the development and the diffusion of science and culture” as well as “to respect the freedom indispensable for scientific research and creative activity”. States also “recognise the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields”.

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.⁶²

It also provides that “Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source”.⁶³ The detailed content of the Recommendation will be discussed in the topic-specific sections, in sections 3 to 6, below.

Also worth considering here are regional standards. In Europe, Council of Europe Parliamentary Assembly Recommendation 1762(2006) *on Academic Freedom and University Autonomy* gives a broad definition of institutional autonomy that goes beyond the concept of self-governance, defining it as existing “when universities are morally and intellectually independent of all political or religious authority and economic power.”⁶⁴ It also underscores the responsibilities placed on universities:

To grant universities academic freedom and autonomy is a matter of trust in the specificity and uniqueness of the institution, which has been re-confirmed throughout history. These principles, however, should remain a subject of a continued and open dialogue between the academic world and society at large in the spirit of partnership. Universities should be expected to live up to certain societal and political objectives, even to comply with certain demands of the market and the business world, but they should also be entitled to decide on which means to choose in the pursuit and fulfilment of their short-term and long-term missions in society.⁶⁵

Council of Europe Recommendation CM/Rec(2012)7 *of the*

62 1997 UNESCO Recommendation, para 17.

63 1997 UNESCO Recommendation, para 19.

64 Council of Europe Parliamentary Assembly Recommendation 1762(2006) *on Academic Freedom and University Autonomy*, 30 June 2006, para 7.

65 Council of Europe Parliamentary Assembly Recommendation 1762(2006), para 10.



Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source.

-1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel



Committee of Ministers to member States on the responsibility of public authorities for academic freedom and institutional autonomy provides a detailed recommendation on the responsibilities of the state and requirements for autonomy. It emphasises that “[a]cademic freedom and institutional autonomy are essential values of higher education, and they serve the common good of democratic societies.”⁶⁶ The recommendation emphasises the responsibility of national authorities in “promoting institutional autonomy and academic freedom as essential features of their national education systems.”⁶⁷ It underscores that institutional autonomy “in its full scope, encompasses the autonomy of teaching and research as well as financial, organisational and staffing autonomy” and that it should be “a dynamic concept evolving in the light of good practice.”⁶⁸ It also identifies the steps to be taken by governments:

For academic freedom and institutional autonomy to become and remain a reality, public authorities should devise policies that call for positive measures in some areas, such as adopting a qualifications framework and making provisions for external quality assurance, while in other areas they should refrain from intervening, and from providing detailed guidelines for curricula and teaching programmes or regulating the internal quality development of institutions, for example.⁶⁹

The EU Charter of Fundamental Rights also provides for academic freedom, in article 13 on *Freedom of the arts and sciences*, which states; “[t]he arts and scientific research shall be free of constraint. Academic freedom shall be respected.”⁷⁰ The accompanying explanation notes that this right comes “primarily from the right to freedom of thought and expression” and may be subject to the limitations of Article 10 of the European Convention on Human Rights (ECHR) on freedom of expression.⁷¹ Article 2 of Protocol 1 to the ECHR sets out a negatively phrased right to education, that ‘no person shall be denied the right to education’.⁷² This has been interpreted by the European Court of Human Rights (ECtHR) as meaning that there is no positive obligation to create a public educa-

66 Council of Europe Recommendation CM/Rec(2012)7, para 4.

67 Council of Europe Recommendation CM/Rec(2012)7, para 1.

68 Council of Europe Recommendation CM/Rec(2012)7, para 6.

69 Council of Europe Recommendation CM/Rec(2012)7, para 7.

70 Charter of Fundamental Rights of the European Union, (2012)/C 326/020, OJ C 326, 26.10.2012, pp. 391–407, Article 13.

71 Treaty establishing a Constitution for Europe - FINAL ACT - A. Declarations concerning provisions of the Constitution - 12. Declaration concerning the explanations relating to the Charter of Fundamental Rights, Official Journal 310, 16/12/2004 P. 0424 – 0459. Article 10 ECHR permits limitations “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.” Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 10.

72 ECHR Article 2 of Protocol No. 1 – Right to education “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

tion system, and that it is a discretionary area.⁷³ However, there is a positive obligation to ensure the right to education in relation to the institutions established in the state.⁷⁴ It is not an absolute right, but one which “by its very nature calls for regulation by the state”,⁷⁵ with a considerable margin of appreciation. Any restrictions must however, be foreseeable and in pursuit of a legitimate aim.⁷⁶ Accordingly, “a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved”.⁷⁷

As part of the margin of appreciation for this right, states have the discretion to set the criteria for admission to an educational institution, and to limit admission to those who have reached the required level,⁷⁸ including setting entrance exams,⁷⁹ and the duration of studies.⁸⁰ States may also change these once the changes are foreseeable. But “the fact of changing the rules governing access to university unforeseeably and without transitional corrective measures may constitute a violation”.⁸¹ As regards academic freedom, the ECtHR has usually dealt with this under Article 10 ECHR (freedom of expression). As described by the European Commission for Democracy Through Law (the Venice Commission):

It seems obvious that, as a key pre-requirement for the effective enjoyment of this freedom, States should refrain from undue interference with the university teaching and the freedom of organising teaching and research. ... Only such limitations that are prescribed by law, are in line with legitimate aims, and are – in the light of these aims - proportionate and necessary in a democratic society, as foreseen by Article 10, Article 11 ECHR and implicit in Article 2 of Protocol 1 ECHR, may be allowed.⁸²

73 European Court of Human Rights, Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights - Right to Education, updated on 30 April 2018, p. 5. (Hereafter European Court of Human Rights, Guide on Article 2 of Protocol No. 1).

74 European Court of Human Rights, Guide on Article 2 of Protocol No. 1, p. 5.

75 Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium, *European Commission of Human Rights v Belgium*, Merits, Application nos 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, (1979-80) 1 EHRR 252, IHRL 6 (ECHR 1968), 23rd July 1968 “Belgian Linguistic” case, p. 28.

76 *Leyla Şahin v. Turkey* (Application no. 44774/98), Grand Chamber Judgment, 10 November 2005, para. 154

77 European Court of Human Rights, Guide on Article 2 of Protocol No. 1, p. 6.

78 *Ibid.*, citing *X. v. the United Kingdom*, Commission decision.

79 *Ibid.*, p. 8, citing *Tarantino and Others v. Italy* - legislation imposing an entrance examination with numerus clausus for university studies in medicine and dentistry (public and private sectors).

80 *Ibid.*, citing *X. v. Austria*.

81 *Ibid.*, p. 8, citing *Altınay v. Turkey*, paras. 56-61. It continues: “Thus, in view of a lack of foreseeability to an applicant of changes to rules on access to higher education and the lack of any corrective measures applicable to his case, the impugned difference in treatment had restricted the applicant’s right of access to higher education by depriving it of effectiveness and it was not, therefore, reasonably proportionate to the aim pursued”.

82 European Commission for Democracy Through Law (Venice Commission), Hungary: Opinion On Act XXV Of 4 April 2017 on the Amendment of Act CCIV Of 2011 on National Tertiary Education, Endorsed by the Venice Commission at its 111th Plenary Session (Venice, 6-7 October 2017) (Hereafter, Venice Commission Opinion on Hungary (2017)), p. 13 citing *Kjeldsen, Busk Madsen and Pedersen v. Denmark*... see also *B.N. and S.N. v. Sweden*, no. 17678/91, EComHR (decision), 30 June 1993; *Konrad and others v. Germany*, Application no. 35504/03, 11 September 2006 (admissibility decision).

The right to education is also provided for article 17 of the African Charter on Human and Peoples' Rights; "[e]very individual shall have the right to education; Every individual may freely take part in the cultural life of his community. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State".⁸³

In the United States context, the American Association of University Professor's Statement of Principles on Academic Freedom and Tenure formulated in 1915 and reissued in 1940 and 1970, is widely accepted by many US universities.⁸⁴ It provides that:

Academic freedom ... applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.⁸⁵

The Statement of Principles underscore that:

1. Teachers are entitled to full freedom in research and in the publication of the results...
2. ... freedom in the classroom in discussing their subject, ...
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but...they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.⁸⁶

The US Supreme Court has also made a number of pronouncements on the scope of academic freedom, which are informative as they also speak to the operation of the university. For example, Justice Frankfurter in *Sweezy v New Hampshire* (1957),⁸⁷ wrote of "the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university". The Justice continued:

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university-to de-

83 African Charter on Human and Peoples' Rights, (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

84 Eric Barendt and David Bentley, *Academic Freedom and the Law*, Summary of the International Law Discussion group meeting held at Chatham House on Wednesday, 8 December 2010, p. 4.

85 American Association of University Professor's Statement of Principles on Academic Freedom and Tenure, 1970.

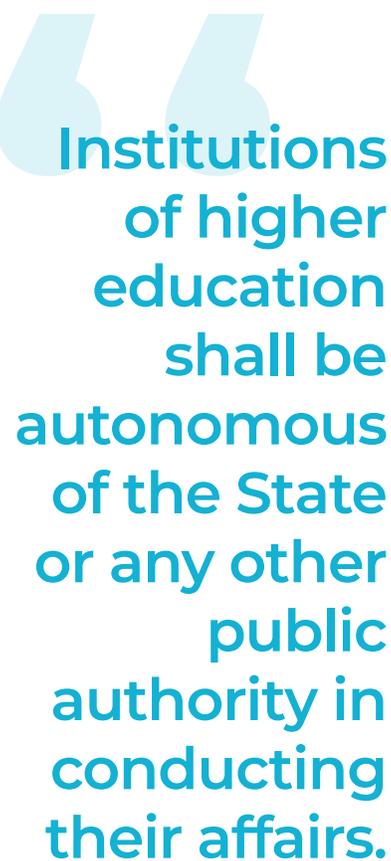
86 American Association of University Professor's Statement of Principles on Academic Freedom and Tenure, 1970 [footnotes omitted]. See generally, Eric Barendt, *Academic Freedom and The Law: A Comparative Study* (Hart, 2010), chapter 6.

87 *Sweezy v. New Hampshire* 354 US 234 (1957).

termine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

In *Keyishian v. Board of Regents* (1967) the Court observed that “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendental value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”⁸⁸ However, more recent rulings have cast doubt on whether, and to what extent, academic freedom is covered by the First Amendment.⁸⁹

Other standards from professional bodies, include the 1988 Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education of the World University Service. This defines autonomy as “the independence of institutions of higher education from the State and all other forces of society, to make decisions regarding its internal government, finance, administration, and to establish its policies of education, research, extension work and other related activities”.⁹⁰ It includes the right to research, teach without interference, collaboration with the academic community around the world, freedom to study for students, student participation in governing bodies and to express their opinions. As regards the role of universities, it considers that “[i]nstitutions of higher education should be critical of conditions of political repression and violations of human rights within their own society.”⁹¹ Article II of the Kampala Declaration on Intellectual Freedom and Social Responsibility of the pan-African Council for the Development of Social Science Research in Africa (CODESRIA), provides that “[i]nstitutions of higher education shall be autonomous of the State or any other public authority in conducting their affairs, including the administration, and setting up their academic, teaching research and other related programmes.”⁹² CODESRIA



**Institutions
of higher
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their affairs.**

-Kampala Declaration on Intellectual Freedom and Social Responsibility (by the pan-African Council for the Development of Social Science Research in Africa)



88 *Keyishian v. Board of Regents of University of State of New York* 385 U.S. 589 (1967) at 603.

89 See for example, Amar and Brownstein, ‘A Close-up, Modern Look at First Amendment Academic Freedom Rights of Public College Students and Faculty’ 101 *Minn. L. Rev.* 1943 (2016-2017).

90 Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education of the World University Service, 1988.

91 *Ibid.*, para 15.

92 The Kampala Declaration on Intellectual Freedom and Social Responsibility (1990).

RA's subsequent 2007 Juba Declaration on Academic Freedom and University Autonomy, reiterates that "Government should not interfere with the autonomy of Higher Education Institutions" and that "Institutions of Higher learning should exercise autonomy by democratic means whereby all members of academic community actively participate".⁹³ Overall, these standards emphasise that autonomy entails a number of aspects including independence from the state in setting governance, financial and administrative rules, and autonomous decision making on education and research related activities.

ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY

As is clear from the standards set out above, there is a close interconnection between concepts of academic freedom and institutional autonomy. The 1997 UNESCO Recommendation describes autonomy as "the institutional form of academic freedom".⁹⁴ This is also the case in the academic literature. Vrieling et. al. argue that institutional autonomy is the 'collective or institutional dimension' of academic freedom. They continue:

It implies that departments, faculties and universities as a whole have the right to preserve and promote the principles of academic freedom in the conduct of their internal and external affairs. This institutional autonomy is a sine qua non for the individual rights of academics to teach, research, publish and participate in public debate. If and when this institutional dimension of academic freedom conflicts with its individual dimension(s), a balance between both dimensions will have to be struck, in which special consideration should be given to the latter.⁹⁵

Going further, Judges Sajó, Vučinič and Kūris at the European Court of Human Rights contended that academic freedom refers 'first and foremost' to institutional autonomy:

Traditionally, academic freedom referred to a crucial element of university autonomy: non-interference by external powers in university teaching. This core academic freedom has increasingly been accepted as including personal freedom of expression, often in the sense of scholars' autonomy... Also, teachers' freedom of expression is interlinked with the freedom of research. In order to provide for the self-determination necessary for the autonomous advancement of learning, knowledge and science, institutional autonomy is guaranteed under the name of academic freedom. However, although academic freedom refers, first and foremost, to institutional autonomy, it cannot be reduced to its institutional setting, since scholars' in-

93 Council for the Development of Social Science Research in Africa (CODESRIA), Juba Declaration on Academic Freedom and University Autonomy, 26-27 February 2007, Khartoum, Sudan.

94 1997 UNESCO Recommendation, para 18. Beiter et. al. note that "[h]aving been adopted by the General Conference of UNESCO, they must be considered to reflect an international consensus on the specific subject matter dealt with" Beiter et. al., 'Yearning to belong' (2016) above note 47, pp. 121-122.

95 Jogchum Vrieling, Paul Lemmens, Stephan Parmentier and the LERU Working Group on Human Rights Academic Freedom as a Fundamental Right, *Procedia Social and Behavioral Sciences* 13 (2011) 117-141, p. 139.

stitutional autonomy is meaningful only if they enjoy personal freedom of research that entails unimpeded communication of ideas within, but not exclusively within, the scholarly community.⁹⁶

A number of other international instruments are directly relevant to issues of institutional autonomy and academic freedom. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) on the freedom of opinion and expression, provides a basis for claims of violations of academic freedom. It includes the “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 [their] choice”.⁹⁷ This includes speech challenging national authorities. Quinn and Levine note that “[i]t is well established that an expression of information or belief that is unfavourable or disagreeable to the state or others cannot be justifiably restricted on that basis alone.”⁹⁸ This represents a further challenge in the context of the present report, in that from a human rights perspective, institutional autonomy concerns cannot be limited to breaches of organisational or institutional features, but may involve breaches of human rights outside of those listed in the international standards on academic freedom. Quinn and Levine note an important point that “attacks on academic freedom often manifest as violations of other rights under which claims are brought”.⁹⁹ They give the example of a professor “imprisoned in retaliation for publishing a paper – an academic freedom violation – a claim may be brought for wrongful detention alone.”¹⁰⁰ In terms of breaches, they suggest that adding a claim of an academic freedom violation may strengthen the claim for relief and provide evidence of ‘motive and intent’.¹⁰¹ They identify as potentially relevant to academic freedom, rights including; opinion and expression, education, liberty and security of person, movement or travel, assembly, and association.¹⁰² As will be seen in this report, these types of broader human rights breaches are indeed present in examples of repressive state practices against the academic community.

96 *Mustafa Erdoğan and others v. Turkey* (Applications nos. 346/04 and 39779/04), Judgment 27 May 2014, Joint Concurring opinion of Judges Sajó, Vučinič and Kūris, para. 4. “This interrelatedness between academic institutional autonomy and personal freedom of scholars is expressed in various instruments including Recommendation CM/Rec(2012)7 of the Committee of Ministers to member States on the responsibility of public authorities for academic freedom and institutional autonomy. In this Recommendation, academic freedom and institutional autonomy are characterised as “essential values of higher education” which “serve the common good of democratic societies”. It is also emphasised that “academic freedom should guarantee the right of both institutions and individuals to be protected against undue outside interference, by public authorities or others”, which is “an essential condition for the search for truth”, and that “[u]niversity staff and/or students should be free to teach, learn and research without the fear of disciplinary action, dismissal or any other form of retribution” (see paragraphs 4 and 5 of the Recommendation).”

97 ICCPR Article 19.

98 Robert Quinn and Jesse Levine, ‘Intellectual-HRDs and claims for academic freedom under human rights law’, *The International Journal of Human Rights*, (2014) 18:7-8, 898-920, p. 903. Referencing the Human Rights Committee decision in *Morais v. Angola*, para. 6.7.

99 *Ibid.*, p. 903.

100 *Ibid.*, p. 903.

101 *Ibid.*, p. 903.

102 *Ibid.*, p. 904. See also, Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua, “Measuring” the Erosion of Academic Freedom as an International Human Right: A Report on the Legal Protection of Academic Freedom in Europe, *Vanderbilt Journal of Transnational Law* 49:597 (2016), pp. 602-605.

b. Measurements of Institutional Autonomy

In addition to international standards, it is worth considering some of the measurements of institutional autonomy that have been carried out by academic and professional bodies, to gain a fuller understanding of the concept and how it has been measured. A number of significant initiatives have been undertaken by scholars and practitioners to clarify and measure the scope of institutional autonomy. Key studies measuring institutional autonomy are those undertaken by the European University Association (EUA). Their first *Exploratory Study* produced in 2009,¹⁰³ and *Scorecards* in 2011¹⁰⁴ and 2017,¹⁰⁵ look at over 30 indicators of autonomy across four areas:

- **organisational** autonomy (including academic and administrative structures, leadership and governance),
- **academic** autonomy (including study fields, student numbers, student selection and the structure and content of degrees),
- **financial** autonomy (including the ability to raise funds, own buildings and borrow money) and
- **staffing** autonomy (including the ability to recruit independently and promote and develop academic and non-academic staff).¹⁰⁶

There is a caveat with the findings of the EUA reports which is that it uses a self-reporting mechanism, and are limited to public universities.¹⁰⁷ Nonetheless, as one of the few studies aimed at measuring institutional autonomy, and given its scope, the EUA studies provide an important basis for consideration of the elements of institutional autonomy, and will be discussed further below in the relevant sections of the report.

These four components of institutional autonomy are reflected elsewhere in the literature. For example, a 2003 OECD Study on university governance examined autonomy on the basis of: university ownership of buildings and equipment, ability to borrow funds, ability to “spend budgets to achieve their objectives”, the ability to set academic structure and course content, ability to employ and dismiss academic staff, the ability to set salaries, ability to decide on the size of student enrolment, and the ability to decide on the level of fees.¹⁰⁸ A 1998 Australian study considered institutional autonomy and

103 Thomas Estermann and Terhi Nokkala, *University Autonomy in Europe I Exploratory Study*, European University Association, 2009. (Hereafter EUA exploratory Study, 2009).

104 Thomas Estermann, Terhi Nokkala and Monika Steinel, *University Autonomy in Europe II The Scorecard*, European University Association, 2011. (Hereafter *University Autonomy in Europe II* 2011).

105 European University Association, *University Autonomy in Europe III - The Scorecard*, 2017.

106 *University Autonomy in Europe II* 2011, p. 10 [emphasis added]. See also, *EUA Exploratory Study* 2009, p. 7.

107 European University Association, *University Autonomy in Europe III - The Scorecard*, 2017, p. 8: “Private universities are not addressed in the country profiles, regardless of their relative importance in the system. The score for a country always relates to the situation of public universities.”

108 OECD, ‘Education Policy Analysis’, Chapter 3: Changing Patterns of Governance in Higher Education (2003) <<https://www.oecd.org/education/skills-beyond-school/35747684.pdf>> accessed 24 November 2018, p. 63.

the government's role (legal and *de facto*) in respect of seven main areas: staff, students, curriculum and teaching, academic standards, research and publication, governance, and administration and finance.¹⁰⁹

Another important body of work on institutional autonomy is the numerous studies and publications of Beiter, Karran and Appiagyei-Atua cited in this report. While their focus is on academic freedom, their studies nonetheless include indicators on autonomy. Their 2016 study on the legal protection of the right to academic freedom used similar indicators to the EUA in determining “organizational, financial, staffing, and academic autonomy”:

organisational autonomy (1. autonomy to determine the rector, 2. autonomy to decide on the internal structure (faculties, departments, etc.)), **financial** autonomy (1. block grants with/without restrictions, line-item budgets, 2. express competence to perform commissioned research), **staffing** autonomy (right to define academic positions and their requirements, and to recruit and promote academic staff), and **academic** autonomy (1. capacity to determine the selection criteria for bachelor students and to select the latter, 2. whether or not bachelor programmes need not be accredited).¹¹⁰

Beiter et. al.'s study also measured the extent of governmental powers, in particular, the form of state supervision in checking legal compliance or the merits of decisions.¹¹¹ They argue that:

Generally addressing the extent of government powers regarding [higher education] institutions, a reading of a state's [higher education] legislation should reflect wide competences for [higher education] institutions and a minimal measure of involvement of the state in regulating their activity. This is not to say that the state does not retain ultimate responsibility in respect of the [higher education] sector.¹¹²

There is a significant caveat to be mentioned when determining the measurements of autonomy. As seen above, international standards largely focus on academic freedom, rather than institutional autonomy. One reason for that may be that the concept of institutional autonomy is both complex and varied. As noted in a 2008 World Bank Report on University Governance¹¹³:

109 Don Anderson and Richard Johnson, *University Autonomy in Twenty Countries*, Centre for Continuing Education, The Australian National University, April 1998. The survey used is reproduced in the appendix at the end of the study.

110 Beiter, et. al. *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, p. 286 and fn. 99. Emphasis added.

111 *Ibid.*, p. 286 and fn. 100.

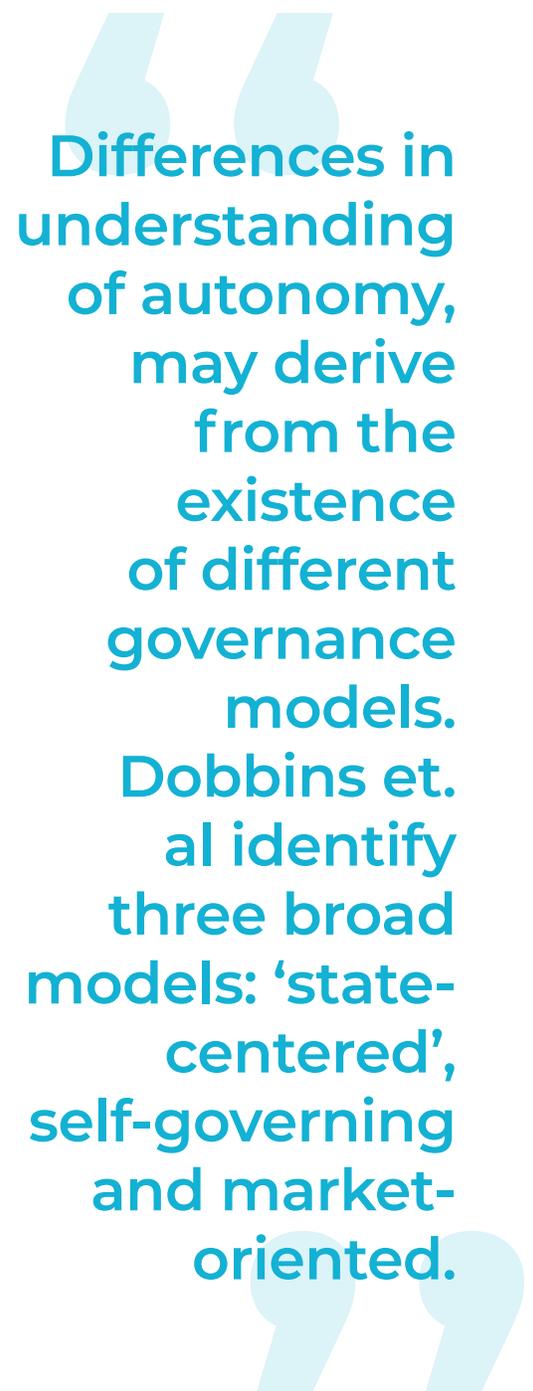
112 Beiter et. al., “Measuring” the Erosion of Academic Freedom (2016), above note 102, p. 648.

113 There is a large body of academic literature discussing issues of governance, reforms and, funding. See for example: *International Trends in University Governance – Autonomy, Self-Government and the Distribution of Authority*, Michael Shattock ed., Routledge 2014; Christensen, Tom, *University governance reforms: potential problems of more autonomy?* *Higher Education* (2011) 62:503–517; Michael Dobbins, Christoph Knill and Eva Maria Vogtle, *An analytical framework for the cross-country comparison of higher education governance*, *Higher Education* (2011) 62:665–683; Tero Erkkilä and Ossi Piironen, *Shifting fundamentals of European higher education governance: competition, ranking, autonomy and accountability* *Comparative Education*, 2014 Vol. 50, No. 2, 177–191.

The extent of autonomy that institutions are allowed by the state is often a mixture of inherited rights, tradition, legislative intent, and societal culture. It is usually built up over time through a variety of legislative processes, ministerial decisions, and ad hoc regulations. It is rarely a finely crafted structure to a rational design. It is also culture specific and rights or controls that are taken for granted in one country can be unthinkable in another.¹¹⁴

The EUA Scorecard notes this, particularly the important point, which echoes the World Bank finding above, that “[a]utonomy is a concept that is understood very differently across Europe; associated perceptions and terminology tend to vary quite significantly” due to different legal framework and historical and cultural circumstances.¹¹⁵ A similar diversity of models is noted in South-East Asian higher education institutions.¹¹⁶

Differences in understanding of autonomy, may derive from the existence of different governance models.¹¹⁷ Dobbins et. al identify three broad models. The first is ‘state-centred’, where the state exercises “strong oversight over study content” as well as itemised allocation of finances, appointed staff and nationally standardised procedures such as conditions of access and pay scales.¹¹⁸ This model contrasts with the self-governing model that “has shaped and still shapes [higher education] in Germany, Austria and much of pre- and post-communist central Europe”.¹¹⁹ This model “[i]n its ideal form...is based on a state-university partnership, governed by principles of corporatism and collective agreement” with a strong focus on knowledge as an end in itself, albeit “within state-defined constraints, as universities remain under the auspices of the state”.¹²⁰ Under



Differences in understanding of autonomy, may derive from the existence of different governance models. Dobbins et. al identify three broad models: ‘state-centered’, self-governing and market-oriented.

114 John Fielden, *Global Trends in University Governance*, World Bank, March 2008, p. 18.

115 *University Autonomy in Europe II The Scorecard*, p. 18.

116 S. Ratanawijitrasin, ‘The Evolving Landscape of South-East Asian Higher Education and the Challenges of Governance’, in A. Curaj, L. Matei, R. Pricopie, J. Salmi, P. Scott (eds) *The European Higher Education Area*. Springer, Cham (2015).

117 Michael Dobbins, Christoph Knill and Eva Maria Vogtle, An analytical framework for the cross-country comparison of higher education governance, *Higher Education* (2011) 62:665–683, p. 670.

118 Dobbins et. al, above note 117, p. 670. Their examples include France, Turkey, post-communist Romania and Russia. *Ibid.*

119 Dobbins et. al, above note 117, p. 671.

120 *Ibid.*, p. 671.

this model, it is the community of scholars that has the main decision-making role. The third model is the market-oriented model, where universities operate as economic enterprises “within and for regional or global markets” and higher education is viewed as “a commodity, investment, and strategic resource”.¹²¹ In this model the state “promote[s] competition, while ensuring quality and transparency”,¹²² and may influence higher education through policy instruments such as pricing and enrolment, and university management have the central decision-making role.¹²³ They identified different forms or levels of autonomy across institutional structures, quality evaluation, funding, personnel, substance of what is taught and researched.¹²⁴ The importance of this classification for the present report is that it highlights the disparity among university governance models and the different levels of, and potential for, state interference and control. In this regard, it is useful to consider one possible framework that already applies to independent human rights institutions, to identify whether there may be useful parallels that would suggest a uniform approach that could be broadly applicable irrespective of governance model. This will be discussed further, below.

c. Is There a Difference for Private Institutions?

The international standards, and most of the academic literature on universities, focus either implicitly or explicitly on public universities in receipt of state funds. However, as will be seen in this report, repressive state practices are not limited to public universities. The question therefore arises as to whether there is a difference in terms of autonomy when it comes to private¹²⁵ institutions?

Wallach Scott suggests that “[a]lthough private universities typically require state certification, they are less susceptible to direct intervention than are state-supported institutions whose financial interest gives the state greater power to intervene.”¹²⁶ As President and Rector of the private Central European University in Budapest, Michael Ignatieff, noted, a central autonomy issue for private institutions around the world is ensuring institutional autonomy from the source of funding (such as the founder, or major donors).¹²⁷

The extent of state interference in private institutions depends to some extent on the jurisdiction. Barblan et. al. found that in Turkey, while the Council of Higher Education exercises considerable powers both over state and private institutions (such as in the design academic programs, departments and curriculums, student intake, the recruitment of

121 Ibid., p. 672.

122 Ibid., p. 672.

123 Ibid., p. 672.

124 Ibid., pp. 673-679.

125 For the purposes of this report, private universities are those where the majority of income comes from investments, donors, tuition, service-provision or similar sources rather than from the taxpayer. Generally private universities self-identify as such.

126 Joan Wallach Scott, 'Academic Freedom: The Tension Between the University and the State', in Michael Ignatieff and Stefan Roch (eds), *Academic Freedom: The Global Challenge*, Central European University Press, 2018, p. 22.

127 Interview with CEU President and Rector, Michael Ignatieff, 28 June 2018.

faculty and appointment of academic leaders),¹²⁸ private universities enjoy more institutional autonomy in financial and administrative matters compared to state universities, because they are not subject to the same financial ties to the state as public universities.¹²⁹ Writing on China in 2010, Li Wang found that “there are signs that the state has started to strengthen its control over private colleges. A ... policy issued jointly by CCP [the Chinese Communist Party] and [Ministry of Education] requires all private [higher education institutions], including minban and independent colleges, to set up CCP branches to assure the leading role of the party in the operation of private institutions (Organisation Department of the CCP Central Committee and Party group in Ministry of Education 2006).”¹³⁰ In Europe, there is a right to set up private higher education institutions, and a requirement that such institutions conform to required educational standards.¹³¹

Overall, private higher education institutions are unlikely to be subject to as many state-imposed requirements. Where there may be a particularly notable difference is in the responsibility of the institution to the state, in that its activities do not merit scrutiny under the ‘use of public monies’. In this regard, such institutions may benefit in practice from additional autonomy, although there still will be some state-imposed requirements such as in ensuring relevant academic standards for the awarding of degrees. However, in countries with a long tradition of public universities, private institutions may on the other hand be more vulnerable to closure because they are not part of the state structure that may afford protection to a state-established body. Despite some differences in their relationship with the state, private institutions, and their staff and students, can still be subjected to repressive measures in the same way as those of public universities, as will be seen from the examples in this report, and therefore merit equal consideration in any examination of repressive state practices.

d. International Standards on State-based Independent Institutions

Whether public or private, higher education institutions cannot operate entirely separately from the state in which they are established. As institutions that require state permission in order to exist, and, for public universities, state funding to operate, the state wields considerable power over the institution in supporting or undermining au-

128 Andris Barblan et. al., *Higher Education in Turkey: Institutional autonomy and Responsibility in a Modernising Society, Policy Recommendations in a Historical Perspective*, (Bononia University Press 2008) p. 92.

129 Barblan et. al., *Higher Education in Turkey* (2008), above note 128, pp. 159-160.

130 Li Wang, ‘Higher education governance and university autonomy in China’, *Globalisation, Societies and Education*, 2010, 8:4, 477-495, p. 487.

131 As provided by the Venice Commission: “the individual’s right to education guaranteed in the first sentence of Article 2 of Protocol 1 ECHR, as well as the room for pluralism in education as required in its second sentence, demand that - read in conjunction with Article 10 and 11 of the Convention - there should be a wide freedom to establish and maintain education institutions coexisting alongside the state-run system of public education. It must also be stressed that the Court has indicated that these provisions are relevant both for primary, secondary and tertiary education.” Venice Commission Opinion on Hungary, October 2017, p. 12, para. 39. Citing *Leyla Şahin v. Turkey*, Grand Chamber, paras 134 and 136. See generally in the European context, Recommendation R (97)1 of the Committee of Ministers on the Recognition and Quality Assessment of Private Institutions of Higher Education, of 4 February 1997.

tonomy. As with consideration of other independent state institutions, the nature of the state in which they operate is also highly relevant, though not necessarily determinative, of autonomy.

It can be challenging to determine the exact *permissible* scope of state interference, from a human rights perspective. Different approaches to and understandings of the concept of institutional autonomy make identifying the scope of autonomy across jurisdictions a challenge. A useful framework through which to examine institutional autonomy is that provided by the 1993 United Nations principles relating to the status of national institutions (the Paris Principles),¹³² which “provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation” of national human rights institutions (NHRI).¹³³ NHRIs are state-established independent institutions mandated with the promotion and protection of human rights. By virtue of the Paris Principles, NHRIs are intended to be independent in law and practice, based in legislation or the constitution, and mandated to promote and protect all human rights of everyone in their country.¹³⁴ As state-established independent institutions, the framework for ensuring the independence of NHRIs can be a useful one for assessing the autonomy of universities and level of permissible state interference, particularly for public universities.

NHRIs benefit from having a peer-review mechanism, the Global Alliance of NHRIs’ Sub-Committee on Accreditation, which assesses NHRIs for their compliance with the Paris Principles. This Sub-Committee has undertaken assessments since 2006, and developed a body of ‘jurisprudence’ elaborating on the requirements of the Paris Principles. Of particular relevance to universities are the following requirements:

- The NHRI should be established in legislation or the national constitution providing sufficient detail to ensure its mandate and independence, not by an executive instrument.¹³⁵ This requirement is aimed at limiting the likelihood of arbitrary interference – on the presumption that legislation or the constitution are not as easily changed as executive orders.¹³⁶
- The board members or head of the institution (where a single-member institution, such as an ombudsperson), should be appointed through a transparent process that includes broad consultation, clear criteria for selection and appointment, public advertisement of vacancies, and pluralism.¹³⁷

132 Principles relating to the status of national institutions (the Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

133 Global Alliance of National Human Rights Institutions (GANHRI), General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 21 February 2018, para 1. (Hereinafter, GANHRI Sub-Committee on Accreditation General Observations).

134 See generally, Kirsten Roberts Lyer, ‘National Human Rights Institutions’, in Gerd Oberleitner & Steven Hoadley eds., *Human Rights Institutions, Tribunals and Courts – Legacy and Promise*, Springer Major Reference Works handbook series (2018).

135 GANHRI Sub-Committee on Accreditation General Observations, 1.1.

136 See however, Hungary, below.

137 GANHRI Sub-Committee on Accreditation General Observations, 1.8.

- Members of the board and senior leadership must have security of tenure, and not be removed for arbitrary reasons.¹³⁸
- The institution should have the ability to appoint its own staff, not seconded from Government Departments or Ministries.¹³⁹ It should also be able to determine its own internal operational structure.
- Resources must be sufficient to allow the institution to undertake its functions, the budget should be separate and secure and one over which the NHRI has management and control.¹⁴⁰ Funding by the state should ensure the gradual and progressive realization of the improvement of the organization's operations and the fulfilment of its mandate. This as a minimum should include: the allocation of funds for adequate accommodation (at least the head office), salaries and benefits for staff comparable to public service salaries and conditions, remuneration of the Board (where appropriate), and for communications systems including telephone and internet.
- The NHRI must have complete financial autonomy, albeit within the appropriate national accountability framework for the use of public monies.¹⁴¹ Within the scope of its powers and functions as defined in law, the institution must be free to choose its own priorities, publish its reports publicly, and broadly engage at the national and international levels.¹⁴²

The types of interference faced by these institutions has parallels with those faced by universities, including arbitrary and disproportionate budget cuts, 'budgetary retaliation' where budgets are cut following work by the NHRI critical of the government, governmental appointment of leadership, removal from office and threats to staff.

The Paris Principles have formed the basis for the establishment of other independent national bodies in recent core UN human rights instruments including the Convention on the Rights of Persons with Disabilities (Article 33) and the Optional Protocol to the Convention Against Torture (Article 18(4)). Similar requirements to the Paris Principles have been developed for other independent state-established bodies. For example, the European Union has included a definition of independent data protection bodies in its General Data Protection Regulation ((EU) 2016/679) which entered into force in 2018, requiring that they "remain free from external influence, whether direct or indirect,

138 GANHRI Sub-Committee on Accreditation General Observations, 2.2.

139 GANHRI Sub-Committee on Accreditation General Observations, 2.5.

140 GANHRI Sub-Committee on Accreditation General Observations, 1.10.

141 GANHRI Sub-Committee on Accreditation General Observations, 1.10.

142 Kirsten Roberts Lyer, 'National Human Rights Institutions', in Gerd Oberleitner & Steven Hoadley eds., *Human Rights Institutions, Tribunals and Courts – Legacy and Promise*, Springer Major Reference Works handbook series (2018).

and ...neither seek nor take instructions from anybody".¹⁴³ Recommendations with considerable similarity to the Paris Principles as regards features of autonomy for independent state bodies have also been developed by the Council of Europe's European Commission Against Racism and Intolerance (ECRI)¹⁴⁴ and European Commission for Democracy Through Law (The Venice Commission).¹⁴⁵

The Paris Principles form a useful basis for considering the autonomous operation of state institutions. Although the focus of the Paris Principles is on independence, this is clearly connected to the concept of autonomy as self-governance. Independence from the state does not mean that the institution is free from responsibility or oversight by the state, particularly in the use of public monies. However, it is also true that it is somewhat easier to assess governmental interference with an NHRI than a university. There is intended to be one NHRI per country, and are currently only around 120 NHRIs globally, all of which operate along a relatively similar framework and for a common goal, and most of which were established after the 1993 Paris Principles were adopted, meaning that these principles have closely shaped their development. Further, they are bound by the peer-review mechanisms that has developed a clear understanding of what independence from the state means for these institutions. They do not have the complexity of mission that universities have, nor the complexities of governance.

Like NHRIs, universities are not intended to be governmental bodies. Though state funded, they are not the implementers or supporters of state policy. However, they are also not entirely free from the state. As recipients of public monies (in the case of public universities) and operating within a national higher education framework (both public and private universities), higher education institutions will always be subject to some form of government control. The scope of that control will vary both across jurisdiction, and across time. As a 2003 OECD study noted:

Despite the broad trends in official policy and government legislation to give greater autonomy to higher education institutions, these changes have often been accompanied by new mechanisms for monitoring and controlling performance, quality and funding. Thus, it is simplistic to see high-

143 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Article 52(2) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>> Accessed 24 November 2018, The Regulation also provides for conflict of interest among members of the supervisory authority, and that the state provides "the human, technical and financial resources, premises and infrastructure necessary for the performance of its tasks and exercise of its powers" (Article 52(4)) as well as the power to choose its own staff "subject to the exclusive direction of the member or members of the supervisory authority" (Article 52(5)) and "is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget." (Article 52(6)). A new set of standards released in June 2018 on the independence of EU Equality Bodies is also informative here: <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination/network-experts-field-anti-discrimination_en#standardsforequalitybodies> accessed 24 November 2018.

144 CRI(2018)06 ECRI General Policy Recommendation No. 2: Equality Bodies to Combat Racism and Intolerance at National Level, Adopted on 7 December 2017, para 23.

145 European Commission for Democracy Through Law (Venice Commission), Compilation of Venice Commission Opinions Concerning the Ombudsman Institution, CDL-PI(2016)001, 5 February 2016.

er education reform as always leading towards greater institutional autonomy; rather, it has often substituted one form of influence and control by government for another.¹⁴⁶

Having regard to the international standards, existing criteria for assessing university autonomy, and the Paris Principles, the definition of institutional autonomy used in this report 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”.¹⁴⁷ While not synonymous concepts, academic freedom and institutional autonomy go hand in hand. Academic freedom centres on the ability of individual academics to freely express opinions, pursue research and teaching, and participate in academic bodies. Clearly, breaches of individual academic freedom can have a significant impact on institutional autonomy, particularly in interference with academic work. It is clear also that both the state and universities have certain responsibilities. For universities, their internal responsibilities include prevention of discrimination and upholding academic freedom. Their external responsibilities are in accountability to the state particularly in the use of any public monies and in complying with national educational standards. States generally should be providing for the progressive improvement of the enjoyment of the right to education, and refrain from interfering with universities. They are particularly constrained by international standards from taking ‘deliberately retrogressive’ measures, and interfering in curricula, teaching programmes, and internal quality development. As will be seen in the following sections however, measures taken by governments to restrict the autonomy of higher education institutions in organisation, finance, staffing, and restrictions on academics and students are both broad and widespread.

146 OECD, ‘Education Policy Analysis’, Chapter 3: Changing Patterns of Governance in Higher Education (2003) <<https://www.oecd.org/education/skills-beyond-school/35747684.pdf>> accessed 24 November 2018, p. 64.

147 CESCR General Comment No. 13, para. 40. This language is also reflected in the 1997 UNESCO Declaration, para 17.

RESTRICTIONS ON THE INSTITUTION

This section considers some of the restrictive legislative and regulatory measures put in place by states that impact the operation of autonomous universities. As noted in the introduction, the aim of this report is to identify repressive state practices, and this section considers restrictions to the enabling law, finances, leadership and faculty and staffing.

a. Changes to Higher Education Laws

Governments wield considerable power to interfere with the running of universities through amending their enabling laws. As will be seen below, particularly in the cases of Hungary and Russia, governments can cripple or even close a university by modifying foundational laws and changing regulatory requirements.

Legal frameworks governing higher education can be complex and multi-faceted. The legal framework for universities may be contained in a number of legislative instruments, including the constitution or equivalent supreme law, which may also contain a provision on the right to education, or institutional autonomy, or in specific laws on higher education or higher education institutions. In addition, specific pieces of legislation are likely to be in place governing the operation of the higher education framework, including provisions for admissions, funding, and quality assessments. Explicit constitutional protections for university autonomy were found by Beiter, Karran and Appiagyei-Atua in 15 European constitutions, and provisions on self-governance in three.¹⁴⁸ Of thirty higher education systems assessed for their study, they found that “the [higher education] Acts of 9 contain an express and adequate provision on autonomy, 20 an express, but in certain respects problematic or incomplete provision, and one a seriously deficient provision.”¹⁴⁹ Regarding legal protection for academic freedom in higher education legislation, they found a mixed picture in terms of the quality of protection provided.¹⁵⁰ They found explicit recognition in 14 (out of 55) African constitutions.¹⁵¹

Where insufficient legal provisions are in place, universities can be particularly vulnerable to governmental interference. Discussing legal protections for academic freedom,

148 Beiter, et. al, *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, p. 298. See also, Vrieling, J, Lemmens, P, Parmentier, S and the LERU Working Group on Human Rights, *Academic Freedom as a Fundamental Right*, *Procedia Social and Behavioural Sciences* 13 (2011) 117-141, p. 120.

149 *Ibid.*, pp. 306-307.

150 *Ibid.*, pp. 305-306.

151 Kwadwo Appiagyei-Atua, Klaus D. Beiter, and Terance Karran, *A Review of Academic Freedom in African Universities through the Prism of the 1997 ILO/UNESCO Recommendation*, *AAUP Journal of Academic Freedom*, Volume 7 (2016), p. 6.

Beiter et. al., argue that where protection is not provided in parliamentary legislation “this ordinarily does not, therefore, satisfy (or fully satisfy) requirements for adequate ‘legal’ protection”.¹⁵² They continue “[a]ccordingly, a state’s human rights and [higher education] legislation should adequately protect academic freedom and institutional autonomy”.¹⁵³ In Europe, Council of Europe Parliamentary Assembly Recommendation 1762(2006) *on Academic Freedom and University Autonomy*, also recommends that the principles of academic freedom and university autonomy should “be reaffirmed and guaranteed by law, preferably in the constitution”.¹⁵⁴

In addition to provision in law for institutional autonomy and academic freedom, and the foundation and operation of higher education institutions, the process by which changes to higher education laws are made is important. Changes should follow appropriate procedures as outlined by national law, such as consultations and time for deliberations.¹⁵⁵ Where proper legislative amendment procedures are not followed, there may be particular cause for concern. An example is the case of Hungary where an expedited “exceptional procedure”¹⁵⁶ was used for the adoption of a law impacting the private Central European University, whereby the law could be tabled for plenary debate and voted on within a single day, as was done on 4 April 2017.¹⁵⁷

In 2017, the Hungarian government introduced a new legislative framework for foreign universities. The measures, essentially targeted a specific university whose founder the authorities had vilified publicly, showing the ease with which governments can interfere with institutional autonomy whether the institution is public or private. As stated by the Venice Commission, an expert body of the Council of Europe responsible for reviewing national laws for rule of law compliance,¹⁵⁸ Hungary’s Act XXV of 2017 “introduced new, more restrictive requirements for the licencing and operation of foreign universities”.¹⁵⁹ The new regulations required that foreign universities could only operate in Hungary under an “international agreement concluded between the government of Hungary and the government of the university’s country of seat”.¹⁶⁰ The institution

152 Beiter, et. al, *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, p. 259, fn. 8.

153 *Ibid.*, p. 260.

154 Council of Europe Parliamentary Assembly Recommendation 1762(2006) *on Academic Freedom and University Autonomy*, para 7.

155 Venice Commission Opinion on Hungary 2017, p. 15 – changes to the law adopted by exceptional procedure. “The reason given for using the expedited procedure was that it was urgent to adopt the law to allow it to enter into force before the next academic year. This reason seems not very convincing since there was no urgent need to change the applicable rules”.

156 Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure, official English translation of the resolution from the Parliament’s website <<http://www.parlament.hu/documents/125505/138409/Resolution+on+certain+provisions+of+the+Rules+of+Procedure/968f2e08-f740-4241-a87b-28e6dc390407>> original version in Hungarian. <<https://net.jogtar.hu/jogszabaly?dbnum=1&docid=A14H0010.OGY&mahu=1>> Accessed 24 November 2018.

157 See, Deputy Prime Minister’s written request to the Speaker of the National Assembly for the use of the emergency procedure on this law on the Hungarian Parliament’s official website <<http://www.parlament.hu/irom40/14686/14686-0002.pdf>> [in Hungarian] Accessed 24 November 2018.

158 Venice Commission, Council of Europe, see official website <https://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN> accessed 24 November 2018.

159 Venice Commission Opinion on Hungary, October 2017, p. 5.

160 *Ibid.*, p. 6, referencing the new Article 76(1)(a) Act XXV of 2017.

must have a campus in the territory of origin and have nothing ‘misleading or confusing’ as to its name.¹⁶¹ Further, all non-European Economic Area (EEA) academic staff would require a work permit, removing an existing exemption.¹⁶² As the Venice Commission highlighted, the law also changed the conditions under which educational programmes and degrees were delivered:

the Law alters the conditions enabling foreign universities to deliver educational programmes and corresponding degrees (recognized by the foreign state), through a Hungarian university, based on a programme-cooperation agreement between the two universities (Article 77(4) of the HEA 2011). Under the modified legal framework, this will no longer be possible for foreign universities based in non-EEA OECD countries.¹⁶³

In the enforcement of the new provisions, operating licences could be withdrawn as of 1 January 2018, in the following circumstances:

(i) in case of federal states which have no competence in the field of education, on 11 October 2017 no preliminary agreement with the central government of that state has been reached [new Article 115(7)]; (ii) on 1 January 2018 no international agreement with the governments of Hungary and the state of origin has been concluded [new Article 76(1)(a)]; (iii) on 1 January 2018 no higher educational services are offered by the foreign higher education institution in its country of origin [new Article 76(1)(b)].¹⁶⁴

The government argued that having examined foreign universities in autumn 2016, they had “discovered discrepancies and serious irregularities in their functioning” and further that the new laws were “meant to respond to wider policy imperatives related to the establishment and functioning of foreign higher education institutions in Hungary, including foreign policy and international cooperation in the field, as well as national security concerns”.¹⁶⁵ They also argued that the motivation behind the law included educational guarantees for students, international cooperation “foreign policy and national security considerations” and issues of transparency and non-discrimination.¹⁶⁶

In practice, of the 24 foreign universities operating in Hungary, the law only applied to 6 (as the others were EEA-area institutions, to which the law didn’t apply). While the Venice Commission noted that the law on its face was ‘neutrally worded’ it had been widely criticized as being directed specifically at CEU.¹⁶⁷ In its review of the law, the

161 Ibid., October 2017, p. 7, referencing the new Article 76(1)(b) Act XXV of 2017.

162 Ibid., October 2017, p. 7.

163 Ibid., p. 7, para. 19.

164 Ibid., p. 7. See Act CCIV of 2011 On National Higher Education, original version in Hungarian available <<https://net.jogtar.hu/jogszabaly?docid=a1100204.tv>> accessed 24 November 2018.

165 Ibid., p. 5 [footnotes omitted].

166 Ibid., p. 20, para. 70.

167 Ibid., p. 7, para. 22.

Venice Commission recalled that the European Commission had found the law to be incompatible with EU internal market rules and the right to academic freedom, the right to education and the freedom to conduct a business under the EU Charter of Fundamental Rights.¹⁶⁸ Furthermore, in practice, the impact of the law was to target one university.¹⁶⁹ During a debate in Parliament about this law, a Hungarian Minister expressly mentioned CEU and CEU founder George Soros in relation to the purpose of the bill.¹⁷⁰ The Venice Commission noted both the legitimacy of efforts to ensure quality higher education in line with the Bologna Process,¹⁷¹ as well as the large discretion left to EU governments regarding higher education.¹⁷² However, it found that “the intended goals ... seem rather vague and broad, and have little connection as far as existing universities are concerned, with the actual scope of the new restrictions imposed by the Law”.¹⁷³ Moreover, it found that considerations of “a more political and ideological nature” had been used to justify the law.¹⁷⁴ The Venice Commission considered it “doubtful” that the law responded to a genuine need.¹⁷⁵ Issues found by the Commission to be problematic included the deadlines for compliance, which were “unrealistic”, and severe legal consequences – the closure of the institution – for failure to comply, which were disproportionate.¹⁷⁶ The application of more stringent rules to institutions that had been operating for many years, was also problematic,¹⁷⁷ and raised issues of arbitrariness and

168 Ibid., citing European Commission Press Release, ‘Hungary: Commission takes legal action on Higher Education Law and sets record straight on ‘Stop Brussels’ consultation’, Brussels, 26 April 2017. See also, Parliamentary Assembly of the Council of Europe Resolution 2162 (2017) <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23715&lang=en>> accessed 24 November 2018.

169 Ibid., p. 7, para. 23.

170 Ibid., p. 8, para. 23.

171 The Bologna Process involves intergovernmental cooperation of 48 European countries in the field of higher education focussing on the introduction of the three cycle system (bachelor/master/doctorate); strengthened quality assurance and; easier recognition of qualifications and periods of study. See European Commission <https://eacea.ec.europa.eu/national-policies/eurydice/sites/eurydice/files/bologna_internet_0.pdf> Accessed 24 November 2018.

172 Ibid., paras. 71-72.

173 Ibid., para. 74.

174 Ibid., para. 74.

175 Ibid., para. 74.

176 Ibid., para. 75.

177 Ibid., para. 77.



The European Commission had found the Hungarian law to be incompatible with EU internal market rules and the right to academic freedom ... Furthermore, in practice, the impact of the law was to target one university.

proportionality, foreseeability and legitimate expectations.¹⁷⁸ There has been a significant impact on CEU as a result of this law. At time of writing, CEU had announced that it would be forced to move operations to Vienna beginning in the academic year 2019/2020 “because the Hungarian government has not concluded an agreement allowing CEU to operate in freedom in Hungary as a U.S. institution chartered in New York State.”¹⁷⁹

In its 2018 review of Hungary, the UN Human Rights Committee similarly expressed concerns that the amendment “imposes disproportionate restrictions on the operation of foreign-accredited universities”, lacks “sufficient justification for the imposition of such constraints on freedom of thought, expression and association, as well as academic freedom”, and “that the constraints particularly affect the Central European University because of its links with George Soros”.¹⁸⁰ It recommended revision of the amendments so that “any restrictions imposed on the operation of foreign-accredited universities are strictly necessary, proportionate and consistent with the requirements of, inter alia, articles 19 (3), 21 and 22 (2) of the Covenant and that they do not unreasonably or disproportionately target [CEU].”¹⁸¹

In two other examples, from Hungary and Venezuela, the government has not targeted a specific institution, but rather has changed the entire higher education framework to limit the autonomy of institutions. In Venezuela, the 2011 Organic Law on Education gave the executive branch “powers to control the rules of governance, admissions policy, and teacher education programs; [...] the Organic Law on Science, Technology, and Innovation, which centralizes funding for scientific research.”¹⁸² Civil society organizations in Venezuela reported to the Inter-American Commission on Human Rights that these laws undermined institutional autonomy.¹⁸³ Even prior to this legislative change, Venezuela had made significant changes to its higher education system through the establishment of parallel non-autonomous university institutions. A 2003 presidential decree created a “non-autonomous system of higher education totally subordinated to the State, named *Sucre Mission*” (*Misión Sucre*).¹⁸⁴ Under this system, 47 non-autonomous

178 Ibid., p. 20, para. 78. Citing the Venice Commission Checklist on the Rule of Law, para 60; “[l]aw can be changed, but with public debate and notice, and without adversely affecting legitimate expectations”.

179 Central European University, Press release: “CEU to Open Vienna Campus for U.S. Degrees in 2019; University Determined to Uphold Academic Freedom” (25 October 2018) <<https://www.ceu.edu/article/2018-10-25/ceu-open-vienna-campus-us-degrees-2019-university-determined-uphold-academic>> Accessed 25 November 2018.

180 Human Rights Committee, Concluding observations on the sixth periodic report of Hungary UN Doc. CCPR/C/HUN/CO/6, 9 May 2018, para 51.

181 Ibid., para 51.

182 Inter American Commission on Human Rights (IACHR), ‘Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report’ (2017) 237, footnote 1126. Subsequent amendments of the Organic Law on Science, Technology, and Innovation in 2010 and 2011 maintained similar restrictions. See the law’s original text 2011 *La Ley Orgánica de Ciencia Tecnología e Innovación* (LOCTI) <<http://www.conatel.gob.ve/wp-content/uploads/2014/10/PDF-Ley-Org%C3%A1nica-de-Ciencia-Tecnolog%C3%ADa-e-Innovacion.pdf>> accessed 24 November 2018.

183 Inter American Commission on Human Rights (IACHR), ‘Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report’ (2017) 237, fn. 1126.

184 Mayda Hócevar, David Gómez & Nelson Rivas, ‘Threats to Academic Freedom in Venezuela: Legislative Impositions and Patterns of Discrimination Towards University Teachers and Students’ (2017) Issue 3(1) *Interdisciplinary Political Studies*, 156.

new national universities were established between 2003 and 2012, in addition to the existing 5 public and 27 private universities.¹⁸⁵ The creation of a parallel state-controlled university system resulted in budget cuts for more autonomous higher education institutions,¹⁸⁶ enabled the exclusion of autonomous universities from higher education policies and is reportedly used to advance the state's ideological policies.¹⁸⁷ These moves have had significant impacts on existing universities. For example, the *Washington Post* reported that in the new parallel university system 2.6 million students enrolled in 2013, compared to the 875,000 in the country's 10 biggest autonomous public universities, and reportedly the majority of the country's education budget was shifted to the new non-autonomous institutions. The moves have resulted in major budget cuts to autonomous universities. As a result of reallocations and the worsening economic crisis, it was reported that the country's most prestigious university, the Central University of Venezuela, received 28% of its requested annual budget in 2017 down from 44% in 2014 with consequences for maintaining basic campus infrastructure, wages and allocations for research.¹⁸⁸

In 2014, the Hungarian government introduced a new governance structure for Hungarian universities, creating the position of chancellor, as discussed further below in the section on governance structures. Chancellors would be appointed by the Prime Minister and have authority over all decisions with financial implications. A previous effort by the government to limit universities' financial autonomy had been ruled unconstitutional, and Kováts suggests that in order to avoid this problem, the government changed the constitution.¹⁸⁹ Article X paragraph 3 of the Hungarian Constitution, introduced on 11 March 2013, provides that:

Higher education institutions shall be autonomous in terms of the content and the methods of research and teaching; their organisation shall be regulated by an Act. The Government shall, within the framework of an Act, lay down the rules governing the management of public institutes of higher education and shall supervise their management.¹⁹⁰

As will be seen below, this has significantly impacted on Hungarian university autonomy.

185 Hocevar et. al., *Ibid.*, p. 156.

186 *Ibid.*, p. 156.

187 Human Rights Observatory of the University of Los Andes et. al. 'Contribution for the second cycle of Universal Periodic Review of Venezuela, in the 26th session of the United Nations Human Rights Council: Restrictions and reprisals against autonomy and academic freedom in higher education system in Venezuela' (2016) 3.

188 The Washington Post, 'Venezuela's universities feel the sting of economic and political crisis', Rachele Krygier and Anthony Faiola, 17 November 2017 <https://www.washingtonpost.com/world/the_americas/venezuelas-universities-feel-the-sting-of-economic-and-political-crisis/2017/11/15/665068aa-c59b-11e7-9922-4151f5ca6168_story.html?noredirect=on&utm_term=.f15204b2237d> accessed 24 November 2018.

189 Gergely Kováts, 'Recent Developments in the Autonomy and Governance of Higher Education Institutions in Hungary: the Introduction of the Chancellor System', (2015) <http://unipub.lib.uni-corvinus.hu/2212/1/Kovats_CEHEC_2015.pdf> accessed 24 November 2018, p. 32.

190 The Fundamental Law of Hungary, Official English translation from the Parliament's website <http://www.kormany.hu/download/a/68/11000/The_Fundamental_Law_of_Hungary_01072016.pdf> , original Hungarian version < <https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV>> accessed 24 November 2018.

Other examples of recent potentially restrictive, changes to higher education laws have taken place in Myanmar and Thailand. In Myanmar, Freedom House reported the parliament approved a new Education Law in 2015, which, despite demands from students did not include a clear role for student unions for influencing education policy. Those critical of the law saw that it does not sufficiently guarantee "demands concerning decentralization, access to instruction in local languages, curriculum reform, and a clear role for student unions in setting education policy, among other issues,"¹⁹¹. Fortify Rights also reported that the law was criticized for the lack of decentralization of education policy formulation and failing to address the needs of minorities.¹⁹² In Thailand, some public universities have greater autonomy than others; as a result of the National Education Act of 1999 and other institution-specific legislation, meaning that 16 of the country's 78 public universities were granted a higher degree of institutional autonomy by 2018.¹⁹³ The more autonomous public universities receive public funds through block grants (as opposed to earmarked budgeting) and have the autonomy to establish their own administrative structures and rules and regulations on personnel and staffing in contrast to public universities that are not specifically designated as autonomous.¹⁹⁴ A study on these 16 institutions found that as a result of their higher level of autonomy, they have significantly increased their budget allocations for research and do not have to ask for permission from state authorities in curricula considerations, student recruitment and administrative matters. It found that these institutions have enhanced their financial autonomy by generating income from research and tuition fees, while still also receiving funding from the government, and that they have greater autonomy for budgetary allocations.

191 Freedom House: Freedom in the World 2016: Myanmar. See also, Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties' (2017).

192 Fortify Rights and the International Human Rights Clinic, "Crackdown at Letpadan Myanmar: Excessive Force and Violations of the Rights to Freedom of Peaceful Assembly and Expression" (2015), p. 27 <https://www.fortifyrights.org/downloads/FR_Crackdown_At_Letpadan_October_2015.pdf> accessed 24 November 2018.

193 Sakchai Jarernsripornkul and I.M. Pandey, Governance of autonomous universities: case of Thailand, *Journal of Advances in Management Research* Vol. 15 Issue: 3, 288-305. See also, Reehana R. Raza, 'Higher Education Governance in East Asia' (World Bank 2010), pp. 288-290.

194 World Bank Group, 'Thailand Social Monitor: Towards a Competitive Higher Education System in a Global Economy' (Human Development Sector, East Asia and Pacific Region, 2009); Reehana R. Raza, 'Higher Education Governance in East Asia' (World Bank 2010) 13, p. 17.



**In Myanmar,
the parliament
approved
a new
Education
Law in 2015,
which, despite
demands
from students
did not
include a
clear role
for student
unions for
influencing
education
policy.**

The report observed that the degree of financial autonomy Thai universities have is influenced by how much governmental funding they receive; universities with less governmental funding generally have more financial autonomy and vice versa.¹⁹⁵

Determining the permissible scope of government interference with foundational legislative provisions is complex in that the government retains the right to legislate for the higher education system in the country. What would seem important, as noted by Beiter et. al., is firstly to ensure explicit constitutional or legislative protections for autonomy, which can serve as a guiding principle on subsequent changes. Although, as seen in the case of Hungary, where a government can easily amend the constitution, such provisions may not be sufficient. Further, there are warning signs stakeholders should watch for, for example, the process through which the law is adopted, particularly its speed, the process of consultation and transparency. Changes to enabling laws that clearly restrict autonomy, or are arbitrary and disproportionate in their effect, are cause for concern. What is particularly concerning about the Hungarian example is that it has taken place within the EU. It may therefore set a precedent in Europe and more broadly for restrictive measures. It also illustrates how private universities are not immune from government interference and also require legislative protections. However, constitutional or legislative protections for autonomy are also unlikely to protect universities where changes to the entire higher education framework are made. Universities may see a gradual reduction in autonomous functioning through government interference in funding, structures, faculty and research, as will be discussed in the next section.

b. Interference with Governance Structures

Central to the operation of universities are their governance structures. There is a huge body of academic literature and debate on university governance issues. The purpose of this section is not to discuss the merits or nature of governance models themselves, but rather to identify where repressive government measures may act to undermine an institution's autonomy through its governance structure.

There are a number of specific autonomy considerations as regards governance structures: including who is responsible for governance, how are they appointed, what control does the government have, and what role do faculty have in governance. A complicating factor in determining potentially repressive state practices is the variety of governance models. Governance structures for universities globally are diverse. Just within Europe, the *EUA 2011 Scorecard* found 15 countries with a dual governance structure of a board or council, and a senate,¹⁹⁶ within which the composition and scope of responsibilities varied considerably.¹⁹⁷ In the remaining countries, a single board or

195 Sakchai Jarernsiripornkul and I.M. Pandey, Governance of autonomous universities: case of Thailand, *Journal of Advances in Management Research* Vol. 15 Issue: 3, 288-305, pp. 300-301.

196 University Autonomy in Europe II 2011, p. 24. The EUA notes that terminology may differ between jurisdictions.

197 University Autonomy in Europe II 2011, p. 25.

senate type structure existed.¹⁹⁸ While there may be considerable diversity in governance models globally, what is of interest here is whether the governance of the university in practice supports autonomy or whether it has been essentially co-opted by the government. In this regard, this section is closely connected to the next section on the selection and appointment of university leadership.

Another governance issue relevant to autonomy is to what extent the board should comprise external members. In terms of the composition of the board, the EUA in its 2017 Scorecard argued that “[t]he inclusion and appointment of non-university members is an important aspect of a university’s governing structure. If an institution is able to include external members, the selection can be carried out by the university itself and/or by an external authority.”¹⁹⁹ However, it also found that within the jurisdictions surveyed “[t]he ability to decide on the inclusion of external members in university governing bodies is rare”.²⁰⁰ Considerable diversity of approach exists across Europe, with the EUA identifying four main models: universities are free to appoint external members, they may be proposed by the university but appointed by an external authority, part of the members are appointed by the university and part by an external authority or the external authority decides on appointments.²⁰¹ For the purpose of the present report, what is of particular interest are instances where the board or governance body is comprised largely of political appointees or government representatives.

An example of the negative impact of government interference with board members arose in Hungary. In 2014, the Hungarian government made a fundamental change to the governance structure of universities. It introduced a chancellor system, whereby every university has a chancellor appointed by the Prime Minister, who oversees financial, budgetary and operational decisions that have financial implications. The 2011 National Law on Higher Education was amended in 2014, to introduce the following provision:

The chancellor a) shall be in charge of the economic, financial, controlling, internal audit, accounting, labour, legal, administrative, IT and asset management activities of the higher education institution, including technical, facility utilisation, operational, logistical, service provision, procurement and public procurement matters, and shall manage operation in this field.²⁰²

The EUA observed that “[t]he creation of the position of ‘chancellor’ in Hungarian universities since July 2014 fundamentally alters the capacity of institutions to organise themselves.”²⁰³ Writing about this change, Kováts notes that the government had tried

198 Ibid., p. 26.

199 EUA Scorecard III 2017, p. 19.

200 Ibid., p. 19.

201 Ibid., p. 20.

202 Act CCIV of 2011 on National Higher Education, III, Article 13/A, 2(a). Official translation by the Hungarian [Higher Education] Accreditation Committee <http://www.mab.hu/web/doc/hac/regulations/Nftv_angol_2Sept2016_EMMI%20forditas.pdf> accessed 24 November 2018.

203 European University Association, ‘University Autonomy in Europe III’ (2017) 90-91.

to previously limit financial autonomy through the introduction of financial boards, but these were ruled unconstitutional as they breached autonomy.²⁰⁴ To circumvent this, the Constitution was changed to include a provision allowing the government to set the rules for the management of higher education institutions via legislation as noted in the section on amendments to enabling laws, above.²⁰⁵

Examples of government interference in higher education institutions governance were also found where the government directly participated in university governance. In Armenia, the 2017 US State Department human rights country report observed that “the administration and student councils of the most prominent state universities were politicized and affiliated with the ruling [party]. For example, President Serzh Sargsyan was the president of the Board of Trustees of Yerevan State University. Government ministers led, or were members of, the boards of trustees of other universities.”²⁰⁶ In Botswana, the University Act makes the president of the republic chancellor, with powers, where it is in the public interest, to “direct the minister of education in writing to assume the exercise of any power or the performance of any duty conferred or imposed on the university council or on the vice chancellor”.²⁰⁷ In Malaysia, Chang-Da notes that under the University Colleges Act of 1995, the Minister of Education “directly appoints all members of the Board of Directors [of public universities], with the exception of one or two representatives of the Senate. A few ministers and deputy ministers have also been appointed as mentors to public universities with an autonomous status.”²⁰⁸ Appiagyei-Atua et. al. found several other instances of government interference with governance bodies in Africa, including in Djibouti where members of the university council were appointed by decree and the majority were public service representatives.²⁰⁹ In Rwanda, the “organization, functioning and responsibilities” of senates are determined by order of the prime minister.²¹⁰ In Ethiopia the “membership and the number of members of each public institution’s senate and their terms of office are determined by the law establishing the public institution” and appointments are made by the president of the institution.²¹¹

204 Gergely Kováts, Recent Developments in the Autonomy and Governance of Higher Education Institutions in Hungary: the Introduction of the Chancellor System, (2015) <http://unipub.lib.uni-corvinus.hu/2212/1/Kovats_CEHEC_2015.pdf> accessed 24 November 2018, p. 32.

205 The Fundamental Law of Hungary, Article X (3), Official English translation from the Parliament's website <http://www.kormany.hu/download/a/68/11000/The_Fundamental_Law_of_Hungary_01072016.pdf>, original Hungarian version <<https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV>> accessed 24 November 2018.

206 US State Department Human Rights Report 2017: Armenia 2017.

207 Kwadwo Appiagyei-Atua, Klaus D. Beiter, and Terance Karran, 'A Review of Academic Freedom in African Universities through the Prism of the 1997 ILO/UNESCO Recommendation', *AAUP Journal of Academic Freedom*, Volume 7 (2016), p. 8, citing University of Botswana Act, 1982 (Act 24).

208 Chang-Da Wan, 'The History of University Autonomy in Malaysia', (Institute for Democracy and Economic Affairs 2017), p. 18.

209 Appiagyei-Atua et. al., 'A Review of Academic Freedom in African Universities' (2016) above note 209 p. 13 citing *République de Djibouti, décret no. 2007-0167/PR/MENESUP, fixant le statut particulier de l'Université de Djibouti*, article 4.

210 *Ibid.*, p. 13 citing Republic of Rwanda, Law no. 27/2013, May 24, 2013, Governing Organization and Functioning of Higher Education, article 32.

211 *Ibid.*, p. 13 citing Federal Democratic Republic of Ethiopia, Higher Education Proclamation, article 50.

In some instances, governments have taken more direct control over university governance. In Venezuela, a 2009 law on education delegated powers over university rules and policies, control of income and expenditure of universities, and teacher training to the cabinet (*Poder Ejecutivo Nacional*). It also established new rules for the elections of student representatives and university authorities, and explicitly noted that training programs and research need to be subordinated to the plans of the cabinet.²¹² The 2009 law reinforced the State's control on training for university faculty including over the formulation and monitoring of training.²¹³ In addition to direct control by the executive, a 2014 decree²¹⁴ created the Ministry of Popular Power for Higher Education, Science and Technology (*Ministerio del Poder Popular Para La Educación Universitaria, Ciencia y Tecnología*) with powers to “issue decrees without consultation regarding policies, plans, and training programs, student admissions, and research priorities in higher education.”²¹⁵ A Venezuelan professor interviewed for this report noted that the parallel non-autonomous universities “were created parallel to the existing association networks to diminish the influence of the existing associations” that were often critical of the government. Further, “during negotiations and consultations, the government only consults the newly created associations”.²¹⁶

For a university to be autonomously governed, its governance structures should not be controlled by the government. In the authors' view, where government appointed individuals (directly or indirectly) control governance bodies, this can significantly reduce university autonomy and governance decisions will be disproportionately guided by governmental preferences. An important check on this is the involvement of faculty in institutional governance. Beiter et. al. note that the principle of collegiality aims is “to prevent powers from being concentrated in a single or a few persons (for example, the rector (rectorate) or dean (dean's office)), as this will increase the likelihood of

212 Hocevar et. al., *Threats to Academic Freedom in Venezuela* (2017), above note 184, pp. 157-158.

213 Human Rights Observatory of the University of Los Andes (2016), above note 187, p. 3.

214 Decree N° 1.226, of September 3, 2014.

215 Hocevar et. al., *Threats to Academic Freedom in Venezuela* (2017) above note 184, p. 159.

216 Interview with Professor Hugo Pérez Hernáiz, former Professor at Universidad Central de Venezuela, Department of Social Sciences, 15 June 2018.



In some instances, governments have taken more direct control over university governance. In Venezuela, a 2009 law on education delegated powers over university rules and policies, control of income and expenditure of universities, and teacher training to the cabinet.

decisions being taken that are not ‘in the best interest of science and scholarship’ and which infringe individual academic freedom”.²¹⁷ This is important for the autonomy of the institution. As they note, citing the German Constitutional Court in the *Hamburgisches Hochschulgesetz* case:

The legislator is not prevented from granting extensive competences to the executive organ, also not in matters of science and scholarship. However, the more competences the legislator grants to the executive organ, the more robust, in return, must be its formulation of direct or indirect rights of participation, influence, information and control of the collegial organs to avoid threats to freedom of teaching and research.²¹⁸

Equally important is that any changes to university governance are discussed with universities in a consultative manner. In this regard, CEU President and Rector, Michael Ignatieff, underlined the general importance of consultation, dialogue, and an approach from governments that values higher education institutions as partners.²¹⁹

One area of governance on which there appears to be general agreement is on faculty participation and membership of governing bodies as a crucial feature of university self-governance. The 1997 UNESCO Recommendation states that “Self-governance, collegiality and appropriate academic leadership are essential components of meaningful autonomy for institutions of higher education.”²²⁰ It recognised the diversity of arrangements in different countries for teaching personnel, but was “[c]onvinced nevertheless that similar questions arise in all countries” meriting common approaches and common standards.²²¹ Beiter et. al. in their study of 30 higher education systems in Europe contended that self-governance requires that “[a] majority – ideally between 60 and 70 percent – of the members of the senate (or its equivalent) should be representatives of academic staff”.²²² On boards involved in strategic decision-making they should have up to 50% representation.²²³ In suggesting these levels of representation, Beiter et. al. rely on the 1997 UNESCO Recommendation, which notes that higher education teaching-personnel “should also have the right to elect a majority of representatives to academic bodies within the higher education institution”.²²⁴ The Recommendation also emphasises that the principles of collegiality include a “policy of participation of all concerned in internal decision making structures and practices” including for “deci-

217 Beiter et. al., ‘Yearning to belong’ (2016), above note 40, p. 137.

218 Beiter et. al., Academic freedom in the U.N. human rights covenants (2016), above note 47, p. 138. Citing the *Hamburgisches Hochschulgesetz* Case, Judgment of July 20, 2010, BVerfG [Fed. Const. Ct., F.R.G.], Entscheidungen Des Bundesverfassungsgerichts [BVerfGE] 127, at 117-118 94-95 They note that it is the “(authors’ own translation from original German text) (internal citation omitted).” *Ibid.*, fn. 111.

219 Interview with CEU President and Rector, Michael Ignatieff, 28 June 2018.

220 1997 UNESCO Recommendation, para 21.

221 1997 UNESCO Recommendation, preamble

222 Beiter et. al., Academic Freedom and its Protection in the Law of European States (2016) above note 40, p. 314.

223 Beiter et. al., Academic freedom in the U.N. human rights covenants (2016), above note 47, fn. 64.

224 1997 UNESCO Recommendation, para 31.

sions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities.”²²⁵ Only 3 higher education acts they surveyed contained ‘express and adequate’ provision for self-governance.²²⁶ Not all shifts away from academic involvement in governance are as a result of repressive actions by the government. Altbach, writing in 2001, noted the trend in ‘managerialism’ where the “autonomy and power” of the professoriate is reduced because of an increase in power in administrators.²²⁷ A 2003 OECD study similarly noted this trend in OECD countries where the “general loss of faculty power, the increased weighting of “external constituencies” and outside interests has contributed to the strength of executive authorities”.²²⁸

Excessive interference by governments in governance structures can result in essentially government-run institutions and stakeholders should be particularly wary of moves by the government to weaken or co-opt university governance structures. Where the top operational position in a university is a government appointee or a member of the government, this may be a particular cause for concern, as will be discussed further below.

c. Regulatory Restrictions

Two recent situations in Russia where excessive administrative investigations have been used by the authorities against an institution were identified during this research. These point to the type of interference states can exercise through the excessive application of administrative or regulatory requirements. In the first case, administrative inspections (triggered by a complaint by a politician from the ruling party) obstructed the operations of the European University in St. Petersburg. The institution’s license was revoked in 2017, after 11 unannounced inspections by state agencies finding 120 license-related violations, of which reportedly only one had not been resolved by the university authorities by 2017.²²⁹ The university’s license was suspended for more than a year prohibiting it from enrolling students. The licence was re-issued on 10 August 2018.²³⁰ These technical license violations included “the absence of a faculty gym and the failure to display anti-alcohol leaflets”.²³¹ Observers found that the revoking of the university’s license was politically motivated as the European University in St. Petersburg was known for its liberal views.²³² Even more recently, during the preparation of this report, the accreditation of a private graduate university in Russia was withdrawn

225 1997 UNESCO Recommendation, para 32.

226 Beiter et. al., *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, p. 314.

227 Philip G. Altbach, *Academic freedom: International realities and challenges*, *Higher Education* 41: 205–219, 2001, p. 216.

228 OECD, ‘Education Policy Analysis’, Chapter 3: Changing Patterns of Governance in Higher Education (2003) <<https://www.oecd.org/education/skills-beyond-school/35747684.pdf>> accessed 24 November 2018, p. 71.

229 Daniela Crăciun and Georgiana Mihut, ‘Requiem for a Dream: Academic Freedom under Threat in Democracies’ (2017) *International Higher Education*, Number 90, pp. 15-17.

230 European University at St. Petersburg, ‘375 days without a license.’ Press Release 13 August 2018 <<https://eu.spb.ru/en/news/19178-375-days-without-a-license>> accessed 24 November 2018.

231 *Scholars at Risk*, ‘Free to Think’ (2017) above note 15, p. 31.

232 US State Department Human Rights Report 2017: Russia 2017.

after an inspection, which the university's rector said contained "factual discrepancies".²³³ The Moscow School of Social and Economic Sciences, which partners with different universities in the UK and issues UK diplomas, was reported as no longer being able to issue Russian diplomas as a result of the withdrawal of its accreditation.²³⁴

In Turkey, while preparing this report, another extreme regulatory restriction stopped the operations of a higher education institution. Decree no. 703 dated 2 July 2018, resulted in the Institute for Public Administration for Turkey and the Middle East being abruptly shut down and its "website deleted, and the institution handed over to YÖK [Council of Higher Education] with all its students and academic staff."²³⁵ Subsequently YÖK decided that the students of the Institute should continue their studies at another university and that its faculty would be reassigned to other institutions, with a maximum of three faculty allowed to relocate to any one institution.²³⁶

d. Selection, Appointment and Dismissal of Leadership

Critical to the autonomy of universities is their leadership.²³⁷ In particular, it is important to consider how the leadership is selected and appointed, and the extent of government involvement in that process. This is often closely connected to the issue of governance structures, discussed above.

Beiter et. al. argue that the state should not be involved in deciding on the rector of a university, that is, "the rector should not be required to be appointed or the election to be confirmed by the state – also not formally at the highest executive level by the state president, the cabinet, or a minister, as this conveys an undesirable image of 'closeness' of state and [higher education] institutions."²³⁸ However, the reality is that there is often state involvement in this process. Beiter et. al., in their 2016 study found that in 14 of the 30 European systems examined, the state was involved "in some way or another" in the process, albeit usually symbolically.²³⁹ A 2003 OECD study noted at that

233 Medusa Project, 'Regulators have revoked their accreditation of the Moscow School of Social and Economic Sciences, one of Russia's last major private colleges' (22 June 2018) <<https://meduza.io/en/feature/2018/06/22/regulators-have-revoked-their-accreditation-of-the-moscow-school-of-social-and-economic-sciences-one-of-russia-s-last-major-private-colleges>> accessed 24 November 2018; Medusa Project, 'Russian regulators revoke the accreditation of another top ranked, Western-linked graduate school' (21 June 2018) <<https://meduza.io/en/news/2018/06/21/russian-regulators-revoke-the-accreditation-of-another-top-ranked-western-linked-graduate-school>> accessed 24 November 2018.

234 Medusa Project, above note 233.

235 Bilim Akademisi [The Science Academy in Turkey], 'The Science Academy Report on Academic Freedoms: 2017-18' <<https://en.bilimakademisi.org/wp-content/uploads/2018/11/academic-freedoms-report-2017-18-en-science-academy-turkey.pdf>> accessed 25 November 2018, p. 6.

236 Ibid., p. 6.

237 A variety of terminologies can be used for the senior position(s) in a university: President, Principal, Rector, Vice Chancellor, Provost. 'Senior leadership' here refers to the top positions in a university structure.

238 Beiter, et. al, *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, p. 308.

239 Ibid., p. 308. See also, Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua, "Measuring" the Erosion of Academic Freedom as an International Human Right: A Report on the Legal Protection of Academic Freedom in Europe, *Vanderbilt Journal of Transnational Law* 49:597 (2016), p. 646.

time a trend away from (academy) elected leadership towards appointed leadership.²⁴⁰ The EUA 2017 Scorecard found four common categories in Europe for appointment of the executive head²⁴¹ of the university: Elected by a specific electoral body, (usually large, representing different groups of the university community); Elected by the governing body; Appointed by the council/board of the university; Appointed through a two-step process in which both the senate and the council/board are involved.²⁴² In 12 out of 29 cases, the selection was validated by an external body.²⁴³ This could be the ministry or minister for higher education, and the president or head of state/government or other authorities. In 17 countries no external procedure was required, this was up from 14 in 2011.²⁴⁴ Also relevant are the appointment criteria for the selection of candidates. Provisions on qualifications of the executive leadership were present in the law in 19 countries, with the most common being that the rector had to hold an academic position.²⁴⁵ Similarly, security of tenure is also important. In 14 countries, dismissal was an internal matter – though 3 of these required external confirmation, and in 15 it was regulated either in law or regulations.²⁴⁶

A number of examples were identified where the government was not only involved in a nominal way in the appointments process, but directly selected university leadership. In Turkey, restrictions on selection and appointment processes of leadership of universities include a change to the appointments process for rectors. Prior to 2016, six candidates were nominated by faculty and three by the Council of Higher Education for appointment by Turkey's President²⁴⁷, since October 2016 the President can appoint rectors directly. Decree No. 676 eliminated



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240 OECD, 'Education Policy Analysis', Chapter 3: Changing Patterns of Governance in Higher Education (2003) <<https://www.oecd.org/education/skills-beyond-school/35747684.pdf>> accessed 24 November 2018, p. 73.

241 This position can be referred to as the rector, vice-chancellor, provost, president or principal. EUA Scorecard II, 2011, p. 21.

242 University Autonomy in Europe III – The Scorecard 2017, p. 15. 1997 UNESCO Recommendation, para 25.

243 Ibid., p. 15.

244 Ibid., p. 15, EUA Scorecard II, p. 21.

245 Ibid., p. 15.

246 Ibid., p. 15.

247 Andris Barblan et. al., *Higher Education in Turkey: Institutional Autonomy and Responsibility in a Modernising Society, Policy Recommendations in a Historical Perspective*, (Bononia University Press 2008) 54.

nominations by university faculty, but kept the three nominations by the Council of Higher Education. If these nominations are rejected by the President, he can directly appoint a rector he chooses.²⁴⁸ This practice was reinforced by Law no. 2547 dated 2 July 2018, which states that “[t]he rectors of public and private universities are assigned by the President.”²⁴⁹ Within a month of the new appointment system,^{President} Erdogan directly appointed the Rector of Bogaziçi University in Istanbul despite the fact that another candidate, Gülay Barbarosoglu, received 348 out of 399 votes in the university with a turnout of 90%.²⁵⁰ Turkey’s national research institution, the Scientific and Technological Research Council of Turkey, (*Türkiye Bilimsel ve Teknolojik Araştırma Kurumu*) (TÜBİTAK), which described itself as an “autonomous institution governed by a Scientific Board whose members are selected from prominent scholars from universities, industry and research institutions,” also has its president “appointed by the President of Turkey upon the recommendation of the Prime Minister”.²⁵¹

In Egypt, there is a long-standing law permitting direct appointments. Law 49 on the Regulation of Universities (1972) enables the President to directly appoint university presidents and vice presidents in public universities.²⁵² Moreover, Saint, writing in 2009, found that the governing boards of public universities included government officials appointed by Ministries,²⁵³ and the head of state appointing university chief executive officers.²⁵⁴

In China, the Standing Committee of the Chinese Communist Party has authority for appointment of deans and senior administrators.²⁵⁵ Li Wang found that informal systems of control also operate, though, for example, career development. She notes that “[a]s the senior administrators in public HEIs are appointed by the government, they

248 Scholars at Risk, ‘Free to Think’ (2017) above note 15, p. 17.

249 Bilim Akademisi [The Science Academy in Turkey], ‘The Science Academy Report on Academic Freedoms: 2017-18’ <<https://en.bilimakademisi.org/wp-content/uploads/2018/11/academic-freedoms-report-2017-18-en-science-academy-turkey.pdf>> accessed 25 November 2018, p. 7.

250 European University Association (EUA), ‘News release: University autonomy in Turkey: the first impact of new decrees’ (2016) November 15, <<https://eua.eu/news/37:university-autonomy-in-turkey-first-impact-of-new-decrees.html>> accessed 24 November 2018.

251 The Scientific and Technological Research Council of Turkey (TÜBİTAK), see official website, “Senior Management” page <<https://www.tubitak.gov.tr/en/content-senior-management>> accessed 24 November 2018.

252 European Commission, Education, Audiovisual and Culture Executive Agency (EACEA), ‘Overview of the Higher Education System: Egypt’ (2017) p. 20.

253 William Saint, ‘Guiding Universities: Governance and Management Arrangements around the Globe’ (World Bank, Human Development Network 2009), 13, 22.

254 Saint, ‘Guiding Universities’ (2009) above note 253, pp. 29-30. Although institutional autonomy in leadership appointments somewhat improved in 2010-2012, (Ursula Lindsey, ‘Freedom and Reform at Egypt’s Universities, (Carnegie Endowment for International Peace 1 2012) 9 <https://carnegieendowment.org/files/egyptian_universities.pdf> accessed 24 November 2018, and in 2013, university leaders were no longer appointed by the government, (Freedom House, ‘Freedom in the World: Egypt country report, 2014’ (2014) <<https://freedomhouse.org/report/freedom-world/2014/egypt>> accessed 24 November 2018, by 2014-2015, appointment powers once again resided with the President. (Freedom House, ‘Freedom in the World: Egypt country report, 2015’ (2015) <<https://freedomhouse.org/report/freedom-world/2015/egypt>> accessed 24 November 2018. These brief improvements in leadership appointments were also not put into law, with Law 49 on the Regulation of Universities (1972) not being amended. Ursula Lindsey, ‘Freedom and Reform at Egypt’s Universities, (Carnegie Endowment for International Peace 1 2012) 11-14 <https://carnegieendowment.org/files/egyptian_universities.pdf> accessed 24 November 2018.

255 Michaela Martin and N.V. Varghese, ‘Governance reforms and university autonomy in Asia’ (UNESCO & International Institute for Educational Planning 2013), p. 42.

see themselves as government officials rather than educators.”²⁵⁶ Li Wang found that China, the control of the party is “built into” the structure of higher education institutions:²⁵⁷

According to the Higher Education Law, the public university president is under the leadership of the CCP commission. In fact, the party has maintained leadership over [higher education institutions] for most of the time since the establishment of the modern [higher education] system after the foundation of the People’s Republic of China (PRC).²⁵⁸

As regards appointing leadership, Su-Yan Pan found that:

Through the use of appointment and promotion mechanisms, a control and incentive cycle can be seen. Holding the power to appoint suggests that the state is attempting to extend governmental control over the university through university president, who could maintain the authority relationship between the state and the university.²⁵⁹

In Hong Kong, Carrico found that since 1997, the head of Government of Hong Kong, the “Chief Executive of the Special Administrative Region”, is automatically named as the Chancellor of universities in Hong Kong,²⁶⁰ with powers to nominate some members of university councils, the decision-making bodies of public universities in Hong Kong.

As noted above, in Hungary, the rectors and chancellors are appointed by the government. Act CCIV of 2011 on National Higher Education²⁶¹ provides that while the senate of an institution can express its opinion on applications for the rector’s position,²⁶² it is the Prime Minister who is entitled to appoint and dismiss college rectors, and the President of the Republic university rectors.²⁶³ In addition, university and college senates do not directly issue an opinion to the Prime Minister and the President on recommending persons for appointment. Rather, the Minister of Human Capacities (*Emberi Erőforrások Minisztere*) forwards a list of proposed candidates,²⁶⁴ which does not have to be the same as those recommended by senates, and in some cases, they do not coincide. For exam-

256 Li Wang, ‘Higher education governance and university autonomy in China’ (Globalisation, Societies and Education, 2010) 8:4, 477-495, p. 483.

257 Li Wang, *ibid.* pp. 448-449.

258 Li Wang, *ibid.* pp. 448-449.

259 Su-Yan Pan, ‘Intertwining of Academia and Officialdom and University Autonomy: Experience from Tsinghua University in China’ (Higher Education Policy 2007) 20, (121–144) p. 137 [citations omitted].

260 Kevin Carrico, ‘Academic Freedom in Hong Kong since 2015: Between Two Systems’ (Hong Kong Watch 2018) p. 6.

261 Act CCIV of 2011 on National Higher Education. Original law in Hungarian available at <<https://net.jogtar.hu/jogszabaly?docid=a1100204.tv>> unofficial English translation is available on the Hungarian [Higher Education] Accreditation Committee’s website <http://www.mab.hu/web/doc/hac/regulations/Nftv_angol_2Sept2016_EMMI%20forditas.pdf> accessed 24 November 2018.

262 Act CCIV of 2011 on National Higher Education, IX, 21, Article 37/4.

263 Act CCIV of 2011 on National Higher Education, XVII, 39, Article 64/2 (c).

264 Act CCIV of 2011 on National Higher Education, XVII, 39, Article 64/2 (c).

ple, the Ministry has selected candidates who did not receive the majority of votes from the senates of higher education institution of the University of Debrecen and the College of Kecskemet.²⁶⁵ In other cases, the ministry requested the selection process be repeated when it did not favour the nominees, for example at the University of Miskolc.²⁶⁶ In terms of qualifications, Kováts found that:

[s]ince 2012, further restrictions have been set up regarding selection criteria [of rectors] (language requirements and experience in management of higher education institutions, in addition to being a university professor), a newly established age limit, and the term of office (maximum five years renewable once since the end of 2016; previously, maximum three years renewable once).²⁶⁷

As a result of this, some rectors were replaced.²⁶⁸

In Russia, in federal universities although candidates for rectors are presented by advisory boards and are elected, they are appointed by the Ministry of Education.²⁶⁹ In addition, according to Dubrovskiy:

in some universities rectors are not even elected but appointed by the president (Moscow and St. Petersburg State Universities). According to the official explanation, this was done to ensure responsibility for the serious investment into these Universities. This same practice has been extended to many other universities under the pretext of controlling state budget funds. Next, the appointed rectors try to minimize the degree of influence and resources of the academic councils, reducing their influence to a minimum and, instead of traditional faculties (departments), establish institutes the heads of which are appointed rather than elected.²⁷⁰

In Malaysia, Chang-Da found that under the University Colleges Act of 1995, the Minister of Education had the power to appoint Vice Chancellors and Deputy Vice Chancellors for public universities.²⁷¹ In Uzbekistan, a 2014 study found that the rectors of public universities are appointed “at the discretion of the Cabinet of Ministers”, from candidates nominated by the Ministry of Education.²⁷² A review of the 2017 US State Department and Freedom House reports shows that restrictions on the autonomy of universities in

265 Gergely Kováts, 'Recent Developments in the Autonomy and Governance of Higher Education Institutions in Hungary: the Introduction of the Chancellor System' (2015), p. 32.

266 Kováts above note 265, p. 32.

267 University Autonomy in Europe III – The Scorecard 2017, p. 90.

268 Kováts, above note 265, p. 32.

269 Dmitry Dubrovskiy, 'Escape from Freedom. The Russian Academic Community and the Problem of Academic Rights and Freedoms' (2017) *Interdisciplinary Political Studies*, Issue 3(1) 2017, 189-190.

270 Ibid., 189-190.

271 Chang-Da Wan, 'The History of University Autonomy in Malaysia', (Institute for Democracy and Economic Affairs 2017) 18.

272 World Bank, Uzbekistan: Modernizing Tertiary Education, June 2014 p. 58.

selecting and appointing their leadership is an issue in Zimbabwe, Morocco, Belarus and Sudan. In Zimbabwe, the country's President served as the chancellor of all eight state universities, and also appointed the vice-chancellors of the institutions.²⁷³ Article 17 of the 2006 Zimbabwe Council for Higher Education Act 2006,²⁷⁴ also permitted the President to “close a public higher education institution if it is in the interests of higher education in Zimbabwe and generally for the institution of higher education to merge or to be closed.”²⁷⁵ In Morocco, the Ministry of Interior approves the appointments of university rectors,²⁷⁶ while in Belarus the Minister of Education “has the right to appoint the heads of private educational institutions.”²⁷⁷ In Sudan the government appoints the vice chancellors of universities responsible for their administration.²⁷⁸

In some of the most extreme examples of government interference, following the coup attempt in July 2016 in Turkey, the Council of Higher Education ordered the temporary resignation of 1,577 deans at different private and state universities in order to “reestablish the autonomy of universities”.²⁷⁹ Other examples of excessive interference include Pakistan. At time of writing, media reports indicated that in Pakistan's Sindh province, under a recently passed law - the Sindh Universities and Institutes Law Amendment 2018 - pending before the Sindh High Court,²⁸⁰ the Chief Minister of the province will appoint the chancellors and pro-vice chancellors of 23 public universities and control their admissions policy. Reportedly, prior to the passing of the law, equally restrictive measures were in place whereby the Governor was chancellor of the region's universities.²⁸¹

273 US State Department Human Rights Report 2017: Zimbabwe 2017.

274 Zimbabwe Council for Higher Education Act 2006. English version available on website of International Labor Organization <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85415/95635/F861120966/ZWE85415.pdf>> accessed 24 November 2018.

275 James Cemmell, 'Academic Freedom International Study: Burma, Colombia, Israel, Palestine, Zimbabwe' (University and College Union 2009) 65.

276 US State Department Human Rights Report 2017: Morocco.

277 US State Department Human Rights Report 2017: Belarus.

278 US State Department Human Rights Report 2017: Sudan.

279 Scholars at Risk, 'Free to Think: Report of the Scholars at Risk Academic Monitoring Project' (2016) p. 11.

280 The Express Tribune, 'Attack on academic freedom: Controversial Universities Bill challenged in SHC', (14 March 2018) <<https://tribune.com.pk/story/1659125/1-attack-academic-freedom-controversial-universities-bill-challenged-shc/>> accessed 24 November 2018.

281 See for example, Radio Pakistan, 'SA passes Sindh Universities & Institutes Law Amendment Bill 2018' (9 March 2018) <<http://www.radio.gov.pk/09-03-2018/sa-passes-sindh-universities-institutes-law-amendment-bill-2018>> accessed 24 November 2018.



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of universities.'

While not interference directly by the government *per se*, it is worth noting that the Electoral Chamber of the Supreme Court of Venezuela has prohibited the renewal of university authorities (rectors and deans) through elections in 9 universities since 2011. In addition, Decision No. 134 by the Supreme Court suspended electoral processes in a university (in the University of Zulia) and prohibited overall “the development of a new regulation for university elections.”²⁸²

Considering the above examples, as well as interferences with governance, above, the Paris Principles may provide a useful framework for the parameters of state involvement. As state-funded independent institutions, the process for selecting the leadership (head and/or board) of an NHRI has been given the most time and attention by the peer-review assessment body. This body, the global NHRI network’s Sub-Committee on Accreditation, has determined that the appointment process should be formalised in the enabling law, it should be clear, transparent and merit-based, the selection panel should be pluralistic, broad consultation is promoted,²⁸³ and there should not be political appointments or political representation on the board (or if any, they should not have voting rights).²⁸⁴ While not all of these are directly applicable to universities, and indeed, the introduction of a process along these lines may engender backlash from some academics, having a process that restricts political appointments and ensures fairness and transparency would seem to be in keeping with the principles of institutional autonomy and academic freedom.

e. Changes to Financial Conditions

One of the ‘simplest’ ways for a government to interfere with the autonomous or independent functioning of a state institution is through budgetary restrictions. Having self-governance over the use of that budget is a central component to ensuring institutional autonomy, that allows the financial stability and foreseeability essential for the planning and development of robust institutions.

A number of relevant international standards specifically recognise the importance of this issue. Council of Europe Recommendation CM/Rec(2012)7 emphasises that “financial autonomy is a key prerequisite for institutional autonomy”, and that “[r]egardless of the sources of financial income, higher education institutions should be in a position to allocate and manage their funds in line with the priorities established by their governance bodies, in accordance with the legal provisions and the regulatory framework as set by the public authorities.”²⁸⁵ The recommendation emphasises that the “[t]he overall regulatory mechanisms for higher education funding should enhance transparency and provide clear provisions for impeding any possible menace to academic

282 Human Rights Observatory of the University of Los Andes (2016), above note 187, pp. 6-7.

283 GANHRI Sub-Committee on Accreditation General Observations, General Observation 1.8, pp. 22-23.

284 GANHRI Sub-Committee on Accreditation General Observations, General Observation 1.9, pp. 24-26.

285 Council of Europe Recommendation CM/Rec(2012)7 of the Committee of Ministers to Member States on the responsibility of public authorities for academic freedom and institutional autonomy, 20 June 2012, para 17.

freedom and institutional autonomy through funding schemes, whether the sources are public or private.”²⁸⁶ However, challenges exist in determining the extent to which government interference with funding is a breach of autonomy. The 1997 UNESCO Recommendation notes that “the funding of higher education is treated as a form of public investment the returns on which are, for the most part, necessarily long term, subject to government and public priorities”.²⁸⁷ The UN Committee on Economic, Social and Cultural Rights emphasises that “[g]iven the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability.” However, it continues “[w]hile there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.”²⁸⁸ In an interview for this report, CEU President and Rector, Michael Ignatieff, also underscored that while states can set the overall budgetary allocation for higher education, it is higher education institutions themselves that should exercise complete spending control.²⁸⁹

The European University Association (EUA) hosts a Public Funding Observatory on institutions in Europe and issues annual reports on public funding.²⁹⁰ The EUA’s 2017 Public Funding Observatory Report found that a number of European systems were at risk from cuts to public funding combined with increased student numbers.²⁹¹ While these types of trends may be generally concerning for higher education provision, what is more of interest for the present report is the use of funding to exercise restrictive control over a university.

There are several ways in which restrictions can be imposed through funding: reductions in funding (including ‘budgetary retaliation’ for academic activities), form of funding (whether block grants or line item), and conditionality on funding. As regards conditionality, the EUA 2011 scorecard found that within the countries covered:

[p]ublic funding is increasingly provided subject to conditions tied to its allocation or accompanied by growing accountability requirements. This has given public authorities more steering power over universities, which significantly contributes to reducing universities’ capacity to manage their own funds freely, and hence curtails their autonomy.²⁹²

The EUA Scorecard looks at 6 different areas of financial autonomy: length and type

286 Council of Europe Recommendation CM/Rec(2012)7, para 19.

287 1997 UNESCO Recommendation, para 10(d).

288 CESCR General Comment No. 13, para 40.

289 Interview with CEU President and Rector, Michael Ignatieff, 28 June 2018.

290 See, Thomas Estermann and Enora Bennetot Pruvot, *Financially Sustainable Universities II – European universities diversifying income streams*, European University Association, 2011. Bennetot Pruvot, Enora, Thomas Estermann and Veronika Kupriyanova, *Public Funding Observatory Report 2017*, European University Association 2017.

291 Enora Bennetot Pruvot, Thomas Estermann and Veronika Kupriyanova, *Public Funding Observatory Report 2017*, European University Association 2017.

292 *University Autonomy in Europe II 2011*, p. 10.

of public funding; capacity to keep surplus; capacity to borrow money; ability to own buildings; ability to charge tuition fees for national/EU students; and ability to charge tuition fees for non-EU students.²⁹³ As regards the form of funding, the 2011 study found a trend towards negotiated contracts between ministries and universities, with rights and responsibilities of the institution set out, but with the possibility of annual adjustments.²⁹⁴ In 2017, 16 out of 29 jurisdictions had no restrictions on the internal allocation of funding, with 9 having “limited or no possibility to shift funding across categories” and one having a line-item budget.²⁹⁵ Beiter et. al. in their study of thirty higher education systems in Europe contend that state funds should be provided by block grants, to give institutions freedom in deciding how to allocate funds, and that 11 systems had this requirement with another 17 accepting it in principle with minor restrictions.²⁹⁶ They argue that the current design of higher education funding in Europe “expect[ing] academics to perform so many administrative tasks...engaging ‘managers’ of various sorts ‘to control’ academics/teaching/research, by excluding academic staff from meaningful participation in decision-making, and by introducing ‘executive-style’ management”²⁹⁷ violates article 13 ICESCR in that states are not taking steps to the maximum of their available resources to make higher education progressively available to all.²⁹⁸

Several examples were found of governments exercising control over financial allocations. In Turkey, the government has considerable power over resource allocation for public universities. The budgets of public universities are assigned by specific Acts of Parliament and are line-itemized.²⁹⁹ According to Barblan, budgets are developed based on figures from previous years, and the Ministry of Finance and the State Planning Organization make most of the budget itemization decisions, while the Council on Higher Education only formally exercises resource allocation.³⁰⁰ Further, vacancies for faculty in public universities can only be created through parliamentary acts and require the approval of the Ministry of Finance and the General Directorate for Personnel of the Prime Minister.³⁰¹

In Venezuela, budgetary decisions rest with the government, and financial retaliation is reported to be common against autonomous universities. Budgetary decisions for

293 University Autonomy in Europe III – The Scorecard 2017, p. 21.

294 University Autonomy in Europe II 2011, p. 30.

295 University Autonomy in Europe III – The Scorecard 2017, p. 22.

296 Beiter, et. al, *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, pp. 308 - 309.

297 *Ibid.*, pp. 308, 337-338.

298 *Ibid.*, pp. 308 - 337.

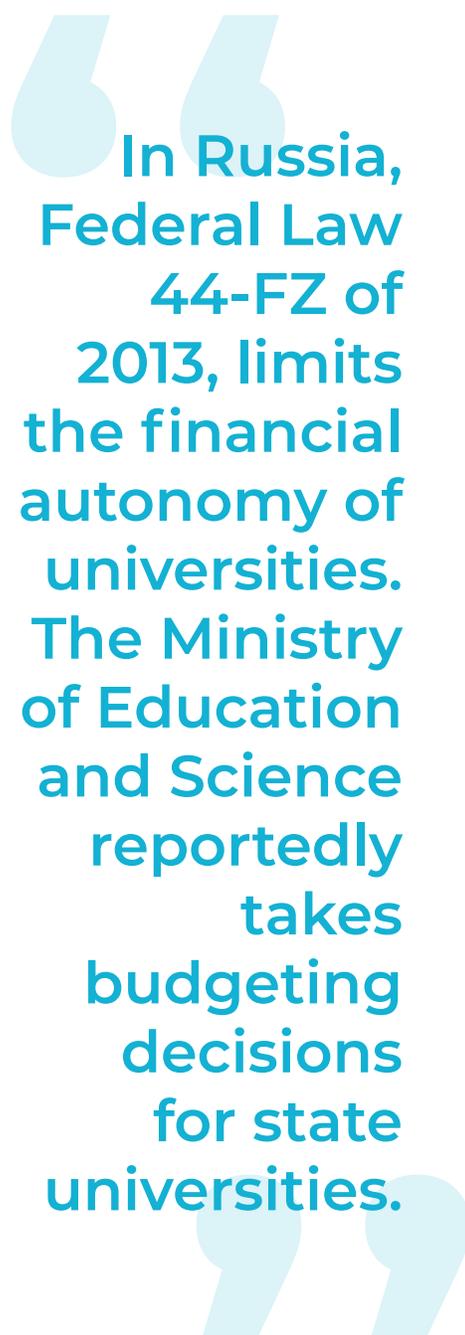
299 Julia Iwinska and Liviu Matei, ‘University Autonomy: A Practical Handbook’ (Central European University, Yehuda Elkana Center for Higher Education 2014) 47; Barblan et. al., *Higher Education in Turkey* (2008), above note 128, pp. 90-91.

300 Barblan et. al., *Higher Education in Turkey* (2008), above note 128, pp. 91.

301 *Ibid.*, pp. 90-92.

universities are centralized,³⁰² and limitations are established on requests for expenses beyond salaries and operational expenditures.³⁰³ Government subsidies provided to autonomous public universities in 2017 were “significantly below the annual inflation rate” and universities received considerably less than the amounts they requested.³⁰⁴ The remaining autonomous universities generally received 30-60% of the requested amount.³⁰⁵ The ability of universities to charge tuition fees as a source of income is also regulated by the state, which has reportedly resulted in the further deterioration of service provision at higher education institutions.³⁰⁶ Institutions need to apply to the government’s price control system with implications for staff mobility, the purchase of equipment, infrastructure investments and the availability of teaching materials.³⁰⁷ The salaries of university professors have been substantially reduced through state imposed “collective bargaining” for the higher education sector.³⁰⁸ As part of this, professors were denominated as “university workers”, two-thirds of whom earn less than the minimum wage.³⁰⁹

In Russia, Federal Law 44-FZ of 2013, limits the financial autonomy of universities.³¹⁰ The Ministry of Education and Science reportedly takes budgeting decisions for state universities. State resources, which comprise 70-80% of funding, are earmarked for particular budget lines in contrast to other types of income of higher education institutions, which can be allo-



In Russia, Federal Law 44-FZ of 2013, limits the financial autonomy of universities. The Ministry of Education and Science reportedly takes budgeting decisions for state universities.

302 Decree no. 40.836, January 26, 2016 centralized purchases for public universities. Available at <<http://www.finanzasdigital.com/wp-content/uploads/2016/01/Gaceta40836SistComprasPublicas.pdf>> accessed 24 November 2018; Human Rights Observatory of the University of Los Andes (2016), above note 187, 8, fn. 32.

303 Human Rights Observatory of the University of Los Andes (2016), above note 187, p. 8.

304 US State Department, 'Country Reports on Human Rights Practices: Zimbabwe 2017 Human Rights report (2017) [hereinafter, "US State Department Human Rights Report 2017"]'. See also, Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties', which notes that in Venezuela "in 2016, budget cuts and broader funding issues remained serious challenges that undermined universities' autonomy."

305 Human Rights Observatory of the University of Los Andes (2016), above note 187, p. 8.

306 Ibid., p. 8.

307 Ibid., p. 8-9.

308 Ibid., p. 9.

309 Ibid., p. 9.

310 European Commission Erasmus+, 'Overview of the Higher Education System: Russian Federation' (2017) 8.

cated by the institutions themselves.³¹¹ Private institutions in contrast, are “entitled to the same programme budget financing as public ones if they have a state license and accreditation. However, they are not entitled to budgetary allocations for construction, maintenance of facilities, supplies, etc.”³¹² Dubrovskiy found that one of the pretexts used for explaining the direct appointment of rectors of some Russian universities by the Russian President has been the control of state funds, with authorities arguing that public investments in universities need to be responsibly overseen by state appointed rectors.³¹³

Another example of a restrictive approach to funding is in Poland, where the EUA notes that although universities receive funding in block grants for teaching activities, funding for research is allocated directly to university faculties on the basis of a points system awarded for academic publications in peer-reviewed journals, and thus the institutions do not have the autonomy to allocate most of the funding for research among departments.³¹⁴ Dakowska argues that while this has enhanced performance-based financing for individual faculty, it has meant that universities have struggled to secure funding for research for departments.³¹⁵ Such restrictive approaches may impact the ability of universities to determine their own research agendas.

As regards the introduction of new financial control measures by a government, in Hungary, the introduction of the chancellor system³¹⁶ significantly restricted the ability of universities to control their own finances. The EUA revised its scoring on the financial autonomy of universities in Hungary in 2017 from “medium high” to “low”,³¹⁷ and observed:

The fact that the chancellor, appointed by the Prime Minister, has to approve all decisions with financial implications leaves, in effect, no capacity for the university to decide on internal funding allocation. Borrowing remains prohibited. Universities may keep surpluses but their use is also subject to the authorisation of the chancellor.³¹⁸

In addition to chancellors, in 2015 the Hungarian government introduced a new university governing body, the ‘*Konzisztórium*’, which supervises economic activity in addition

311 Ibid., 34.

312 Ibid., 10.

313 Dmitry Dubrovskiy, ‘Escape from Freedom. The Russian Academic Community and the Problem of Academic Rights and Freedoms’ (2017) *Interdisciplinary Political Studies*, Issue 3(1) 2017, pp. 187-188.

314 European University Association, *University Autonomy in Europe III* (2017), p. 146.

315 Dorota Dakowska, ‘Higher Education in Poland: Budgetary Constraints and International Aspirations’, in Jon Nixon ed., *Higher Education in Austerity Europe*, (2017) London: Bloomsbury Academic, pp. 4,5,10-11.

316 Act CCIV of 2011 on National Higher Education, III, Article 13/A, 2(a).

317 European University Association, ‘University Autonomy in Europe III’ (2017) pp. 90-93.

318 European University Association, ‘University Autonomy in Europe III’ (2017) pp. 90-91.

to setting broader strategic decisions for the institutions.³¹⁹ It consists of five members: the rector, the chancellor and the three external candidates appointed by the Minister for Human Resources. Taken together, four out of five of its members are directly appointed by the government, giving the government significant control. As the EUA notes, the chancellors and *Konzisztórium* together “oversee all decisions with financial implications.”³²⁰ The ‘*Konzisztórium*’, sets financial strategies and plans and approves financial reports, overseeing economic activity broadly, while the chancellors oversee and approve actual expenditures and individual spending decisions.³²¹ The Venice Commission found that the fourth amendment of the Fundamental Law in Hungary also restricted the financial autonomy of universities. In its opinion, the Venice Commission observed that the constitutional amendment created a basis for legislation on the organisation and supervision of financial management of higher education institutions.³²² Budgetary restrictions also include the earmarking of budgets in budgetary allocations for universities and restrictions on how they are used. As of 2017, funding allocated to universities were divided into categories without the possibility for universities to shift resources internally between these.³²³

Restrictive practices were also identified in Egypt and Malaysia. In Egypt, Lindsey found that in 2012, university budgets were “determined and managed in a highly centralized and inefficient manner by the Ministries of Education, Finance, and Planning and by university presidents.” Individual departments did not have independent budgets, and “must request funds for every extra expenditure...and have little power to change curricula, programs, or admissions standards”.³²⁴ In Malaysia, Chang-Da Wan found that public universities have “significant constraints on the types of income generating activities universities can initiate.”³²⁵ Universities cannot decide “how to allocate funds and research grants and need to strictly adhere to procurement and financial procedures laid out by the Ministry of Finance and Treasury.”³²⁶

A review of US State Department and Freedom House country reports from 2017 identifies that the limiting or placing of restrictions on funding for universities was also an issue in Ecuador, Israel and Oman. In Ecuador, the National Assembly passed legisla-

319 Eurydice, European Commission, 'Hungary: Management and Other Education Staff' (2018) <https://eacea.ec.europa.eu/national-policies/eurydice/content/management-staff-higher-education-29_pt-pt> accessed 24 November 2018.

320 University Autonomy in Europe III – The Scorecard 2017, p. 91.

321 Gergely Kováts, 'A kancellári rendszer bevezetése a magyar felsőoktatásban: Tapasztalatok és várakozások' ["The introduction of the chancellor system in Hungarian higher education: expectations and experiences"], Corvinius University Budapest, Center for International Higher Education Research (2016) <http://unipub.lib.uni-corvinus.hu/2205/1/NFKK_201601.pdf> accessed 24 November 2018, p. 14.

322 Venice Commission, 'Opinion 720/2013 on the Fourth Amendment to the Fundamental Law of Hungary, adopted at the 95th Plenary Session' (2013), p. 14.

323 University Autonomy in Europe III – The Scorecard 2017, p. 91.

324 Ursula Lindsey, 'Freedom and Reform at Egypt's Universities', (Carnegie Endowment for International Peace 2012), pp. 5-6.

325 Chang-Da Wan, 'The History of University Autonomy in Malaysia', (Institute for Democracy and Economic Affairs 2017), p. 17.

326 *Ibid.*, p. 17.

tion “eliminating public funding for research at universities that operated under international agreements [which] has the potential to undermine the sustainability of two graduate universities”, namely, Universidad Andina Simon Bolivar and FLACSO Ecuador.³²⁷ In Israel, conditionality was imposed on funding, with institutions receiving governmental funding reportedly prohibited in engaging in the commemoration of the *Nakba*, “a term used by Palestinians to refer to the displacement of Palestinians during Israel’s 1948 War of Independence”.³²⁸ In Oman, universities required a permit from the Ministry of Foreign Affairs to accept money for programmes and speakers from foreign diplomatic missions.³²⁹

Another example of restrictive funding practices arose during the preparation of this report. In June 2018, the Hungarian Government began targeting another academic institution, the Hungarian Academy of Social Sciences, Hungary’s largest scientific research institution. As per the budget law for 2019,³³⁰ (approved on 17 July 2018), the Ministry for Innovation and Technology will decide how to allocate 28 billion HUF (approximately \$72 million USD) out of the Academy’s total 40 billion HUF budget, whereas previously the allocation decision lay fully with the Academy.³³¹ The law will likely considerably weaken the Academy’s financial autonomy and consequently its autonomy and independence to decide what research projects to support.³³²

A challenge for determining repressive state practices in funding is that for state-funded institutions, the government retains a legitimate right to allocate resources for higher education from the national budget, and ensure proper financial practices, and there is no clear agreement across jurisdictions as to the scope of this right against the right of universities to have financial autonomy. Furthermore, while states may have a responsibility to establish and fund higher education generally, there is no right for individual universities to receive a specific portion of that funding. The approach taken to the autonomy of state-funded national human rights institutions (NHRI) may be instructive here. NHRIs should be provided sufficient funding to fulfil their mandate, have autonomy over the manner in which funds are used, and be accountable for the use of public monies to a national financial accountability mechanism³³³ (such as a parliamentary public accounts committee). The state does not get to dictate the manner in which an NHRI’s funds are used, as to do so would interfere with the independent operation of

327 Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’.

328 US State Department Human Rights Report 2017: Israel.

329 US State Department Human Rights Report 2017: Oman.

330 T/503. Bill on Hungary’s Central Budget for 2019. Official version from the Parliament’s website in Hungarian <<http://www.parlament.hu/irom41/00503/00503.pdf>> accessed 24 November 2018.

331 Hungarian Academy of Sciences, ‘Press release: The Academy stands by its independence and freedom of research’ (17 June 2018) <<http://mta.hu/english/the-academy-stands-by-its-independence-and-the-freedom-of-research-108816>> accessed 24 November 2018.

332 Dan Nolan, ‘Hungary’s unscientific swivel: First they came for the humanities and now Hungary’s government is after the sciences’ (2018) *Index on Censorship* Volume: 47 issue: 3, pp. 46-48 <<http://journals.sagepub.com/doi/full/10.1177/0306422018800258>> accessed 24 November 2018.

333 GANHRI Sub-Committee on Accreditation General Observations, General Observation 1.10, pp. 27-29.

the institution.³³⁴ Furthermore, funding via government ministries is not preferred, but rather, funding should come through a procedure where the institution receives a set amount from the national budget and not, for example, as part of an overall budgetary grant to a ministry, which may allow the ministry supervisory powers over expenditure. Where there is significant state interference to, including reductions in, budgets, the institution may lose its ‘independent’ classification.

In terms of university funding, it would appear that governmental control over how funds are used by universities, be it through direct decision making and control over the budget, or indirect through a governance model that has been or is at high risk of being co-opted by the government, is a significant threat to institutional autonomy. Severe reductions in budgets of specific institutions for reasons not in keeping with rule of law requirements would also raise questions of interference with autonomy. As will be seen further below, additional financial issues such as control over promotions and salaries, may also be used as measure of enhancing state control and restricting autonomy. Stakeholders should pay particular attention to funding changes given the substantial impact these have on the ability of an institution to function.

f. Restrictions on Faculty and Staffing

The extent of governmental interference in decisions on the appointment and dismissal of faculty, researchers and staff is also an important aspect of institutional autonomy. Nirmala Rao, Vice Chancellor of the Asian University for Women, Bangladesh, highlighted the impact this can have on individual academics:

when terms and appointments conditions of appointment and dismissal of staff remain in the hands of authorities, they can seriously curtail freedom. The freedom of an individual teacher to write, teach and research according to his or her consciousness depends in the last resort on him being safeguarded from dismissal, should one’s attitude and actions become displeasing to the university authorities.³³⁵

However, it can also impact the autonomy of the institution as a whole. The 1997 UNESCO Recommendation provides that “[w]orking conditions for higher-education teaching personnel should be such as will best promote effective teaching, scholarship, research and extension work.”³³⁶ As stated in the recommendation, “[a]ccess 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.”³³⁷ The recommendation also includes provisions on security of

334 GANHRI Sub-Committee on Accreditation General Observations, General Observation 1.10, pp. 27-29.

335 Nirmala Rao, ‘Academic Freedom in the UK, the Indian Subcontinent and Bangladesh’ in Michael Ignatieff and Stefan Roch (eds), *Academic Freedom: The Global Challenge*, Central European University Press, 2018, p. 42.

336 1997 UNESCO Recommendation, para 7.

337 1997 UNESCO Recommendation, para 25.

employment, noting that tenure “constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions”.³³⁸ One of the values of tenure is that 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”.³³⁹ As regards disciplinary procedures, it provides that:

No member of the academic community should be subject to discipline, including dismissal, except for just and sufficient cause demonstrable before an independent third-party hearing of peers, and/or before an impartial body such as arbitrators or the courts.³⁴⁰

Dismissal procedures require safeguards in accordance with the international standards set out in the appendix to the recommendation.³⁴¹ Dismissal should only be for “just and sufficient cause related to professional conduct”, with a right to appeal.³⁴²

The EUA’s *Scorecard* assessment of staffing autonomy looks at the ability of the university to decide on the recruitment processes, salaries, dismissals and promotions.³⁴³ As regards recruitment/hiring procedures, practice is widely varied among universities. The EUA found they ranged “from a large degree of independence in the recruitment of staff to formalised procedures that necessitate the approval of an external authority.”³⁴⁴ The majority of European jurisdictions (19) could recruit their own senior administrative staff, and 12 could freely recruit senior academic staff.³⁴⁵ Restrictions typically included; limitation on the number of posts, external recruitment or external confirmation.³⁴⁶ Senior administrative staff often had civil servant status.³⁴⁷ Of the remaining 10 jurisdictions, 4 re-



Tenure
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and against
arbitrary
decisions.

-1997 UNESCO Recommendation
concerning the Status of Higher-Education
Teaching Personnel

338 1997 UNESCO Recommendation, para 45.

339 1997 UNESCO Recommendation, para 46.

340 1997 UNESCO Recommendation, para 48.

341 1997 UNESCO Recommendation, para 49.

342 1997 UNESCO Recommendation, para 50.

343 University Autonomy in Europe III – The Scorecard 2017, p. 28.

344 University Autonomy in Europe III – The Scorecard 2017, p. 28.

345 University Autonomy in Europe III – The Scorecard 2017, p. 29.

346 University Autonomy in Europe III – The Scorecard 2017, p. 29.

347 University Autonomy in Europe III – The Scorecard 2017, p. 29.

quired recruitment to be externally confirmed, and 3 had the number of posts externally regulated.³⁴⁸ Most were not ‘entirely free’ to set salaries for faculty or staff.³⁴⁹ Universities were generally not free to set salaries.³⁵⁰

Beiter et. al. in their 2016 study of thirty higher education systems in Europe considered that “the law should lay down a minimum of detail regarding the academic positions available and the requirements for positions”, with no or minor restrictions on recruitment and promotion of academic staff and no requirement that professors be appointed or confirmed by the state.³⁵¹ They nonetheless found examples of state appointment, such as in France where university professors are appointed by the French President.³⁵² Related to this, they also found a mixed situation as regards the tenure and appointment of staff. The research identified varying levels of legal protection of tenure and dismissal.³⁵³ For example, the EUA found that professor appointments had to be confirmed by an external authority (i.e. a governmental body³⁵⁴) in Croatia, Hungary and Poland.³⁵⁵

However, particularly in countries where academics have the status of civil servants, such terms and conditions and restrictions on salaries, recruitment etc. can arguably fall within the scope of legitimate state engagement rather than governmental interference or repressive practices. Quinn and Levine identify where this line might be drawn:

More commonly, employment decisions which are intended to punish past academic content or conduct or to chill future academic content or conduct may manifest as based on other, permissible grounds such as lack of qualification, unprofessional or immoral behaviour, or financial or administrative discretion unrelated to the scholar’s conduct or views. Common examples might include:

- Denial of promotion or tenure to a junior professor according to a standard promotion schedule despite apparent satisfaction of all requirements, when the professor is known to publish views which are critical of state or university authorities.
- Firing or denial of contract renewal to a professor, despite professional qualification and quality, after his teaching or lectures angered political authorities.

348 EUA Scorecard II p. 39

349 EUA Scorecard II p. 41.

350 University Autonomy in Europe III – The Scorecard 2017, p. 29.

351 Beiter et. al., *Academic Freedom and its Protection in the Law of European States* (2016) above note 40, p. 309.

352 *Ibid.*, p. 309 citing Decree No. 84–431 of 1984.

353 Beiter et. al., *Academic Freedom and its Protection in the Law of European States* (2016) above note 40, pp. 320-327.

354 University Autonomy in Europe III – The Scorecard 2017 uses “external authority” for ministries and other types of governmental bodies. See the report’s terminology section, *Ibid.*, p. 9.

355 University Autonomy in Europe III – The Scorecard 2017, p. 29.

- Closing an entire department or faculty and discharging its academic staff in response to protesters outside the university objecting to the content of its research or teaching.³⁵⁶

Clearly, some of these restrictions may come through university authorities, rather than directly from the state, but this may nonetheless suggest a high level of state co-option of university authorities and operations.

In Hungary, the EUA noted that the Prime Minister-appointed chancellor now has control over staffing and that appointments of senior academics “are validated by the ministry and confirmed by the President of the Republic.”³⁵⁷ The power of chancellors also extends to promotions, as universities can only increase salaries with the approval of chancellors, given their financial implications.³⁵⁸ A pre-condition for employment as a college or university professor in Hungary is the awarding of this title by the Prime Minister (for college professors) and by the President of the Republic (for university professors).³⁵⁹ Without this title being awarded, academics cannot start employment as professors³⁶⁰ even if they are offered a position.

Other examples of restrictive staffing practices include in Turkey, where the Council for Higher Education allocates a number of vacancies to universities, after which universities may conduct their own recruitments.³⁶¹ As a result, the available number of academic positions in higher education institutions are softly regulated by an external authority (the Council) that comprises majority representation from state institutions. In Bosnia, the cantonal governments in Tuzla and Sarajevo reportedly passed laws following municipal elections in 2016, that give powers to elected municipal officials “to hire and fire university personnel including academics, at their discretion.”³⁶² In Vietnam, in 2008 it was reported that decisions on the promotion of faculty for public universities were controlled by the central government³⁶³, and remuneration for professors was based on seniority and political connections as opposed to merit.³⁶⁴ In Uzbekistan, a 2014 study found that the salaries of faculty and staff are based on regulations issued by the Cabinet of Ministers.³⁶⁵

356 Robert Quinn and Jesse Levine, 'Intellectual-HRDs and claims for academic freedom under human rights law', *The International Journal of Human Rights* (2014), 18:7-8, 898-920, p. 910.

357 University Autonomy in Europe III – The Scorecard 2017, p. 91.

358 University Autonomy in Europe III – The Scorecard 2017, p. 91.

359 Act CCIV of 2011 on National Higher Education, VIII, 15, Article 27/(3).

360 Eurydice, European Commission, 'Hungary: Management and Other Education Staff' (2018) <https://eacea.ec.europa.eu/national-policies/eurydice/content/management-staff-higher-education-29_pt-pt> accessed 24 November 2018.

361 Julia Iwinska and Liviu Matei, 'University Autonomy: A Practical Handbook' (Central European University, Yehuda Elkana Center for Higher Education 2014), p. 57.

362 US State Department Human Rights Report 2017: Bosnia and Herzegovina.

363 Martin Hayden and Lam Quang Thiep, 'Institutional autonomy for higher education in Vietnam (2007) *Higher Education Research & Development* 26:1, pp. 65-76.

364 Thomas J. Valley, 'Vietnamese Higher Education: Crisis and Response' (Ash Institute for Democratic Governance and Innovation, Harvard Kennedy School, 2008) pp. 3-4.

365 World Bank, Uzbekistan: Modernizing Tertiary Education, June 2014, p. 59.

US State Department and Freedom House reports 2017 indicate that appointments, promotions and dismissals on the basis of political or religious affiliation was an issue in a number of countries. In Azerbaijan, some professors were dismissed for being connected to opposition groups.³⁶⁶ In Bolivia³⁶⁷, and Bangladesh³⁶⁸ political affiliation and considerations reportedly influence academic appointments. In Cuba, Ethiopia, Equatorial Guinea, Nigeria, Egypt, Seychelles, Syria and Yemen, affiliation with and connections to the governing parties was needed, or was advantageous, for appointments and career advancement of faculty in universities.³⁶⁹ In Egypt, the Ministry of Education “began a campaign to remove all Muslim Brotherhood members from teaching positions,”³⁷⁰ and in Iran, the authorities removed faculty for their political or religious affiliation and activism.³⁷¹ In Kenya, ethnic considerations influenced university hiring, creating ethnic imbalances.³⁷² An additional staffing restriction may come from nationality requirements or discriminatory practices. For example, the UN Committee on Economic, Social and Cultural Rights criticised Turkmenistan in 2011 for its policy of “Turkmenization” which gave preference for persons of Turkmen origin.³⁷³ It is also worth noting here that a professor at the Russian University of Arkhangelsk was reportedly fired following the introduction of the anti-LGBT ‘homosexual propaganda’ law in Russia.³⁷⁴ As will be seen in section 4, below, instances of dismissal by university authorities for expression of opinions are also widespread.

Repressive state practices in academic hiring, as with many elements of institutional autonomy, may be challenging to identi-

366 US State Department Human Rights Report 2017: Azerbaijan.

367 US State Department Human Rights Report 2017: Bolivia.

368 US State Department Human Rights Report 2017: Bangladesh.

369 Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’; See also US State Department Human Rights Report 2017 reports for Cuba, Egypt, Ethiopia, Equatorial Guinea, Nigeria, Egypt, Seychelles, Syria, Yemen.

370 US State Department Human Rights Report 2017: Egypt 2017.

371 US State Department Human Rights Report 2017: Iran 2017.

372 Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’

373 Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Turkmenistan, 13 December 2011, para 8.

374 Civil Rights Defenders, ‘LGBT Human Rights Defender Fired from Russian University’ (2014) <<http://old.civilrightsdefenders.org/news/lgbt-human-rights-defender-fired-from-russian-university/>> accessed 24 November 2018.



In Cuba, Ethiopia, Equatorial Guinea, Nigeria, Egypt, Seychelles, Syria and Yemen, affiliation with and connections to the governing parties was needed, or was advantageous, for appointments and career advancement of faculty in universities.

fy. As seen in the EUA study, it is not uncommon for the state to have some involvement in academic hiring. This may particularly be the case in countries where academics are classed as civil servants. Looking again at the rules and practice of National Human Rights Institutions, staffing decisions are expected to be made by the institution itself, on the basis of a merits-based, open and transparent appointment procedure.³⁷⁵ Decisions on who to hire and dismissals rest with the institution, and due process rights – such as the right to appeal a dismissal to a competent independent body – should be included.³⁷⁶ Removing governmental interference from the selection and appointment process, and ensuring there is no government interference in dismissals, may assist universities in retaining sufficient autonomy in staffing matters and in upholding academic freedom. However, as seen above, restrictive staffing practices for higher education institutions may not be solely legislative or regulatory, but may be more subtle such as promotions on the basis of religious or political affiliation, or for not engaging in contentious topics. Infringements may also come from *within* the university itself though this may indicate a high level of government control over the institution. Finally, as has been seen, government co-option of universities may occur through the exercise of control over governance structures, leadership and staffing. Where this happens, and the university is for all intents and purposes ‘government run’, it cannot be designated as an autonomous institution.

375 GANHRI Sub-Committee on Accreditation General Observations, General Observation 2.4, pp. 39-40.

376 GANHRI Sub-Committee on Accreditation General Observations, General Observation 2.1, pp. 33-34.

RESTRICTIONS ON ACADEMIC ENGAGEMENT & FREE EXPRESSION

While the previous section focussed on institutional and governance restrictions, this section considers restrictions on substance, including academic freedom issues such as free speech or freedom of expression restrictions.

The 1997 UNESCO Recommendation defines the scope of academic freedom as:

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.³⁷⁷

Thus, academic freedom not only requires that academics be able to freely teach and research, but also to express their opinions, and be free from institutional censorship or fear of state repression. The state has a duty to create a conducive environment in which these rights can be exercised. As will be seen below, however, restrictions on academics in exercising this right are widespread. As discussed above, academic freedom is usually classed as an individual right, and the nature of the connection between academic freedom and institutional autonomy is a topic much debated among scholars in the field.³⁷⁸ What can be said is that given that autonomy includes the self-governance

³⁷⁷ 1997 UNESCO Recommendation, para 27.

³⁷⁸ See for example, Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua, 'Yearning to belong: finding a "home" for the right to academic freedom in the U.N. human rights covenants', *Intercultural Hum. Rts. L. Rev.* 107 (2016). See also on this Vrieling, J, Lemmens, P, Parmentier, S and the LERU Working Group on Human Rights, *Academic Freedom as a Fundamental Right*, *Procedia Social and Behavioural Sciences* 13 (2011) 117-141.

necessary for effective decision-making in relation to higher education institutions' academic work,³⁷⁹ restrictions on the ability of academics to freely teach and research will impact on the ability of the institution to function autonomously and thus are clearly of concern in any examination of institutional autonomy.

a. Restrictions on Expression of Views

Academics are entitled to the right to freedom of expression in the same way as any other individual. Academics “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.”³⁸⁰ They are also additionally entitled to express their views freely because of their position as academics. As the 1997 UNESCO Recommendation notes, this is fundamental to the very existence of universities: “Institutions of higher education, and more particularly universities, are communities of scholars preserving, disseminating and expressing freely their opinions on traditional knowledge and culture, and pursuing new knowledge without constriction by prescribed doctrines.”³⁸¹

Repressive practices were found in a number of countries where academics expressed their views in the context of their work. In Turkey, as will be discussed further in section 6, below, faculty have faced far-reaching consequences for expressing their views and opinion on politically contested issues. A 2016 petition entitled “Academics for Peace” called on the government to “create a road map that would lead to a lasting peace which includes the demands of the Kurdish political movement.”³⁸² Approximately one-third of the 1,128 original signatories to the petition were targeted for dismissal, which Amnesty International describes as being “part of a government campaign against them, which has included public condemnation, branding them terrorists, and criminal investigations and prosecutions”³⁸³. Turkish universities initiated disciplinary measures “under the direction of the Higher Education Council (YÖK)” against scholars who signed the petition, many of who were “suspended, dismissed, forced to retire, or otherwise denied work.”³⁸⁴ In one of the most notable cases involving petition signatories, authorities issued arrest warrants for four scholars who gave a press conference on 10th March 2016, reaffirming their commitment to the petition and challenging the state’s response.³⁸⁵ These free speech restrictions in Turkey are part of a broader governmental effort in curtailing academic

379 CESCR General Comment No. 13, para. 40.

380 1997 UNESCO Recommendation, para 26.

381 1997 UNESCO Recommendation, para 4.

382 Amnesty International, ‘No End in Sight: Public Sector Workers Denied a Future in Turkey’ (2017) 11.

383 Amnesty International, ‘Press release: Detention of academics intensifies crackdown on freedom of expression’ (2016) 15 January <<https://www.amnesty.org/en/press-releases/2016/01/turkey-detention-of-academics-intensifies-crackdown-on-freedom-of-expression/>> accessed 24 November 2018.

384 Scholars at Risk, ‘Free to Think: Report of the Scholars at Risk Academic Monitoring Project’ (2016), p. 10.

385 *Ibid.*, pp. 10-11. According to Amnesty International, “[b]y the end of April 2017, 372 signatories to the petition had been dismissed from their positions as academics under [a series of] decrees”. Amnesty International, ‘No End in Sight: Public Sector Workers Denied a Future in Turkey’ (2017), p. 11.

freedom (and fundamental freedoms in general). By 31 August 2017, “a total of 5,717 academics from 117 universities had been dismissed since the 2016 attempted coup under state of emergency decrees”.³⁸⁶ Repercussions for these academics extend beyond the loss of jobs. Pension rights and the inability to work again in public service are also issues, as according to Amnesty International, the decrees firing faculty often state that “they are expelled from all forms of public service...[and] in many cases this means that dismissed people are effectively banned from continuing their professions.”³⁸⁷ Dismissed scholars in Turkey are also not allowed to work in private higher education institutions. Although it should be noted that private universities in Turkey are still regarded as “public service” institutions, as they have the same status as foundations and are also regulated by the Council of Higher Education.³⁸⁸ Law no. 7145 of 31 July 2018, made some modification to the ability of academics to be reemployed, providing that academics who were dismissed during the state of emergency period could apply for reinstatement individually. However, this could only be outside the universities where they were originally employed and outside Ankara, Istanbul and Izmir; the three largest cities in the country.³⁸⁹ The law’s application is expected to be monitored by Turkey’s Science Academy.³⁹⁰

While the post-2016 crackdown shows excessive repressive practices by the state, limitations on free expression for faculty in Turkey existed before the 2016 coup attempt, and included restrictions set out in the Constitution. As Seggie and Gökbel note, Article 130 of the 1981 Constitution provides that universities and teaching staff “may freely engage in all kinds of scientific research and publication” but this “shall not include the liberty to engage in activities against the existence and independence of the State, and against the integrity and indivisibility of the nation and the country.”³⁹¹ In addition, even in the 2000s “many academic conferences and campaigns were deemed politically motivated or declared non-scientific by HEC [the Council of Higher Education].”³⁹² There were also restrictions on the freedom of faculty to speak to the media, with the addition of a clause in Article 6 of the Disciplinary Procedure for Administrators, Faculty, and Academic Staff in Higher Education Institutions providing that “[w]ith the exception of academic discussions and remarks, giving information or issuing statements by faculty members to the press, news agencies or radio and televisions on official matters without permission requires a disciplinary punishment.”³⁹³

386 US State Department Human Rights Report 2017: Turkey.

387 Amnesty International, ‘No End in Sight: Public Sector Workers Denied a Future in Turkey’ (2017), p. 13.

388 *Ibid.*, p. 14.

389 Bilim Akademisi [The Science Academy in Turkey], ‘The Science Academy Report on Academic Freedoms: 2017-18’ <<https://en.bilimakademisi.org/wp-content/uploads/2018/11/academic-freedoms-report-2017-18-en-science-academy-turkey.pdf>> accessed 25 November 2018, pp. 10-11.

390 The Times Higher Education, ‘Turkey’s reinstated academics face internal exile’ (21 November 2018) <<https://www.timeshighereducation.com/news/turkeys-reinstated-academics-face-internal-exile>> accessed 25 November 2018.

391 Fatma Nevra Seggie and Veysel Gökbel, ‘From Past to Present: Academic Freedom in Turkey’, (SETA, Foundation for Political, Economic and Social Research 2015), p. 22.

392 *Ibid.*, p. 22.

393 *Ibid.*, pp. 22-23.

In Venezuela, academics can be also prosecuted for publishing materials critical of the government's policies. For example, in February 2017 the Prosecutor's Office charged a faculty of the University of Carabobo, Santiago Guevara, who was arrested by the Directorate of Military Counter-intelligence and tried in a military court with a charge of treason after publishing opinion articles on the country's economic crisis.³⁹⁴ Other examples of restrictive practices against academics for the expression of their views included in Cuba, where "[s]everal university professors, researchers, and students reported they were forced from their positions, demoted, or expelled for expressing ideas or opinions outside of government-accepted norms."³⁹⁵ In Poland, the government was reported to have "attempted to silence academics whose work challenged PiS's preferred historical narrative [with a focus on the Holocaust]."³⁹⁶ The law was later referred to the country's Constitutional Court. It originally criminalized the use of the words "Polish death camps" in the context of the Holocaust, and has been criticized for censoring free discussion among historians. While the bill reportedly allows debate for academic research, scholars argued that it would 'freeze' research and the public discussion of the topic.³⁹⁷ Following international pressure, this law has been amended to change the attributing of crimes during Nazi occupation to Poland from a criminal offence to a civil offence.³⁹⁸

Repressive measures may not always come directly from the government, but can come from the university itself. Although the focus of this report is on state practices, where a university is censoring its own academics for views critical of the state, it can indicate that the institution is not autonomous, and that there

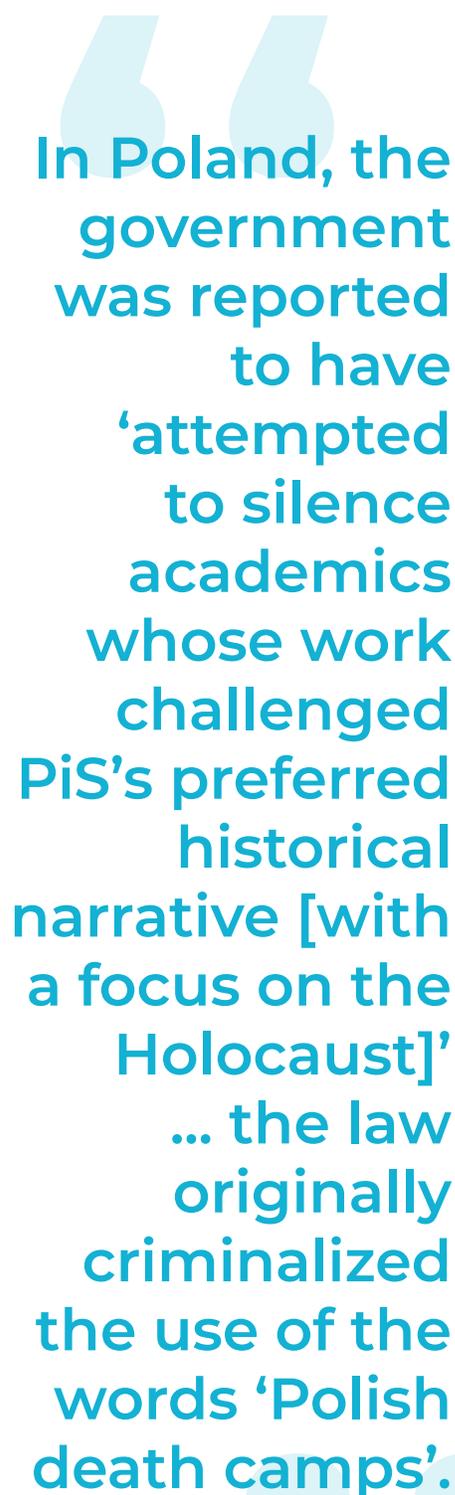
394 Inter American Commission on Human Rights (IACHR), 'Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report (2017) 165.

395 US State Department Human Rights Report 2017: Cuba.

396 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'.

397 See for example Times Higher Education, 'Historians fear 'censorship' under Poland's Holocaust law' (21 February 2018) <<https://www.timeshighereducation.com/news/historians-fear-censorship-under-polands-holocaust-law>> accessed 24 November 2018.

398 BBC News, 'Poland Holocaust law: Government U-turn on jail threat' (27 June 2018) <<https://www.bbc.com/news/world-europe-44627129>> accessed 24 November 2018; The Times of Israel, 'Does the Israeli-Polish Holocaust law agreement defend truth or betray history?' (4 July 2018) <<https://www.timesofisrael.com/does-the-israeli-polish-holocaust-law-agreement-defend-truth-or-betray-history/>> accessed 24 November 2018; Haaretz, 'Polish Holocaust Law Was Revised Due to U.S. Pressure, Report Says' (28 June 2018), <<https://www.haaretz.com/us-news/polish-holocaust-law-was-revised-due-to-u-s-pressure-report-says-1.6221289>> accessed 24 November 2018.



In Poland, the government was reported to have 'attempted to silence academics whose work challenged PiS's preferred historical narrative [with a focus on the Holocaust]' ... the law originally criminalized the use of the words 'Polish death camps'.

may be the absence of an enabling environment for academic freedom and institutional autonomy in the country. In Hungary, after the awarding by the University of Debrecen of the title of “honorary citizen” to Russian President Vladimir Putin, several professors and departments publicly criticized the university’s decision. Following this, the media reported that the university rector was conducting an inquiry into departments that publicly criticized the decision (no further update was available at time of writing).³⁹⁹

In Hong Kong, Carrico notes that university professors critical of the Chinese government can face retribution from university authorities. In 2015, following protests in Hong Kong on autonomy, the President of Lingnan University reportedly advised a professor who vocally spoke in favour of autonomy from China that his words “crossed the line of freedom of speech”, after which his contract was not renewed with the university.⁴⁰⁰ Professors were also fired following reports from students of ‘politically inappropriate’ comments.⁴⁰¹ Monitoring of academic views expressed in classrooms through CCTV was also reported.⁴⁰² Free speech restrictions allegedly also come in the form blocked promotions for faculty on political grounds in Hong Kong.⁴⁰³

In Bahrain, Education International, a global network of teachers unions, reported that in 2012 the University of Bahrain “dismissed at least 117 of its academic staff and expelled more than 400 students for participating in demonstrations against the government or posting related links on social media sites.”⁴⁰⁴ In Turkey, professors reported they faced “censure from their employers if they spoke or wrote on topics not acceptable to academic management or the government.”⁴⁰⁵ In the UK in 2014, the University of Leeds used its social media policies to ask a lecturer who publicly criticised the Home Secretary to remove her posts from social media, arguing that this was needed as her institutional affiliation was noted on the social media website. However, the university was reported to have reversed its request.⁴⁰⁶ In some countries restrictions were imposed on who academics could meet. In Zimbabwe, state-run universities “frequently cancelled scheduled events organized by foreign embassies.”⁴⁰⁷ In Oman, foreign diplomats were allegedly barred from interacting with students at a college fair,⁴⁰⁸ and in Uzbekistan, some univer-

399 US State Department Human Rights Report 2017: Hungary.

400 Kevin Carrico, ‘Academic Freedom in Hong Kong since 2015: Between Two Systems’ (Hong Kong Watch 2018) p. 5.

401 University World News, ‘University teachers fired on say of student informants’ (15 June 2018) <<http://www.universityworldnews.com/article.php?story=20180615170735269>> accessed 24 November 2018.

402 University World News, ‘Rights fears over spread of cameras in lecture halls’, 13 October 2016 <<http://www.universityworldnews.com/article.php?story=20161013205513755>> accessed 24 November 2018.

403 Kevin Carrico, ‘Academic Freedom in Hong Kong since 2015: Between Two Systems’ (Hong Kong Watch 2018) p. 5.

404 Education International, ‘Bahrain: Academic freedom under threat’ (26 March 2012) <<https://www.ei-ie.org/en/detail/1832/bahrain-academic-freedom-under-threat>> accessed 24 November 2018.

405 US State Department Human Rights Report 2017: Turkey.

406 Times Higher Education, ‘University of Leeds lectures legal scholar over ‘political’ tweets’ (21 August 2014) <<https://www.timeshighereducation.com/news/university-of-leeds-lectures-legal-scholar-over-political-tweets/2015272.article>> accessed 24 November 2018.

407 US State Department Human Rights Report 2017: Zimbabwe.

408 US State Department Human Rights Report 2017: Oman.

sity administrators reportedly pressure professors not to participate in conferences with diplomatic mission involvement.⁴⁰⁹

A review of the US State Department Human Rights Country Reports and Freedom House Reports for 2017, identifies restrictions on expression of views by academics in a number of other countries. In Uganda, faculty need to “obtain permissions to hold public meetings in universities.”⁴¹⁰ In Zimbabwe, the government restricted those critical of the ruling party or the President from using cultural platforms.⁴¹¹ In Ukraine, a research centre was searched and investigated for expressing views that diverted from the governments’ on resolving the conflict in Crimea.⁴¹² In Israel, the Education Minister “presented a new draft code of ethics to prevent academics from engaging in political activity, defined as supporting or opposing a party, political figure, or position on a topic.”⁴¹³ In Rwanda, authorities “often prevented the publication of studies that cast the government in a negative light.”⁴¹⁴ In Tajikistan academics feared retribution from censorship reviews if they wrote about certain topics.⁴¹⁵ In Vietnam, professors “must refrain from criticizing government policies and adhere to party views when teaching or writing on political topics.”⁴¹⁶ In Saudi Arabia public universities are not allowed to host meetings with foreign academics without government permission.⁴¹⁷ In Brunei, “quasi-governmental authorities must approve public lectures, academic conferences and visiting scholars.”⁴¹⁸

In Ukraine, there were reports from 2015 that special commissions were set up at universities with the aim to uncover “potential separatist attitudes in faculties.” Reportedly, if these commissions identified such “attitudes”, they informed the Ministry of Education and the faculty in question can be dismissed.⁴¹⁹

b. Restrictions on Research and Discussion on Specific Topics

Closely connected to the above are restrictions on research on particular topics. In this regard, the 1997 UNESCO Recommendation provides that faculty should be able to access libraries and online material without censorship,⁴²⁰ freely publish and disseminate

409 US State Department Human Rights Report 2017: Uzbekistan.

410 Freedom House, *Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties (2017)* (Hereinafter, Freedom House Report 2017).

411 US State Department Human Rights Report 2017: Zimbabwe.

412 US State Department Human Rights Report 2017: Ukraine.

413 US State Department Human Rights Report 2017: Israel.

414 US State Department Human Rights Report 2017: Rwanda.

415 US State Department Human Rights Report 2017: Tajikistan.

416 Freedom House Report 2017.

417 US State Department Human Rights Report 2017: Saudi Arabia.

418 US State Department Human Rights Report 2017: Brunei.

419 Tatyana Malyarenko, ‘Universities under fire in Ukraine’s war’ (*Index on Censorship* 2015), p. 2.

420 1997 UNESCO Recommendation, para 11.

their research and have adequate intellectual property protections,⁴²¹ be able to participate in international gatherings, and communicate and collaborate widely.⁴²² As noted above, limitations in these areas do not just impact on individual academics, they impact on the ability of the institution to operate as an autonomous centre of learning.

Reviewing the 2017 US State Department and Freedom House reports, restrictions on research were identified in 12 countries. In Bangladesh, authorities discouraged research on certain topics and government approval was needed for some historical publications.⁴²³ In Brunei, “religious authorities reviewed publications to verify compliance with social norms”, and a censorship board composed of governmental officials were reported to censor cultural activities.⁴²⁴ In China, academic censorship was reported to be on the rise and academics who criticized the Chinese Communist Party policies faced reprisals.⁴²⁵ In Cuba, access to libraries was restricted through a government sanctioned registration system.⁴²⁶ In Swaziland, political research documents could only be obtained on special request.⁴²⁷ In Nigeria, academics reported “occasional denial of permission to conduct research” on certain political and human rights topics.⁴²⁸ In Egypt, the Ministry of Higher Education required private universities to ensure that their research papers “do not insult societies or individuals.”⁴²⁹ In Turkmenistan, the government similarly “curtailed research in areas it considered politically sensitive.”⁴³⁰ In Qatar, authorities reportedly censored books.⁴³¹ At an extreme end of censorship of research and material, in Somalia, the Puntland administration required state issued permits for conducting academic research,⁴³² while in Jordan, academics reported that the university administration needs to approve all research papers, forums and materials.⁴³³ In the United Arab Emirates, government permits are required for conferences.⁴³⁴

In Hungary, after funding allocation decisions had been partially taken away from the Hungarian Academy of Sciences (and given to a Ministry, as discussed above in the

421 Ibid., para 12.

422 Ibid., para 13.

423 US State Department Human Rights Report 2017: Bangladesh.

424 US State Department Human Rights Report 2017: Brunei.

425 US State Department Human Rights Report 2017: China.

426 US State Department Human Rights Report 2017: Cuba.

427 US State Department Human Rights Report 2017: Swaziland.

428 US State Department Human Rights Report 2017: Rwanda.

429 US State Department Human Rights Report 2017: Egypt. Human Rights Watch reported in 2005 that restrictions on faculty included limitations on conducting research through controlling permits for statistical research, requiring researchers who want to conduct surveys or large numbers of interviews to apply to the Central Agency for Public Mobilization and Statistics (CAPMAS) for a permit at that time. Human Rights Watch 'Reading between the Red Lines: The Repression of Academic Freedom in Egyptian Universities' (2005) 46-49.

430 US State Department Human Rights Report 2017: Turkmenistan.

431 US State Department Human Rights Report 2017: Qatar.

432 US State Department Human Rights Report 2017: Somalia.

433 US State Department Human Rights Report 2017: Jordan.

434 US State Department Human Rights Report 2017: United Arab Emirates.

“Changes to financial conditions” section), two open lectures were cancelled by the Academy’s leadership citing political reasons. The Deputy Secretary of the Academy informed two lecturers who would have publicly presented on “The success and role of men and women in IT based on big data” and “The legal side of social media” on the Day of Hungarian Science, that the lectures been cancelled because “they have political considerations” and the former also has “gender thematical implications”.⁴³⁵ Closely related to the imposition of limitations on research on specific topics is the environment created by the government to support both academics and universities. As Altbach found, in some countries informal bans exist on some research topics such as certain religious issues and local corruption.⁴³⁶ This will be considered further, below. What can be said here is that government restriction of academics and universities in what they research and publish goes against the very purpose of academic freedom and institutional autonomy.

c. Restrictions on Academic Programmes, Curricula and Teaching

State interference in and restrictions on academic programmes, curriculum and teaching represent a crossover between issues that impact individual academics and those that impact the university as a whole. In relation to academics, the UNESCO 1997 Recommendation provides that:

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.⁴³⁷

As a principle of university self-governance, the ability of an institution to select its academic programmes is fundamental. The EUA include two criteria related to this in their definition of academic autonomy: the ability to introduce programmes, and the ability to design content of degree programmes. It found a mixed picture, with most new bachelor’s programmes requiring “some sort of approval”.⁴³⁸ However, the majority of European universities examined (26) had the capacity to design academic content,

435 Qubit, ‘A Magyar Tudomány Ünnepe: Betiltott két Előadást a Magyar Tudományos Akadémia Vezetése.’ [“Day of Hungarian Science: Two lectures are forbidden by the leadership of the Hungarian Academy of Sciences”] (2 October 2018) <<https://qubit.hu/2018/10/02/a-magyar-tudomany-unnepe-betiltott-ket-eloadast-a-magyar-tudomanyos-akademia-vezetese>> accessed 24 November 2018.

436 Philip G. Altbach, Academic freedom: International realities and challenges, *Higher Education* 41: 205–219, 2001, p. 213.

437 1997 UNESCO Recommendation, para 28.

438 University Autonomy in Europe III – The Scorecard 2017, p. 36.

with three (Italy, Latvia, Lithuania) having some form of restrictions from the state.⁴³⁹

In Hungary, at time of writing, the Prime Minister's office announced that it would no longer finance or accredit gender studies higher education programmes. Two gender studies programmes were run in Hungary, one at the public Eötvös Loránd University (ELTE) and one at the private Central European University (the latter issuing dual degrees accredited in the United States and Hungary). Following the announcement, ELTE abruptly suspended its gender studies programme and CEU will no longer be able to issue a Hungarian degree for its programme. CEU and ELTE were not consulted on these measures in advance and were given less than 24 hours to respond to the proposal under which an EU Member State government unilaterally barred universities from issuing degrees in a particular subject.⁴⁴⁰

In Venezuela, autonomous public and private universities are constrained by the state in the creation of new academic programs. Since 2010, the National Council of Universities has not authorized the opening of new academic programs in autonomous public and private universities. In contrast, more than 12 programs offering "new careers" were created in the non-autonomous parallel university system since 2012, mentioned above.⁴⁴¹ In Nigeria, a governmental body, the National University Commission reportedly "retains the power to approve or disapprove academic programmes of universities."⁴⁴²

There is also evidence of state interference through requirements to teach certain subjects imposed by governments. In Turkey, Articles 4 and 5 of the (1981) Higher Education Law 2547 describe specific principles and values⁴⁴³ that universities should promote for students.⁴⁴⁴ In particular, Article 4/a provided that "[t]he aims of higher education is to educate students so that they 1) will be loyal to Atatürk nationalism and to Atatürk's reforms and principles...2) will be in accord with the national, ethnical, human spiritual and cultural values of the Turkish Nation and conscious of the privilege of being a Turk...4) will be conscious of their duties and responsibilities towards their country and act accordingly..."⁴⁴⁵ Similarly, Article 5(a) requires that "[h]igher education is organized, planned and programmed in accordance with the following basic principles: a) To ensure that students develop a sense of duty in line with Atatürk's reforms and principles, loyal to Atatürk nationalism."⁴⁴⁶

439 Ibid., p. 39.

440 Science Business, 'Hungary's plan to ban gender studies sparks international backlash', (22 August 2018) <<https://sciencebusiness.net/news/hungarys-plan-ban-gender-studies-sparks-international-backlash>> accessed 24 November 2018; Reuters, 'Hungary to stop financing gender studies courses: PM aide' (14 August 2018) <<https://www.reuters.com/article/us-hungary-government-education/hungary-to-stop-financing-gender-studies-courses-pm-aide-idUSKBN1KZ1M0>> accessed 24 November 2018.

441 Human Rights Observatory of the University of Los Andes (2016), above note 187, p. 5.

442 Akpan Kufre Paul and Dr. Glory Amadi, 'University autonomy and academic freedom in Nigeria: A theoretical overview (*International Journal of Academic Research and Development* 2017) Vol. 2, p. 542.

443 See for example, Article 4/a of the (1981) Higher Education Law 2547.

444 Seggie and Gökbel, 'From Past to Present: Academic Freedom in Turkey', above note 391, p. 21.

445 The Council of Higher Education (Turkey), 'The Law on Higher Education' (Ankara University 2000) 5.

446 Ibid., 6; See, Human Rights Watch, 'Background Briefing: Academic Freedom in Higher Education in Turkey, (2004) <<https://www.hrw.org/legacy/backgrounder/eca/turkey/2004/5.htm>> accessed 24 November 2018.

Compulsory programs are a requirement in Venezuela. A 2008 Presidential decree created the “National Program for Higher Education” (*Programas Nacionales de Formación en Educación Superior*)⁴⁴⁷, which was “conceived under the direct supervision of the Ministry for University Education” with the purpose of advancing the “Simon Bolívar National Project”.⁴⁴⁸ According to Hocevar, professors and students must “submit to the Bolivarian revolutionary credo under threat of being expelled”.⁴⁴⁹ Researchers noted that “[o]ffices and class-rooms in university buildings are filled with political propaganda and slogans of the type: ‘Educating for Socialism’; ‘Our homeland, Venezuela, needs patriots, we have had enough betrayers.’”⁴⁵⁰ Other examples of state promoted courses include Uganda, where university students are encouraged to take political education and military science courses.⁴⁵¹ In China, undergraduate students are required to complete state-sanctioned political ideology courses,⁴⁵² and in Cuba the government-controlled curricula in all universities includes reinforcing “revolutionary ideology”.⁴⁵³ In Belarus, the US State Department Report 2017 found that education institutions had to teach official state ideology and use government sanctioned textbooks.⁴⁵⁴

There is also evidence of government-required approval for curricula and materials. In Turkey, the Council of Higher Education approves all university courses that are taught in a language other than Turkish,⁴⁵⁵ which leaves the majority state-led body with powers to constrain non-Turkish university courses. Restrictions in the teaching of particular subjects can also come in the form of criticism of textbooks by the Council of

447 República Bolivariana De Venezuela, Ministerio Del Poder Popular Para La Educación Superior, Despacho Del Ministro, Resolución N° 2963, Caracas, 13 mayo 2008 Años 198° y 149° <http://apps.ucab.edu.ve/nap/recursos/PNF-Resolucion_2963%20del%2013-05-2008.pdf> Accessed 24 November 2018.

448 Hocevar et. al., Threats to Academic Freedom in Venezuela (2017) above note 184, p. 157.

449 Ibid., p. 162.

450 Hocevar et. al., Threats to Academic Freedom in Venezuela (2017) above note 184, p. 162.

451 US State Department Human Rights Report 2017: Uganda.

452 US State Department Human Rights Report 2017: China.

453 Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’;

US State Department Human Rights Report 2017: Cuba.

454 US State Department Human Rights Report 2017: Belarus.

455 Julia Iwinska and Liviu Matei, ‘University Autonomy: A Practical Handbook’ (Central European University, Yehuda Elkana Center for Higher Education 2014) 42.



In China, undergraduate students are required to complete state-sanctioned political ideology courses, and in Cuba the government-controlled curricula in all universities includes reinforcing ‘revolutionary ideology’.



Higher Education, as the state body that inspects them. In one example, the Council labelled the *Turkish Revolution History* textbook published by Afyon Kocatepe University as “objectionable and unsuitable for being taught in universities.”⁴⁵⁶ In Egypt, a 2005 Human Rights Watch report found that at that time course instruction materials were reviewed by a censor’s office, posing a significant restriction on the freedom of faculty to choose what materials they used for the teaching of subjects in that period.⁴⁵⁷ More recently, part of the functions of Egypt’s Supreme Council to Combat Terrorism and Extremism will reportedly involve the “amending” of curriculums to “spread ideas of citizenship and tolerance in schools and universities.”⁴⁵⁸ It remains to be seen what impact the newly established Council will have on restricting the teaching of certain subjects.

A 2014 study of higher education in Uzbekistan found that curricula were centrally approved as were grading structures, and 95% of all subjects were mandatory.⁴⁵⁹ Authorities reportedly also sometimes required department heads to get approval for lectures.⁴⁶⁰ In Myanmar, the 2014 National Education Law prohibited ethnic language education at some universities.⁴⁶¹ Curricula restrictions were also identified in a number of additional countries in the 2017 US State Department and Freedom House reports. In Ethiopia, private universities are not allowed to offer degree programs in law and teacher education,⁴⁶² and in Iran, social sciences and humanities curricula are restricted by the state.⁴⁶³ In Saudi Arabia, a ban prohibits the teaching of secular philosophy and religions other than Islam.⁴⁶⁴ In Thailand, the government controls curricula and events regarded as politically sensitive, which are subject to permission by the authorities.⁴⁶⁵

Governmental interference in the content of curricula may pose a significant threat to the freedom of both the university, and academics, to operate freely. This includes mandatory ideological or political courses that aim at indoctrination rather than education. Related to this is the ability of the university to decide on their own internal academic structures. The EUA found that in 2017, a majority (20 out of 29) European jurisdictions surveyed had this ability, whereas 4 were subject to legal guidelines and 4 others had to follow

456 Seggie and Gökbel, 'From Past to Present: Academic Freedom in Turkey', above note 391, pp. 23-25.

457 Human Rights Watch, 'Reading between the Red Lines: The Repression of Academic Freedom in Egyptian Universities' (2005) 36: "Law No. 20/1936 requires that all imported printed material, including course books, be reviewed by the censor's office", under which law "the Ministry of Information screens all imported books and periodicals."

458 Al Bawaba, 'News article: Egypt Establishes Supreme Council to Combat Terrorism and Extremism' (April 26 2018) <<https://www.albawaba.com/editorchoice/egypt-establishes-supreme-council-combat-terrorism-and-extremism-1122874>> accessed 24 November 2018.

459 World Bank, Uzbekistan: Modernizing Tertiary Education, June 2014, p. 59.

460 US State Department Human Rights Report 2017: Uzbekistan 2017.

461 Global Coalition to Protect Education from Attack, 'Education Under Attack' (2018) p. 176.

462 US State Department Human Rights Report 2017: Ethiopia 2017.

463 US State Department Human Rights Report 2017: Iran 2017.

464 US State Department Human Rights Report 2017: Saudi Arabia 2017.

465 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'; US State Department Human Rights Report 2017: Thailand.

structures listed in the law.⁴⁶⁶ Beiter et. al. in their study of 30 higher education systems in Europe argue that the state should not be required to or able to create a department or institute within an institution (though it may encourage and promote certain developments).⁴⁶⁷ No other examples were found in the research done for this report. However, it is a factor that should be considered when examining the ability of a higher education institution to function autonomously as regards its academic offerings.

d. Mandatory Training for Faculty

Related to the above as regards mandatory courses for students, it may also be noted that in Venezuela, the state exerts control over higher education teacher training policies and programs. Specifically, Articles 37 and 38 of the 2009 Organic Law on Education assigns “the design and control of training policies and programs for university teachers to the executive power. The so-called System of Continuing Education of University Professors, issued by the MES [Ministry of Higher Education] in June 2015, which is applicable to all universities in the country, is based on these articles.”⁴⁶⁸ According to the Human Rights Observatory, this training system for university professors was founded by the government-created Ministry responsible for higher education, the Ministry of Popular Power for Higher Education, Science and Technology (*Ministerio del Poder Popular Para La Educación Universitaria, Ciencia y Tecnología*), and is designed to support higher education institutions in adopting state-sanctioned socialist ideological frameworks.⁴⁶⁹

e. Travel Restrictions

Restrictions on the travel of university faculty constrain the freedom of movement of academics, their freedom of expression, and breach principles of collaboration and sharing of scientific knowledge provided for in international standards. For example, the 1997 UNESCO Recommendation provides that “[p]rogrammes providing for the broadest exchange of higher-education teaching personnel between institutions, both nationally and internationally, including the organization of symposia, seminars and collaborative projects, and the exchange of educational and scholarly information should be developed and encouraged.”⁴⁷⁰

In Egypt, universities reportedly required security clearances and approval for the travel of faculty members from the Ministry of Foreign Affairs and the Ministry of Higher Education.⁴⁷¹ Universities are also obliged to implement security examinations before allowing business travel for staff and to request the return of faculty to Egypt who

466 University Autonomy in Europe III – The Scorecard 2017, p. 17.

467 Beiter, et. al, Academic Freedom and its Protection in the Law of European States (2016), above note 40, p. 308.

468 Hocevar et. al., Threats to Academic Freedom in Venezuela (2017) above note 184, p.159.

469 Human Rights Observatory of the University of Los Andes (2016) above note 187, p. 4.

470 1997 UNESCO Recommendation, para 14.

471 Association for Freedom of Thought and Expression (AFTE) in Egypt, ‘The Quarterly Report on the State of Freedom of Expression in Egypt: First quarter January to March 2017’ (2017) p. 23.

conduct politically sensitive research abroad.⁴⁷² In Turkey, dismissed academics and/or those detained by decrees issued under the state of emergency had their passports indefinitely cancelled. Decree no. 673 extends the invalidation of travel documents to some of the spouses of dismissed scholars⁴⁷³ “forcing couples and their dependents to remain in country, suffer financial insecurity, and fear detention and other threats to their security.”⁴⁷⁴ As long as restrictions on the travel of academics and their close family members remain in place, approximately 6,900 higher education personnel are not allowed to leave Turkey for the purpose of employment, and participation in academic events.⁴⁷⁵ Travel restrictions have been further reinforced by an emergency decree enacted on April 29, 2017, which required university rectors to ask for permits from the Council of Higher Education for any work-related travel abroad.⁴⁷⁶

In Malaysia, Chang-Da Wan notes that a circular from the Ministry of Finance dated 2016 required that:

the Vice Chancellor would have to seek permission from the Board of Directors, Chief Secretary of the Ministry of Higher Education and the Chief Secretary of Malaysia to travel abroad for official duties. All other university staff would have to seek the permission of the Vice Chancellor, Board of Directors and the Chief Secretary of the Ministry to travel. Foreign visits on the other hand have been limited to ‘strategic purposes’ and not more than four times a year.⁴⁷⁷

A review of 2017 reports of Freedom House and US State Department found restrictions on academic travel in 7 countries. In China, authorities were reported to often deny permission to Tibetan academics to travel to overseas conferences,⁴⁷⁸ while in Iran several individual academics have been banned from travelling abroad.⁴⁷⁹ In Thailand, both citizen and non-citizen academics may be subject to travel restrictions such as through the requirement for exit stamps.⁴⁸⁰ In Cuba, academics require permission from their superiors to travel abroad,⁴⁸¹ and in Eritrea the government often denied exit visas for faculty going for research and study trips.⁴⁸² In Uganda, a scholar critical of the govern-

472 Scholars at Risk, 'Free to Think' (2017) above note 15, pp. 13-14.

473 Amnesty International, 'No End in Sight: Public Sector Workers Denied a Future in Turkey' (2017) p. 14.

474 Scholars at Risk, 'Free to Think' (2017) above note 15, p. 18.

475 Ibid., p. 18.

476 Ibid., p. 19.

477 Chang-Da Wan, 'The History of University Autonomy in Malaysia' (Institute for Democracy and Economic Affairs 2017) p. 17.

478 US State Department Human Rights Report 2017: China.

479 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'; US State Department Human Rights Report 2017: Iran.

480 US State Department Human Rights Report 2017: Thailand.

481 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'; US State Department Human Rights Report 2017: Cuba.

482 US State Department Human Rights Report 2017: Eritrea.

ment was reportedly prevented from attending an academic conference in the Netherlands.⁴⁸³ In India, the government was reported to occasionally apply travel restrictions for visiting foreign scholars.⁴⁸⁴

f. The National Environment: Self-Censorship

Even where governments are not actively or directly interfering in institutional autonomy or academic freedom, states party to the ICESCR have a responsibility to respect, protect and fulfil academic freedom under the convention, and to protect academics' rights to free expression where they are party to the ICCPR. This includes the protection of academics in the expression of their views and publication of their research, and more generally, in the creation of an enabling environment within the state. Where an enabling environment is not created, but rather there is a restrictive national environment, there becomes a risk of academic self-censorship, either through universities censoring their own academics, or academics censoring themselves. As Romanowski and Nasser argue in their 2010 study of perception of academic freedom in Gulf states:

Not every academic who chooses to censor him or herself has necessarily been repressed by the university or the state laws. Yet the fact that many choose to do so reflects the general climate of fear that leads professors to avoid discussing certain subjects— chiefly politics, religion, and gender—thereby subtly repressing social progress and academic work among the faculty.⁴⁸⁵

Altbach, writing about academic freedom in Islamic countries in 2001, argued that “[w]ith a few exceptions, universities do not have strong traditions. This makes the professoriate more vulnerable to external pressure.”⁴⁸⁶ Leon Botstein suggests conformist behaviour is also behind this: “It is a problem that the modern university now expects an increasing conformism in behavior as well as standardization of expressed thought. And that finally leads to a tremendous problem of self-censorship and passivity.”⁴⁸⁷

Universities may also choose to align themselves with the prevailing political climate, thereby creating an environment that restricts academic freedom. This is by no means a new phenomenon. As noted by Jonathan Cole, in the US in the early 20th Century, the Presidents of Columbia, Cornell and Yale publicly stated that they would not have ‘communists’ in their institutions.⁴⁸⁸ More recent examples of institution-imposed restrictions have been seen in other parts of this report. Censorship can thus come from within the

483 US State Department Human Rights Report 2017: Uganda.

484 US State Department Human Rights Report 2017: India.

485 Michael H. Romanowski and Ramzi Nasser. Faculty perceptions of academic freedom at a GCC university, *Prospects* December 2010 p. 16 (PDF version), citing Human Rights Watch, Reading between the “red lines”: The repression of academic freedom in Egyptian universities, 2005.

486 Philip G. Altbach, Academic freedom: International realities and challenges, *Higher Education* 41: 205–219, 2001, p. 212.

487 Leon Botstein, ‘Academic Freedom in the US and its Enemies: A Polemic’, in Michael Ignatieff and Stefan Roch (eds), *Academic Freedom: The Global Challenge*, Central European University Press, 2018, p. 107.

488 Jonathan R. Cole, The Fundamental Role of Academic Freedom and Free Inquiry in US Higher Education, in Michael Ignatieff and Stefan Roch (eds), *Academic Freedom: The Global Challenge*, Central European University Press, 2018, pp. 78-79.

university structure, but this is likely a product of the external environment. Rao notes a concerning trend in the Indian subcontinent, where administrators are increasingly taking academic decisions with less input from faculty, and those faculty who disagree with administrators can be reprimanded. She notes a rise in the number of academic appointments of persons supporting government positions.⁴⁸⁹ She also notes a concerning trend in shaping academic research, because “[w]hat one writes and studies can result in suspension of services, public controversy, withholding or suspension of publications.”⁴⁹⁰ As de Wit and Hanson write “[t]he reality ... is that it is still possible for the scope of academic freedom to be constrained by government or social pressures placed on speech.”⁴⁹¹

One example of an environment where political affiliation is required, is in Kyrgyzstan, where university professors were ordered to campaign for the ruling party in local elections.⁴⁹² However, numerous other examples were identified where the academics reportedly feel obliged to self-censor. For example, in Malaysia, career advancement for academics is reported to be influenced by self-censorship on the government’s policies and anti-government views are subject to disciplinary action under the Universities and University Colleges Act of 1971.⁴⁹³ In the case of China, the Chinese Communist Party reportedly not only creates an environment for self-censorship in the country but also for Chinese students overseas.⁴⁹⁴ A review of the US State Department and Freedom House reports from 2017 indicated that self-censorship is a widespread issue, reported by academics in 24 countries; Brunei, Cambodia, China, Egypt, Lebanon, Cuba, Equatorial Guinea, Guinea, Kazakhstan, Kuwait, Malaysia, Maldives, Nicaragua, Oman, Qatar, Republic of Congo, Rwanda, Saudi Arabia, Singapore, Sudan, Swaziland, Turkey, Uzbekistan and Zimbabwe.⁴⁹⁵

An additional cause of self-censorship may be threats or fear of violence. For example, Scholars at Risk has published numerous accounts of Indian academics who have been arrested, beaten or in some instances imprisoned or killed, because of what they’ve said in the classroom or what they’ve written. There is a real fear both in India and Bangladesh of vigilante reaction for unpopular or uncommon ideas.⁴⁹⁶ Also relevant here is the securitisation and monitoring of campuses, discussed in section 6, below.

489 Nirmala Rao, ‘Academic Freedom in the UK, the Indian Subcontinent and Bangladesh’ in Michael Ignatieff and Stefan Roch (eds), *Academic Freedom: The Global Challenge*, Central European University Press, 2018, pp. 44-45.

490 Nirmala Rao, *Ibid.*, pp. 46.

491 Hans de Wit and Kathryn Hanson, ‘Academic Freedom Under Threat Everywhere’, *Inside Higher Education* November 7, 2016.

492 Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’.

493 US State Department Human Rights Report 2017: Malaysia.

494 US State Department Human Rights Report 2017: China.

495 See Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’ and US State Department Human Rights Report 2017 country reports on Brunei, Cambodia, China, Egypt, Lebanon, Cuba, Equatorial Guinea, Guinea, Kazakhstan, Kuwait, Malaysia, Maldives, Nicaragua, Oman, Qatar, Republic of Congo, Rwanda, Saudi Arabia, Singapore, Sudan, Swaziland, Turkey, Uzbekistan and Zimbabwe.

496 Scholars at Risk, ‘Free to Think: Report of the Scholars at Risk Academic Monitoring Project’ (2016) pp. 7-8.

RESTRICTIONS ON STUDENTS

Interference with institutional autonomy is not limited to interference with governance, funding or academics. Authorities may also, and frequently do, place restrictions on students. As the lifeblood of universities, these interferences can have a significant impact on the ability of a university to autonomously function as a higher education institution. Interferences by the state can come from admissions policies, politicisation of funding or scholarship programmes, retaliation against students for expressing their views or engaging in peaceful protests.

a. Admissions

Restrictions on selecting who will study at a particular institution may impact a higher education institution's autonomy. As regards student numbers, the *EUA 2017 Scorecard* found five models of how numbers were determined, but only in one (Serbia) were student numbers exclusively decided by the state.⁴⁹⁷ The study also found that admissions mechanisms were most commonly co-regulated between an external authority and the university with the basic qualifications granting eligibility were usually set in the law, albeit with more freedom granted over Masters' programmes than Bachelors.⁴⁹⁸ In Turkey, student numbers were fixed for all programs at universities by the majority state-governed Council of Higher Education. The Council alone decides on the "overall fixed number of students to be admitted, based on proposals submitted by the universities."⁴⁹⁹ Similarly, in Venezuela, the National Council of Universities in 2015 allocated quotas for incoming students to autonomous public and private universities, despite higher education legislation providing that University Councils are in charge of "defining the policies and procedures for entry of new applicants in each institution."⁵⁰⁰ In Uzbekistan, a 2014 study found that admissions quotas were established by the Cabinet of Ministers and endorsed by a presidential decree "outlining the exact intake for each university and each profile or speciality."⁵⁰¹ Universities also had to lobby the Ministry of Education to increase their intake and introduce new programmes, with the final

497 University Autonomy in Europe III - The Scorecard (2017), p. 33. Turkey was not covered in the 2017 Report, but in 2011, it also had state controlled student numbers. Scorecard 2011, p. 45.

498 University Autonomy in Europe III - The Scorecard (2017), pp. 34-35.

499 Julia Iwinska and Liviu Matei, 'University Autonomy: A Practical Handbook' (Central European University, Yehuda Elkana Center for Higher Education 2014), p. 45.

500 Human Rights Observatory of the University of Los Andes (2016), above note 187, p. 6.

501 World Bank, Uzbekistan: Modernizing Tertiary Education, June 2014 p. 60.

decision resting with the Cabinet of Ministers.⁵⁰² In Nigeria, several accounts suggest that student admissions policies were reported to be the subject of political interference,⁵⁰³ for example, admissions decisions to the country's prestigious universities were reportedly influenced by the political connections of applying students.⁵⁰⁴

A potentially emerging area for restrictive state practice is the use visa restrictions for incoming students. Some examples were found, such as in the United States, where restrictions were proposed on visa lengths for some Chinese students under the argument of preventing intellectual property theft.⁵⁰⁵ The US administration's travel ban on individuals from certain countries may also restrict students' ability to attend US universities. Anecdotally, the authors have also learned of instances of visa denials or excessive restrictions for students from some countries to attend particular universities. While concrete examples are limited at present, it highlights how governments have the ability to use administrative restrictions, such as visa processes, to limit students from certain countries or even students' ability to attend certain universities. Universities may have data on the outcomes of visa processes of prospective students, and therefore it is an area where further research and monitoring could be done by stakeholders to identify the scope of this interference.

b. Politicised Admissions, Scholarships, Grades, & Dismissals of students

Another form of government interference with institutional autonomy may come through the exercising of control over the allocation of scholarships, awarding of grades and removal of students.

502 Ibid., p. 60.

503 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'

504 Bakwaph Peter Kanyib, 'Admission Crisis in Nigerian Universities: The Challenges Youth And Parents Face in Seeking Admission', (2013) Seton Hall University, PhD dissertation <<https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2917&context=dissertations>> accessed 24 November 2018, pp. 101,107-110.

505 The Chronicle of Higher Education 'Higher-Ed Groups Warn Against Visa Restrictions for Chinese Students' (30 May 2018) <<https://www.chronicle.com/article/Higher-Ed-Groups-Warn-Against/243534>> accessed 24 November 2018



In Nigeria, several accounts suggest that student admissions policies were ... the subject of political interference, for example, admissions decisions to the country's prestigious universities were reportedly influenced by political connections.

A review of US State Department and Freedom House reports from 2017 found that the politicisation of these issues arose in 9 countries. In Bahrain, scholarships were reportedly unfairly distributed to Shia students due to bias by government officials, and students were questioned on their political beliefs in admission interviews.⁵⁰⁶ In the Seychelles, students were denied admission based on the political affiliation of their parents.⁵⁰⁷ In Belarus, to receive benefits, university students were urged to join a government affiliated youth group, the Belarusian Republican Youth Union, in addition to authorities pressuring students to work for the country's security services.⁵⁰⁸ In Burundi, there were reports that students' grades and leadership elections were "subject to political interference in favour of the [ruling party]".⁵⁰⁹ In Ethiopia, postgraduate students loyal to the ruling party were reportedly favoured in admissions,⁵¹⁰ and there were reports that students were pressured to join the governing party to be admitted into universities.⁵¹¹ In Iran students were reported to have been prevented from continuing their education due to their political and religious affiliations;⁵¹² for example, a student was expelled under a law that bars Baha'is from attending university.⁵¹³ In Jordan, some students who were the children of activists were threatened with being barred from graduating,⁵¹⁴ while in Vietnam human rights activists were reported to have been refused graduation from universities in addition to pressure being put on university leaders to expel activist students.⁵¹⁵ In Venezuela, it was reported that a "government-issued social benefits card provided primarily to government supporters, would be required for enrolment in public universities affecting approximately 305,000 students."⁵¹⁶

Some countries also saw government authorities having broad disciplinary powers over students, as in Zimbabwe.⁵¹⁷ In Egypt, a student was expelled and had his scholarship withdrawn because of his research on politically contested issues regarding the sovereignty of two disputed islands.⁵¹⁸ A 2014 amendment in Egypt (Decree Law No. 15 of 2014) to the 1972 Law Regulating Universities makes it possible for students to be

506 US State Department Human Rights Report 2017: Bahrain.

507 US State Department Human Rights Report 2017: Seychelles.

508 US State Department Human Rights Report 2017: Belarus.

509 US State Department Human Rights Report 2017: Burundi.

510 US State Department Human Rights Report 2017: Ethiopia.

511 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'.

512 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'; US State Department Human Rights Report 2017: Iran.

513 Centre for Human Rights in Iran, 'Baha'i Student Expelled From Iranian University One Year Before Graduation', (14 June 2018) <<https://www.iranhumanrights.org/2018/06/bahai-student-expelled-from-iranian-university-one-year-before-graduation/>> accessed 24 November 2018.

514 US State Department Human Rights Report 2017: Jordan.

515 US State Department Human Rights Report 2017: Vietnam.

516 US State Department Human Rights Report 2017: Venezuela.

517 US State Department Human Rights Report 2017: Zimbabwe.

518 US State Department Human Rights Report 2017: Egypt.

expelled directly by university presidents instead of disciplinary boards.⁵¹⁹ This power allows heads of public universities to take action against students who express views critical of the government and university authorities. The Association for Freedom of Thought and Expression in Egypt notes that the amendment was passed in the “middle of the academic year 2013/2014 [when an] escalation of activities of the opposition student movement took place [including] daily protests and silent demonstrations against the new government.”⁵²⁰ A 2014 decree (Decree Law No. 134 of 2014), extended this power to the president of the public al-Azhar University.⁵²¹ National restrictions in Turkey also impacted Turkish university students studying abroad. 285 students studying mostly in the US, UK, Canada and Germany were expelled under emergency decrees between 1 September 2016 and 14 July 2017.⁵²² The students were accused of having terrorist connections, and “decrees cancelled their financial aid and provided that any degrees or certificates they obtained abroad would not be recognized in Turkey”.⁵²³

An additional level of restrictive practices can be seen in the deportation of students. In Turkey, after the coup attempt in 2016, foreign students were deported or were threatened with deportation for alleged links to Fethullah Gülen a cleric self-exiled in the US,⁵²⁴ who the authorities in Turkey claim is the mastermind of the 2016 coup attempt. Deportations affected Nigerian, Yemeni and Syrian students.⁵²⁵ Scholars at Risk reported that two of the Syrian scholars deported were also detained without charge and held incommunicado when visiting a Turkish immigration office to renew their Turkish residency.⁵²⁶ In Egypt, restrictions on foreign students also include arrests and deportations; dozens of Uyghur students from China were reported to have been deported back to China from the Al-Azhar University, Egypt’s top Islamic higher education institution, at the request of Chinese authorities.⁵²⁷ In China, family members of students were reportedly “held hostage to force the students’ return; in several cases, the students who did return to China were jailed or sent to re-education camps, while others have reportedly disappeared.”⁵²⁸ Similarly, the US State Department’s 2017 report on China notes that ethnic Uyghur students who have left the country to study abroad were often pressured to return to China, including through pressuring their family members.⁵²⁹

519 Association for Freedom of Thought and Expression (AFTE) in Egypt, ‘Besieged Universities: A Report on the Rights and Freedoms of Students in Egyptian Universities from the Academic Years 2013-2014 to 2015-2016’ (2017), p. 20.

520 AFTE, Report on 2013-2014 to 2015-2016 (2017) above note 519, p. 20.

521 Ibid., pp. 20-27.

522 Scholars at Risk, ‘Free to Think’ (2017) above note 15, pp. 16-17.

523 Scholars at Risk, ‘Free to Think’ (2017) above note 15, pp. 16-17.

524 Ibid., p. 17.

525 Ibid., p. 18.

526 Ibid., p. 18.

527 Ibid., p. 30.

528 Ibid., p. 30.

529 US State Department Human Rights Report 2017: China.

c. Restrictions on Student Expression of Views

Students frequently experience strong state responses to their expression of views. Restrictions on freedom of expression for students in Turkey included disciplinary investigations, arrests and detentions. Between the coup attempt in 2016 and September 2017, 294 students were expelled under various decrees enacted under the state of emergency in Turkey.⁵³⁰ Scholars At Risk reported that on 10 February 2017, police attacked and arrested students peacefully protesting against the dismissal of academic personnel, and a week later, university administrators started disciplinary investigations against 24 students who had peacefully protested.⁵³¹ In April 2018, a group of anti-war students were detained after police raided the campus of Boğaziçi University in Istanbul using armoured vehicles, entering libraries and accommodation blocks in search of students who opposed the Turkish government's foreign policies.⁵³² Seggie and Göbkel report that even prior to the coup attempt, students were required to behave in “an apolitical manner” and “ideological and political behaviors [could] constitute a crime.”⁵³³ LGBTI groups also reported harassment by university authorities in addition to harassment by the police and the government, and “university groups in cities across the country complained that rectors had denied them permission to organize.”⁵³⁴

Following the 2013 coup in Egypt, thousands of students were imprisoned for exercising their rights to expression, association and assembly. Scholars at Risk reported that in recent years “state actions against students included killings, arrests, and the increased imposition of travel restrictions — typically on the basis of purported security concerns — against both Egyptian and non-Egyptian scholars and students.”⁵³⁵ There is



Following the 2013 coup in Egypt, thousands of students were imprisoned for exercising their rights to expression, association and assembly.

530 Scholars at Risk, 'Free to Think' (2017), above note 15, p. 12.

531 Ibid., p. 16.

532 Financial Times, 'News: University crackdown raises fears for Turkish academic freedom' (11 April 2018), <<https://www.ft.com/content/225fcb8e-3cad-11e8-b9f9-de94fa33a81e>> accessed 24 November 2018.

533 Seggie and Göbkel, 'From Past to Present: Academic Freedom in Turkey', above note 391, p. 23.

534 US State Department Human Rights Report 2017: Turkey 2017.

535 Scholars at Risk, 'Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project' (2016) p. 13.

little evidence in Egypt of state actions to prevent and punish acts of arbitrary killings of students.⁵³⁶ Several laws were also passed banning student groups that were “backed by or associated with political parties”.⁵³⁷ Restrictions were also introduced on student elections by a decree issued on 18th October 2015 amending the laws regulating student electoral processes. According to the Association for Freedom of Thought and Expression in Egypt (AFTE), these amendments imposed “clear restrictions on the students ‘right to organize; the arbitrary criteria regulating the right to run for student elections prevented those who did not pay full tuition fees from participating.”⁵³⁸ It also introduced a vague requirement that to run for elections, students “must have a record of noticeable participation in student activity” with the definition of ‘notable’ left to university authorities.⁵³⁹ According to the AFTE, “[t]his amendment was the main reason behind the exclusion of hundreds of students in the ... elections in 2016.”⁵⁴⁰ However, as in Turkey, state interference in university student bodies in Egypt is not new. The University Law of 1979 gave deans approval power over student union nominees and student clubs.⁵⁴¹ The law included a clause “requiring nominees to ‘enjoy good and straight conduct and good reputation’.”⁵⁴² According to a 2005 Human Rights Watch report, “the state-appointed administrations used this vague requirement to screen out both leftist and Islamist applicants.”⁵⁴³

In Venezuela, restrictions on students has included exclusion from scholarships, the criminalization of protests, the physical presence and interventions of security forces in university campuses, arrest, detention, ill-treatment of students, extrajudicial killings and the trial of students in military courts.⁵⁴⁴ Students in Venezuela can face retaliation in their financial support by university authorities for expressing their political opinion. In 2016, 896 students were temporarily expelled from the State of Zulia’s Jesús Enrique Lossada scholarship programme as a reprisal for signing a referendum recalling President Maduro.⁵⁴⁵ Despite scholarships subsequently being given back, the regional government openly signalled its disagreement to students expressing political opinions.⁵⁴⁶ In September 2017, the Office of the Governor of the State of Zulia request-

536 British Institute of International and Comparative Law, ‘Protecting Education in the Middle East and North Africa Region’ (2016), p. 68.

537 AFTE, Report on 2013-2014 to 2015-2016 (2017), above note 519, p. 14.

538 *Ibid.*, p. 18.

539 *Ibid.*, p. 18.

540 *Ibid.*, p. 18.

541 Human Rights Watch ‘Reading between the Red Lines: The Repression of Academic Freedom in Egyptian Universities’ (2005), p. 36.

542 *Ibid.*, p. 53.

543 *Ibid.*, pp. 53-54.

544 Hocevar et. al., Threats to Academic Freedom in Venezuela (2017), above note 184. See also, Human Rights Observatory of the University of Los Andes et. al. ‘Contribution for the second cycle of Universal Periodic Review of Venezuela, in the 26th session of the United Nations Human Rights Council: Restrictions and reprisals against autonomy and academic freedom in higher education system in Venezuela’ (2016) above note 187.

545 Hocevar et. al., Threats to Academic Freedom in Venezuela (2017), above note 184 p. 161.

546 *Ibid.*, p. 162.

ed students receiving scholarships to “sign forms supporting the candidate Francisco Arias Cárdenas” in regional elections.⁵⁴⁷ The Inter American Commission on Human Rights notes that “[s]imilar cases of discrimination against students were reported at other universities, either for having an opinion critical of the Government or belonging to opposition groups.”⁵⁴⁸

A review of US State Department and Freedom House country reports from 2017 found restrictions on students’ expression of views and student protests were also at issue in another 6 countries. In Belarus, under a Ministry of Education directive, educational institutions “may expel students who engage in anti-government or unsanctioned political activity.”⁵⁴⁹ In Armenia, university student councils “experienced various form of pressure...to keep the student body focused on non-political issues.”⁵⁵⁰ In Benin, the Council of Ministers banned the activities of certain university student groups, although this decision was overturned by the Constitutional Court later in 2016.⁵⁵¹ Similarly in Malaysia, laws imposed limitations on student associations and student political activities.⁵⁵² In Cuba, university students have been reportedly expelled for anti-government views and activities.⁵⁵³ In Uganda, the University of Makerere, the country’s largest university, was temporarily shut down by the authorities following student protests and faculty strikes on the discontinuation of payments of allowances.⁵⁵⁴ In the United States, the Foundation for Individual Rights in Education’s project studying free speech policies on US campuses in 2013 found that 1 in 6 universities restrict the freedom of expression of university students through the establishment of “free speech zones.” The organization reports that universities designate specific physical spaces as “free speech zones”, and in some universities students can only exercise free speech in these locations as part of institutional policies.⁵⁵⁵ In its 2018 annual report, the organization shows that out of 461 higher education institutions, of which it surveyed, 52 (11%) have “free speech zone” policies, and that such free speech restrictions are present both at public and private institutions. The report underlines that “public colleges and universities are legally bound to protect their students’ First Amendment rights”.⁵⁵⁶ In

547 Inter American Commission on Human Rights (IACHR), ‘Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report (2017), p. 237.

548 Inter American Commission on Human Rights (IACHR), ‘Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report (2017), p. 237.

549 US State Department Human Rights Report 2017: Belarus.

550 US State Department Human Rights Report 2017: Armenia.

551 US State Department Human Rights Report 2017: Benin.

552 Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’; US State Department Human Rights Report 2017: Malaysia.

553 Freedom House, ‘Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties’; US State Department Human Rights Report 2017: Cuba.

554 US State Department Human Rights Report 2017: Uganda.

555 Foundation for Individual Rights in Education, ‘[Infographic] Free Speech Zones on America’s Campuses’, (19 September 2013) <<https://www.thefire.org/infographic-free-speech-zones-on-americas-campuses-2/>> accessed 24 November 2018.

556 Foundation for Individual Rights in Education, ‘Spotlight on Speech Codes 2018: The State of Free Speech on Our Nation’s Campuses’ p. 8.

contrast to public colleges, “while private universities are not legally bound by the First Amendment - which regulates government actors - most make extensive promises of free speech to their students and faculty.”⁵⁵⁷ This is demonstrated by the report’s survey results on free speech zones, noting that “despite being inconsistent with the First Amendment, free speech zones are more common at public universities than at private universities: 13.7 percent of public universities surveyed maintain free speech zones, while just 4 percent of private universities do”.⁵⁵⁸

Evidence of the use of criminal sanctions against students was found in Cameroon, where the police arrested student protesters, some of who were reportedly taken to an undisclosed location and held for months.⁵⁵⁹ In Chad, during a protest in the University of N’Djamena, 71 students were arrested.⁵⁶⁰ In Sierra Leone, the police allegedly fatally shot and wounded two university students who demonstrated the closure of Njala University, and police used “excessive force to disperse student protests.”⁵⁶¹ Similarly, in Sudan the “government forces reportedly used live bullets to disperse crowds of protesting students... including at the University of Kordofan, Khartoum University and al-Zaeem al-Azhari university” in addition to “continuing to arrest student activists.”⁵⁶² In Thailand, restrictions on students and student protests include the arrests of students who expressed opinions critical of the government in the media and of students who peacefully protest. Authorities arrested students on the basis of violating the decrees of the National Council for Peace and Order, the ruling governmental body in Thailand, such as Order No. 3/2558 that bans political gatherings of more than five people.⁵⁶³ In Vietnam, a student from



In Thailand, restrictions on students and student protests include the arrests of students who expressed opinions critical of the government in the media and of students who peacefully protest.

557 Ibid., p. 7.

558 Ibid., p. 23.

559 US State Department Human Rights Report 2017: Cameroon.

560 US State Department Human Rights Report 2017: Chad.

561 US State Department Human Rights Report 2017: Sierra Leone.

562 US State Department Human Rights Report 2017: Sudan.

563 Scholars at Risk, 'Free to Think: Report of the Scholars at Risk Academic Monitoring Project' (2016) 18;

Scholars at Risk, 'Free to Think' (2017) above note 15, p.24; Human Rights Watch, 'Thailand: Drop Bogus Charges Against Thai Studies Academics' (16 August 2017) <<https://www.hrw.org/news/2017/08/16/thailand-drop-bogus-charges-against-thai-studies-academics>> accessed 24 November 2018. "Article 116 of the Criminal Code (prohibiting incitement and agitation), and Article 61 of the Constitutional Referendum Act of B.E. 2559 (criminalizing actions that "cause confusion to affect the orderliness of voting")."

Thai Nguyen University was sentenced to six years in prison and four years' probation "for blog posts deemed critical of the government,"⁵⁶⁴ and similarly in Zimbabwe the police arrested a university student for criticising the president online.⁵⁶⁵ In Myanmar there were reports that following the passage of the 2014 National Education Law, university student protests were met "with violence by policy and other government security forces"⁵⁶⁶ including the beating and arresting of students as documented by Fortify Rights and the International Human Rights Clinic at Harvard Law School.⁵⁶⁷ Four students were also sentenced to jail on 8 May 2018 after they protested the banning of mobile phones on campuses and called on the government to "respect students' rights and democracy."⁵⁶⁸ In Iran, large numbers of students were arrested during nationwide protests with some receiving long prison sentences.⁵⁶⁹ The Global Coalition to Protect Education from Attack reported that dozens of students including university students "were killed or injured, along with hundreds arrested, during the government's response to student protests in Ethiopia."⁵⁷⁰ In India, a student leader at Jawaharlal Nehru University was held in custody "on charges of sedition having led protests...[and] was reportedly beaten en route to court."⁵⁷¹

While the issues of interference with student admissions, grades and scholarships, as well as restrictions on expression and arrests and violence against students may not all appear to be institutional autonomy violations, the environment created by such actions is a clear interference with autonomy. By restricting student access to universities through interference in admissions and grants, governments limit universities' freedom to determine who higher education institutions teach. Further, restrictions on free speech and violent state actions against students seriously limit the ability of students to learn in a supportive environment created by the university, limiting universities' ability to determine how they teach.

564 US State Department Human Rights Report 2017: Vietnam.

565 US State Department Human Rights Report 2017: Zimbabwe.

566 Global Coalition to Protect Education from Attack, 'Education Under Attack' (2018), p. 176.

567 See International Human Rights Clinic, Human Rights Program at Harvard Law School, 'Crackdown at Letpadan: Excessive Force and Violations of the Rights to Freedom of Peaceful Assembly and Expression in Letpadan, Bago Region, Myanmar' (2015).

568 Global Coalition to Protect Education from Attack, 'Education Under Attack' (2018), p. 177.

569 Radio Farda RFE/RL, 'Iranian Students Protest Against Harsh Verdicts', (24 June 2018) <<https://en.radiofarda.com/a/iranian-students-protest-against-harsh-verdicts/29315614.html>> accessed 24 November 2018.

570 Global Coalition to Protect Education from Attack, 'Education Under Attack' (2018), p. 123.

571 Freedom House, 'Freedom in the World 2017: The Annual Survey of Political Rights and Civil Liberties'.

UNDERMINING ACADEMIC LEGITIMACY

Several issues are addressed in this section under the broad heading of ‘undermining academic legitimacy’. In this regard, ‘legitimacy’ refers to the importance of the public perception of universities as autonomous centres of research, teaching and learning. This legitimacy can be undermined particularly where the government stigmatises universities as ‘dangerous’ institutions aiming to undermine the state. Steps to undermine universities in this way include through the criminalisation of academics, the use of anti-terrorism or other repressive laws against academics, securitisation or militarisation of campuses, and negative public discourse against universities by government officials.

a. Criminalisation of Academics

As noted above, the 1997 UNESCO Recommendation provides that higher-education teaching personnel 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.” Further, “[t]hey 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.” Importantly, “[t]hey should not suffer any penalties simply because of the exercise of such rights.” Further:

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.⁵⁷²

The criminalisation of academics for their academic activities has serious consequences for the ability of higher education institutions to function as autonomous centres of learning. Furthermore, the environment such criminalisation creates has a serious chilling effect on academic discourse, research and debate in the country.

⁵⁷² UNESCO Recommendation 1997, para 26.

A number of examples of academics being criminalised and imprisoned for their activities were identified in the research for this report. One of the most severe examples has been in Turkey, following the coup attempt in September 2016. There, the legitimacy of academics has been increasingly undermined by state-led efforts to criminalize and stigmatize them. According to Scholars at Risk, by September 2017, approximately 7,000 academic and administrative personnel had been “targeted for dismissal from their positions... with a series of decrees issued under a state of emergency that continues to be extended. At least 990 scholars, staff, and students have been detained or arrested, with warrants served for at least 318 more.”⁵⁷³ The grounds for the criminalization of academics (resulting often in their dismissal, arrest and detention) in almost all cases relate to the signing of the Peace Petition or alleged links to Fethullah Gülen. The bases for the dismissal and detention of scholars are often not made public but have included acts of peaceful expression and association as well as the use of secure messaging applications on smartphones.⁵⁷⁴ Scholars detained under terrorism related allegations can face prolonged and uncertain periods of detention. Emergency Decree No. 694 (issued on August 25, 2018), extended the time of pretrial detention from five to seven years for persons detained under such charges.⁵⁷⁵

Faculty in Venezuela face potential criminalisation in retaliation for participating in demonstrations. As reported by the Human Rights Observatory:

Professors and researchers who question government policies are monitored and harassed by the Bureau of Scientific and Criminal Investigations (CICPC) and SEBIN. In 2012, the Rector ULA [*Universidad de los Andes*] reported being questioned for more than four hours due to electricity rationing protests outside the university residences. In 2014, more than 200 faculty and staff of the ULA, received subpoenas for their participation in peaceful demonstrations.⁵⁷⁶

Academics in China have also been criminalized for their activities, an issue which has been highlighted by several NGOs including Amnesty International on the imprisonment of an Uyghur scholar,⁵⁷⁷ and Human Rights Watch on firing university professors for expressing disagreements about state policy and ideology.⁵⁷⁸ In Thailand, authorities dropped charges against an 85 year old academic accused of insulting the royal family for questioning the truth about a historical battle.⁵⁷⁹ In 2017, organisers and participants at an academic conference were charged and faced up to a year in prison

573 Scholars at Risk, ‘Free to Think’ (2017) above note 15, p. 12.

574 Ibid., p. 12.

575 Ibid., p. 15.

576 Human Rights Observatory of the University of Los Andes (2016) above note 187, p. 12.

577 Amnesty International, ‘Hundreds of academics urge China’s President to free Professor Ilham Tohti’ (15 January 2016) < <https://www.amnesty.org/en/latest/news/2016/01/hundreds-of-academics-urge-chinas-president-to-free-professor-ilham-tohti/> > accessed 24 November 2018.

578 Human Rights Watch, ‘China: Events of 2017’, <<https://www.hrw.org/world-report/2018/country-chapters/china-and-tibet>> accessed 24 November 2018.

579 Reuters, ‘Thai court drops royal insult case over ancient king’, (17 January 2018).

under a ban on public gatherings.⁵⁸⁰ In Uganda, the US State Department Report 2017 reported that a professor was arrested on charges of cyber harassment for criticising the government.⁵⁸¹ In Uzbekistan, the Tashkent military court convicted an academic and sentenced him to 11 years in prison on treason charges for sending scanned copies of academic manuscripts to a group of foreign scholars.⁵⁸²

A review of US State Department and Freedom House reports from 2017, identifies that the criminalization of academics for their expression of views and for participating in peaceful protests was also an issue in a number of other countries. In Ethiopia, security forces “arbitrarily arrested and detained protesters, professors and university students”, and security officials were reported to have “forcibly entered Ethiopian schools and universities to make arrests.”⁵⁸³ In Yemen, “since 2015, Houthi forces have detained scholars as part of their crackdown on dissent.”⁵⁸⁴ In addition, Scholars at Risk reported that in Pakistan, the “authorities detained two scholars and a student leader from the University of Karachi on April 1, 2017, in connection with a press conference they organized to protest the imprisonment of retired scholar-activist Dr. Hasan Zafar Arif.”⁵⁸⁵ In February 2018, six academics reported to have been deported from Nigeria to Cameroon under anti-terrorism laws.⁵⁸⁶ A Cameroon academic holding both Cameroon and US passports was detained for ‘insulting and defaming’ the President and subsequently deported to the US.⁵⁸⁷

A number of laws that may permit the criminalisation of academics were also identified. In Morocco, the law “permits the government to criminalize presentations or debate questioning the legitimacy of Islam, the legitimacy of the monarchy and state institutions,”⁵⁸⁸ while in Thailand, military officers have the authority to detain academics (and other persons) without charge for 7 days under NCPO Order No. 3/2015.⁵⁸⁹ Under the referendum Act, the expression of opinions about the 2016 referendum vote if “inconsistent with the truth” could carry penalties of up to 10 years in jail⁵⁹⁰, and some academics were reportedly charged and arrested.⁵⁹¹

580 Human Rights Watch, 'Thailand: Drop Bogus Charges Against Thai Studies Academics', (16 August 2017) <<https://www.hrw.org/news/2017/08/16/thailand-drop-bogus-charges-against-thai-studies-academics>> accessed 24 November 2018.

581 US State Department Human Rights Report 2017: Uganda.

582 Human Rights Watch, 'You Can't See Them, but They're Always There: Censorship and Freedom of the Media in Uzbekistan' (28 March 2018) <<https://www.hrw.org/report/2018/03/28/you-cant-see-them-theyre-always-there/censorship-and-freedom-media-uzbekistan>> accessed 24 November 2018.

583 Freedom House Report 2017; US State Department Human Rights Report 2017: Ethiopia.

584 US State Department Human Rights Report 2017: Yemen.

585 Scholars at Risk, 'Free to Think' (2017) above note 15, p. 24.

586 University World News, 'Rights groups condemn deportation of academics and others' (23 February 2018) <<http://www.universityworldnews.com/article.php?story=20180221064526769>> accessed 24 November 2018.

587 University World News, 'Concerns over persecution of Cameroon academic' (12 January 2018) <<http://www.universityworldnews.com/article.php?story=20180112080423732>> Accessed 24 November 2018.

588 US State Department Human Rights Report 2017: Morocco.

589 US State Department Human Rights Report 2017: Thailand.

590 Freedom House Report 2017.

591 Freedom House Report 2017; US State Department Human Rights Report 2017: Thailand.

On 5 May 2018, a British PhD student researching the security policies of the United Arab Emirates (UAE) was arrested and charged with spying, and subsequently sentenced to life imprisonment.⁵⁹² He was later pardoned in November 2018 following international outcry, but the incident raises serious concerns regarding the potential criminalisation of academics, including in countries where major universities have established second campuses.

At the extreme end of criminalization are the mistreatment of academics in detention and extrajudicial killings. A review of US State Department and Freedom House reports from 2017 shows that in Iran an Iranian-Canadian scholar was imprisoned for four months after trying to leave the country and was reportedly subjected to harsh interrogations.⁵⁹³ In Iran, several scholars were arrested and some subsequently died in custody.⁵⁹⁴ In Egypt, an Italian doctoral student who was previously investigated was allegedly detained and subsequently found dead with signs of torture.⁵⁹⁵ In Syria, some professors have “been killed for supporting regime opponents.”⁵⁹⁶

b. Use of ‘Foreign Agents’ or Anti-Terrorism Laws

Repressive measures may also come in the form of anti-terrorism laws, which impact on the ability of academics to freely work and the ability of higher education institutions to operate as autonomous bodies.

In 2016, the Levada Center in Russia, a prestigious polling and sociological research institution founded in 2003, was requested to register as a “foreign agent” under the 2012 “Foreign Agent Law”,⁵⁹⁷ because it was an organization that conducts “political activities” and received “foreign funding”. This regulatory restriction stigmatized the institution and undermined its activities.⁵⁹⁸ The Levada Center, which has probably attracted the most international attention, is not however the only or first scientific and research insti-

592 The Economist, ‘A British academic is jailed for life in the United Arab Emirates’ (24 November 2018) <<https://www.economist.com/middle-east-and-africa/2018/11/24/a-british-academic-is-jailed-for-life-in-the-united-arab-emirates>> accessed 25 November 2018; The Guardian, ‘Matthew Hedges: British academic accused of spying jailed for life in UAE’ (25 November 2018) <<https://www.theguardian.com/world/2018/nov/21/british-academic-matthew-hedges-accused-of-spying-jailed-for-life-in-uae>> accessed 25 November 2018.

593 Freedom House Report 2017.

594 For example, The Globe and Mail, ‘Human rights lawyer Irwin Cotler helping family of Canadian-Iranian widow stuck in Iran’, (28 June 2018) <<https://www.theglobeandmail.com/canada/article-human-rights-lawyer-irwin-cotler-helping-family-of-canadian-iranian/>>. See also, The Guardian, ‘Our concerns about the arrest of Abbas Edalat in Iran’, (6 June 2018) <<https://www.theguardian.com/world/2018/jun/06/our-concerns-about-the-arrest-of-abbas-edalat-in-iran>> accessed 24 November 2018; Amnesty International, ‘Iran: Upholding academic’s death sentence in secret shows utter contempt for right to life’, 12 December 2017 <<https://www.amnesty.org/en/latest/news/2017/12/iran-upholding-academics-death-sentence-in-secret-shows-utter-contempt-for-right-to-life/>> accessed 24 November 2018.

595 Freedom House Report 2017.

596 Freedom House Report 2017.

597 Federal Law № 121-FZ, 2012 On Making Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents. For an analysis on the restrictive and negative impact of the law, see Venice Commission Opinion on Federal Law N. 121-FZ on Non-Commercial Organizations (“Law on Foreign Agents”), on Federal Law N. 19-FZ and N.147-FZ and Federal Law N. 190-FZ on Making Amendments to the Criminal Code (“Law on Treason”) June 27, 2014.

598 Scholars at Risk, ‘Free to Think’ (2017) above note 15, p. 31.

tute that has been stigmatized under Russia's foreign agent law. Other research bodies that were required to register as 'foreign agents' were the Samara Center for Gender Studies, the Center for Independent Social Research (St. Petersburg), the Institute of Economic and Social Research, the 'Panorama' Information and Research Center, the Russian Research Center for Human Rights, the Research and Information Center 'MEMORIAL', and the 'SOVA' Center for Information and Analysis.⁵⁹⁹

In the United Kingdom, the Counter-Terrorism and Security Act of 2015 introduced a duty reportedly requiring universities to "vet the remarks of visiting speakers" in an effort to prevent students from being drawn into terrorism, which "raised concerns that open debate and academic inquiry could be stifled."⁶⁰⁰ It has been argued that this duty essentially puts lecturers in the position of being 'agents of the state'.⁶⁰¹

In addition to the examples seen throughout this report of the use of alleged terrorist links against scholars in Turkey, a decree in Turkey also resulted in the closure of 15 private universities as the crackdown on institutions widened following the coup attempt, based on the argument that they were "connected or are in communication with the Fethullah Terrorist Organization."⁶⁰²

c. Campus Securitisation and Militarisation

Restrictive measures resulting in the militarisation or securitisation of campuses is also of concern for institutional autonomy given its serious impact on the ability of the institution to function and the likely impact on academic freedom. The UN

599 Dmitry Dubrovskiy, 'Escape from Freedom. The Russian Academic Community and the Problem of Academic Rights and Freedoms' (2017) *Interdisciplinary Political Studies*, Issue 3(1) 2017, 189-190; Human Rights Watch, 'Russia: Government vs. Rights Groups' (18 June 2018) <<https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>> accessed 24 November 2018.

600 Freedom House Report 2017. See also on research on terrorism; The Guardian 'University research on terrorism may never be free from interference' (15 June 2015) <<https://www.theguardian.com/higher-education-network/2015/jun/15/university-research-terrorism-without-state-government-rightwing-interference>> accessed 24 November 2018.

601 Imran Awan, 'How lecturers are pushing back against counter-terrorism creep into universities, The Conversation', The Conversation, July 2, 2018 <<http://theconversation.com/how-lecturers-are-pushing-back-against-counter-terrorism-creep-into-universities-93998>>. See also, Keith Spiller, Imran Awan & Andrew Whiting (2018) 'What does terrorism look like?': university lecturers' interpretations of their Prevent duties and tackling extremism in UK universities, *Critical Studies on Terrorism*, 11:1, 130-150.

602 Scholars at Risk, 'Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project' (2016) 11.



In the United Kingdom, the Counter-Terrorism and Security Act of 2015 introduced a duty reportedly requiring universities to 'vet the remarks of visiting speakers' in an effort to prevent students from being drawn into terrorism.

Committee on Economic, Social and Cultural Rights has criticised police and military presence on university campuses.⁶⁰³ The 1990 Kampala Declaration on Intellectual Freedom and Social Responsibility explicitly refers to the prohibition on securitisation.⁶⁰⁴ It provides that “[t]he State shall not deploy any military, paramilitary, security, intelligence, or any like forces within the premises and grounds of institutions of education.” Where there is a deployment, this should only be where there is a “clear, present and imminent danger to life and property” and the head of the institution has issued a written invitation, approved by “elected standing committee of the academic community set up in that behalf”.⁶⁰⁵

In Egypt, Law No. 136 of 2014, reclassified universities as military facilities. This legislation “resulted in the referral of 65 students to military prosecution for events taking place on campus in the three academic years [in 2014-2017].”⁶⁰⁶ The law stipulates that in order to protect “vital and public institutions”, armed forces are to coordinate with the police, and categorizes universities within such institutions.⁶⁰⁷ The Association for Freedom of Thought and Expression in Egypt reports that “the Law notes that vaguely defined ‘crimes’ or ‘attacks’ on certain public facilities fall under the jurisdiction of military law, referring anyone who commits any of these attacks to military prosecution, rather than referring them to public prosecution.”⁶⁰⁸ Moreover, according to the organisation, a decree enacted in 2013 allows security forces to enter universities without a warrant “whenever there is a threat to security.”⁶⁰⁹

Various judgements by the Supreme Court of Justice of Venezuela enable security forces to use excessive force in response to campus protests.⁶¹⁰ Including Resolution 008610, issued by the Ministry of Defence in 2015, which authorized the national armed forces to control public meetings and demonstrations by using lethal force.⁶¹¹ In the context of this legal framework, Venezuelan police and military personnel have used disproportionate force in student protests. This has included injury and use of lethal force against of non-violent protesters, arbitrary arrests, detentions and the ill-treatment

603 See Klaus D. Beiter, *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* (Martinus Nijhoff 2006), pp. 599-600.

604 The Kampala Declaration on Intellectual Freedom and Social Responsibility (1990), article 12.

605 *Ibid.*, article 12.

606 AFTE, *Report on 2013-2014 to 2015-2016* (2017) above note 519, p. 23.

607 *Ibid.*, p. 21.

608 *Ibid.*, p. 21.

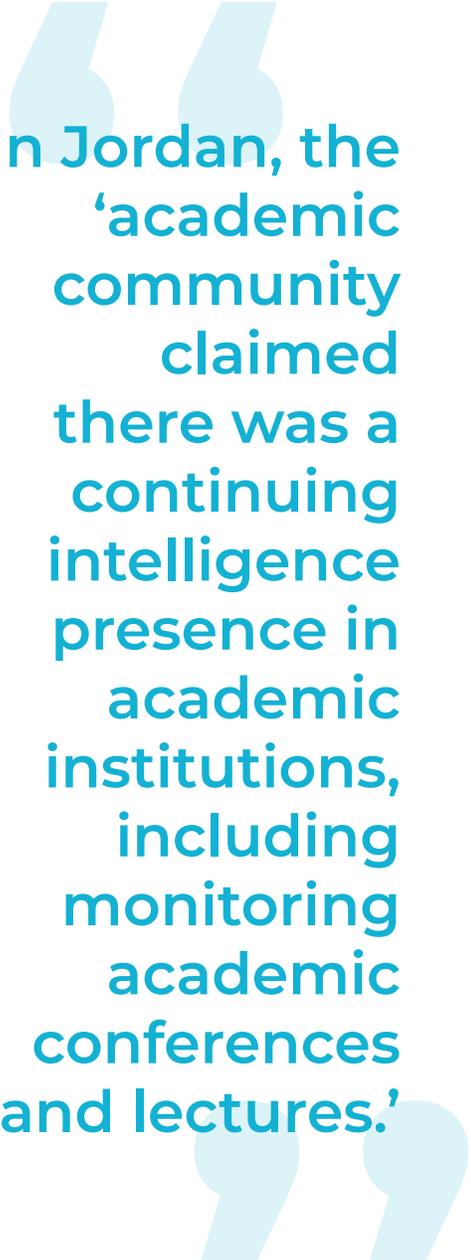
609 *Ibid.*, p. 23. The use of military courts to try students again is not recent however. A 2005 Human Rights Watch report found that emergency laws, “under which Egypt has been governed almost continuously since 1967” allowed the referral of civilians to military or state security courts. Human Rights Watch, ‘Reading between the “Red Lines: The Repression of Academic Freedom in Egyptian Universities’ 2005, p. 37.

610 Hocevar et. al., *Threats to Academic Freedom in Venezuela* (2017), above note 184, p. 150.

611 Human Rights Observatory of the University of Los Andes (2016), above note 187, p. 11.

of students in detention.⁶¹² In addition to the examples noted in the section on student protests, in Burundi, Honduras and Kenya student protests were reported to have been repressed by security forces.⁶¹³ For example in Kenya the police allegedly used excessive force to stop protests following allegations of fraud in student union elections.⁶¹⁴

US State Department and Freedom House reports from 2017 report that the monitoring of university campuses by security forces and government officials was an issue in 7 other countries. In Ethiopia, there was a “pattern of surveillance and arbitrary arrests of Oromo university students...[and] an intense build-up of security forces both uniformed and plainclothes, embedded on university campuses.”⁶¹⁵ In Jordan, the “academic community claimed there was a continuing intelligence presence in academic institutions, including monitoring academic conferences and lectures”,⁶¹⁶ in addition to needing the clearance of the country’s General Intelligence Directorate, an intelligence branch of the Jordanian armed forces, for the appointment of university professors.⁶¹⁷ In Gambia, private discussion in the University of Gambia was “curtailed due to credible fears of government surveillance and retaliation.”⁶¹⁸ Following a handover of power in 2018, Freedom House found that an “environment featuring the free exchange of ideas has yet to be established.”⁶¹⁹ In Togo, security forces were believed to maintain a presence on university campuses,⁶²⁰ and similarly in Uganda, there was alleged surveillance of lectures by security officials.⁶²¹ In Zimbabwe, personnel



In Jordan, the ‘academic community claimed there was a continuing intelligence presence in academic institutions, including monitoring academic conferences and lectures.’

612 See for example, Scholars at Risk, ‘Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project’ (2016) 16; Scholars at Risk, ‘Free to Think’ (2017) above note 15, p. 26, 27; OHCHR, ‘Human rights Violations and Abuses in the Context of Protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017’ (2017); Human Rights Observatory of the University of Los Andes (2016), above note 187, p. 11; Inter American Commission on Human Rights (IACHR), ‘Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report (2017), p. 139. In 2017 alone, at least 339 students were reportedly detained and 21 murdered, and altogether “92 demonstrations called by the university community have been repressed”. Ibid. p. 235.

613 See, US State Department Human Rights Report 2017, country reports on Burundi, Honduras, Kenya.

614 US State Department Human Rights Report 2017: Kenya.

615 US State Department Human Rights Report 2017: Ethiopia.

616 US State Department Human Rights Report 2017: Jordan.

617 US State Department Human Rights Report 2017: Jordan.

618 Freedom House Report 2017.

619 Freedom House, “Freedom in the World 2018: The Gambia (2018) <<https://freedomhouse.org/report/freedom-world/2018/gambia>> accessed 24 November 2018.

620 Freedom House Report 2017.

621 Freedom House Report 2017.

from the Central Intelligence Organization, the national intelligence agency, “at times assumed faculty and other positions, or posed as students...[and] officers regularly attended classes in which noted Movement for Democratic Change [opposition party] activists were lecturers or students.”⁶²² In Yemen, the National Security Bureau, the national intelligence agency, maintained permanent offices on campuses.⁶²³ Media reports from Pakistan indicated that the administration of Gombal University was visited by “security personnel” asking them to “remove courses on critical thinking from the curriculum.”⁶²⁴ In Ukraine, the Global Coalition to Protect Education from Attacks reported that in 2017, military personnel of conflicting parties used universities for military purposes including for deploying fighters in and near institutions and for storing weapons.⁶²⁵ Similarly, in Nigeria it was reported that government security forces used universities for military purposes.⁶²⁶

d. Negative Public Discourse by Governments

A further means of undermining institutional autonomy is through negative public discourse from public officials. While limited examples were found, this is a trend that should be closely monitored by stakeholders. In Hungary, negative discourse towards institutions and academics undermines the autonomy of higher education and research institutions. For example, speaking four days before the passing of the law critiqued for specifically targeting CEU, discussed above, Hungary’s Prime Minister stated in relation to CEU that Hungary is a country “that supports knowledge but does not tolerate cheating.”⁶²⁷

Discourse on the university’s alleged “cheating” resurfaced in other governmental communications.⁶²⁸ Later, in 2018, a government-friendly newspaper, *Figyelo*, published a list of people in an article entitled “the people of the speculator”, referring to George Soros, the founder of Central European University. In addition to listing people working in NGOs, the paper also listed academics, including deceased scholars.⁶²⁹ Subsequently, the same newspaper published a list of researchers and their pictures, from the Hungarian Academy of Sciences at the time of ongoing discussions about the draft bud-

622 US State Department Human Rights Report 2017: Zimbabwe.

623 US State Department Human Rights Report 2017: Yemen.

624 Daily Times, ‘Noam Chomsky among academics concerned over stifling of speech at Pakistani campuses’ (18 April 2018) <<https://dailytimes.com.pk/229552/noam-chomsky-among-academics-concerned-over-stifling-of-speech-at-pakistani-campuses/>> accessed 24 November 2018.

625 Global Coalition to Protect Education from Attack, ‘Education Under Attack’ (2018), pp. 252-253.

626 Ibid., p. 181.

627 www.hirado.hu (Hungarian Public Service National News Portal), ‘Orbán: Véget kell vetni a migránsbiznisznek’ [“We need to stop the migrant business”] (31 March 2017) <<https://www.hirado.hu/2017/03/31/orban-a-soros-egyetem-jovojekormanykozi-targyalasokon-mulik/>> accessed 24 November 2018.

628 See for example, the Spokesperson of the Hungarian Government said about CEU that “It makes one think, that institutions operate in the country...that have no connection to reality”, [Magyarhirlap.hu](http://magyarhirlap.hu) ‘Nekünk nincs mit magyarázkodunk’ [“We do not have anything to explain”] (28 October 2017) <http://magyarhirlap.hu/cikk/101682/Nekunk_nincs_miért_magyarazkodunk> accessed 24 November 2018.

629 *Figyelo*, ‘A Szpekuláns Emberei’ [“The people of the Speculator”], Volume 15. Translation authors’ own.

get law (discussed above), under the headline “Migration, the rights of homosexuals and gender studies – what most occupies those working at the Hungarian Academy of Sciences.”⁶³⁰

Negative discourse on academics has also impacted university associations in Venezuela. In November 2015, the National Assembly passed a resolution (*Acuerdo*) requesting the takeover of management of the remaining autonomous universities. University associations protested against it, which the government framed as an illegal activity,⁶³¹ associated with opposition political forces. According to Hocevar et al., the resolution:

accused universities of being abducted by forces of different signs (i.e. tendencies not aligned to the national government), of generating processes of insubordination to the law and of supporting unconstitutional and violent solutions against the democratically elected government. The [resolution] criminalized the legitimate struggles of the university associations by pointing out that they constituted a policy of the Venezuelan opposition.⁶³²

e. Particular Considerations in Situations of National Emergency

One area worth noting finally is the use of national emergency legislation to impose restrictions on universities. While a relatively limited number of examples were found, states of emergency can be used by governments to impose restrictions on human rights, and much of the actions in Egypt, and Turkey have been conducted under states of emergency.

In Turkey, as noted above, a state of emergency has underlined all of the actions of the state against universities and academics, with over 7,000 dismissed, and at least 990 scholars, staff

630 Figyelo, ‘Bevándorlás, homoszexuálisok jogai és gendertudományok – ezek foglalkoztatják leginkább az MTA munkatársait’ [Migration, the rights of homosexuals and gender studies – these interest the most people working at the Hungarian Academy of Sciences] (19 June 2018) Translation authors’ own. <<https://figyelo.hu/v/bevandorlas-homoszexualisok-jogai-es-gendertudomany--ezek-foglalkoztatjak-leginkabb-az-mta-munkatarsait--/>> accessed 24 November 2018.

631 Human Rights Observatory of the University of Los Andes (2016) above note 187, p. 12.

632 Hocevar et. al., Threats to Academic Freedom in Venezuela (2017) above note 184, p. 160.



States of emergency can be used by governments to impose restrictions on human rights, and much of the actions in Egypt, and Turkey have been conducted under states of emergency.

and students detained or arrested.⁶³³ The US State Department Report 2017, reported that in Ethiopia:

Authorities frequently restricted speech, expression, and assembly on university and high school campuses. SOE [state of emergency] regulations prohibited strikes in educational institutions, giving authorities the power to order educational institutions to take measures against any striking student or staff member and provided law enforcement officers the authority to enter educational institutions and take measures to control strikes or protests.⁶³⁴

International standards ground academic freedom, and institutional autonomy in the right to education under Article 13 ICESCR. Pursuant to Article 4 ICESCR, States have a positive obligation in the progressive realisation of the rights in the ICESCR, and to at a minimum, refrain from regressive measures. Rights may be subject “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”. It is worth recalling the statement of the Committee on Economic, Social and Cultural Rights, that “a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4.”⁶³⁵ Therefore, when monitoring excessive state interference with universities, stakeholders should be particularly vigilant regarding the use of national emergency laws to restrict the activities of higher education institutions particularly taking into account where the measures enacted by such laws are not proportionate and justified.⁶³⁶

633 Scholars at Risk: Report of the Scholars at Risk Academic Monitoring Project, 2017, p. 12.

634 US State Department Human Rights Report 2017: Ethiopia.

635 CESCR General Comment No. 13, para. 42.

636 Recalling that ICESCR Article 4 provides that “The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” As well as the limitations on the invocation of a national emergency provided by ICCPR Article 4.

FINDINGS AND RECOMMENDATIONS

This report has found repressive and potentially repressive government practices against higher education institutions, including academics and students, in more than 60 countries. These practices include: changes to higher education laws or regulations to restrict autonomy or target specific institutions; interference in governance structures; political appointment of leadership; requiring or prohibiting the teaching of certain materials or subjects; elected or government officials having hiring or firing powers over faculty and staff and the power to select or expel students; prioritising appointments, promotions or admissions on the basis of party or political affiliation; politicised distribution of student scholarships; limiting or setting restrictive requirements on funding; censorship of materials; restricting academic travel abroad; and creating an environment in which self-censorship is routine and academic collaboration subject to restrictions or potential punishment. At the severest end of the repressive practices found are examples of state monitoring and restriction of academic research and publications, monitoring of universities through the presence of security services on campuses, criminalisation of academics and students for the expression of their views or undertaking of peaceful protests, and instances of aggressive policing of campuses or even their militarisation. For the purposes of this report, we have identified government interferences as being excessive or 'repressive' where they restrict universities' ability to take operational or academic decisions autonomously, and go beyond what could be regarded as permissible interferences for legitimate purposes, such as oversight of the use of public monies or regulation of the system of higher education.

Our findings include examples of state practice even where a specific legislative or regulatory provision could not be identified. In part, this was because information on specific legislative or regulatory restrictions was often not available or it was not clear whether restrictions were set out in legal instruments or were rather a matter of policy or state practice. Examples of this type of state practice were also included in the report because it was clear that they are highly relevant to the ability of higher education institutions to operate autonomously.

Most of the examples found in this report clearly fall outside of legitimate interventions by the state on the basis of the public interest (such as financial oversight). Nonetheless, it is also clear that universities find themselves in a complicated position with regard to the state. Governments, at a minimum, have the power to set higher education legislation and funding (particularly for public universities). Additionally, governments

may consider that they can legitimately get involved in issues of university governance, leadership, admissions, and even in the courses and curricula of state-funded institutions on the grounds of state investment and national education policy. In determining when state interference becomes 'repressive', therefore, consideration must be given to the legitimate role of the state, as well as the complexity and diversity of university governance models.

As seen in this report, university governance models range from those where the state exercises a high level of control, to those that are highly autonomous and self-governed.⁶³⁷ We have not found agreement on the extent of permissible state engagement in public university governance. Beiter et. al. have argued:

Generally addressing the extent of government powers regarding [higher education] institutions, a reading of a state's [higher education] legislation should reflect wide competences for [higher education] institutions and a minimal measure of involvement of the state in regulating their activity. This is not to aver that the state does not hold ultimate responsibility in respect of the [higher education] sector. The state should, however, merely supervise whether legal requirements have been complied with (German: 'Rechtsaufsicht'), but not review decisions on their merits (German: 'Fachaufsicht'). [Higher education] institutions should be in a position to enact most regulations and take most decisions without these requiring prior approval or subsequent confirmation by the state.⁶³⁸

However, this hands-off supervisory approach is clearly not broadly applied around the world. There are regional and national differences in the extent of institutional autonomy, particularly when compared to academic freedom. Berdahl suggests that this arises because "[a]cademic freedom... is a universal concept, needed by universities, East and West, North and South, public or private. Autonomy, in contrast, is a relative value and may legitimately differ in its contents from place to place and from time to time."⁶³⁹ An additional complicating factor in determining the scope of institutional autonomy is the absence of a clear set of international standards.

Autonomy as discussed in this report is that degree of self-governance necessary for effective decision-making, as defined by the CESCR and UNESCO. While the correct balance between state engagement and institutional autonomy may be debated, it does appear to be widely accepted from both international standards and professional assessments of autonomy that self-governance relates to two broad areas: academic de-

637 For a discussion on governance models see, Michael Dobbins, Christoph Knill and Eva Maria Vogtle, An analytical framework for the cross-country comparison of higher education governance, *Higher Education* (2011) 62:665–683.

638 Beiter, et. al, *Academic Freedom and its Protection in the Law of European States* (2016), above note 40, p. 310. Overall, they found that the average score for institutional autonomy was just 46%, academic self-governance 43% and job security 37%.

639 Robert Berdahl, 'Thoughts About Academic Freedom, Autonomy and Accountability', Magna Charta Observatory Seminar, Istanbul, Turkey, November 2010, Workshop Proceedings, Sabancı University, Istanbul, 30 November 2010, p. 1.

cisions, and operational decisions, including organisation and management, finance, and staffing. As CEU President and Rector Michael Ignatieff emphasised, at its core, institutional autonomy is the right of higher education institutions to determine academic procedure, what to teach, who to recruit and hire, and which students to admit.⁶⁴⁰ However, it was also evident in researching this report that repressive practices against academic freedom cannot be artificially separated from institutional autonomy issues. In this regard, governmental interference in areas that may more usually be classified as ‘academic freedom’, such as censorship of materials or research, clearly fall within the scope of interference with institutional autonomy as they limit the institution’s ability to determine its academic programmes and ‘what to teach’.

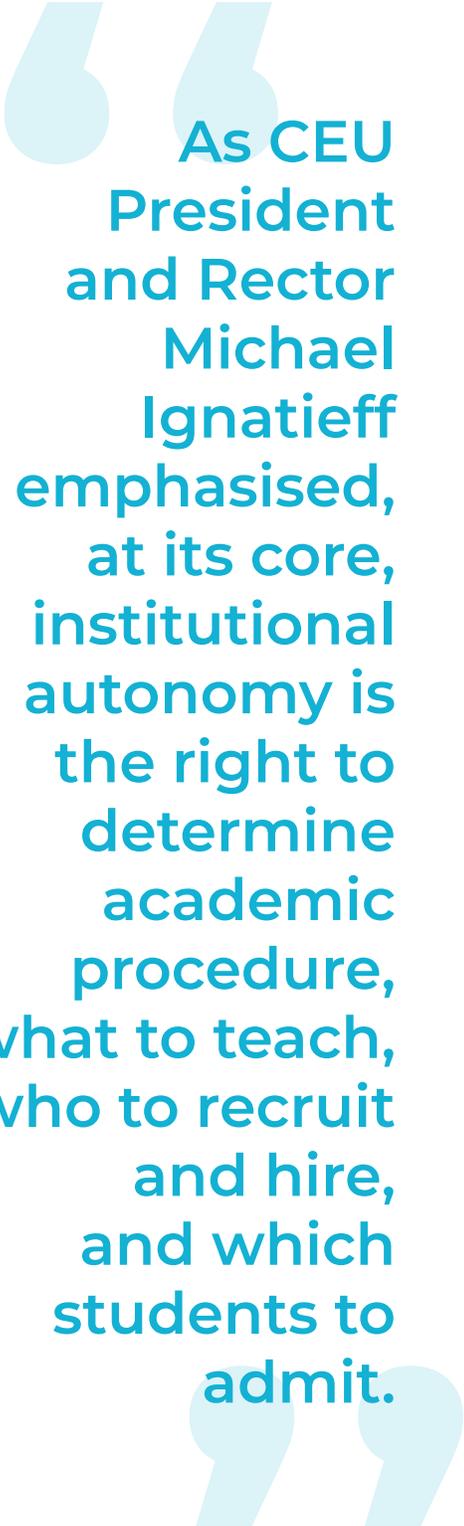
In examining repressive practices against institutions, and whether there is a closing academic space, it is therefore important to consider not just specific national legislative or regulatory provisions, but also examples of repressive practices against individual institutions, academics and students. This is because government interference with higher education institutions may also be on a much more subtle hidden level than what is placed in legal provisions, as Altbach notes, where “[g]overnment authorities make it clear to university officials that continued good relations, budgetary allocations, and research funds depend on the appropriate academic and political behaviour on the part of the faculty.”⁶⁴¹ One example of this found in the present report is the extent of self-censorship reported by academics.

There is also a distinction to be made between the *ability* of a government to exert influence, and the (mis)use of that influence.⁶⁴² The nature of the research undertaken for this report necessarily focuses on situations where influence has been applied with negative or potentially negative consequences for universities. However, a weak legal and regulatory framework, or one that leaves considerable scope for government interference, should be a cause for concern as it leaves universities open to repressive actions.

640 Interview with CEU President and Rector, Michael Ignatieff, 28 June 2018.

641 Philip G. Altbach, Academic freedom: International realities and challenges, *Higher Education* 41: 205–219, 2001, p. 213.

642 This was noted as a distinction in the research undertaken by Don Anderson and Richard Johnson, *University Autonomy in Twenty Countries*, Centre for Continuing Education, The Australian National University, April 1998, p. 13.



As CEU President and Rector Michael Ignatieff emphasised, at its core, institutional autonomy is the right to determine academic procedure, what to teach, who to recruit and hire, and which students to admit.

A further caveat is important here. This report's focus on repressive actions against universities does not capture the extent to which universities themselves are the cause of restrictions. Yet it may be that universities are also implementing repressive practices. We would suggest that these two issues cannot be easily separated. Two aspects are of interest here to the interaction of the state with higher education institutions; firstly, whether it is the actions of the state in reducing the autonomy of the university through, for example, appointing government-friendly leadership that has led to this, or secondly, whether it is as a result of the actions of the state in creating an environment where it is understood that academic freedom cannot be freely practiced. Beiter et. al. suggest that:

In Europe, however, it is nowadays rather sources of a different nature from which direct threats to academic freedom emanate, the state having become a (seemingly innocent) actor in the background. The state has assigned [higher education] institutions fairly wide-reaching powers (as it were, delegated many of its powers to these institutions). In practice, this has had the effect that [higher education] institutions themselves have become direct violators of academic freedom.⁶⁴³

With those considerations in mind and a focus on the actions of the state, what might be a workable framework for monitoring repressive state practices against higher education institutions by stakeholders?

Coming back to the Paris Principles and the assessment of National Human Rights Institutions (NHRI) discussed in this report, the approach taken to those institutions provides a useful framework through which institutional autonomy could be considered with a view to identifying potentially repressive state interference with universities. The Paris Principles provide guidance for institutions that are independent in their functioning, but receive state funding (necessitating accountability towards the state). Taking into account the Paris Principles, and the examples found in this report, the following table suggests how institutional autonomy issues might be examined:

⁶⁴³ Beiter et. al., *Academic Freedom and its Protection in the Law of European States* (2016) above note 40, p. 333.

IDENTIFYING REPRESSIVE STATE PRACTICES AGAINST HIGHER EDUCATION INSTITUTIONS

Area	Autonomy Requirements
1. Enabling Law	<ul style="list-style-type: none"> • Is there clear constitutional or legislative provision for academic freedom and institutional autonomy? • Are any material legislative or regulatory changes impacting universities made through a transparent process, with sufficient time for consultation and debate? • Are changes to funding, higher education policies, and the higher education framework made in consultation with relevant higher education institutions, faculty and student bodies? • Are changes impacting higher education institutions made only where necessary, proportionate and in keeping with international standards including on the right to education?
2. Governance & Leadership	<ul style="list-style-type: none"> • Is there open, transparent merits-based appointment process for leadership and the board? • Is there a transparent, consultative recruitment process for leadership with appointments decided by the institution or an independent external authority (as appropriate)? • What level of (direct and indirect) government representation is there in the governance structures? • Do faculty meaningfully participate in governance structures? • Are students represented within governance structures?
3. Organisation & Financing	<ul style="list-style-type: none"> • Does the university choose its own internal structures that are not subject to closure or arbitrary alteration by the government or government-run agencies? • Is the university able to decide on the use of its own budget without government interference? • Is funding predictable and stable? • Is there evidence of significant budget cuts or budgetary retaliation against one or more institutions? • Are financial accountability mechanisms proportionate, similar across independent state bodies, and in keeping with the principle of autonomy? • Is research funding administered through a peer-review process?
4. Government Oversight	<ul style="list-style-type: none"> • Does a government-run body or government appointed individual(s) exercise control over higher education institutions' academic or operational decisions? • Are regulatory requirements excessive, or unfairly applied (e.g. between universities)? • Is the national environment one in which academics feel pressured to practice self-censorship? • Is engagement with higher education institutions by the government collaborative and in a spirit of partnership?
5. Substance (academic autonomy)	<ul style="list-style-type: none"> • Are curricula faculty-built without government interference? • Is there censorship in accessing research materials? • Is there a requirement for government/state-body approval for publications and/or censorship of publications and research outputs? • Is there a requirement for mandatory political or ideological courses? • Are faculty de facto free to choose their research topics? • Are faculty free to travel for academic collaboration and conferences? • Do academic conferences and events require government approval?

IDENTIFYING REPRESSIVE STATE PRACTICES AGAINST HIGHER EDUCATION INSTITUTIONS (CONTINUED)

Area	Autonomy Requirements
6. Faculty	<ul style="list-style-type: none"> • Is there an open, transparent, merits-based academic appointment process with appointment decisions taken by the university? • Is there a clear, transparent, merits-based promotions/tenure process based on recognised academic requirements? • Is there evidence of promotions/tenure based on political or other affiliation? • Is there government involvement in the appointment of senior academics (e.g. professors)? • Are academics 'punished' for expressing their views such as by demotions/lack of promotions/suspension or other measures? • Can national authorities fire or demote (or promote) faculty, including having university authorities do this at their request? • Are academics prevented from accessing certain research materials and from publishing and discussing certain topics?
7. Students	<ul style="list-style-type: none"> • Can universities set their own admissions policies and procedures or are admissions government controlled? • Are admissions, scholarships or other awards distributed on merit and not based on political or ideological considerations? • Can students be arbitrarily expelled by state bodies or university leadership for the expression of their views? • Is there evidence of discriminatory practices in admissions, awards or expulsions (particularly on the basis of political affiliation)? • Are there excessive or arbitrary restrictions on visas for incoming students?
8. Extreme cases	<ul style="list-style-type: none"> • Do governmental actors repeatedly engage in discourse that portray universities, their students or academics, as illegitimate or 'dangerous'? • Is there securitisation or militarisation of campuses? • Is there evidence of state security 'spying' or other government security monitoring of campuses? • Is there evidence that the state disproportionately uses security focused legislation and practices (such as foreign agent or anti-terrorism laws) to restrict universities operations and/or the work of academics? • Is national emergency legislation used by governments to impose disproportionate restrictions on higher education institutions? • Is there criminalisation of academics for acts undertaken as part of their work, expression of views or participation in conferences or other performance of their duties? • Is there criminalisation of students for expression of views and peaceful protests?

An important component of the Paris Principles framework for NHRIs is that their compliance with the Principles is periodically peer-assessed, based on which, the institutions are graded. While such grading would be an enormous task to apply to individual universities, the potential monitoring of country-level legislation, regulations and national environments on institutional autonomy and academic freedom might learn from the field of monitoring compliance with the Paris Principles for state-funded NHRIs. The regular monitoring of the Paris Principle compliance of NHRIs has generated resources and literature that can also inform the design of monitoring mechanisms for university autonomy.

Our main recommendation arising out of this report is that there is a need to fill the current gap in monitoring of repressive practices against higher education institutions. While there are some excellent organisations working on issues of academic freedom and violations against academics and students (for example, Scholars At Risk), and studying institutional autonomy (for example, EUA, Beiter et. al.), there is an absence of any systematic monitoring of repressive measures impacting institutional autonomy. This is also the case at the UN level. For example, from 2010 to 2018, just 7 mentions of restrictions on universities were found in the Concluding Observations of the CESCR. US State Department reports were one of the few human rights reports that regularly, albeit relatively briefly, record violations against higher education institutions. There is a need for stakeholders to better monitor how legal and regulatory regimes and state practice constrain the institutional autonomy of higher education institutions. In this context, we specifically recommend that stakeholders encourage UN Treaty Bodies, particularly the CESCR, to engage in more systematic examinations of the situation of universities in their reviews of states. A greater emphasis on reporting by stakeholders to UN Treaty Bodies on university autonomy would be a practical step towards this, providing the Treaty Bodies with more concrete information on which to undertake their assessments. Considering the role higher education institutions play in influencing social change through teaching, research, the discussion of topics and the facilitation of free exchange of ideas, monitoring excessive state interference has implications for better understanding the quality of democratic institutions, rule of law and human rights globally. This underscores the importance and need for improved monitoring mechanisms on university autonomy.

The lack of focus on university autonomy has also meant there is a dearth of readily available information in this area. This suggests the need for more extensive study, for example, through a global overview of higher education frameworks and national situations using the above chart. In this regard, collaboration between leading organisations and scholars working in this area would seem beneficial. As seen in this report, extensive work on the issue of academic freedom has been done by Beiter, Karran and Appiagyei-Atua. Among their proposals, they suggest a future UN Treaty Body general

comment on academic freedom.⁶⁴⁴ International standards not just on academic freedom, but also on institutional autonomy that are clear and robust could indeed be beneficial to protecting higher education institutions from repressive state practice. Clear international standards on autonomy and academic freedom may be particularly useful as benchmarks for ongoing monitoring.

The research undertaken in this report also indicates that repressive practices against universities, and individual academics, are closely connected with anti-human rights practices generally in a country. In particular, in countries where civil society is not free to operate, or there are other significant limitations on freedom of expression. The relationship between these two may benefit from further exploration. Stakeholders who monitor restrictions on civil society would seem to be in an excellent position to identify such correlations. Identifying these connections may also assist in highlighting countries where there is particular risk of state interference with higher education institutions.

Overall, there is clear scope for improved monitoring of restrictive practices against universities. At the same time, rapidly changing landscapes, the large number of higher education institutions globally, and complexity of higher education governance and purpose noted above, render this a potentially daunting undertaking. It is important to note that Scholars at Risk and the Global Coalition to Protect Education from Attack already gather data on and monitor human rights violations against academics and higher education institutions. Although Scholars At Risk's 2018 annual report now includes a "threat to institutional autonomy" sub-section, their focus remains primarily on physical integrity rights, cases of arbitrary detention, travel restrictions and physical attacks by state and non-state actors. Initiatives that would monitor changes to the *legislative and policy environment* such as excessive restrictions on leadership selection and appointment, dismissals, governance mechanisms, financial autonomy, curricula development, staffing and other issues covered in this report, are lacking. A 2018 report by the Berlin-based Global Public Policy Institute



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644 Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua, Yearning to belong: finding a "home" for the right to academic freedom in the U.N. human rights covenants, 11 Intercultural Hum. Rts. L. Rev. 107 (2016), p. 190.

examines possible methods for measuring academic freedom and political repression in universities. It proposes codebook-guided expert assessments for monitoring these areas across countries,⁶⁴⁵ whereby country experts would code country environments on the basis of a common codebook and produce aggregate scores.⁶⁴⁶ There is a potential to assess country-level legislative and regulatory environments through such methodology that could be further explored by stakeholders.

Higher education institutions, faculty and students are likely to see increasing restrictions and repressive state practices in the coming years as the global environment for human rights and rule of law continues to decline. Examples from Hungary, Venezuela, Turkey and Russia, among others, suggest that state practice in this area is becoming more repressive. At present, the scarcity of international standards and lack of monitoring of repressive practices leaves higher education institutions, faculty and students vulnerable. As universities are often drivers of social change, as well as barometers of the health of democracies, monitoring of higher education institutions for repressive state interference would seem a positive and valuable contribution to rule of law and human rights globally.

645 Felix Hoffmann and Katrin Kinzelbach, 'Forbidden knowledge: Academic Freedom and Political Repression in the University Sector Can Be Measured. This is How.' (Global Public Policy Institute 2018) <http://www.gppi.net/fileadmin/user_upload/media/pub/2018/Kinzelbach_Hoffmann_2018_Forbidden_Knowledge.pdf> accessed 24 November 2018.

646 Felix Hoffmann and Katrin Kinzelbach, 'Forbidden knowledge: Academic Freedom and Political Repression in the University Sector Can Be Measured. This is How.' (2018) above note 645, pp. 23-27.

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