

ACADEMIC FREEDOM IN INDIA, RUSSIA, NIGERIA, AND CAMEROON

A REPORT PREPARED FOR SCHOLARS AT RISK

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INTRODUCTION

Promoting and protecting academic freedom is fundamental to ensuring that academics, students, and higher-education institutions can explore new ideas, offer insightful critiques, and provide innovative solutions to complex problems. Despite its central importance, academic freedom is imperiled across the globe – professors are arrested for voicing thoughtful critiques of their government, student protests are met with brute force, and universities are compelled to remove controversial issues from their programs.

Threats to academic freedom are highly contextual and depend on the specific context of each country. In Nigeria, concerns have been raised over violence on campus, the sex for grades scandal, and government efforts to tightly regulate the academic affairs of universities. In Cameroon, there are concerns relating to the government's tight-knit control over academic institutions and reprisals against Anglophone scholars and students who critique the central government. Similar concerns have also been raised in India, where civil and political dissent has been consistently suppressed and internet shutdowns have been used as a means of concealing discontent towards government repression. Finally, academic freedom in Russia faces ongoing threats of deliberate control, targeting of minority groups, and reprisals against dissenting opinions.

The purpose of this report is to examine the situation in four countries – Nigeria, Cameroon, India, and Russia – where serious threats to academic freedom persist. In order to meaningfully consider the current state of academic freedom in these different contexts, this monitoring exercise begins with a review of the political, historical, and legal context of each country. Subsequently, this report monitors and documents the situation of academic freedom in each country by analyzing the major threats to academic freedom and highlighting incidents of violations. The analyses of Nigeria, Cameroon, and India provide new insights into the situation in each country, while the Russian analysis builds on previous research conducted by the Academic Freedom Monitoring Legal Clinic.

INTERNATIONAL LEGAL FRAMEWORK

Multiple interconnected and internationally recognized human rights work together to constitute an international legal framework supporting academic freedom. Academic freedom encompasses a wide range of human rights, including freedom of opinion, expression, association, and assembly. As the Committee on Economic, Social and Cultural Rights (CESCR) has noted, university autonomy is a prerequisite for the exercise of professors' and students' individual rights. As such, academic freedom extends not only to members of the academic community, but also to educational institutions.¹ These rights are enshrined in the Universal Declaration of Human Rights (UDHR) as well as in other international treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).² Among these rights are the freedoms of thought and opinion, expression,

¹ See *General Comment 13, The Right to Education (Art. 13)*, UN Doc E/C.12/1999/10 (8 December 1999) at para 40. See also Human Rights Watch, "III. Academic Freedom: Definition and Legal Protections" (2005), online: <<https://www.hrw.org/reports/2005/egypt0605/4.htm>> [*HRW Academic Freedom*].

² See *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 [*UDHR*]; *International Covenant on Civil and Political Rights*, 16 December 1966, GA Res 2200

privacy, conscience and religious belief, assembly and association, education, and scientific advancements.³

THE RIGHT TO FREEDOM OF OPINION AND FREEDOM OF EXPRESSION

The freedom of opinion (or thought) is among the most essential safeguards for academic freedom, protecting the process of intellectual curiosity, reflection, and exploration. Article 19 of the UDHR guarantees the freedoms of opinion and expression, specifying that “this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁴ The freedom of opinion is also enshrined in the ICCPR at Article 19 which reiterates that this right is to be enjoyed without interference.⁵ The freedom of opinion safeguards the internal elements of academic freedom such as an individual’s ability to analyse ideas, develop theories, and draw conclusions about a given subject. These treaties specify that such freedom should be enjoyed “without interference” which means that scholars should be able to conduct their work free from harassment, intimidation, threats, or violence.⁶

The freedom of opinion is further supported by Article 2 of the UDHR, the ICCPR, and the ICESCR by protecting individuals from discrimination. This article lists “political or other opinion” as a protected ground, meaning that individuals cannot face discrimination on this basis.⁷ This can manifest itself in various ways in relation to academic freedom. For example, decision-

A (XXI) (entered into force 23 March 1976) [ICCPR]; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, GA Res 2200 a (XXI) (entered into force 3 January 1976) [ICESCR].

³ See David Kaye, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, David Kaye, GA Res 75/261, OHCHR, 75th Sess, GA Doc A/75/261 (28 July 2020) at 5, para 5.

⁴ UDHR, *supra* note 2, art 19.

⁵ See ICCPR, *supra* note 2, art 19.

⁶ See Kaye, *supra* note 3 at para 17.

⁷ See UDHR, *supra* note 2, art 2; ICCPR, *supra* note 2, art 2, ICESCR, *supra* note 2, art 2.

making around hiring should not be based on discriminatory attitudes held towards a person's opinion or beliefs. This right also protects individuals from being discharged from their duties on a discriminatory basis.

The freedom of expression also plays an instrumental role in promoting academic freedom. This right is articulated at Article 19 of the UDHR and Article 19(2) of the ICCPR. These articles codify an individual's ability to outwardly express their opinions, ideas, and research. For example, the ICCPR states that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of act, or through any other media of his choice."⁸ This article also lays out methods by which academic freedom can be expressed such as orally or in writing.

THE RIGHT TO FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY

Article 21 and 22 of the ICCPR provide for the right of freedom of association and freedom of assembly. This provides for the association of student unions and clubs, teachers' unions, and the right to organize and participate in campus protests.⁹

THE RIGHTS TO EDUCATION

The ICESCR guarantees the right to education (Article 13) and the right to scientific progress and its applications (Article 15).¹⁰ These rights speak to the essence of academic freedom and impose on states a positive obligation to guarantee these rights. A recent report by the Special Rapporteur on the promotion and protection of freedom of opinion and expression suggests that states have a positive obligation to implement institutional protections, promote autonomy, and

⁸ ICCPR, *supra* note 2, art 19(2).

⁹ See *ibid*, arts 21–22. See also HRW Academic Freedom, *supra* note 1.

¹⁰ See ICESCR, *supra* note 2, arts 13, 15.

create an environment conducive towards “seeking, receiving and imparting information and ideas.”¹¹

Although these rights play a central role in promoting academic freedom, they are bolstered by a number of other fundamental rights. These rights include the right to privacy, the freedom of movement as well as the freedom of conscience and religious belief.

RATIFICATION OF KEY INTERNATIONAL INSTRUMENTS

The four countries featured in this analysis - Cameroon, India, Nigeria, and Russia - have ratified both the ICCPR and the ICESCR.¹² These countries are therefore bound by the legal provisions discussed above. The current ratification status for each of these countries and the relevant instruments is as follows:

Country	Ratification status			
	ICCPR	First Optional Protocol to the ICCPR ¹³	ICESCR	First Optional Protocol to the ICESCR ¹⁴
Cameroon	Yes	Yes	Yes	No

¹¹ See Kaye, *supra* note 3 at para 9.

¹² See “Status of Treaties: International Covenant on Civil and Political Rights”, *United Nations Treaty Collection* (status as of 27 May 2021), online: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en#13>;

“Status of Treaties: International Covenant on Economic, Social and Cultural Rights”, *United Nations Treaty Collection* (status as of 27 May 2021), online: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en>.

¹³ See “Status of Treaties: Optional Protocol to the International Covenant on Civil and Political Rights”, *United Nations Treaty Collection* (status as of 27 May 2021), online: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=_en>.

¹⁴ See “Status of Treaties: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights”, *United Nations Treaty Collection* (status as of 27 May 2021), online: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&clang=_en>.

India	Yes (with reservations relevant to analysis)	No	Yes	No
Nigeria	Yes	No	Yes	No
Russia	Yes	Yes	Yes	No

The first Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP I-ICCPR) and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) established treaty bodies which act as quasi-judicial complaints mechanisms.¹⁵ These treaty bodies or committees are able to review individual complaints of violations of human rights relevant to each treaty, although subject to certain limitations.¹⁶ An important limitation is that individual complainants may only bring forward grievances against a state which has ratified the relevant optional protocol or has agreed to the competence of the Committee in question.¹⁷ None of the countries which are part of this analysis ratified the OP-ICESCR while only Cameroon and Russia recognize the jurisdiction of the Human Rights Committee established by OP I-ICCPR.

¹⁵ The OP I-ICCPR established the Human Rights Committee and the OP-ICESCR established the Committee on Economic, Social and Cultural Rights.

¹⁶ See “Human Rights Bodies - Complaints Procedures”, *Office of the High Commissioner of Human Rights* (n.d.), online: <<https://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrtbpetitions.aspx>>.

¹⁷ See *ibid.*

ACADEMIC FREEDOM IN NIGERIA

AFRICAN REGIONAL FRAMEWORK

The *African Charter on Human and Peoples' Rights (African Charter)*, also referred to as the *Banjul Charter*, is the primary treaty outlining the human rights obligations of states in the region. With 54 state-parties to the treaty, it enjoys near-universal acceptance in the African continent. Article 9 of the *African Charter* guarantees the freedom of information, expression, and opinion, as follows:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.¹⁸

The *African Charter* is reinforced by the efforts of civil society which culminated in the adoption of the *Kampala Declaration on Intellectual Freedom and Social Responsibility, 1990 (Kampala Declaration)*, as well as the more recent *Juba Declaration on Academic Freedom and University Autonomy, 2007 (Juba Declaration)*.¹⁹ Although these declarations are not legally binding on states, they underline the importance of fundamental principles required to preserve academic freedom. For example, Article 3 of the *Kampala Declaration* states that “No African intellectual shall in any way be persecuted, harassed or intimidated for reasons only of his or her intellectual work, opinions, gender, nationality or ethnicity.”²⁰ Both declarations reiterate the need

¹⁸ *African Charter on Human and Peoples' Rights*, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M 58 (1982) (entered into force 21 October 1986), online: <<https://www.achpr.org/legalinstruments/detail?id=49>>.

¹⁹ See “The Kampala Declaration on Intellectual Freedom and Social Responsibility”, *The University of Minnesota Human Rights Library* (1990), online: <<http://hrlibrary.umn.edu/africa/KAMDOK.htm>> [*Kampala Declaration*]. See also “Juba Declaration on Academic Freedom and University Autonomy”, *Council for the Development of Social Science Research in Africa* (27 February 2007), online: <<https://codesria.org/spip.php?article349>>.

²⁰ See *Kampala Declaration*, *supra* note 19.

for autonomy, freedom from state interference, and respect for the freedoms of thought and expression.

UNIVERSITY LANDSCAPE AND BRIEF HISTORY OF EDUCATION IN NIGERIA

British colonial rule introduced Western-style education to Nigeria.²¹ Throughout the 19th and early 20th centuries, Christian missionary bodies ran some of the earliest of Nigeria's modern-day schools, using grants from the British colonial government.²² Islamic education was also provided in the northern, predominantly Muslim regions who resisted the teaching of Christian beliefs.²³ Largely, Britain's colonial policies ignored and did not invest in education in Western Africa.²⁴ However, a stronger emphasis was placed on university education as a tool for social development in British colonies following the Second World War.²⁵ Consequently, British colonial authorities established the Asquith and Elliott Commissions, whose 1945 reports established a blueprint model for the export of British universities to overseas colonies.²⁶ The two reports encouraged the establishment of the University College, Ibadan in 1948: an institution that would parallel the educational values of the United Kingdom and enter into a special relationship with the University of London.²⁷

²¹ Before Western-style education was imported into Nigeria, Indigenous and religious educational systems existed. For more on early forms of education in Nigeria, see e.g. A Babs Fafunwa, *History of Education in Nigeria* 1st ed (London: Taylor & Francis, 2018).

²² Reuben Kenrick Udo et al, "Nigeria" (8 December 2020), online: *Encyclopedia Britannica* <<https://www.britannica.com/place/Nigeria/Security#ref55302>>. See also Kwadwo Appiagyei-Atua, "Positioning Academic Freedom in the Discourse on the Revitalisation of Higher Education in Africa" (2015) 28 U Ghana LJ 243 at 250, n 32.

²³ Udo et al, *supra* note 22.

²⁴ See Ogechi Emmanuel Anayanwu, *The Politics of Access: University Education and Nation-Building in Nigeria, 1948–2000* (Calgary: University of Calgary Press, 2011) at 34, 40–41. See also Appiagyei-Atua, *supra* note 22 at 321.

²⁵ See Anayanwu, *supra* note 24 at 3.

²⁶ See Appiagyei-Atua, *supra* note 22 at 250; Anayanwu, *supra* note 24 at 3, 31–32

²⁷ See Anayanwu, *supra* note 24 at 33.

In the 1950s, as calls of colonial reform and independence in Nigeria became louder, leaders also began to recognize the important role of education in society.²⁸ Colonial powers largely failed to invest in education, and Nigerians grew dissatisfied with the University of Ibadan's inappropriate course offerings and failure to satisfy the increasing demand for university education. For example, the University offered primarily fundamental or pure sciences, as opposed to applied science or practical subjects such as engineering, economics, medicine, and agriculture, which Nigerians considered to be most useful in working towards national and economic development.²⁹ As such, early approaches to higher education failed to meet or relate to the needs of the Nigerian populace.³⁰

The new institution came under attack by Nigerian nationalists, who saw it as “conservative, cautious, elitist, and ill-equipped for pioneering a new University in an alien culture.”³¹ A 1953 World Bank mission in Nigeria and subsequent report only provided further support, and pressure, for Nigerian educational policies to change and meet the demands of a developing and soon-to-be independent, post-war nation. The report stressed the need to expand educational opportunities for all Nigerians.³²

These critiques culminated in the formation of a mass-study that would inform the expansion of higher education in Nigeria. In 1958, the Nigerian government requested the appointment of a commission to assess the higher educational needs of Nigeria.³³ The Ashby Commission was sponsored by the Carnegie Corporation of New York and carried out in coalition with the British

²⁸ See Anayanwu, *supra* note 24 at 37–68.

²⁹ See *ibid* at 34. See also Ajuji Ahmed, “The Asquith Tradition, the Ashby Reform, and the Development of Higher Education in Nigeria” (1989) 27:1 *Minerva* 1 at 3.

³⁰ See Anayanwu, *supra* note 24 at 34–36.

³¹ Anayanwu, *supra* note 24 at 35.

³² See *ibid* at 42.

³³ See *ibid* at 59–60.

Ministry of Overseas Development and Inter-University Council, in consultation with Nigerian governments and stakeholders, as well.³⁴ It was the first inter-regional and international collaboration in Nigeria of its kind.³⁵ In 1960, the Ashby Commission Investment in Education Report made the following recommendations to universities in the newly independent Nigeria:

- i. To upgrade³⁶ Nigerians who are already in employment but who need further education;
- ii. To design a system of post-secondary education which will, as a first objective, produce before 1970 the flow of high-level manpower which Nigeria is estimated to need; and to design it in such a way that it can be enlarged, without being re-planned, to meet Nigeria's need up to 1980.³⁷

The report ultimately based its recommendations on economic concerns, framing education as an investment to be made and as crucial for national economic development and modernization.³⁸ And as Nigeria transitioned into an independent state, the education system transitioned, as well, to include curricula, models, and areas of study that were more suitable for Nigeria's immediate social and community life.³⁹ Since then, and still today, education in Nigeria is "regarded as an

³⁴ American and British interests in education policy in Nigeria were largely driven by Cold War politics in the context of decolonization. See *ibid* at 37–68, 212; Ahmed, *supra* note 29 at 6.

³⁵ See Anayanwu, *supra* note 24 at 59.

³⁶ The exact meaning of the term "upgrade" within the context of the 1960 Ashby Commission Report is uncertain. It is possible the Commission is referring to "upgrading" Nigerians' skills or employment status by providing further educational opportunities.

³⁷ John Adeboye Adeyemo, "The Demand for Higher Education and Employment Opportunities in Nigeria" in Yann Lebeau & Mobolaji Ogunsanya, eds, *The Dilemma of Post-Colonial Universities: Elite Formation and the Restructuring of Higher Education in sub-Saharan Africa* (Ibadan: IFRA-Nigeria, 2015) 241; Anayanwu, *supra* note 24 at 69–101.

³⁸ See Ahmed, *supra* note 29 at 5–7; Anayanwu, *supra* note 24 at 69–101.

³⁹ W O Ibukun & A Aboluwodi, "Nigeria's National Policy on Education and the University Curriculum in History: Implication for Nation Building" (2010) 1:2 *J Education & Practice* 9 at 10. But note: despite a transition towards an educational system more suitable for Nigerian needs, and given the heavy American and British presence on the planning and execution of the Ashby commission, the international perspective was fairly limited to Western interests that were keen on maintaining the political-economic framework by the United Kingdom (see AI Asiwaji,

instrument per excellence for social and economic reconstruction of the nation.”⁴⁰ This view of education as a tool for promoting nation-building and national cohesion resulted in an emphasis on uniformity in admissions policies and the centralization of power, so as to ensure successful and cohesive implementation amongst different regions.⁴¹

DOMESTIC LEGISLATIVE FRAMEWORK

CONSTITUTIONAL LAW

Academic freedom in Nigeria is indirectly provided for at the domestic level by an expansive jurisprudential interpretation of the Nigerian Constitution’s provision on freedom of expression, and through Nigeria’s obligations as signatories to regional and international instruments.

The right to academic freedom is not explicitly mentioned in Nigeria’s Constitution. Rather, Courts have given an expansive reading to section 39 of the Constitution, which provides that “[e]very person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.”⁴² S. 39(2) of Nigeria’s Constitution provides that “every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions” without prejudice.⁴³ In deciding

“Ashby Revisited: A Review of Nigeria's Educational Growth, 1961-1971” (1972) 15:1 African Studies Rev 1 at 3; Anayanwu, *supra* note 24 at 12).

⁴⁰ Nigeria, Federal Ministry of Education, *National Policy on Education*, 6th ed (Lagos: Nigerian Educational Research and Development Council, 2013) at xii. See also Anayanwu, *supra* note 24 at 69–101.

⁴¹ See Anayanwu, *supra* note 24 at 75–76.

⁴² *Constitution of the Federal Republic of Nigeria, 1999*, Act No 24 of 1999, s 39(1); Elijah Adewale Taiwo, “Regulatory Bodies, Academic Freedom and Institutional Autonomy in Africa: Issues and Challenges – the Nigerian Example” (2011) 9:1–2 J Higher Education Africa 63 at 71.

⁴³ *Constitution of the Federal Republic of Nigeria, 1999*, *supra* note 42, s 39(2).

that it would be unconstitutional to abolish private primary schools, the court interpreted the word “medium” as not limited to traditional means of mass communication but also schools.⁴⁴

Nigeria is also a signatory to the UDHR, ICCPR and ICESCR, and the *African Charter*. Collectively, the provisions, and jurisprudential interpretations of these international, regional, and domestic frameworks, guarantee academic freedom in Nigeria.⁴⁵

LEGAL AND REGULATORY FRAMEWORK

Following the Second World War and in the years leading up to Nigeria’s independence, colonial authorities enacted a series of constitutional conventions that formed the bedrock of Nigeria’s federal structure. Following the Richard Constitution of 1946 and Macpherson Constitution of 1951, Nigeria’s federal structure was split into three regional administrative units—West, East, and North—as well as a central legislative body and an executive council.⁴⁶ The 1954 Lyttleton Constitution solidified a concurrent federal and regional power structure over education, “giving both the central and regional governments authority to establish and run higher education institutions.”⁴⁷ Today, the Federal, State and Local governments are all authorized to manage higher or vocational education.⁴⁸ However, throughout the independence, the civil war, and military dictatorship periods in the 1960s and 1970s, control over education became increasingly centralized, viewed for its utility to facilitate national unity.⁴⁹

⁴⁴ See *Anthony Olubunmi Okogie v Attorney-General of Lagos State* (1981) 1 NCLR 105; *Adewole v Alhaji Jakande & Others* (1981) 1 NCLR 262, cited in Taiwo, *supra* note 42 at 71.

⁴⁵ See Taiwo, *supra* note 42 at 71.

⁴⁶ See Grace Oluremi Akanbi & Alice Arinlade Jekayinfa, “Education and emancipation, educational policies and “de-emancipation”: A history of the Nigerian education system from 1914 to 2014” (2019) 6:2 *Espacio, Tiempo & Educación* 177 at 180; Anayanwu, *supra* note 24 at 38–40.

⁴⁷ Anayanwu, *supra* note 24 at 43–44.

⁴⁸ See *Constitution of the Federal Republic of Nigeria, 1999*, *supra* note 42 at 2nd Schedule, Part II, para 27–30 (Concurrent Legislative List), 4th Schedule, para 2(a); *National Policy on Education 2013*, *supra* note 40 at vi–vii.

⁴⁹ See Ahmed, *supra* note 29 at 106.

Today, Nigeria's education system is split into early childcare, basic education, post-basic (or secondary) education, and tertiary (or higher) education.⁵⁰ Tertiary institutions include colleges of education, monotechnics, polytechnics, and universities, which offer undergraduate, graduate, vocational, and technical programs.⁵¹ While both public and private institutions exist and, despite shared constitutional jurisdiction over higher education, the federal government primarily controls and regulates the administrative and academic affairs of all universities.

The Ashby Commission's recommendations were greatly relied upon by the newly independent Nigeria in expanding their educational offerings. As discussed previously, a trend towards centralization of power in this sphere emerged out of the recognition that education could be a driver of economic and social development on a national scale. The expansion of higher education was made a priority in Nigeria's first national development plan, and the federal government created and gave powers to National Universities Commission (NUC) in 1962.⁵² Though it did not have any statutory power at the time, the NUC Decree No. 1 of 1974 recomposed and gave powers to the commission to execute its vision of a centrally coordinated tertiary system.⁵³ The NUC exists to this day and has the accreditation power to approve or disapprove academic curriculums and institutions, ensures quality assurance of programs, and advises the government on funding.⁵⁴ With the creation of the Joint Admissions and Matriculation Board (JAMB) in the 1970s, "admission to the universities became centralized and nationalized."⁵⁵

⁵⁰ See *National Policy on Education 2013*, *supra* note 40 at vii.

⁵¹ See *ibid.* See also World Education Services, "Education in Nigeria" (7 March 2017), online: *World Education News & Reviews* <<https://wenr.wes.org/2017/03/education-in-nigeria>>.

⁵² See Anayanwu, *supra* note 24 at 81–82.

⁵³ See *ibid* at 114.

⁵⁴ See Taiwo, *supra* note 42 at 72; Akpan Kufre Paul & Dr Glory Amadi, "University autonomy and academic freedom in Nigeria: A theoretical over view" (2017) 2:4 *Intl J Academic Research & Development* 540 at 542; M Olalekan Arikewuyo "The Challenge of Academic Freedom in the Nigerian University System" (2013) 4:2 *Makerere J Higher Education* 247 at 225.

⁵⁵ Anayanwu, *supra* note 24 at 125–126. See also World Education Services, *supra* note 51.

Though local governments, private individuals and Nigerian companies were given the right to establish private universities in 1993, these federal agencies still exert a great deal of control over all tertiary institutions in Nigeria.⁵⁶ As will be discussed in greater detail below, the concentration of federal power over academic programming infringes upon the autonomy of Nigeria's tertiary institutions.

NATIONAL POLICY ON EDUCATION

Nigeria's National Policy on Education (NPE) informs the objectives and guidelines for education in Nigeria.⁵⁷ While it focuses largely on primary and secondary education, it includes goals for tertiary (higher) education and speaks to the rationale behind education policy more generally. The first NPE was released in 1977, and its 6th and current version was enacted in 2013.⁵⁸ It was largely informed by the work of the Ashby Commission, other government-created committees, and a series of curriculum reform conferences that took place in the 1960s–70s.⁵⁹

Nigeria's education policy characterizes education as an important tool for “developing the full capacities and potentials of human resource,” and as an investment for economic, social, and political development.⁶⁰ Nigeria's approach to education is rooted in beliefs, outlined in the NPE as follows:

- a) Education is an instrument for national development and social change;
- b) Education is vital for the promotion of a progressive and united Nigeria;
- c) Education maximizes the creative potentials and skills of the individual for self-fulfillment and general development of the society;

⁵⁶ See Anayanwu, *supra* note 24 at 204.

⁵⁷ See *National Policy on Education 2013*, *supra* note 40.

⁵⁸ See *ibid* at viii.

⁵⁹ See Ibukun & Aboluwodi, *supra* note 39 at 10; Anayanwu, *supra* note 24 at 110–12; Akanbi & Jekayinfa, *supra* note 46 at 183.

⁶⁰ *National Policy on Education 2013*, *supra* note 40 at iv–v.

- d) Education is compulsory and a right of every Nigerian irrespective of gender, social status, religious, colour, ethnic background and any peculiar and individual challenges; and
- e) Education is to be qualitative, comprehensive, functional and relevant to the needs of society.⁶¹

The NPE also outlines the multi-faceted infrastructure of the education sector. Not only do constitutional provisions and legislative support exist at all levels of government, but stakeholders such as civil society organizations, private individuals and the private sector, NGOs, and international stakeholders all participate in the delivery of education.⁶² The goals assigned specifically to tertiary and university institutions overlap significantly with the foundations of education in Nigeria elaborated in the NPE. The NPE tasks higher educational institutions with: providing accessible and affordable quality learning opportunities, in order to contribute to national development and reduce skills-shortages through high level manpower training; providing career counselling; and with forging and cementing national unity.⁶³

From these mandates, a Nigerian university could be understood as more or less an industrial agent for shaping national unity, as well as the destiny of individuals and of the state.⁶⁴ Indeed, the role of education as a tool for nation-building was the main philosophy that guided the formulation of Nigeria's higher education policy in the first place. This philosophy is not only stated explicitly throughout the NPE, but given Nigeria's heterogenous ethnic makeup, and the regional splits that exist within the primary and secondary education sectors, "the idea to employ

⁶¹ *National Policy on Education 2013*, *supra* note 40, art. 3.

⁶² See *ibid* at vi.

⁶³ *Ibid*, art 81. See also A K Okorosaye-Orubite, F Godgift Paulley & Nath M Abraham, "University Autonomy, Academic Freedom and Academic Staff Union of Universities' (ASUU) Struggles in Nigeria: A Historical Perspective" (2012) 8:12 Asian Soc Science 265 at 266.

⁶⁴ Okorosaye, Paulley & Abraham, *supra* note 63 at 266.

university education to achieve national unity seemed cogent, especially after the experience of the civil war.”⁶⁵

Article 85 of the NPE seems to define academic freedom as the responsibility of tertiary institutions over internal organization and administrative matters, as follows:

85. The internal organization and administration of each institution shall be its own responsibility.

a) The traditional areas of academic freedom for the institutions are to:

- i. Select their students, except where the law prescribes otherwise
- ii. appoint, promote and discipline their staff
- iii. teach and select areas of research; and
- iv. determine the content of courses in line with minimum standards stipulated by regulatory agencies.

Government shall continue to respect this freedom.⁶⁶

While this article seems to support the idea that tertiary institutions enjoy academic freedom, the scope of this right, in practice, is quite narrow. For example, while it seems as though universities have control over student selection, the legal framework and policies surrounding university admissions vests power entirely with government agencies.⁶⁷ Further, article 87 clarifies that “University research shall be relevant to the nation’s developmental goals.”⁶⁸ Given that national goals and objectives are defined by the State, making academic freedom contingent on

⁶⁵ Anayanwu, *supra* note 24 at 110–112.

⁶⁶ *National Policy on Education 2013*, *supra* note 40, art 85.

⁶⁷ See section on university admissions practices, below.

⁶⁸ *National Policy on Education 2013*, *supra* note 40, art 87.

national goals can open avenues for the government to impose restrictions on curricula and areas of research. This erodes institutional autonomy and restricts the right to academic freedom.

THREATS TO ACADEMIC FREEDOM

Threats to academic freedom vary by context, but are often based on “political, financial, ideological, and/or social and cultural pressure.”⁶⁹ In the post-colonial Nigerian context, political and economic strife not only places pressure on the education system as a whole, but also contributes to a generally violent climate in which people do not necessarily feel safe in pursuing academic interests. In this sense, threats to academic freedom in Nigeria include abductions and attacks on university campuses by criminal gangs and militant groups.

The erosion of institutional autonomy at Nigerian universities poses another threat to academic freedom. Pursuant to human rights norms, academic freedom also involves an institutional element of protection: governments must facilitate and protect the autonomy and self-governance of educational institutions, in order to create an enabling environment for seeking, receiving, and imparting information and ideas.⁷⁰ To this end, the *2007 Juba Declaration* specifically demands that Governments avoid interfering with “the autonomy of Higher Education Institutions.”⁷¹ However, the locus of control over Nigerian tertiary institutions is vested almost entirely with the government. This type of influence is not only contrary to human rights norms, but a lack of institutional autonomy has a demonstrated negative impact on the attitudes and morale of academic staff.⁷²

⁶⁹ Kaye, *supra* note 3 at para 31.

⁷⁰ See *ibid* at para 9

⁷¹ *Ibid* at para 22.

⁷² See Osarenren-Osaghae et al, “The Influence Of Academic Freedom And University Autonomy On The Attitude To Work By Academic Staff Of Public Universities In Edo And Delta States Of Nigeria” (2014) 3:1 Literacy Information & Computer Education J 1764.

EARLY THREATS: MILITARY RULE

Threats to academic freedom have persisted since at least the 1970s, when the military began to enact repressive policies that suppressed academic freedom and university autonomy.⁷³ During military rule (1966-1979 and 1984-1999), Nigeria's university system was grossly underfunded, understaffed, and overcrowded.⁷⁴ Lecturers and student union leaders were dismissed or expelled for protesting against the then-Minister of Education.⁷⁵ Military "cronies" were appointed to Vice-Chancellorship positions, who would hire and discipline staff and students without respect for due process.⁷⁶ During this time, members and leaders of the ASUU were repeatedly dismissed or detained under allegations of being extremists.⁷⁷

Violence on Campus

Universities have long been the targets and sites of violence. Not only are universities usually understood as important social and cultural centers, but Nigerian campuses have historically been used for military or government security purposes, which makes them targets for destruction and attacks even after occupation.⁷⁸ For example, the University of Maiduguri and the Federal Polytechnic, Mubi (both in northeastern regions) have seen recurring attacks by Boko Haram over recent years.⁷⁹ To defend against gunfire and suicide bombings, the University of

⁷³ See Okorosaye, Paulley & Abraham, *supra* note 63 at 270.

⁷⁴ See *ibid.*

⁷⁵ See *ibid* at 270–71.

⁷⁶ See *ibid* at 270.

⁷⁷ See *ibid* at 271.

⁷⁸ See Global Coalition to Protect Education from Attack, "Education Under Attack 2018 – Nigeria" (11 May 2018), online: *Refworld* <<https://www.refworld.org/docid/5be9430613.html>>.

⁷⁹ See Samuel Okocha, "North East universities press on in the shadow of Boko Haram" *University World News* (9 July 2020), online: <<https://www.universityworldnews.com/post.php?story=20200708133324548>>; Benita van Eyssen & Mohammed Al-Amin, "The Nigerian university that defies Boko Haram" *Deutsche Welle* (24 September 2020), online: <<https://www.dw.com/en/the-nigerian-university-that-defies-boko-haram/a-55030832>>.

Maiduguri dug trenches around the perimeter of fences they have erected.⁸⁰ The Federal Polytechnic, Mubi had to suspend academic activities between 2014 and 2015 because of ongoing attacks.⁸¹ In addition, the abductions of university lecturers and staff over recent years by non-state militant groups and criminal gangs have reportedly “thrown the university community into a state of fear and anxiety.”⁸² This violence affects academic freedom in the sense that it renders tertiary institutions as unsafe environments, deterring students and staff from pursuing academic endeavors in the first place.

GOVERNMENT CONTROL OVER THE ACADEMIC AFFAIRS OF UNIVERSITIES

Today, governmental agencies and regulatory bodies hold much of the power in making decisions as to the basis on which students are admitted, curriculum design, and teaching qualifications. The NUC must approve all academic programs; in fact, “a university cannot run a course except the course has been approved or accredited by the NUC.”⁸³ Moreover, the process through which students are admitted to university and tertiary institutions are heavily influenced by the government. The Joint Admissions and Matriculation Board (JAMB) oversees the standardized university entrance exam, the Unified Tertiary Matriculation Examinations (UTME). Because they oversee the sole university entrance exam, JAMB effectively has the power to decide who to admit to tertiary institutions, and on what criteria. Nigeria’s quota system, in place since 1979, is another example of how the government exerts control over admissions: a quota system obliges universities to admit students not solely based on merit but based on location

⁸⁰ See van Essyen & Al-Amin, *supra* note 75; “Boko Haram suicide bomb and gun attack at Maiduguri university military camp” *The Defense Post* (16 September 2019), online: <<https://www.thedefensepost.com/2019/09/16/boko-haram-suicide-attack-maiduguri-university/>>.

⁸¹ See See Samuel Okocha, *supra* note 75; “Nigeria hunts suspects in student killings” *Al Jazeera* (3 October 2012), online: <<https://www.aljazeera.com/news/2012/10/3/nigeria-hunts-suspects-in-student-killings>>.

⁸² Tunde Fatunde, “University staff kidnappings: Union calls for action” *University World News* (31 May 2019), online: <<https://www.universityworldnews.com/post.php?story=20190528132012194>>.

⁸³ Arikewuyo, *supra* note 54 at 255.

and other guidelines set by government actors.⁸⁴ Despite the quota system's encroaching effects on institutional autonomy, its equitable roots also work towards national unity, since it was envisaged as a way to address regional imbalances in education between the East, West, and North.⁸⁵

The culminating effect of government and ministerial control over university operations and admissions is that “[a] bureaucrat, rather than the university, decides whether a particular lecturer is fit to teach.”⁸⁶ This highly centralized framework not only encroaches on the institutional autonomy that universities traditionally enjoy, but the existence of several bodies, with overlapping functions, “[makes] it difficult to have a clear-cut demarcation of who does what.”⁸⁷ Further, the presence of academic staff on university councils and boards is lower than what is recommended by the UNESCO *Recommendation concerning the Status of Higher-Education Teaching Personnel*.⁸⁸ According to the *Recommendation*, academic staff should make up the majority of representatives elected to different boards and bodies.⁸⁹ However, some Nigerian universities have a dominant presence of government appointees.⁹⁰

The erosion of university autonomy and control over their own affairs is especially problematic in light of several accounts that illustrate how government oversight is often subject to heavy political interference and corruption. Many have criticized the NUC and other government bodies for playing politics with universities, pointing out that accreditation and

⁸⁴ See *ibid* at 253; Osarenren-Osaghae et al, *supra* note 72 at 1767.

⁸⁵ See Anayanwu, *supra* note 24 at 111–12, 115–127.

⁸⁶ Taiwo, *supra* note 42 at 73.

⁸⁷ Akanbi & Jekayinfa, *supra* note 46 at 189.

⁸⁸ *Recommendation concerning the Status of Higher-Education Teaching Personnel*, UNESCOR, 29th Sess (1997) 1, online (pdf): <<https://unesdoc.unesco.org/ark:/48223/pf0000113234.page=2>>.

⁸⁹ See *ibid*, art 31.

⁹⁰ See Appiagyei-Atua, *supra* note 20 at 262–63.

admissions processes are often subject to political influence.⁹¹ A common theme reported by many students is that admissions decisions can be influenced by political connections, or is contingent on knowing influential people.⁹² Officials may accept bribes or letters from ministers or other top government officials before making a decision about admission.⁹³

SEX FOR GRADES SCANDAL

“[S]exual violence on campuses that put women’s safety at risk in academic scenarios” is considered to be a threat to academic freedom.⁹⁴ In recent years, incidents of sexual harassment of students by university lecturers has been uncovered and subsequent legislation addressing the issue has been passed. In 2018, a CNN interview with a student prompted a Senate investigation⁹⁵ and the dismissal⁹⁶ of an Obafemi Awolowo University professor who was caught on tape. He was also sentenced to two years in jail.⁹⁷ A 2019 BBC News Africa documentary, *Sex for Grades*, explores these allegations and the pervasiveness of sexual harassment in Nigeria and Ghana.⁹⁸ Some argue that unclear policies contribute to sexual harassment in universities.⁹⁹

⁹¹ See Paul & Amadi, *supra* note 54 at 542.

⁹² See Kirsten Roberts Lyer & Aron Suba, “Closing Academic Space: Repressive State Practices in Legislative, Regulatory and Other Restrictions on Higher Education Institutions” (March 2019) at 89, online (pdf): *International Center for Not-for-profit Law* <<https://www.icnl.org/wp-content/uploads/Uni-restrictions-rpt-final-March-2019.pdf>>; Bakwaph Peter Kanyip, *Admission Crisis in Nigerian Universities: The Challenges Youth And Parents Face in Seeking Admission* (PhD Dissertation, Seton Hall University, 2013) [unpublished] at 107–110; Kaye, *supra* note 3 at para 40.

⁹³ See Kanyip, *supra* note 92 at 102

⁹⁴ Kaye, *supra* note 3 at para 31.

⁹⁵ See Bukola Adebayo & Stephanie Busari, “Nigeria’s Senate to launch investigation after CNN report on sex-for-grades scandal,” *CNN* (1 June 2018) online: <<https://www.cnn.com/2018/06/01/africa/nigeria-senate-investigates-harassment/index.html>>.

⁹⁶ See Bukola Adebayo, “Nigerian Senate passes sexual harassment bill” *CNN* (8 July 2020), online: <https://www.cnn.com/2020/07/08/africa/nigeria-sexual-harassment-bill/index.html> [Adebayo, “Nigeria sexual harassment bill”].

⁹⁷ See Bukola Adebayo, “Nigerian professor in sex for grades scandal gets prison term” *CNN* (17 December 2018), online: <<https://www.cnn.com/2018/12/17/africa/nigerian-professor-jailed-in-sexual-assault-case-intl/index.html>>.

⁹⁸ BBC News Africa, “Sex for Grades: undercover inside Nigerian and Ghanaian universities – BBC Africa Eye documentary” *YouTube* (7 October 2019), online (video): <<https://www.youtube.com/watch?v=we-F0Gi0Lqs>>.

⁹⁹ See Mohammed Lere & Ijeoma Okereke, “How unclear policies contribute to sexual harassment in Nigerian tertiary institutions” *Premium Times* (16 November 2020), online:

A bill aimed at curbing sexual harassment was passed in 2020 to end the hostile environment for students in Nigeria and “promote and protect ethical standards in tertiary education.”¹⁰⁰ It was reintroduced into the legislature after the airing of the BBC documentary.¹⁰¹ University lecturers found guilty of sexual harassment or making sexual overtures could face up to two or fourteen years in jail, depending on the severity of the offense. There are also sanctions for administrators who fail to look into allegations. But some argue the new legislation unfairly targets university lecturers, and that it should be broadened to include other institutions.¹⁰²

<<https://www.premiumtimesng.com/video/426362-video-how-unclear-policies-contribute-to-sexual-harassment-in-nigerian-tertiary-institutions.html>>.

¹⁰⁰ *A bill for an act to prevent, prohibit and redress sexual harassment of students in Tertiary Educational Institutions and for matters connected therein, 2019* (Nigeria), online: <<https://ndlink.org/wp-content/uploads/2020/02/ANTI-SEXUAL-HARASSMENT-IN-TERTIARY-BILL-2019.pdf>>. See also Adebayo, Adebayo, “Nigeria sexual harassment bill,” *supra* note 92.

¹⁰¹ See QueenEsther Iroanusi, “Analysis: Important things to know about Nigeria’s ‘new’ Anti-Sexual Harassment Bill” *Premium Times* (13 October 2019), online: <<https://www.premiumtimesng.com/features-and-interviews/357329-analysis-important-things-to-know-about-nigerias-new-anti-sexual-harassment-bill.html>>.

¹⁰² See Abuja Kanayo Umeh, “Sex-for-marks: UniAbuja sacks dean” *The Guardian* (16 December 2019), online: <<https://guardian.ng/news/sex-for-marks-uniabuja-sacks-dean/>>; Editorial Board, “That unfair anti-sexual harassment bill” *The Guardian* (21 July 2020), online: <<https://guardian.ng/opinion/that-unfair-anti-sexual-harassment-bill>>.

ACADEMIC FREEDOM IN CAMEROON

POLITICAL AND LEGAL CONTEXT

The introduction of the 1996 Constitution was meant to usher in an era of democracy and modern constitutionalism that has not materialised, as the country remains plagued by failed democratic transition, weak institutions, human rights abuses and conflict in the Anglophone regions.¹⁰³

Originally under control of German colonial powers until their expulsion in 1916, Cameroon was divided between France and Britain, with the former controlling the majority of the territory, until Cameroon gained independence in 1960-1961.¹⁰⁴ French Cameroon gained independence under President Ahmadou Ahidjo (1960-1982) becoming an authoritarian regime marked by political repression from its inception. As for the areas under British control, Northern and Southern Cameroon joined the Republic of Cameroon a year later in 1961, despite Southern Cameroon's attempts to achieve independence as its own sovereign state.¹⁰⁵ The divided colonial rule is important for understanding the legal pluralism in post-colonial Cameroon, namely the concurrent existence of both civil law and common law systems, as well as the roots of most of the continuing social unrest and political conflicts.¹⁰⁶

After over 60 years of independence, President Paul Biya (1982-present) is only Cameroon's 2nd President. Though the country formally moved to a multi-party system in 1992, elections have little credibility as Biya, widely considered a dictator, has ruled the country with an

¹⁰³ See Laura-Stella E Enonchong, *Constitution and Governance in Cameroon* (London: Routledge, Taylor & Francis Group, 2020) at 1.

¹⁰⁴ See *ibid* at 8.

¹⁰⁵ See *ibid* at 15-17.

¹⁰⁶ See *ibid* at 9-11.

iron fist marking his presidency with widespread violence and corruption.¹⁰⁷ Opposition forces have been jailed, along with their supporters. For instance, Titus Edzoa, a former advisor to Biya, resigned from his cabinet position and decided to run for Presidency, and was promptly brought up on dubious charges along with his campaign manager, Michel Thierry Atangana, a French citizen. After a trial widely seen as a sham, the two men spent 17 years in prison.¹⁰⁸

DOMESTIC LEGISLATIVE FRAMEWORK

CONSTITUTIONAL LAW

Academic freedom is supported in Cameroon through the freedom of expression. The Cameroonian Constitution protects the freedom of expression at Article 16, “the freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism, as well as the right to strike shall be guaranteed under the conditions fixed by law.”¹⁰⁹ The preamble to the Constitution states “Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of United Nations and the African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto, in particular, to the following principles...” reiterating the commitment of Cameroon to uphold their international obligations.¹¹⁰ As Cameroon is considered a monist regime, treaties are self-

¹⁰⁷ See David Wallechinsky, “The World’s Worst Dictators” (25 May 2011), online: *The Huffington Post* <https://www.huffpost.com/entry/the-worlds-worst-dictator_b_28679>; La Rédaction, “Elections. La fraude «made in Cameroon» fait fureur”, *CameroonVoice* (29 October 2012), online: <<https://cameroonvoice.com/news/2012/10/29/elections-la-fraude-made-in-cameroon-fait-fureur/>>; Vava Tample, “For the sake of Cameroon, life-president Paul Biya must be forced out”, *The Guardian* (2 November 2020), online: <<https://www.theguardian.com/world/2020/nov/02/for-the-sake-of-cameroon-life-president-paul-biya-must-be-forced-out>>.

¹⁰⁸ See Marie Desnon, “Michel Thierry Atangana, le citoyen oublié” (22 October 2015), online: *Paris Match* <<https://www.parismatch.com/Actu/Societe/Michel-Thierry-Atangana-le-citoyen-oublie-850735>>; “Cameroon frees French businessman after 17 years in jail” (25 February 2014), online: *France 24* <<https://www.france24.com/en/20140225-cameroon-frees-french-atangana-17-years-jail>>.

¹⁰⁹ *Constitution of the Republic of Cameroon*, Law No 96–06 of 1996.

¹¹⁰ *Ibid.*

executing and thus are automatically adopted within the domestic legal context, binding all levels of government.¹¹¹

However as is the case in many countries rife with political repression, formal legal guarantees are inconsistent with the reality on the ground. Those who speak up against the government often face repercussions.

Statutes

Academic freedom is further governed by a number of Cameroonian laws¹¹² including: Law no. 90/52 on the freedom of social communication,¹¹³ Law no. 90/55 on public meetings and demonstrations (1990),¹¹⁴ and Law no. 90/53 on the freedom of association (1990).¹¹⁵

However, rather from protecting rights to freedom of communication, demonstration, and association, these laws are actually used as tools of repression. For instance, regarding law 90/52, referred to colloquially as the “Mass Communication Laws,” scholars have found that “under the MC Law of 1990 censorship has been imposed through various mechanisms: all press organs had to be registered, and their total could be restricted, as might the number owned by printing houses, whose premises were liable to be searched without warrant on the grounds of 'conflict with the principles of public policy'.”¹¹⁶

¹¹¹ See ICCPR, *supra* note 2 at art 2.

¹¹² See Working Group on the Universal Periodic Review, *National Report Submitted in Accordance With Paragraph 15(A) Of The Annex To Human Rights Council Resolution 5/1*: Cameroon*, 4th Sess, UN Doc A/HRC/WG.6/4/CMR/1 (2009).

¹¹³ See *Act No. 90/052 of 19 December 1990 concerning the freedom of social communication* (amended by Act No. 96/0 of 16 January 1996) (Cameroon).

¹¹⁴ See *Act No. 90/055 of 19 December 1990 regulating public meetings and demonstrations* (Cameroon).

¹¹⁵ See *Act No. 90/053 of 19 December 1990 concerning freedom of association* (Cameroon); This law was in part modified by Law no. 90/11 in 1999.

¹¹⁶ Charles Manga Fombad, *Freedom of Expression in the Cameroonian Democratic Transition* (1995) 33:2 Mod Afri Stud 211.

THREATS TO ACADEMIC FREEDOM

In its most recent Universal Periodic Review (UPR) report, the Cameroonian state claims that efforts have been undertaken by the government to improve civil and political rights. The adoption of laws on electronic communications and audiovisual communications have been credited with enabling freedom of expression and communication.¹¹⁷ Furthermore, the state adopted the National Action Plan for the Promotion and Protection of Human Rights in Cameroon (2015-2019).¹¹⁸ Despite strides taken towards the realization of rights in certain areas, such as education and gender equality, freedoms of expression and association and are still very limited, and human rights violations against the English speaking minority are frequent and explicit.¹¹⁹

Civil Unrest

The most serious threat to human rights and freedoms, including academic freedom, is the violence and instability in the Anglophone region that erupted in 2016. After complaining to the Ministry of Justice about the imposition of civil law judges on what were essentially common law courts and procedures in the region, lawyers went on strike to protest the Ministry's lack of response.¹²⁰ Joined by teachers with similar concerns over the "lack of recognition of the 'Anglo-Saxon' nature of education," the Cameroon Anglophone Civil Society Consortium (CACSC) was formed.¹²¹ As the CACSC fought for a wide range of Anglophone issues, they were met with harsh government repression. The Rapid Intervention Battalion (BIR) was deployed and accused of

¹¹⁷ See Working Group on the Universal Periodic Review, *National Report Submitted in Accordance With Paragraph 4 of the Annex to resolution 16/21 of the Human Rights Council*: Cameroon*, 30th Sess, UN Doc A/HRC/WG.6/30/CMR/1 (2018) at paras 15, 17.

¹¹⁸ See *ibid* at para 48.

¹¹⁹ See *ibid* at paras 71-73; In its recommendation, Canada "expressed concern about the tensions in the English-speaking regions and the terrorist threats in the Far North region, although it understood the security challenges that Cameroon faced. It reminded the Government of Cameroon to uphold human rights in all circumstances" (*ibid* at para 92).

¹²⁰ See Enonchong, *supra* note 103 at 179.

¹²¹ *Ibid* at 180.

carrying out atrocities such as: “torching of villages, enforced disappearances, torture, arbitrary arrests and extra judicial executions.”¹²² This eventually culminated in the government cutting off internet access in Anglophone regions for 240 days in 2017-2018 in order to prevent the publication of the atrocities being committed.¹²³

GOVERNMENT REPRESSION

Another barrier to full realization of the right to academic freedom is government repression. Though there are not any formal restrictions on academic freedom, for instance dictating what academics are or are not allowed to teach, the existence of “state security informants” on university campuses who report academics who criticize the government, has the effect of limiting academic freedom.¹²⁴ This reflects a very limited civil and political space in Cameroon, where freedom of expression is practically non-existent.

Biya has repressed all criticism and political opposition, even going to so far as to limit access to social networking sites to prevent expression of political views and mobilization.¹²⁵ Accordingly, freedom of association is also very limited, particularly in the Anglophone region where protests for Anglophone rights and/or secession are frequently met with violent repression. In March 2018, over 100 women from the Cameroon People’s Party (CPP) protesting the humanitarian crisis linked to the conflict in the Anglophone region were arbitrarily detained. Freedom of the press is also restricted; journalists face harassment and, as with the rest of the population, risk detention for publishing critical views. Defamation is classified as a criminal

¹²² *Ibid.*

¹²³ See *ibid.*

¹²⁴ See Freedom House, “Freedom in the World 2019: Cameroon” (2019), online: *Freedom House* <<https://freedomhouse.org/country/cameroon/freedom-world/2019>> [Freedom House, Cameroon 2019].

¹²⁵ See “Freedom in the World 2020: Cameroon” (2020), online: *Freedom House* <<https://freedomhouse.org/country/cameroon/freedom-world/2020>> [Freedom House, Cameroon 2020]. See also Freedom House, Cameroon 2019, *supra* note 124.

offense and has been used to target members of the press.¹²⁶ Influence of civil societies is waning, and NGOs rely on foreign aid.¹²⁷

UNIVERSITY LANDSCAPE

In 1993, the government of Cameroon introduced a series of decrees which significantly impacted the higher education system. The country experienced a proliferation of public universities, with the total number jumping from a single institution to six overnight, including the first and only Anglophone institution, the University of Buea.¹²⁸ The decrees also brought forth a number of reforms relating to the management of universities, including such things as governance, decision-making, and budgetary structure.¹²⁹ For example, decree 93/032 outlined the governance structure of universities and “guaranteed administrative, academic and financial autonomy of universities [*translated from French*].”¹³⁰ More reforms were introduced in 2001, legitimizing private higher education institutions which ultimately increased the number of institutions from seven to around one hundred.¹³¹ The current number of public universities in Cameroon is eight, while the number of private higher education institutions is over two hundred.¹³²

Public universities are highly regulated by the state, through the Ministry of Higher Education (*Ministère de l’enseignement supérieur* or MINESUP) which also monitors private

¹²⁶ See Freedom House, Cameroon 2019, *supra* note 124.

¹²⁷ See *ibid.*

¹²⁸ See Marcel Fouda Ndjodo and Charles Awono Onana, “Les reformes de gouvernance dans l’enseignement supérieur Camerounais” (November 2012) at 4, online (pdf): *UNESCO & International Institute for Educational Planning* <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Dakar/pdf/REFORMEGOUVERNANCECAMEROUNnov2012.pdf>>.

¹²⁹ See *ibid* at 12.

¹³⁰ *Ibid* at 4.

¹³¹ See *ibid* at 5.

¹³² See Hali Access Network, “Education Fact Sheet: Cameroon” (2018), online: <<http://haliaccess.org/wp-content/uploads/2018/05/Cameroon-Education-Facts-Sheet.pdf>>.

institutions of higher learning.¹³³ Although the reforms introduced in 1993 supported autonomy on the part of public universities, the reality is such that they are only semi-autonomous and respond to the interests and objectives of MINESUP.¹³⁴ Each university is led by a Rector, which maintains a strong degree of control and discretion over the decision-making process in public universities.¹³⁵ University rectors are appointed to this position by governmental decree.¹³⁶

Although a seemingly positive expansion at the surface, the rapid expansion of public universities was not without its challenges. For example, from 2005 to 2006, a series of student protests began to emerge, starting at the University of Yaoundé I.¹³⁷ Students began to demand change from their universities and, by extension, the government. Common critiques included significant budget cuts and lack of student funding, poor living and studying conditions, as well as broader concerns around integrating democratic principles within higher learning institutions and society at large.¹³⁸

Particular concerns were raised within the only predominantly English university in the country, the University of Buea. Although supposedly established on the basis of Anglo-Saxon norms, various measures have been taken by government to control any opposition within the university. For example, one form of control implemented by the government quickly after the 1993 reforms was to appoint the entire executive staff of the university.¹³⁹ One author highlights how the university's appointed Vice-Chancellor, "started to police the production of critical

¹³³ See Ndjodo, *supra* note 128 at 15.

¹³⁴ See *ibid* at 19.

¹³⁵ See *ibid* at 20.

¹³⁶ See e.g. Université de Dschang, "Installation Ceremony" (12 October 2016), online: <<https://www.univ-dschang.org/installation-ceremony/>>. See also Francis B Nyamnjoh, Walter Gam Nkwi & Piet Konings, eds, *University Crisis and Student Protest in Africa: The 2005-2006 University Students' Strike in Cameroon* (Bamenda: Langaa Research & Publishing CIG, 2012) at 4.

¹³⁷ See *ibid* at 49.

¹³⁸ See *ibid* at 3.

¹³⁹ See *ibid* at 8.

scholarship, intimidate and persecute members of opposition parties and organisations, and crush students and teachers' unions.”¹⁴⁰

INCIDENTS OF VIOLATIONS

GOVERNMENT REPRESSION

Civil and political rights are extremely limited in Cameroon. Though limited guarantees to freedom of expression exist in the Constitution, they are restricted by the 1990 Mass Communication Laws, and even the restricted rights guaranteed in law are not realized in reality. In Freedom House's 2020 country profile report, Cameroon scored an 18/100 (not free) making it one of the least free countries in the world. Accordingly, a barrier to academic freedom is that academics and students are unable to critique the government or promote anglophone rights without fear of reprisal.¹⁴¹ For instance, Bertrand Teyou, a Cameroonian author, was jailed for two years for writing a book that Biya deemed to be insulting to his wife.¹⁴² In 2017, Patrice Nganang, a professor at Stony Brook University in New York was prevented from exiting Cameroon in retaliation for an article he wrote that was critical of the Cameroonian government.¹⁴³ Professor Nganang has since been expelled from Cameroon and told not to return to his country of origin.¹⁴⁴

Student members of the Association pour la Défense des Droits des Etudiants au Cameroun (ADDEC)¹⁴⁵ have also been targeted. After organizing a protest to demand that Biya resign, eight students were charged with “rebellion, complicity in subversion, failure to report, using a false

¹⁴⁰ *Ibid.*

¹⁴¹ See Freedom House, Cameroon 2019, *supra* note 124.

¹⁴² See “Author Jailed for Insulting President's Wife” (31 March 2011), online: *Pen America* <<https://pen.org/rapid-action/author-jailed-for-insulting-presidents-wife/>>.

¹⁴³ See “Cameroon frees Stony Brook University professor held for criticizing government” (27 December 2017) online: *CBS News* <<https://www.cbsnews.com/news/cameroon-frees-stony-brook-university-professor-held-for-criticizing-government/>>.

¹⁴⁴ See *ibid.*

¹⁴⁵ The names of the students arrested are Jules Raymond Anama, Christian Ouemba Kuete, Juliette Ndim Bih, Yannick Mbakop, Samuel Talla Giles, Stanislas Tokam, Herman Zebaze Takoubo and Aimé Kameni Wetchadji.

title, and propagation of false news” in May 2019.¹⁴⁶ After 5 months in jail, Biya dropped the charges against members of the ADDEC and other human rights defenders who were charged in relation to protests against the 2018 election.¹⁴⁷

SILENCING ANGLOPHONE ACADEMICS

In 2018, the Nigeria government was criticized by human rights organizations for deporting 47 Cameroonians back to Cameroon under anti-terrorism laws. Those deported included 6 academics who were quite critical of the Biya regime in campaigning for an independent Anglophone Cameroon, raising questions about the quality of trial that would be had at the Military Tribunal open their re-entry into Cameroon.¹⁴⁸ The absence of an extradition treaty between Cameroon and Nigeria, as well as the fact that many of the 47 who were deported had filed applications for asylum, meaning the deportations were potentially a violation of the principle of non-refoulement, also suggests a certain degree of complicity on behalf of the Nigerian government.¹⁴⁹

Numerous incidents have taken place at the University of Buea, a public English-speaking university with over 12,000 students located in the majority-Francophone Southwest region of Cameroon. In May, Dr. Felix Nkongho Agbor Balla, a former lecturer at the Faculty of Law was suspended for asking the following exam question: “The Anglophone Crisis since 2016 was caused

¹⁴⁶ “8 Hrds Charged With Rebellion, Complicity in Subversion, Failure to Report, Using A False Title & Dissemination of False News” (last updated 10 October 2019), online: *Front Line Defenders* <<https://www.frontlinedefenders.org/en/case/8-hrds-charged-rebellion-complicity-subversion-failure-report-using-false-title-dissemination>>.

¹⁴⁷ See *ibid.*

¹⁴⁸ See Tunde Fatunde, “Rights groups condemn deportation of academics and others” (23 February 2018), online: *University World News* <<https://www.universityworldnews.com/post.php?story=20180221064526769>>.

¹⁴⁹ See *ibid.*

by the lawyers' and teachers' strike. Assess the validity of this statement.”¹⁵⁰ When the same question was asked by a professor at a Francophone university, there were no repercussions.¹⁵¹ Based on the political context in Cameroon, a logical assumption is that scholars working for Anglophone institutions are being targeted to a much greater extent.

The University of Buea has historically been a site of protests and dissent; it was referred to as the “second front” (following the University of Yaoundé) during the student protests in 2005. Student associations, a historically strong source of government opposition, have also been targeted. During peaceful protests in 2016 related to a strike following student demands for English to be the sole language of instruction, students were met with violent repression from state security forces.¹⁵² Students were arrested and beaten, with some reports alleging that students were fired on.¹⁵³

¹⁵⁰ Tunde Fatunde, “Law lecturer’s dismissal over exam question raises concerns” (26 May 2020) online, *University World News* <<https://www.universityworldnews.com/post.php?story=2020052516062646>>; <https://www.scholarsatrisk.org/report/2020-04-20-university-of-buea/>

¹⁵¹ See *ibid.*

¹⁵² See Chloé Lauvergner, “Students in Cameroon beaten and intimidated for protesting” (1 December 2016) online: *France 24* <<https://www.scholarsatrisk.org/report/2016-11-28-university-buea/>>.

¹⁵³ See *ibid.*

ACADEMIC FREEDOM IN INDIA

POLITICAL AND LEGISLATIVE CONTEXT

Having celebrated 73 years of independence from colonial rule and governing a population of 1.5 billion, India is well-known as the “ world’s largest democracy.”¹⁵⁴ Within this democracy, the two major political parties are the Indian National Congress (INC) and the ruling Bharatiya Janata Party (BJP), with the latter being the largest political party in the world in terms of membership numbers.¹⁵⁵ After 10 years of government led by the INC, Narendra Modi led the BJP to victory in 2014. This election was a triumph for the Modi government, winning 282 of 545 seats, making the BJP the second party after the INC to win an outright majority in the lower house, known as the Lok Sabha.¹⁵⁶ The BJP polled strongest among upper and middle-class voters and polled poorly among Muslim voters.¹⁵⁷ In 2019, after India’s general elections, the National Democratic Alliance, mostly composed of the BJP, held on to the leadership for a second consecutive tenure.¹⁵⁸

Scholars have noted that Indian nationalism has played a central role in the populist discourse of the BJP throughout both elections and throughout their tenure in power. The BJP has close ties with the ultra-right Hinduist group, the Rashtriya Swayamsevak Sangh (RSS); Prime Minister Modi himself was a long-time member.¹⁵⁹ The RSS founded a modern-era Hindutva

¹⁵⁴ Jostein Jakobsen et al, “Mapping the World’s Largest Democracy” (2018) 46:1 Forum for Development Studies 83 at 84.

¹⁵⁵ See Duncan McDonnell & Luis Cabrera, “The right wing populism of India’s Bharatiya Janata Party (and why comparativists should care)” (2018) 26:3 Democratization 484 at 485.

¹⁵⁶ See *ibid* at 486.

¹⁵⁷ See Nitasha Kaul, “Rise of the Political Right in India: Hindutva-Development Mix, Modi, Myth, and Dualities” (2017) 20:4 J Labor & Society 523 at 548.

¹⁵⁸ See Ali Zain, *The Hindutva Doctrine and Bharatiya Janata Party in 2019 Elections in India: Critical Discourse and Analysis* (Master of Dissertation, University of South Carolina, 2019) [unpublished] 1 at 1.

¹⁵⁹ See Shukantala Banaji, “Vigilante Publics: Orientalism, Modernity and Hindutva Fascism in India” (2018) 25:4 J European Institute for Communication & Culture 333 at 335.

movement using the slogan, “one nation, one caste, and one culture.”¹⁶⁰ The Hindutva ideology has its roots in the 1923 text *Hindutva: Who Is a Hindu?* by Vinayak Damodar Savarkar, who elevated Hindutva as a force for a united Hindu people, or a cultural nationalism.¹⁶¹ Social reformers ascribing to the Hindutva doctrine promoted the idea that “Hindus were not members of disparate religious sects but instead comprised a single distinct people – one which had long been the victim of powerful foreign elites in the form of Muslim and then British conquering forces.”¹⁶² As Shakuntala Banaji notes, BJP political discourse and policy has been infused with Hindutva doctrine. Since the start of the campaign trail, the BJP’s political communication has featured discussion of “a new Hindu majoritarian national subject, with an adherence to mythological beliefs—including ones around gender—and loyalty to the BJP leadership as the prime measures of citizenship and national belonging.”¹⁶³

After the BJP took power in 2014, persecution and intolerance towards minorities, particularly Muslim minority groups, increased.¹⁶⁴ As Human Rights Watch (HRW) has noted, prejudices embedded in the BJP government “have infiltrated independent institutions, such as the police and the courts, empowering nationalist groups to threaten, harass, and attack religious minorities with impunity.”¹⁶⁵ This can be seen in how cities bearing Islamic names are being renamed, history textbooks are being re-written, and Christians and Muslims continue to survive violence from state and police action and inaction.¹⁶⁶ In August 2019, the BJP “revoked the

¹⁶⁰ Ali Zain, *supra* note 158 at 1.

¹⁶¹ See McDonnell & Cabrera *supra* note 155 at 486

¹⁶² *Ibid* at 485.

¹⁶³ Banaji, *supra* note 159 at 335.

¹⁶⁴ Ali Zain, *supra* note 158 at 1.

¹⁶⁵ Human Rights Watch, “India: Government Policies, Actions Target Minorities (19 February 2021), online: <<https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities>> [HRW India].

¹⁶⁶ Sudha Ramachandran, “Hindutva Violence in India: Trends and Implications” (2020) 12:4 Counter Terrorist Trends & Analyses 15 at 15.

constitutional autonomy granted to the only Muslim-majority state, Jammu and Kashmir, and imposed restrictions in violation of people’s basic rights.”¹⁶⁷ This included an 18-month long ban on high-speed internet services, which activists have called a “digital apartheid.”¹⁶⁸ In February of 2020, 53 people were killed (43 of them Muslim) in the communal violence that took place during riots in Delhi.¹⁶⁹ To this day, state authorities continue to respond with violence to the protesters, farming leaders and journalists involved in the ongoing nationwide demonstrations against recent farm legislation.¹⁷⁰ As Nitasha Kaul has stated “The Modi tenure has been disastrous for minorities, environmentalists, labor rights activists, liberal media, progressive universities, socially, and economically vulnerable groups such as Dalits (oppressed castes) and farmers, to name a few.”¹⁷¹ Freedom House, which rates access to “political rights and civil liberties in 210 countries” moved India from free to partly free in its most recent “Freedom in the World” report.¹⁷² The BJP’s nationalism, and the consequences of both its political discourse and policies in Indian civil society, have had concrete impacts on academic freedom in India, which will be further examined in this report.

DOMESTIC LAW

CONSTITUTION OF INDIA

In India, policy is implemented at two levels, first through the central government, and second, through the governments of its twenty-nine states and seven union territories. Because the

¹⁶⁷ HRW India, *supra* note 165.

¹⁶⁸ “India restores 4G mobile internet in disputed region of Kashmir after 18 months”, *CBC* (6 February 2021), online: < <https://www.cbc.ca/news/world/india-restores-internet-kashmir-1.5904350>>.

¹⁶⁹ See HRW India, *supra* note 165.

¹⁷⁰ See Mujib Mashal, Emily Schmall & Hari Kumar, “As Angry Farmers take to New Delhi’s Streets, Protests Turn Violent”, *The New York Times* (25 January 2021), online: <<https://www.nytimes.com/2021/01/25/world/asia/india-farmers-protests-delhi.html>>.

¹⁷¹ Kaul, *supra* note 157 at 529

¹⁷² Freedom House, “Global Freedom Scores” (2021), online: *Freedom House* <<https://freedomhouse.org/countries/freedom-world/scores>>.

Indian constitution entitles each state and union territory to have their own legislative, administrative, judicial and financial functions, the political situation across the country is varied and dynamic.¹⁷³ Both the national policies established by the BJP and politics promoted by state governments are significant to Indian democracy.¹⁷⁴ However, the central government (the BJP) has an overwhelming influence on state politics as a result of the Indian Constitution. For example, though individual states are allowed to legislate state laws, these laws must be in line with the Indian Constitution. Because of its influence in state-level politics, the Indian Constitution has been described as the “root of legal order in India.”¹⁷⁵

The Constitution of India recognizes certain fundamental rights for every citizen of India that are relevant to academic freedom, including rights to freedom of speech and expression and educational rights. Infringement of these fundamental rights can be challenged by any citizen of India in the court of law.

FREEDOM OF SPEECH AND EXPRESSION

Article 19(1)(a) of India’s constitution guarantees to all citizens “freedom of speech and expression.”¹⁷⁶ Article 19(1)(g) also ensures “the right to practise any profession, or to carry on any occupation, trade or business.”¹⁷⁷ However, there is an important caveat in clause 19(2) that “nothing shall affect the operation of any existing law, or prevent the State from making any law, in so far as such a law imposes reasonable restrictions on the exercise of the right conferred in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or

¹⁷³ See Tatsuya Yamamoto, “Introduction” in Tatsuya Yamamoto & Tamoaki Ueda (eds), *Law and Democracy in Contemporary India Constitution* (Cham: Palgrave MacMillan, 2019) 1 at 3.

¹⁷⁴ See *ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *The Constitution of India*, 1950, s 19(1)(a).

¹⁷⁷ *Ibid.*, s 19(1)(g).

incitement to an offence.”¹⁷⁸ The broad wording of these exceptions “gives the state extensive powers to justify curtailments and to unduly restrict freedom of expression,” typically in the name of public order, decency, or morality.¹⁷⁹ The central government has used the caveat to limit clause 19(1)(a) to censor books, films, and other forms of expression.¹⁸⁰ However, the Indian Supreme Court, in striking down section 66A of the Information Technology Act in 2015, clarified that “any law seeking to impose a restriction on the freedom of speech can only pass if it is proximately related to any of the eight subject matters set out in Article 19(2).”¹⁸¹ In their interpretation of 19(2), Indian Courts have leaned towards protecting freedom of speech. However, other legislation, such as sedition laws in the Indian Penal Code, or the Unlawful Activities Prevention Act, have been relied on by state authorities to stifle dissent.

NATIONAL EMERGENCY (ARTICLE 352, 353, 354, 355 AND 358)

Finally, of note are the national emergency provisions in the Constitution, which may suspend fundamental rights. A national emergency can be declared if there is a threat to the security of India or a part of India. It must be subsequently approved by Parliament within one month and can be repeatedly extended. All fundamental rights under the Constitution (except the rights to life and personal liberty) are automatically suspended.¹⁸² The COVID-19 pandemic has not constituted a national emergency under the constitution: there has been no legal state of emergency to this point. However, scholars have compared attacks to civil liberties under Modi’s government to the National emergency of 1975-77, where the Supreme Court “showed subservience towards the

¹⁷⁸ *Ibid*, s 19(2).

¹⁷⁹ Amit Singh, “Conflict between Freedom of Expression and Religion in India—a Case Study” (2018) 7:7 Soc Sci at 3.

¹⁸⁰ See *ibid*.

¹⁸¹ *Shreya Singhal v Union of India* (2015), 5 SCC 1 (India).

¹⁸² See Mofidul Islam, “Position of Fundamental Rights During Emergency in India” (2020) 11:0 Intl J Management 729 at 730.

executive.”¹⁸³ The Modi government, through its restrictions on media and the circulation of information, and alongside a “hollowing-out of judicial review,”¹⁸⁴ has restricted rights all without having to go through the process of declaring a national emergency.¹⁸⁵

INDIAN PENAL CODE

Other critical legislation relating to academic freedom can be found in the Indian Penal Code. Section 124A of the Indian Penal Code allows for the charge of sedition to be levelled against dissenting citizens.¹⁸⁶ Of note, is that this section is a colonial-era relic. It was written by James Fitzjames Stephen, the uncle of Virginia Woolf, and was “used almost exclusively by the British to contain and repress the freedom struggle,” making its retention in Independent India “controversial from the start.”¹⁸⁷ Other relevant provisions include: Section 295A of the Indian Penal Code, which allows the police to ban books on the grounds of hurting religious sentiments; Section 153, the provocation riot offence; Section 153A, which prohibits inciting enmity on grounds such as of religion, race, caste; and Section 505, which bans the publication of reports causing fear and alarm, or promoting the “hatred and ill-will” between communities.¹⁸⁸ All of these sections of the Indian Penal Code have been extensively used by the police in India to bring charges against citizens, including against writers, activists, students, journalists and even poor villagers protesting caste atrocities.¹⁸⁹ Both students and faculty members have been indicted with sedition,

¹⁸³ See Rahul Mukherji, “Covid vs. Democracy: India’s Illiberal Remedy” (2020) 31:4 J Democracy 91 at 102.

¹⁸⁴ Hollowing out of judicial review means removing judicial review, that means that the power of the judiciary to review the lawfulness of government’s decision is in danger.

¹⁸⁵ Mukherji, *supra* note 183.

¹⁸⁶ See Nandini Sundar & Gowhar Fazili, “TIF- Academic Freedom in India” (2020), online (pdf): *The India Forum* <<https://www.theindiaforum.in/sites/default/files/pdf/2020/09/04/academic-freedom-in-india.pdf>>.

¹⁸⁷ Supriya Chaudhari, “Thought-crimes: dissent, disaffection and intellectual labour in contemporary India” (2021) 24:1 Postcolonial Studies 16 at 18.

¹⁸⁸ *Indian Penal Code*, 1960, s 295A, 153, 153A, & 505.

¹⁸⁹ Chaudhuri, *supra* note 187 at 19.

including, G. N Saibaba, a professor who is serving a life sentence for sedition.¹⁹⁰ Though since 2016 only four sedition cases saw a conviction in court, the state is empowered to arrest and imprison people for long periods.¹⁹¹

OTHER RELEVANT LEGISLATION

Beyond the Indian Penal Code, of significance is the Unlawful Activities Prevention Act (UAPA), “which in its latest version allows the state to designate someone as a terrorist without trial, and to imprison them almost indefinitely.”¹⁹² For instance, section 43D allows for those arrested to be incarcerated up to 180 days without a charge sheet being filed, modifying fundamental rights procedures within the Indian Penal Code that prohibit delays beyond 90 days.¹⁹³ The UAPA criminalizes acts, both spoken and written, which cause “or is intended to cause disaffection against India.”¹⁹⁴ Supriya Chaudhari has documented numerous ways this act has been used to police higher learning, noting that while the Rajya Sabha, or Upper House of the Indian Parliament, was informed in February 2020 “that at least 233 persons had been charged with sedition in the past five years,” these are enormously under-reported numbers.¹⁹⁵ The UAPA has been used to charge and arrest student leaders since the Modi government came to power.¹⁹⁶ For example, student activists such as Hem Mishra, Kanhaiya Kumar, Anirban Bhattacharya, Umar Khalid and Sharjeel Imam, members of feminist student collectives such as Devangana Kalita and Natasha Narwal, have all been charged with sedition or held under the UAPA.¹⁹⁷

¹⁹⁰ See *ibid* at 20.

¹⁹¹ See *ibid* at 20.

¹⁹² *Ibid* at 20.

¹⁹³ See *Unlawful Activities Prevention Act* (India), 1967, s 43D.

¹⁹⁴ *Ibid*, s 2, art 1(o)(iii).

¹⁹⁵ Chaudhuri, *supra* note 187 at 19.

¹⁹⁶ Sundar, *supra* note 186 at 3.

¹⁹⁷ Chaudhuri, *supra* note 187 at 18.

While university professors and students are not the sole targets of the Indian Penal Code or the UAPA, it is clear that the state has viewed universities as significant spaces of threatening dissent.¹⁹⁸ As Chaudhuri notes, “universities, and especially teachers in social science departments, face the full brunt of the state crackdown on intellectual activity.”¹⁹⁹

THE RIGHT TO EDUCATION

The right to education under international obligations has been interpreted in India in a limited way. For example, Article 13(2) of the ICESCR provides that primary education shall be “available and free to all” and secondary and higher education shall be “accessible to all” which means in part that it is affordable to all.²⁰⁰ However, this requirement for free education at the primary level may not necessarily extend to university education. Moreover, the State cannot require private schools to be “free to all” or affordable to all. Under Article 13(4), state intervention in the operation of private schools is limited to ensuring compliance with Article 13(1) and ensuring that minimum educational standards are met, with regards to areas such as admission, curricula, and the recognition of certificates.²⁰¹ This does not extend to ensuring compliance with Article 13(2). Even where the state offers private schools financial assistance or subsidies to cover the cost of offering education that is free/affordable to all, there is still an argument that the state cannot compel private schools to accept such an offer, as this matter does not concern the schools’ compliance with Article 13(1).²⁰² For example, the Supreme Court of India, in *Pramati Educational and Cultural Trust & Others v Union of India & Ors*, applying a provision of the

¹⁹⁸ See *ibid* at 20.

¹⁹⁹ *Ibid* at 21.

²⁰⁰ ICESCR, *supra* note 2, art 13(2).

²⁰¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 13 The Right to Education*, E/C.12/1999/10 (8 December 1999) at para 29.

²⁰² See Adam McBeth, “Privatising human rights: what happens to the State’s human rights duties when services are privatised” (2004) 5:1 Melbourne J Intl L 133 at 138.

Indian Constitution which reflects Article 13(4) of ICESCR, found that even private minority schools which were aided by the state could not be compelled to offer free education to children belonging to disadvantaged groups.²⁰³ Similarly, the state cannot interfere where private providers offer schools to meet the needs of for example, a particular national or linguistic minority, and therefore accept only, or predominantly students from that background. For example, the Supreme Court decision *Society for Unaided Private Schools of Rajasthan v. Union of India & Another* found legislation requiring private, minority schools to reserve 25% of their places for students from disadvantaged backgrounds to be invalid, on the basis that it violated the right of minority groups to establish and administer private schools.²⁰⁴ Because of this, the international right to education is limited when it comes to inequitable access to education in India. Although the requirement for free education under international law may not extend to university education, jurisprudence in India on affordability and private education has pointed to ensuring the independence of private education providers at the expense of more closely examining equity issues within education.

PROTECTION FROM STATE AND NON-STATE ACTORS

Under international law, states must take the necessary steps, including implementation of domestic legislation, to protect the rights that make up academic freedom from both state officials and actors independent of the state. According to Article 2(1) of the ICCPR, “Each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

²⁰³ *Pramati Educational and Cultural Trust & Others v Union of India*, (2014) 8 SCC 1 (India) at para 44.

²⁰⁴ *Society for Unaided Private Schools of Rajasthan v Union of India*, (2012) 6 SCC 1 (India) at para 19.

property, birth or other status.”²⁰⁵ The Committee on Economic, Social and Cultural Rights has commented on the increased role and impact that private actors play in traditionally public sectors, noting that these actors should be “subject to strict regulations that impose on them so-called ‘public service obligations.’”²⁰⁶ In the context of academic freedom, this is important with regards to the protection of rights enshrined in international law in private universities.²⁰⁷

Despite the commitment of India to these varying international obligations relating to academic freedom, Indian Courts have been known for their dualist interpretation of international law and have been cautious in incorporating international conventions in their decisions, “the one exception being the Convention on Elimination of All Forms of Discrimination against Women.”²⁰⁸ Article 372 of the Constitution of India states in part: “subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, shall continue in force therein until repealed or amended by a competent legislature or other competent authority.”²⁰⁹ Because of this, international obligations are assessed in terms of laws passed by the Indian Parliament and by the judgements of courts in India.²¹⁰ This creates inconsistencies between laws in India and international obligations. Moreover, under the Vienna Convention on the Law of Treaties, a “party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”²¹¹

²⁰⁵ ICCPR, *supra* note 2, art 2(1).

²⁰⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UNCESCROR, 61st Sess, UN Doc E/C.12/GC/24 (2017) 1 at para 21, online: <<https://undocs.org/en/E/C.12/GC/24>>.

²⁰⁷ *Ibid* at para 21–22.

²⁰⁸ Sundar, *supra* note 186 at 4.

²⁰⁹ BS Chimni, “International Law in Asian and Pacific States, South and Central Asia“ in Simon Chesterman, Hisashi Owada, & Ben Saul (eds) *Oxford Handbook of International Law in Asia and the Pacific* (London: Oxford Press, 2019) at 559.

²¹⁰ See generally *ibid*.

²¹¹ *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS 1155, art 27 (27 January 1980).

India's commitment to international human rights can also be examined through discourse and submissions to the Universal Periodic Review (UPR). As Paul Chaney has noted, while the BJP's submissions to UPR "appears to embrace civil society engagement and the promotion of religious freedoms in a way that advances political legitimacy," submissions to the UPR by civil society organizations account reveal a concern for the weakening of the rule of law and restrictions on civil society in India.²¹² For example, one civil society organization noted that "the situation of freedom of belief, thought and expression is one of growing intolerance: any expression narrating a different point of view is perceived with resentment and hostility and there are high-pitched demands for bans and followed by physical threats, vandalism and abusive campaigns via media."²¹³ The contrasting submissions reveal a disconnect between rhetoric of the BJP at the international level regarding concerns for human rights and realities at the ground level.

THREATS TO ACADEMIC FREEDOM

Overview of Academia in India

India's history of academia is rooted in a general pursuit for knowledge that has held consistent over time. Sankalia writes that "India has not known anything like the 'dark ages' in her intellectual history."²¹⁴ Prior to the establishment of its first university, India was the setting in which many profound historical works were created, mostly in the spheres of religious thought such as the Dharmashastra – which served to conceptualize early religious legal theory in India.²¹⁵ Nalanda University, one of the first universities in India, and one of the earliest globally,

²¹² Paul Chaney, "India at the crossroads? Civil society, human rights and religious freedom: critical analysis of CSOs' third cycle Universal Periodic Review discourse 2012–2017" (2020) 24:5 Intl JHR 531 at 551.

²¹³ Paul Chaney, "India at the crossroads? Civil society, human rights and religious freedom: critical analysis of CSOs' third cycle Universal Periodic Review discourse 2012–2017" (2019) 24:5 Intl JHR 531 at 543.

²¹⁴ Hasmukhlal Dhirajlal Sankalia, *The University of Nalanda* (Delhi: Oriental, 1972) at 6.

²¹⁵ See generally *ibid.*

was established in 4th or 5th century CE operating as a Buddhist residential monastery.²¹⁶ Many universities were originally saturated predominantly with questions in Buddhism and Brahminical sects of Hinduism.²¹⁷ Nevertheless, much of formal education included studies of medicine, grammar, metaphysics, prose and verse structuring, logic, and rhetoric.²¹⁸

India's educational landscape would change under patterns of migration and colonialism. Missionaries were responsible for teaching English formally in Indian schools for the first time through the 1770s and 1780s, and would spread with the rise of British-created universities.²¹⁹ With the first 'Europeanized' university emerging in 1817 through the Hindu College in Calcutta, the next century would see the promulgation of "European literature and European science."²²⁰ The first modern universities erected in major cities in India such as Calcutta, Bombay, and Madras were all modeled after the London University in England.²²¹ These universities were intended to serve as "instruments for strengthening British cultural, intellectual and political domination."²²² However, even after independence, India still looked to the West to develop its education system, but with further nuancing.

Post-independence India sought to make education accessible for all. In 1947, the new Indian state was prepared "to revamp the whole education system" and implemented the "Radha Krishnan Education Commission ...in...1948-49 to review the whole system of education in the

²¹⁶ See Andrea Marion Pinkney, "Looking West to India: Asian education, intra-Asian renaissance, and the Nalanda revival" (2015) 49:1 *Modern Asian Studies* 111.

²¹⁷ See Sujit Kumar Choudhary, "High Education in India: A Socio-Historical Journey from Ancient Period to 2006-07" (2009) 8:1 *J Educational Enquiry* 50.

²¹⁸ See Romila Thapar, *A History of India* (London: Penguin UK, 1990).

²¹⁹ See Aparna Basu, "Indian higher education: Colonialism and beyond" in Philip G Altbach, Viswanathan Selvaratnam (eds) *From Dependence to Autonomy* (Dordrecht: Springer, 1989) at 169.

²²⁰ *Ibid* at 167

²²¹ See *ibid* .

²²² *Ibid* at 169.

country.”²²³ Although India’s universities were historically financed through private entities, the new governments sought to support higher education by both establishing new universities and colleges and assuming the financial responsibility of all universities in the country.²²⁴ A remnant of colonial legacies, many university subjects continued to be “confined to courses in languages and the humanities, apart from a few institutions for professional education.”²²⁵ Notably, these professional schools would become some of the most reputable institutions in India including the Indian Institutes of Technology (IITs).²²⁶ These schools were established through foreign aid packages from “the USA, the UK, the then USSR and the Federal Republic of Germany.”²²⁷ Other institutions such as two Institutes of Management were created through foreign collaboration with reputable institutions such as the Harvard Business School with the intention to welcome guest faculty, to promote new curriculums, and a new globalized academic culture.²²⁸ This aspiration seemed to be unfulfilled until the era of neoliberalism.

India would find its educational system dramatically transforming throughout the late twentieth century. With new discourse globally endorsing laissez-faire economics, India aimed to increase the quality of its education through privatizing higher education.²²⁹ The state’s policies at this time, particularly throughout the 1990s, could almost be deemed non-existent in regulating private universities.²³⁰ It can be argued that this new era was beckoned with uncertainty. Tilak writes:

²²³ B Komow, Raghav Khanna, R K Sharma, “Journey of Higher Education in India: An Analysis of Post Independence Era” (2012) 1:1 Asian J Multidimensional Research 96 at 98.

²²⁴ See Pawan Agarwal, “Higher Education in India: Growth, Concerns and Change Agenda” (2007) 61:2 Higher Education Quarterly 197.

²²⁵ *Ibid* at 198.

²²⁶ See *ibid*.

²²⁷ *Ibid* at 198.

²²⁸ See *ibid*.

²²⁹ See *ibid*.

²³⁰ See Jandhyala Tilak, *Education and Development in India* (Gateway East: Palgrave MacMillan, 2018) 1.

The government was found saying “yes” and “no” very often, almost simultaneously. For example, the government stated that privatisation was good, but not commercialisation; therefore, privatisation would be allowed but not commercialisation, although they are two sides of the same coin and are based on the same principle – of making and maximising profits... At another point the government stated ... privatisation of higher education was good and needed to be encouraged; commercialisation was not bad, but profit-making in higher education should not be allowed ... Some courts announced in the same context that making “surplus” in private higher educational institutions is acceptable, but not profits, without clarifying the difference between the two. They did not note that, following Karl Marx, surplus means profits.²³¹

Recognizing that privatization was essential to World Bank and International Monetary Fund (IMF) policies, Tilak argues India had to accept privatisation to develop its post-secondary institutional capacities, regardless of whether they were prepared to address its realities.²³² Although much has been written on the failures of the neoliberalism era, the facts remain that India’s educational landscape has been fundamentally transformed by this period. From 25 Universities in 1950, India housed over 467 in 2010 – a twenty-one-fold increase.²³³

The divide between public and private universities in India has been exacerbated in the last thirty years. In India, many private institutions “rely exclusively on student fees.”²³⁴ In the 1990s,

²³¹ *Ibid* at 536.

²³² See *ibid* at 537.

²³³ See Komow, *supra* note 223 at 100.

²³⁴ Tilak, *supra* note 230 at 544.

the University Grants Commission, an entity that governs the distribution of finances and regulation of university operations, recommended that at a maximum, student fees comprise 20% of a university's income source – a recommendation that has been grossly violated.²³⁵ Private institutions are rampant with “massive corrupt and unfair practices, unregulated expansion, and the production of low quality graduates.”²³⁶ Many attribute the challenges in the Indian educational market to a lack of government regulation. Joshi writes that “[t]he regulatory system has failed to hold new private institutions to standards while erecting formidable barriers to competition and quality.”²³⁷ These failings are all the more explicit when considering that “India has the largest target market for higher education in the world, with a population of 234 million in the age group of 15-24 years old.”²³⁸ Furthermore, in recognizing the disparities between regulations governing public and private universities, there are clear barriers to quality education for those who cannot afford private education.

REGULATORY FRAMEWORK OF UNIVERSITIES IN INDIA

India's vast educational terrain is filled with multiple stakeholders. To accommodate such, the Ministry of Education (MoE) houses multiple subsidiary regulatory bodies overseeing the operations and conduct of post-secondary institutions across the country through multiple lenses of equity, academic integrity, management practices, and more. The MoE in India is an entity of the central (or federal) government. Per the Ministry's website, they are responsible for “formulating the National Policy on Education” and ensuring its apt implementation, increasing access to education particularly for minorities while improving the quality of educational

²³⁵ See *ibid.*

²³⁶ *Ibid* at 545

²³⁷ See Kishore M Joshi, “Higher Education, Social Demand, and Social Equity in India” in Simon Schwartzman, Rómulo Pinheiro, Pundy Pillay *Higher Education in the BRICS Countries* (Dordrecht: Springer, 2015) at 132.

²³⁸ *Ibid* at 136.

institutions across the country, “providing financial help in the form of scholarships” and other loan subsidies, as well as working externally by “encouraging international cooperation in the field of education ... to enhance the educational opportunities in the country.”²³⁹

The University Grants Commission

The University Grants Commission (UGC) is a subsidiary body housed under the MoE. It is a remnant of newly independent India’s conceptualization of education as a product that should be accessible to all. Established in November 1956, it endows grants to institutions of higher education for the sake of “coordination, determination and maintenance of standards in institutions of higher education” specifically overseeing state, central, deemed, and private universities.²⁴⁰ As of 2021, however, the UGC will be replaced by the Higher Education Commission of India, established through the new National Education Policy. This new body will oversee the same functions of the UGC alongside other objectives. This report addresses the UGC as its remnants still provide context for questions of academic freedom in India.

One such example is the establishment of Institutions of Eminence (IoEs). IoEs are a specific designation given to ‘deemed universities’ due to their potential to globalize and host students from around the world whilst producing high-quality research.²⁴¹ To facilitate this globalization, IoEs are permitted to establish off-shore campuses in other countries.²⁴² The IoEs have enhanced autonomy and significant funding from the government, which make it “easier to

²³⁹ Government of India, “About Us” (2020) online: *Ministry of Education* <<https://www.education.gov.in/en/about-moe>>.

²⁴⁰ Government of India, “Mandate” (2020) online: *University Grants Commission* <<https://www.ugc.ac.in/page/Mandate.aspx>>.

²⁴¹ See Niraja Gopal Jayal, “The imagined futures of the public university in India” (2019) 16:5 *Globalizations* 737.

²⁴² See Anirudha Majumdar, Aarushi Jain, and Vivek Kathpalia “Institution of Eminence Regime – More Autonomy Given, Foreign Campuses Permitted, Online Education Liberalized” (2021) 11:15 *National L Rev.*

hire international faculty.”²⁴³ Recently, the government began plans to allow universities to give dual and joint degrees.²⁴⁴ IoEs “can collaborate with any institution in the top 500 in international rankings such as QS or Times Higher Education automatically.”²⁴⁵ Other institutions would have to seek UGC approval.²⁴⁶ Of note is the flexibility afforded to IoEs that creates discrepancies in expectations between them and other postsecondary institutions. As the government’s press release notes, these institutions have “complete flexibility in fixing curriculum and syllabus.”²⁴⁷ These liberties allotted to IoEs can be argued to stifle academic freedom as the government selects a very small number of post-secondary institutions to receive an enormous amount of funding and leeway in standard university regulations. This is further questioned when examining the arbitrary nature of how universities are selected to be IoEs. Particularly, there was an uproar in civil society and academic spaces when it was discovered that one of the first institutions to be designated with this new title did not in fact exist yet, but was founded by Indian billionaire Mukesh Ambani. Many raised questions of why leading academic universities such as IIT Madras were not selected while an institution that had not even been constructed was selected.²⁴⁸ The ramifications of such policies

²⁴³ Mona Khare, “Trends and strategies towards internationalisation of higher education in India” (2021) 23:2 Intl J Comparative Education & Development at 8.

²⁴⁴ See Yojana Sharma, “International dual and joint degrees to get green light” (27 February 2021), online: *University World News* <<https://www.universityworldnews.com/post.php?story=20210226145106838>>.

²⁴⁵ “TN univs to offer dual degree in pact with foreign varsities from next year” (28 February 2021), online: *Daily Thanthi Next* <<https://www.universityworldnews.com/post.php?story=20210226145106838>>
<https://www.dtnext.in/News/TamilNadu/2021/02/28014157/1277845/TN-univs-to-offer-dual-degree-in-pact-with-foreign-.vpf>>.

²⁴⁶ See *ibid.*

²⁴⁷ See *Government of India Ministry of Education Press Information Bureau*, Press Release, 1513098, “Institutions of Eminence” (18 December 2017) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1513098>>.

²⁴⁸ See The Wire Staff, “Disappointed’ Over Denial of Eminence Status, IIT Madras Writes to Javadekar” (24 October 2018), online: *The Wire* <<https://thewire.in/education/iit-madras-javadekar-institute-of-eminence>>. Note, however that IIT Madras was selected to be an Institution of Eminence later in 2019: see New Delhi Bureau, “Delhi University, IIT-Madras, BHU among 5 awarded Institutions of Eminence status” (05 September 2019) online: *The Hindu* <<https://www.thehindubusinessline.com/news/education/delhi-university-iit-madras-bhu-among-5-awarded-institutions-of-eminence-status/article29343287.ece>>.

are the discrepancies in how certain universities may be favoured for funding and are provided with greater opportunities for research and institutional support on an arbitrary basis.

The National Education Policy

On July 29, 2020 cabinet approved the newest NEP, which stipulates that the Higher Education Commission of India (HECI) would be set up to replace the UGC. The HECI will act as a centralized umbrella body for the entirety of higher education in India, excluding medical and legal education. The government noted the administration of the HECI will be delivered remotely and that it will have “powers to penalise HEI’s not conforming to norms and standards.”²⁴⁹ The HECI will regulate both public and private higher education institutions.²⁵⁰

Though this transition has not been fully implemented, the NEP and the establishment of the HECI has been criticized by academics. For example, as Nandini Sundar and Gowhar Fazili note, while the NEP recognizes the importance of academic freedom and autonomy by “encouraging innovation and out-of-the-box ideas through autonomy, good governance, and empowerment,” the specific meaning of this autonomy is unclear.²⁵¹ Moreover, discourse in the NEP reflects much of the same discourse seen in the UGC policy and model curricula. For example, the NEP urges that India “bring back this great Indian tradition,” inherited from the ancient universities of Takshashila, Nalanda, Vallabhi, and Vikramshila.²⁵² Moreover, while there are inequities between public and private universities in India, the policy outlines that “private institutions with a public-spirited commitment to high-quality equitable education will be

²⁴⁹ *Government of India Ministry of Education, Press Information Bureau, News Release, “Cabinet Approves National Education Policy 2020, paving way for transformational reforms in school and higher education systems in the country” (29 July 2020),* online: <<https://pib.gov.in/PressReleasePage.aspx?PRID=1642049>>.

²⁵⁰ See *ibid.*

²⁵¹ Sundar, *supra* note 186 at 6; India, Ministry of Human Resource Development, *National Education Policy 2020*, Introduction at 3, online (pdf): <https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf>.

²⁵² *Ibid* at para 34.

encouraged,” with little guidance on how a more equitable framework for private universities could be instituted.²⁵³ Statements on the inclusion of marginalized students are similarly vague, for example, the policy notes that universities and colleges “will be given adequate funds and academic resources to carry this out effectively,” with no specific amounts listed.²⁵⁴ While the NEP has made many promises, a specific framework of enhancing the autonomy of higher education institutions is yet to be introduced.

Research Grants and Funding

Research funding has posed other challenges in the context for academic freedom. For example, according to Gitanjali Yadav, a scientist at the National Institute of Plant Genome Research, New Delhi, "during the past decade, I have been funded variously, often in minuscule amounts, by national and international grants, as well as the corporate sector. I have also had to let go of the best students for lack of funds to sustain them."²⁵⁵ Various institutions provide research grants to support individuals, universities, and other organizations and to fund their research efforts. Research can encompass many subjects, such as literature, medicine, and the environment. The grants can range in scale from small awards to complete multi-year fellowships. Research grants provide direct financial assistance to social scientists who conduct research projects in addition to their daily duties in an honorary capacity.²⁵⁶

Even after grants are approved, funding is not sent to the people who need it for research, which has an impact on students' career prospects and growth. The financial review of projects

²⁵³ *Ibid* at para 10.11.

²⁵⁴ *Ibid* at para 12.4.

²⁵⁵ Gitanjali Yadav, "Funding Challenges in Research" (18 March 2018), online: *IndiaBioscience* <<https://indiabioscience.org/columns/journey-of-a-yi/funding-challenges-in-research>>.

²⁵⁶ See *ibid*.

should not take more than a year, but it often takes more time leading to delays in research.²⁵⁷ Fellowships for academic scholars are not offered on time. Within government funding agencies, a limiting step is the lengthy, opaque process, which requires a lot of documentation that takes excessively long periods of time from the application of a research proposal to the award of a grant. Principal researchers are not necessarily informed of reviewer feedback, there is no ranking or scoring system, the number of expert reviewers is small, and there is no means to apply or track proposals online.²⁵⁸ Since strategic sectors receive the majority of the research and development budget, the pool of governmental funds available for research projects submitted by investigators at various research centres and academies are reduced to a minimum.²⁵⁹ This significantly shapes the landscape for academic freedom as academics rely upon such funding processes for their work. Discrepancies, delays and timelines that prevent the proper functioning of their roles contribute to an already infertile climate for academic freedom.

India's funding proportions for research can also be examined. Research and development spending has remained constant at about 0.7 percent of GDP; however, the private sector spends less than 0.2 percent of GDP on R&D operations. This is significantly less than the >2% of GDP spent on R&D programs by developed countries around the world.²⁶⁰ Research and development expenditure of India from 1996-2018 is 0.65%.²⁶¹ Therefore, the impact of research grants on

²⁵⁷ See KS Jayaraman & Subhra Pryadarshini, "Indian scientists concerned over funding crisis" (6 September 2018), online: *Nature Asia* <<https://www.natureasia.com/en/nindia/article/10.1038/nindia.2018.116>>.

²⁵⁸ See Manov Jadhav & Priyanka Jadhav, "What's ailing India's research funding agencies?" (3 December 2013), online: *Nature Asia* <<https://www.natureasia.com/en/nindia/article/10.1038/nindia.2013.176#:~:text=A%20limiting%20step%20in%20he,peeve%20with%20the%20processes%20involved.&text=%22The%20science%20funding%20situation%20in%20India%20needs%20an%20overhaul>>.

²⁵⁹ See Subhash Lakhota, "Research Fund Crunch, Real or Created, is Hitting India's Academia on the Wrong Side," (2018) 84:3 Proceedings Indian National Science Academy 545.

²⁶⁰ See *ibid.*

²⁶¹ See UNESCO Institute for Statistics, "Research and Development Expenditure (% of GDP)- India", online: <<https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?locations=IN>>.

academic freedom is prominent. Lack of research opportunities is leading to the degradation of new academic opportunities. The difficulty is not on the side of the students or a result of lack of efforts but because of these difficulties in procuring research grants in India.

Arbitrary Administrative Practices

Against this backdrop of a highly contentious and complicated setting of academic institutions, narratives have emerged regarding discrimination in the hiring of professors in Kashmir. Recently, the National Institute of Technology (NIT) in Srinagar, Kashmir posted 76 opportunities for “grade-I and grade II assistant professor[s], 13 posts of associate professors and 04 posts of Professor” but “curbs on high-speed internet created impediments for the majority of the candidates to apply for the post.”²⁶² NIT argues that the error was unintentional, however they refuse to address the gap in applications claiming that many of the applicants were unqualified.²⁶³ Many aspiring academics remain skeptical, arguing that regulations and requirements have constantly shifted with no notice. One candidate noted that, “earlier, they barred those candidates whose cooling period would get over after June 30 of 2020. Most of the candidates did not apply. Now, they changed the date without opening the link for those who didn’t apply earlier. Extension doesn’t serve any purpose for the candidates. It is merely an eyewash.”²⁶⁴ Additionally, this very university was found in February of 2021 to have administered tests for individuals to qualify as professors without providing “admit cards” to identify test-takers.²⁶⁵ The university alleged that

²⁶² Syed Rizwan Geelani, “NIT recruitment evokes criticism as candidates allege 'discrepancies'” (5 February 2021), online: *Greater Kashmir* <<https://www.greaterkashmir.com/news/kashmir/nit-recruitment-evokes-criticism-as-candidates-allege-discrepancies/>>.

²⁶³ See *ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ See Syed Rizwan Geelani, “NIT schedules screening test without issuing admit cards” (10 February 2021), online: *Greater Kashmir* <<https://www.greaterkashmir.com/news/srinagar/nit-schedules-screening-test-without-issuing-admit-cards/>>.

the error was internal and was fixed through an emailed list that was to then ensure test-takers could verify their identity but many claim they did not receive any correspondence.²⁶⁶ These continuous discrepancies may point to biases in the hiring of professors.

Another way arbitrary administrative practices have barred academic freedom is through its ramifications on diversity and inclusion of minority languages in India. In March of 2021, many Persian scholars in Kashmir protested the exclusion of Persian throughout all levels of education including universities.²⁶⁷ Linguistic exclusion has been alleged before as a tool of division, with Kashmiri – the mother-tongue of a large majority of those in Kashmir – only being implemented in schools in 2008.²⁶⁸ The exclusion of languages associated with those who practice Islam in the region has been criticized, as the Modi government in the past has promulgated and standardized the use of Hindi throughout the region.²⁶⁹ These recent developments coexist alongside a history of protests and discrimination. Two Dehradun colleges in February 2019 refused to admit Kashmiri students.²⁷⁰ When Article 370 was invoked, many academics were arrested for dissent.²⁷¹ The repression of academic freedom unfortunately continues.

²⁶⁶ See *ibid.*

²⁶⁷ See Beenish Qureshi, “Persian Scholars Stage Protest” (17 March 2021), online: *Greater Kashmir* <<https://www.greaterkashmir.com/news/srinagar/persian-scholars-stage-protest/>>.

²⁶⁸ See Mehdi Kawaja, “How Kashmiris are resisting linguistic exclusion: (1 June 2019), online: *The Caravan* <<https://caravanmagazine.in/lede/kashmiris-resisting-linguistic-exclusion>>.

²⁶⁹ See Safwat Zargar, “Modi government sparks language anxieties in Jammu and Kashmir – and fears of Hindi imposition” (15 September 2020), online: *Scroll.in* <<https://scroll.in/article/973087/modi-government-sparks-language-anxieties-in-jammu-and-kashmir-and-fears-of-hindi-imposition>>.

²⁷⁰ Sundar, *supra* note 187 at 13.

²⁷¹ See Washington Post Editorial Board, “Opinion: India’s repression in Kashmir is not compatible with democracy” (13 October 2019), online: *Washington Post* <https://www.washingtonpost.com/opinions/global-opinions/indias-repression-in-kashmir-is-not-compatible-with-democracy/2019/10/13/31b5af60-eaba-11e9-9306-47cb0324fd44_story.html>.

SUPPRESSING “CIVIL UNREST”

Protests, Repression and Academic Freedom

As the use of sedition laws and other domestic terrorism legislation demonstrates, India’s climate of academic freedom is overshadowed by the state’s role in suppressing those it deems a threat. A context in which debates about academic freedom are further emerging is that of Indian Punjab. In the last few months, protests have mobilized promoting the rights of farmers in India’s Punjab state. In the last few years, however, the domestic agriculture industry has stagnated due to shifts in trade regulations, the rise of farmers’ debt, and climate change, with a consequent epidemic of farmer suicides in the country.²⁷² More recently, the *Farmers Agreement on Price Assurance and Farm Services Act*, the *Farmers’ Produce Trade and Commerce Act*, and the *Essential Commodities Act* were introduced seeking to reduce government regulation and encourage more privatized and free market interaction between farmers and corporations.²⁷³ In a setting where farmers feel that existing government regulation is insufficient, further privatization may derail their livelihoods.²⁷⁴ This has, unsurprisingly, catalyzed civilians to participate in protests and movements of resiliency. These, however, have been found to intersect with state suppression of academic freedom. It is in this context that farmers have been protesting for months.

²⁷² See Dominic Merriott, “Factors associated with the farmer suicide crisis in India” (2016) 6:4 J Epidemiology & Global Health 217.

²⁷³ See *Government of India Ministry of Agriculture and Farmers’ Welfare Press Information Bureau*, 1656929, “Parliament passes The Farmers’ Produce Trade and Commerce’ (Promotion and Facilitation) Bill, 2020 and the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Service Bill, 2020 (20 September 2020) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1656929>>.

²⁷⁴ See Mujib Mashal, Emily Schmall & Russell Goldman, “Why Are Farmers Protesting in India” (27 January 2021), online: *The New York Times* <<https://www.nytimes.com/2021/01/27/world/asia/india-farmer-protest.html?searchResultPosition=1>>.

Against the backdrop of these farmers' protests, however, are the multiple views of Indian academics. In February 2021, over 400 academics issued a statement arguing the laws “pose a major threat to farming communities all over India.”²⁷⁵ Just a month prior, however, 800 academics signed a letter in support of the new laws – claiming the government was entering these negotiations in good faith.²⁷⁶ In this political setting, the government has used archaic sedition laws and internet shutdowns to stifle voices of dissent.²⁷⁷ This creates a climate in which academics who dissent from the government may face repercussions while those who do not, face no similar threats resulting in unequal treatment for academics based on political perspectives. Furthermore, in a context of government disinformation regarding the laws and their consequences to undermine farmers, facts and analyses that have been established by academics are likewise diminished.²⁷⁸ Fundamentally, this is an application of the law in a politically motivated manner that can be argued to violate the rule of law, in weaponizing the law to silence academics that dissent from the government. Overarchingly, the farmers’ protest highlights how academics’ silencing hides under state narratives of addressing dissent.

²⁷⁵ “More than 400 academics from across India, abroad seek repeal of farm laws” (3 February 2021), online: *The Tribune India* <<https://www.tribuneindia.com/news/nation/group-of-academics-seeks-repeal-of-farm-laws-207376>>.

²⁷⁶ See India TV News Desk, “In support of farm laws, over 850 academics sign open letter” (1 January 2021), online: *IndiaTV* <<https://www.indiatvnews.com/news/india/farmers-protest-farm-laws-academics-sign-open-letter-675454>>.

²⁷⁷ See *Human Rights Watch*, News Release, “India: Journalists Covering Farmer Protests Charged” (2 February 2021) <<https://www.hrw.org/news/2021/02/02/india-journalists-covering-farmer-protests-charged>>.

²⁷⁸ See generally Shreya Sinha, “TIF - The Agrarian Crisis in Punjab and the Making of the Anti-Farm Law Protests” (2021), online (pdf): *The India Forum* <<https://www.theindiaforum.in/sites/default/files/pdf/2020/12/04/the-agrarian-crisis-in-punjab-and-the-making-of-the-anti-farm-law-protests.pdf>>.

Right to Internet in India and International Frameworks

India has by far the most internet shutdowns in the world, and most of them are carried out at a local, or even hyper-local, level rather than national level.²⁷⁹ This includes not only full shutdowns, but also internet speed restrictions.²⁸⁰ The internet shutdowns have created serious barriers to academic freedom in the region which will be further explored in this paper. The Internet was declared a fundamental right by the United Nations in 2016. Everyone relies on the Internet to run their businesses, from Uber drivers to restaurants to clothing store operators. Unavailability of the internet leads to tangible monetary losses for these professionals. Similarly, students also increasingly rely on online resources for their education.²⁸¹

Analysing the international framework, the Estonian Parliament passed a new *Telecommunications Act* in February 2000, which included internet access as a public service. Article 5 of the Act states that, “the set of telecommunications services specified in subsection (1) of this section comprises: (2) Internet service which is universally available to all subscribers regardless of their geographical location, at a uniform price,” which was soon followed by the revision of the constitution of Greece and the creation of a duty of the state to facilitate access to electronically transmitted media.²⁸² In France, public online communication services were seen to

²⁷⁹ See Elizabeth Sutterlin, *Flipping the Kill-Switch: Why Governments Shut Down the Internet* (Undergraduate Honors Theses, William and Mary University, 2020) [unpublished].

²⁸⁰ See Prashant K. Nanda, “Covid-19 lockdown: Kashmir seeks 4G service for schools to offer e-learning” *Mint* (24 March 2020), online: <<https://www.livemint.com/news/india/covid-19-lockdown-kashmir-seeks-4g-services-for-schools-to-offer-e-learning-11585028294937.html>>.

²⁸¹ See Utkarsh Narain, “Are Internet shutdowns healthy for India?” *Thread* (19 December 2019), online: <<https://www.thehindu.com/thread/politics-and-policy/are-internet-shutdowns-healthy-for-india/article30348873.ece>>.

²⁸² Stephanie Borg Psaila, “Right to access the Internet: the countries and the laws that proclaim it” (2 May 2011), online: <<https://www.diplomacy.edu/blog/right-access-internet-countries-and-laws-proclaim-it>>.

be necessary for communication of expression of ideas and opinions.²⁸³ This was similarly analysed in various countries like Finland,²⁸⁴ Costa Rica,²⁸⁵ and Spain²⁸⁶. This sets a precedent for a growing movement to follow domestic legislation on the global scale. India already has legislation addressing access to the internet as a right but continues not to follow through by implementing internet shutdowns to stifle dissent. As analysed by numerous legislatures around the world, the exchange of ideas and expressions can clearly be achieved by online media, and it is important to create and enforce such a right to promote academic freedom. India has included the right to the internet in its constitution, however, the implementation of it is lacking and inadequate.

There are many internet network shutdowns that have taken place over a long period by the federal government. Internet shutdown has been defined as an "intentional Web disruption or mobile interactions that make them unavailable or ineffectively unusable, usually for a particular group or area command over the flow of information."²⁸⁷ Despite the country's urban technology centres and impressive modern technology, recent studies show that only 35% of Indians have internet access at home.²⁸⁸ This has had the consequence of preventing access to essential information, the ability to disseminate information freely, and for academics to share and access

²⁸³ See Library of Congress "Limits on Freedom of Expression: France" (30 December 2020), online: <<https://www.loc.gov/law/help/freedom-expression/france.php>>

²⁸⁴ See Library of Congress "Finland: Legal Right to Broadband for all citizens" (26 July 2010), online: <<https://www.loc.gov/law/foreign-news/article/finland-legal-right-to-broadband-for-all-citizens/>>

²⁸⁵ See Wayback Machine's "*Andres Oviedo Guzman v. Ministry of Environment, Energy and Telecommunications, Ministry of Presidency*" (30 July 2010), online: <https://web.archive.org/web/20151217120514/http://200.91.68.20/pj/scij/busqueda/jurisprudencia/jur_texto_sentencia.asp?nValor2=483874&tem1=013141¶m7=0&lResultado=3&nValor1=1&strTipM=T&strLib=LIB>

²⁸⁶ See Library of Congress "Online Privacy Law: Spain" (30 December 2020), online: <<https://www.loc.gov/law/help/online-privacy-law/2012/spain.php>>

²⁸⁷ Raveena Panicker, *Internet Shutdown: Is It Violation of Fundamental Rights?* (Honors Dissertation, Guru Gobind Singh Indraprastha University, 2020) [unpublished].

²⁸⁸ See Christopher Hill & William Lawton, "Universities, the digital divide and global inequality" (2018) 40:6 J Higher Education & Policy Management 598 at 603.

vital knowledge for their research and activism. To understand the impacts of the shutdowns on academic freedom, the state's legal obligations as it pertains to providing access to the internet must be clarified. In India, Article 19(1)(a) of the Constitution of India protecting the right to freedom of speech and expression is often applied within a wide scope. In 2017, Kerala was the first state to declare the internet as a basic human right with the aim to offer internet connectivity to 20 lakh low-income households for free, as well as at subsidized rates to others.²⁸⁹ This was soon followed by the 2019 judgement where the 'right to internet' was declared as a fundamental right under Article 19(1)(a) and Article 19(1)(g) of the Constitution.²⁹⁰

The right to exercise any profession or carry on any trade, service, or occupation over the medium of the internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1), an Indian court decided. The court also held that the restrictions on the internet have to follow the principles of proportionality under Article 19(2).²⁹¹ The court's decision followed the Kerala high court's decision in *Faheema Shirin v. State of Kerala*, in which the right to internet access was recognized as a fundamental right under Article 21 of the constitution, as part of the right to privacy and the right to education.²⁹²

However, even after the enactment of these laws, the authorities use three statutory provisions to enforce internet shutdowns:

²⁸⁹ See Shobit Varma, "Kerala becomes first Indian state to declare Internet a basic human right", *India Today* (18 March 2017), online: <<https://www.indiatoday.in/technology/news/story/kerala-first-indian-state-declare-internet-basic-human-right-966265-2017-03-18>>.

²⁹⁰ See Aneesha Mathur, "Govt actions in J&K not justified, review crubs within 7 days: Supreme Court," *India Today* (10 January 2020) online: <<https://www.indiatoday.in/india/story/jammu-and-kashmir-lockdown-supreme-court-order-1635559-2020-01-10>>.

²⁹¹ The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between his particular goals and the means he employs to achieve those goals, so that his action impinges on the individual rights to the minimum extent to preserve the public interest. See 'Doctrine of Proportionality' (16 May 2021), online: <https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/Doctrine%20of%20Proportionality_VI%20Sem.pdf>

²⁹² See Sumeesh Srivastava, "Can the Right to Internet Access Flow From the Right to Life?", *The Wire* (7 May 2020) online: <<https://thewire.in/rights/internet-access-fundamental-right> >.

1. Section 144 of the *Code of Criminal Procedure*, 1973 (“CrPC”);
2. Section 69A of the *Information Technology Act*, 2008 (“IT Act”), read with the *Information Technology (Procedure and Protections for Blocking for Access of Information by Public) Law*, 2009 (“Blocking Rules”); and
3. Section 5(2) of the *Telegraph Act*, 1885 read with the *Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules*, 2017²⁹³

There have been times when there has been complete broad suspension of telecom services, be it the internet or otherwise. It was held that the state must take a drastic measure only if it is ‘necessary’ and ‘unavoidable.’ The state must assess the existence of an alternate less intrusive remedy.²⁹⁴

Only the Home Secretary of the central or state government may issue instructions to shut down the internet in any region under the *Indian Telegraph Act* of 1885. Many checks and balances are included in the Act. The order would provide the specific reasons for the shutdown to be delivered the next day to a review committee. Within five days, the committee will submit its report. Only if the committee considers the shutdown justified can the communications blockade begin.²⁹⁵

The *Temporary Termination of Telecom Networks (Public Emergency or Public Safety) Rules*, 2017, grant state home departments the authority to enforce internet shutdowns. This has ramifications for multiple stakeholders across the country. Internet shutdowns are a complete

²⁹³ See *Code of Criminal Procedure*, 1973, *Information Technology Act*, 2008 and *Telegraph Act*, 1885, at Ministry of Law and Justice Legislative Department online: <<https://legislative.gov.in/>>

²⁹⁴ *Ghulam Nabi Azad v Union of India*, (2020) 1 MLJ 574 (India).

²⁹⁵ See The Indian Express, “Suspension of the Internet: What the Rules say, what the SC underlined”, online: *The Indian Express* (17 January 2020), online: <<https://indianexpress.com/article/explained/suspension-of-the-internet-what-the-rules-say-what-the-sc-underlined-6220361/>>

prohibition of the usage of internet facilities as a result of a government order. It may be restricted to a particular location as well as a specific time, date, or number of days. It can also continue indefinitely. A closure of the internet could be restricted to mobile internet, fixed cable, or both at the same time.²⁹⁶

Reasons provided by the federal government for the internet shutdown include to preserve the peace; prevent cheating in exams; stop the flow of information about government decisions or to stop activists from communicating with one another; to avoid rumour-mongering/fake news, prevent the use of encrypted email, and coordinate terror activities by limiting the posting, downloading, and circulation of provocative images; to defeat the nefarious plots to spread terrorism from across the border; and/or to deter elements with the ability to scale up violent crimes and disrupt public order from exploiting data services.²⁹⁷ Ultimately, these myriad reasons have been applied arbitrarily, further stifling academic access.

Local impacts can be discerned in recognizing that the internet is a form of educational access for students who take courses and exams online. It is important to provide internet access in order to promote and enjoy the right to education.²⁹⁸ “Internet connectivity for college students today is something more than a requirement; it's a way of life. We focus on the internet to complete assignments and attend lectures, as well as to watch movies and listen to music in our spare time to keep in contact with family and friends.”²⁹⁹ However, following the advice of a special

²⁹⁶ See Internet Freedom Foundation, "What are Internet Shutdowns?" (2021), online: *Internet Freedom Foundation* <<https://internetfreedom.in/shutdowns-faq/>>.

²⁹⁷ See The Centre for Internet and Society, “Should Aadhar be mandatory”, The Centre for Internet and Society (18 December 2018), online: <https://cis-india.org/internet-governance/blog?b_start:int=900>

²⁹⁸ See Civildaily Staff, “[Burning Issue] Internet Shutdowns in India”, *Civildaily* (21 January 2020), online: <<https://www.civildaily.com/burning-issue-internet-shutdowns-in-india/>>.

²⁹⁹ Namit Kumar, “Education and Student Life in the Valley Since the Shutdown of Kashmir”, *The Citizen is Hopeful* (06 May 2021), online <<https://www.thecitizen.in/index.php/en/NewsDetail/index/9/18094/Education-and-Student-Life-in-the-Valley-Since-the-Shutdown-of-Kashmir>>.

committee and a comprehensive analysis of the overall security situation in the Kashmir UT, the Home Department imposed restrictions on mobile data services and fixed-line broadband. The high-speed broadband internet was suspended for 18 months to keep border handlers at safety, and it had the greatest effect on students and companies. Similarly, during a sixty-four-day internet shutdown in Darjeeling, Geeta Devi, a class XIIth student from Darjeeling, spoke about the challenges she and her peers encountered in the recruitment process for their college admissions. It was a critical time for all freshly graduated high school students to register for higher education, but due to a lack of enough internet access, they were unable to obtain regular admissions alerts. As a result, Geeta surpassed the application deadline and was unable to register for the course she wanted.³⁰⁰

There is also something to be said regarding access to the internet and its overarching regulation and the impact on students. A student's access to knowledge and learning resources is restricted by an internet shutdown, which is more than just a disconnect from Whatsapp, Facebook, or Twitter. It also restricts access to learning opportunities offered by websites like Coursera or EdX. As well, due to significant issues, there is a lack of accessibility of the internet for rural populations.³⁰¹ The students who live in these remote areas face difficulty to get access to the internet which can become a hindrance to their studies³⁰² as around 70% of the population of India lives in rural areas.³⁰³ The lack of resources in India to promote academic freedom, undoubtedly

³⁰⁰ See Software Freedom Law Centre India, "Why Should I Care: Digital India is Now a Reality.", online: *Internet Shutdowns* <<https://internetshutdowns.in/why-care>>.

³⁰¹ See Sujeet Kumar Shumar et al, "Challenges common service centres (CSCs) face in delivering e-government services in rural India" (2021) 38:2 Government Information Quarterly.

³⁰² See Hindustan Times, Ludhiana, "Virtual Learning is okay but not replacement for classroom lessons", *The Hindustan Times* (20 April 2020), online: <<https://www.hindustantimes.com/cities/virtual-learning-is-okay-but-no-replacement-for-classroom-lessons/story-iQem8daJGDODkECz94mcjJ.html>>.

³⁰³ See Press Trust of India, "70% Indians live in rural areas: Census", *Business Standard* (20 January 2013), online: <https://www.business-standard.com/article/economy-policy/70-indians-live-in-rural-areas-census111071500171_1.html#:~:text=Of%20the%2012%20crore%20Indians,Union%20Home%20Secretary%20R%20K%20Singh>.

violates this right as today, the internet plays an integral part in fostering academic freedom in a broader sense.

Internet Shutdowns: Jammu and Kashmir

Internet shutdowns are rampant in Jammu and Kashmir. In August 2019, when the Modi government revoked the special autonomous status of the region, a blanket internet ban came into effect.³⁰⁴ In February 2021, the 18 month long-ban on high-speed internet services for mobile services was finally lifted.³⁰⁵ The shutdowns in this region are not a recent phenomenon. Since 2005, the state of Jammu and Kashmir has observed regular telecom service shutdowns on Republic Day (January 26) and Independence Day (August 15). Withdrawal of communication services in reaction to the state's view that they may cause "political unrest" is a long-standing practice in Kashmir, going all the way back to the princely/colonial era. The state routinely disrupts communication and knowledge networks in Kashmir under the guise of fighting "terror" or containing "external threats." Postal services, newspapers, radio networks, local tv stations, phone lines, mobile and SMS services, and the internet are impacted. The situation worsened after the 1989 popular uprising, which was followed by insurgency and counterinsurgency.³⁰⁶

Following the unilateral abolition of the state of Jammu and Kashmir, and its reconstitution into two union territories on August 5, 2019, all forms of communication were again shut down to prevent dissent, especially on social media.³⁰⁷ A full internet blockade was enforced for more than

³⁰⁴ See Aijaz Hussain, "India Restores 4G Mobile Internet in Kashmir After 550 Days", *CTV News* (6 February 2021), online: <<https://www.ctvnews.ca/world/india-restores-4g-mobile-internet-in-kashmir-after-550-days-1.5298498>>.

³⁰⁵ See *ibid.*

³⁰⁶ See Azhar Farooq and Rebecca Ratcliffe's, "Heightened security and anxiety in Kashmir amid fears of unrest" (4 August 2019), online: <<https://www.theguardian.com/world/2019/aug/04/heightened-security-and-anxiety-in-kashmir-amid-fears-of-unrest>>

³⁰⁷ See Laxmi Murthy & Geeta Seshu, "Silence in the Valley: Kashmiri Media After the Abrogation of Article 370" (26 October 2019), online: *EPW Engage* <<https://www.epw.in/engage/article/silence-valley-kashmiri-media-after-abrogation>>

five months, disrupting the academic calendar of Kashmir's educational system. This, among other things, had a devastating impact on academic scholars. Appeals from Indian scientists and others to end the internet blockade placed on their colleagues and students have gone unheeded.

In *Anuradha Bhasin v. Union of India and Ors*, the Supreme Court ruled that freedom of speech and expression, as well as freedom of profession carried out over the internet, are constitutional rights. It was left to the government, however, to restore the internet, which only brought back 2G.³⁰⁸ The Supreme Court, in response to another petition, *Foundation of Media Professionals v. Union Territory of J&K* demanding the restoration of 4G which was particularly important during the Covid-19 lockout, referred the case back to a committee of the same authorities who had initially dismissed it.³⁰⁹ Students enrolled in various universities across India who returned to Kashmir found it extremely difficult to continue their studies, retain contact with faculty, or access online services due to internet speed restrictions (allowed only to work in 2G mode) and regularly imposed disturbances.³¹⁰

Furthermore, internet shutdowns prevent academics from engaging with the world and with their own research. Situated in a geographically diverse setting, Kashmir provides a space for pertinent environmental and climate change analyses. In this context, many climate scientists and environmental academics are unable to fully engage with their research or share their findings. For example, in spring 2020, a project organized by the University of Kashmir as part of the Himalayan Alpine Dynamics Research Initiative (HIMADRI), which conducts research on alpine tree lines and climate change in the Himalayas, had to be stopped because of the internet shutdowns.³¹¹

³⁰⁸ *Anuradha Bhasin v Union of India* (2020), 3 SCC 637 (India) at para 152.

³⁰⁹ *Foundation of Media Professionals v Union Territory of J&K* (2020), 5 SCC 746 at para 22.

³¹⁰ Aneesha Mathur *Supra* note 290.

³¹¹ See Mudasir Firdosi, "STEM on Hold: The Impacts of the Internet Shutdown in Jammu and Kashmir" (2020) 23:1 Science Under Occupation, online: <<https://magazine.scienceforthepeople.org/vol23-1/stem-on-hold-jammu-kashmir/#easy-footnote-bottom-19-11122>>.

Recognizing that the climate crisis is a global emergency, the stifling of academic freedom in this setting may have severe consequences for the knowledge required to find global solutions.

Arbitrary Internet Regulation Apart from Shutdowns

Globally, recent attempts by the Indian state to weaponize internet access to censor and regulate academic discourse showcase restrictions on academic freedom. The Ministry of External Affairs came under fire for proposed legislation that sought to regulate universities and conferences they host open to the public anywhere in the world. Specifically, “guidelines for online conferences and events ... [would] require universities to seek prior permission if the topic is related to the security of the Indian state or ‘India’s internal matters’.”³¹² The key definition of ‘internal matter’ was left undefined by the state.³¹³ This proposed regulation was met with controversy and criticism from academics, with the Indian government retracting the proposition in late February of 2021.³¹⁴ Although academic freedom was not curtailed through the approval of the rules, their creation and dissemination highlights the Indian state’s interests in regulating discussion surrounding the image of India abroad.

Some argue that the government has chosen predatory new rules over soft-touch monitoring. There are concerns that the lack of advanced technological systems to filter content can have a negative impact on free speech.³¹⁵ The rules imply various restrictions on content that

³¹² Sheetal Banchariya, “MEA guidelines for online conferences spur concern among academics”, *Times of India* (08 February 2021), online: <https://timesofindia.indiatimes.com/home/education/news/mea-guidelines-for-online-conferences-spur-concern-among-academics/articleshow/80746068.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst>.

³¹³ The Logical Indian Crew, “Universities, PSUs To Require Government Nod for Virtual Events: Ministry of External Affairs”, *The Logical Indian* (2 February 2021), online: <<https://thelogicalindian.com/education/universities-psus-government-nod-virtual-events-26593>>.

³¹⁴ See The Wire Staff, “Govt Now Says Controversial Rules for Online International Seminars No ‘Longer Applicable’”, *The Wire* (24 February 2021) <<https://thewire.in/government/government-rules-online-international-seminars-no-longer-applicable-covid>>

³¹⁵ BYJU’S, “Information Technology Rules 2021”, (February 2021) online: <<https://byjus.com/free-ias-prep/information-technology-rules-2021/>>.

the government has defined as violating the ‘sovereignty’ and ‘integrity of India,’ or which is hurtful and damages the country’s friendly relations with other countries. This includes any content which is likely to stir up and encourage any kind of violence or disturb public order in the state or country.³¹⁶ Further the definition of intermediary extends to websites, apps and portals of social media networks, media sharing websites, blogs, online discussion forums and other such functionally similar intermediaries.³¹⁷ A person will not be able to express his honest views because of the various constraints on intermediaries for publishing views on the internet. The internet is a valuable resource of teaching and promoting academic freedom and imposing such restrictions on intermediaries will certainly violate academic freedom of students as well as teachers.³¹⁸ Recognizing that this is a recent implementation, this report flags concerns regarding this legislation and encourages continued monitoring of how this affects academics.

Academic freedom in India is complicated by too great a myriad of stakeholders and factors to be comprehensively reviewed in this report. However, recent political and legislative trends around the free exchange of information in society and the regulatory frameworks for universities pose tangible and significant threats to academic freedom. Since its tenure in power, the Modi government has been quick to repress dissent, at the expense of professors and students with views contrary to the state’s position. This can be seen through the state’s response to protests such as the farmer's protests: in this context, while all academics speak out, only those who dissent have faced repercussions. Similarly, the state’s crackdown in Jammu and Kashmir, and the internet

³¹⁶ See Aditya Aryan, “What Is the Newly Notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.?” *Live Law* (02 March 2021), online: <<https://www.livelaw.in/columns/newly-notified-information-technology-rules-2021-170592>>.

³¹⁷ See *Information Technology Act (India)*, *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules*, 2021, s 2.

³¹⁸ See YOU Broadband India Limited, “The Use of the Internet in Education” (2019), online: *YOU Broadband* <<https://blog.youbroadband.in/the-use-of-the-internet-in-education/>>.

shutdowns, have significantly impacted teaching and research. Bodies regulating universities have prioritized curriculum elevating specific narratives about India's history and identity (a primarily Hindu one). University regulation has also created an inequitable divide between public and private universities, further exacerbated by impositions such as the Institutions of Eminence. All of this, alongside measures and policies meant to exclude people from marginalized backgrounds from university spaces, through exclusive hiring practices or the inaccessibility of private education, has created an environment that is not conducive to the free exchange of information and ideas. Moving forward, it is imperative that government action suppressing academic freedom is more closely monitored and critiqued. Recognizing that much of the questions of academic freedom enumerated throughout this report straddle along lines of (il)legality, it is essential that the Indian state ensure its actions with respect to academics align with its domestic and international obligations.

ACADEMIC FREEDOM IN RUSSIA

POLITICAL CONTEXT: UPDATE 2021

The Academic Freedom Monitoring Legal Clinic has previously examined the political context of Russia. It has been described as operating within “a loyal network of politicians at the national, state and local levels, Vladimir Putin and the Kremlin exert a strong central power over the Russian Federation, including over institutions like civil society, the media, the judiciary, security forces and the internet.”³¹⁹ As it was in 2020, in 2021 Russia is still categorized as a ‘not free country.’³²⁰ It has only scored 5 points for political rights and 15 for civil liberties, and is categorized with an overall score of 20.³²¹ Countries such as Sweden and Norway, in comparison, rank overall at 100 both.³²² Recent political events in the country, such as protests against election fraud and the detention of Alexei Navalny, have exemplified these low rankings for Russia with particular ramifications for academic freedom. Similarly, Russia’s annexation of Crimea has had significant impacts on academic freedom that can be felt within Crimea, but also interior Russia and neighbouring regions such as the Ukraine.

UNIVERSITIES AND DISSENT

PROTESTS AND UNIVERSITIES

The climate for students, professors, and academia as a whole to engage in dissent that questions the role of the Russian state apparatus is rife with real and lived consequences. A recent

³¹⁹ Natalia Koper & Hamza Mohamdhossen, “Academic Freedom in Poland, Russia and Hungary” (2020) McGill University Faculty of Law.

³²⁰ See Freedom House, “Countries and Territories” (2021), online: *Freedom House* <<https://freedomhouse.org/countries/freedom-world/scores>>.

³²¹ See *ibid.*

³²² See *ibid.*

catalyst for the Russian state's heavy-handed stifling of dissent can be examined from the summer of 2019. At this time, protests ensued after numerous candidates and state authorities appeared to be complicit or responsible for violating registration procedures for the Moscow City Duma elections.³²³ At the time, mass arrests were carried out with the state exercising great amounts of force.³²⁴ Students comprised a great number of those protesting and arrested. This continues to shape the landscape for academic freedom today.

Since these protests, students and professors have struggled to maintain their liberties in the university context. Yegor Zhukov was admitted to one of Russia's most liberal universities, the Higher School of Economics, for a master's program. Upon recognition of his role as a prominent blogger and his role in the 2019 protests, Zhukov shared he "was crossed off a list of students admitted" just two hours after he had been enrolled.³²⁵ The search for students who have been a part of protests continues. In 2020, Human Rights Watch reported the Moscow City Prosecutor Office was coordinating bodies of university administrations to gather information about student protestors.³²⁶ Specifically, the office sought to "uncover 'destructive' foreign influence on Russia's younger generation..., 'pro-American groups of influence that can be used by international NGOs trying to achieve their destructive goals,' the 'falsification of global and Russian history to achieve the geopolitical interests of anti-Russian forces,' and the 'destruction

³²³ See Current Time, "Reports of Voting Irregularities in Russian Regional Elections" *Radio Free Europe Radio Liberty* (8 September 2019), online: < <https://www.rferl.org/a/russia-moscow-vote-protest-elections/30151991.html>>.

³²⁴ See Ivan Nechepurenko, "Moscow Police Arrest More than 1,300 at Election Protest" *The New York Times* (2019), online: < <https://www.nytimes.com/2019/07/27/world/europe/moscow-protest-election-russia.html>>.

³²⁵ See Katarzyna Kaczmarek & Dmitry Dubrovsky, "Russia's limits on critical thinking are hitting its academic performance", *Times Higher Education* (13 September 2020), online: <<https://www.timeshighereducation.com/blog/russias-limits-critical-thinking-are-hitting-its-academic-performance>>.

³²⁶ See Human Rights Watch, "Russia: Authorities Targeting Free Speech at a University" (23 October 2020) <<https://www.hrw.org/news/2020/10/23/russia-authorities-targeting-free-speech-university>>.

of Russian traditional spiritual and moral values’.”³²⁷ The need to target students for their political affiliations, whether or not the state makes a case against them contributes to a culture of fear in which it is more beneficial to be silent than to dissent, impeding the academic freedom of students to exercise their political opinions and apply their education in their societies.³²⁸

The policing of protests has continued since 2019 and has affected academics alike. In 2021, Russian dissident Alexei Navalny returned to Russia after allegedly being poisoned by the Russian state for speaking out and exposing Russia’s internal mechanisms, finances, and more.³²⁹ Recognizing his role as a voice countering the unilateral power of the Russian state, outrage percolated at his immediate arrest upon arriving in Russia.³³⁰ Protests broke out where thousands of arrests ensued.³³¹ Students and professors have been affected by these actions. Artyom Nazarov was fired from his position as a senior Drama teacher at a local college after participating in the protests.³³² The college’s rector has been alleged to be an outward supporter of the country’s president, Vladimir Putin, and justifies the firing by alleging the ‘illegal’ and ‘amoral’ nature of the protest.³³³ Students have also been expelled for partaking in these protests, including three

³²⁷ *Ibid.*

³²⁸ See Dmitry Dubrovsky, “Foreign Agents and Undesirable Organizations” (2019) online (pdf): *IWM Post* <https://www.academia.edu/19534503/Foreign_Agents_and_Undesirable_Organizations>.

³²⁹ See Julia Masterson, “OPCW to Investigate Navalny Poisoning” (2020) 50:8 *Arms Control Today* 28.

³³⁰ See Andrew Roth, “Tens of thousands protest in Russia calling for Navalny’s release”, *The Guardian* (January 2021), online: <<https://www.theguardian.com/world/2021/jan/23/alexei-navalny-supporters-join-protests-across-russia>> Note, that protests persist today. See also Luke Harding, “Alexei Navalny allies call for mass protests in Russia to save his life”, *The Guardian* (April 2021), online: <<https://www.theguardian.com/world/2021/apr/18/alexei-navalny-allies-call-for-mass-protests-in-russia-to-save-his-life>>.

³³¹ See Anton Troianovski, Andrew E. Kramer & Andrew Higgins, “In Aleksei Navalny Protests, Russia Faces Biggest Dissent in Years” (23 January 2021), online: *The New York Times* <<https://www.nytimes.com/2021/01/23/world/europe/navalny-protests-russia.html>>.

³³² See Reuters Staff, “Moscow drama teacher who joined Navalny protests fired for ‘amoral act’”, *Reuters* (28 January 2021), online: <<https://www.reuters.com/article/us-russia-politics-navalny-protester-idUSKBN29X2KQ>>.

³³³ *Ibid.*

Astrakhan State University students who are now suing the university over the decision arguing that it signifies a case of political repression.³³⁴

NEW PROPOSED LEGISLATION AND ACADEMIC FREEDOM

The Russian state has also attempted to legislate academic spaces which may have the repercussions of stifling their freedom to research and disseminate knowledge. A proposed law change was presented in February of 2021 with the intent of stopping “anti-Russian propaganda” requiring academics to receive permission from the state for public outreach on science-related educational activities.³³⁵ Academics have alleged this can stifle “scientific literacy” and have come together to create a petition defying the order encompassing over 200 000 signatures.³³⁶

A GENERAL PRACTICE AGAINST RUSSIA’S ACADEMICS

A trend has also been identified emerging around academics that produce content that may counter Russian state narratives about its history and national identity. In July of 2020, a Russian historian discovered mass graves from the Stalin era. Within weeks he was convicted of sexual assault against his daughter.³³⁷ Similar instances of sexual violence, child abuse, and child pornography allegations are brought by state prosecutors against academics whose researched content diverges from the image Russia attempts to present of itself.³³⁸ The authors of this paper

³³⁴ See Mathew Luxmoore, “Russian Students Sue After University Expels Them For Joining Protests” *Radio Free Europe Radio Liberty* (11 February 2021), online: <<https://www.rferl.org/a/31098258.html>>.

³³⁵ See Quirin Schiermeier, “Russian academics decry law change that threatens scientific outreach” (12 February 2021), online: *nature* <<https://www.nature.com/articles/d41586-021-00385-5>>.

³³⁶ See “Russian Academics Protest State Permits for Public Outreach”, *The Moscow Times* (16 February 2021), online: <<https://www.themoscowtimes.com/2021/02/16/russian-academics-protest-state-permits-for-public-outreach-a72964>>. See also “Declaration of Scientists and Popularizers of Science ” (12 January 2021), online: *Trinity Variant - Science* <<https://trv-science.ru/2021/01/declaration/>>.

³³⁷ See Andrew Higgins, “Russian Historian Who Found Stalin-Era Graves Is Convicted”, *The New York Times* (22 July 2020), online: <<https://www.nytimes.com/2020/07/22/world/europe/russian-historian-sex-crime-conviction.html>>.

³³⁸ See Human Rights Watch, “World Report 2021: Russia” (2021), online: *Human Rights Watch* <<https://www.hrw.org/world-report/2021/country-chapters/russia#eea21f>>.

recognize that sexual violence and child abuse are serious violations of the person while also contending that due process and an independent judiciary are essential elements to a functioning democracy and a culture for academic freedom.

CRIMEA

SITUATIONAL OVERVIEW

January 14th, 2021, the European Court of Human Rights (ECHR) recognized that Russia had “exercised effective control” over the peninsula since February 2014, and the human rights situation has significantly deteriorated since its occupation.³³⁹ The court notes that “the imposition of a new citizenship and legal framework and the resulting administration of justice” have significantly curtailed the rights of those living in Crimea.³⁴⁰ Since the occupation, Russian authorities have prevented criticism and dissent and outlawed organized opposition. This can be seen through arbitrary arrests and detentions, enforced disappearances, torture, and “at least one extra-judicial execution,” all which have not been effectively investigated by the judiciary.³⁴¹ Russian authorities have shut down media outlets, which has disproportionately affected Crimean Tatar and Ukrainian communities.³⁴² Moreover, throughout the occupation, the freedom of movement between mainland Ukraine and Crimea has also been restricted.³⁴³ The 2016 *Yarovaya Law*, and amendments made in 2020, classify “any calls to alienate Russian territory, including

³³⁹ See European Court of Human Rights Registrar of the Court, Press Release, “Complaints brought by Ukraine against Russia concerning a pattern of human rights violations in Crimea declared partly admissible” (14 January 2021), online:
<file:///C:/Users/Owner/Downloads/Grand%20Chamber%20decision%20Ukraine%20v.%20Russia%20(re%20Crimea)%20-%20complaints%20concerning%20pattern%20of%20human-rights%20violations%20partly%20admissible.pdf>.

³⁴⁰ *Ukraine v Russia (re Crimea)* [GC], No 20958/14 (16 December 2020) at para 220.

³⁴¹ *Ibid* at para 11.

³⁴² See *ibid* at para 221.

³⁴³ See *ibid* at 223.

Crimea, as extremism.”³⁴⁴ However, while the Russian clampdown on dissent and on human rights in Crimea have long been criticized by the human rights organizations, and now the ECHR, the impacts on academic freedom in the region have been absent from these conversations.

INTERNATIONAL LAW ON OCCUPIED TERRITORY

In light of the ECHR’s recognition that Russia has exercised “effective control over the region,” international laws relating to the law of occupation are relevant. As Human Rights Watch has noted, a significant amount of occupation law is a matter of customary humanitarian law. However, the *Hague Regulations of 1907* (Hague), the *Fourth Geneva Convention of 1949* (Geneva IV), and certain provisions of the *First Protocol of 1977 Additional to the Geneva Conventions of 1949*, to which Russia and Ukraine are party, encompass the primary sources of the modern law of occupation.³⁴⁵ Under these obligations, an occupying power is required to restore and maintain public order and safety.³⁴⁶ Moreover, the occupying power must also respect the fundamental human rights of the territory’s inhabitants, including noncitizens.³⁴⁷ This includes providing access to education for children, but this right to education does not necessarily extend to the university level.³⁴⁸ International human rights law also applies in times of occupation, though it has been argued that the “very fact of occupation is incompatible with human rights.”³⁴⁹

³⁴⁴ Andrew Wilson, “Imagining Crimean Tatar History since 2014: Indigenous Rights, Russian Recolonisation and the New Ukrainian Narrative of Cooperation” (2021) *Europe-Asia Studies* 1 at 2.

³⁴⁵ See Human Rights Watch, “Questions and Answers: Russia, Ukraine, and International Humanitarian and Human Rights Law” (21 March 2014), online: *Human Rights Watch* <<https://www.hrw.org/news/2014/03/21/questions-and-answers-russia-ukraine-and-international-humanitarian-and-human-rights>>.

³⁴⁶ See Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, article 43 (26 January 1910).

³⁴⁷ See Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention, 12 August 1949, arts 29 & 47 (21 October 1950).

³⁴⁸ See *ibid.*, art 50.

³⁴⁹ Gilles Giacca & Ellen Nohle, “Positive Obligations of the Occupying Power: Economic, Social and Cultural Rights in the Occupied Palestinian Territories” (2019) 19:3 *Human Rights L Rev* 491 at 515.

Nonetheless, in its occupation of Crimea, Russia still bears responsibility for the fulfillment of civil, political, economic, social, and cultural rights of the citizens in the region.³⁵⁰ This includes, for example, relevant obligations under the ICESCR and ICCPR or the *European Convention on Human Rights* relating to freedom of association and freedom of expression, to which Russia is a party. Even more pertinent however, are obligations related to non-discrimination, which “is an immediate and cross-cutting obligation under the ICESCR,” is particularly relevant with regards to the situation of Crimean Tatars and restrictions on their language and religion.³⁵¹ Under both international humanitarian law, through the law of occupation, as well as international human rights law, Russia bears responsibility for its actions in Crimea.

UNIVERSITY REGULATION IN CRIMEA

Since the occupation, the Russian state has had a heavy hand in regulating higher education in Crimea, as it does in Russia as well. For example, in 2015 after the occupation, the creation of a federal university in Crimea was put forward by Russian politician Dmitry Medvedev, resulting in the establishment of Crimean Federal University.³⁵² At the same time, Russian authorities disbanded seven Ukrainian universities and colleges and five research centres. Taurida University was able to relocate to Kyiv in 2016, as teachers and students slowly tried to make their way safely out of Russian-occupied Crimea.³⁵³ Of note, however, is that the website of Crimean Federal University traces its history back to Taurida University, claiming that it was restructured after a decree in 2014.³⁵⁴ This narrative stands in stark contrast to the lived experiences of the displaced

³⁵⁰ See *ibid* at 499.

³⁵¹ *Ibid* at 503.

³⁵² See Madeline Roache, “The Forgotten Story Behind Crimea’s Only Displaced University” (10 August 2018), online: *Atlantic Council* <<https://www.atlanticcouncil.org/blogs/ukrainealert/the-forgotten-story-behind-crimea-s-only-displaced-university/>>.

³⁵³ See *ibid*.

³⁵⁴ See VI Vernadsky Crimean Federal University, “History of the University” (2021), online: <<https://eng.cfuv.ru/history-of-the-university/>>.

teachers and students at the relocated Taurida University in Kyiv. This displacement, and heavy control, has had, and is having, reverberating effects on academic freedom. For example, the autonomy of universities in Crimea must be scrutinized.

ACADEMIC MOBILITY

One of the most significant ways academic freedom in the region has been impacted is through the way university students in the region have been afforded little to no mobility to pursue higher education beyond Crimea or Russia. Crimean Federal University is not accredited by other international institutions, “rendering a degree earned there essentially meaningless anywhere outside of Russia.”³⁵⁵ Military conscription, and the obligation that all males over 14 years of age must undergo conscription training, has further restricted the choices of young people who are of university-age.³⁵⁶ However, there are numerous barriers for young adults wanting to pursue university outside Crimea. In checkpoints at the Ukrainian-Crimean border, university admission is considered a viable reason to enter Crimea, but not to leave it.³⁵⁷ Moreover, Donetsk and Luhansk officials have been promoting narratives that prospective students will face threats if they cross over to Ukrainian government-controlled territory. For example, in July 2020, a local paramilitary authority in Donetsk claimed that Ukrainian authorities were trying to lure students into Ukraine, “so as to charge them with separatist crimes and exert pressure on their relatives.”³⁵⁸ This has kept students wishing to pursue university outside of Crimea with little option but to stay.

³⁵⁵ Austin Charron, “Russia’s Recolonization of Crimea” (2020) 119:819 *Current History* 275- 278.

³⁵⁶ See Ibrahim Suleimanov, “Cult of War: Russia Actively Promotes Militarism Among the Youth of Crimea” (26 March 2021), online: *International Centre for Defense and Security* <<https://icds.ee/en/cult-of-war-russia-actively-promotes-militarism-among-the-youth-of-the-crimea/>>.

³⁵⁷ See Yulia Abibok, “Trapped in Eastern Ukraine” (28 August 2020), online: *reliefweb* <<https://reliefweb.int/report/ukraine/trapped-eastern-ukraine>>.

³⁵⁸ *Ibid.*

Outside of the restrictions on mobility, young people have also been punished for showing resistance to the Russian authorities in Crimea. For example, in September 2020, Russian authorities arrested a 22-year-old graduate from Odesa who had been circulating “Crimea Resistance” pamphlets.³⁵⁹ The Russian authorities claimed the young man was involved in terrorism and was a national security threat.³⁶⁰ The suppression of student activism is not just a concern at the university level, but has also been a concern for schoolchildren. For example, teachers in a number of Simferopol schools “demanded that parents report every two hours that their child is under adult supervision.”³⁶¹

CRIMEAN TATARS AND RELIGION

Alongside the limited mobility of students, and the general repression of dissent, specific attention should be paid to the situation of the Crimean Tatars. As the ECHR notes, while human rights violations “have affected Crimean residents of diverse ethnic backgrounds, Crimean Tatars were specifically targeted.”³⁶² This has included the ban of the Mejlis, a representative body of Crimean Tatars in 2016 by the Supreme Court of Crimea, as well as intrusive law enforcement raids.³⁶³ The specific targeting of Crimean Tatars has also had significant impacts on academic freedom, as it both relates to the persecution of academics who are Crimean Tatars themselves, as well as the circulation of discourse aligning with Crimean Tatar history, culture, language, and resistance.

³⁵⁹ See Crimean Human Rights Group, “Crimean Human Rights Situation Review” (September 2020), online (pdf): <https://crimeahrg.org/wp-content/uploads/2020/10/crimean-human-rights-group_sept_2020_en.pdf>.

³⁶⁰ See Halya Coynash, “22-year old Odesa geologist seized in Russian-occupied Crimea for pro-Ukrainian leaflets”, *Kharkiv Human Rights Protection Group* (25 September 2020), online: <<http://khpg.org/en/1600938107>>.

³⁶¹ Kseniya Kirillova, “Russian Authorities Redouble Pressure to Preserve Crimeans’ Loyalty”, *Eurasia Daily Monitor* (8 February 2021), online: <<https://jamestown.org/program/russian-authorities-redouble-pressure-to-preserve-crimeans-loyalty/>>.

³⁶² *Re Crimea*, *supra* note 340 at para 12.

³⁶³ *Ibid.*

Curtailling religious freedoms is not unique to Crimea, and is not unique to Crimean Tatars. Anti-missionary laws have been used to arrest people in Russia. For example, in late February of 2021, a mother and son were sentenced to prison for their beliefs as Jehovah's Witnesses.³⁶⁴ Similarly, the same month, a professor of religious studies at Sevastopol University, Andrei Mironov, testified that when Aleksey Smirnov was charged for inviting an attendee from a Protestant church to his home, his actions were "missionary activity."³⁶⁵ In 2020 at least 10 of the 13 individuals fined under "anti-missionary" laws in Crimea were Muslims "targeted for leading meetings for worship in mosques outside the framework of the Russian-backed Crimean Muslim Board."³⁶⁶

While religious freedom is generally at stake in Russia, Crimean Tatars have borne the brunt. This can be seen for example, in arrests made in February this year, where the Russian Federal Security Service (FSB) arrested six Muslim men, all Crimean Tatars, after prohibited religious literature was found in seven homes.³⁶⁷ Moreover, as noted above, professors of religion have been called to testify to confirm evidence of missionary activity. For example, in 2020, Olga Griva, head of the department of religious studies at the Russian-controlled Vernadsky University, was also called upon to confirm evidence of Crimean Tatar missionary activity to Russian authorities.³⁶⁸ This creates an environment where academic expertise is wielded by state actors to

³⁶⁴ See Washington Post Editorial Board, "Opinion: A mother and son were sentenced to prison in Russia. Their only offense is believing in God," Washington Post (28 February 2021) online, <https://www.washingtonpost.com/opinions/global-opinions/jehovahs-witnesses-russia-persecution/2021/02/28/980b4c06-76d8-11eb-9537-496158cc5fd9_story.html>.

³⁶⁵ Felix Corley, "CRIMEA: Muslim meetings for worship main target of 'anti-missionary' prosecutions", *Forum 18* (25 February 2021), online: <https://www.forum18.org/archive.php?article_id=2641>.

³⁶⁶ *Ibid.*

³⁶⁷ See Yulia Gorbunova, "New Raids and Arrests in Crimea", *Human Rights Watch* (19 February 2021), online: <<https://www.hrw.org/news/2021/02/19/new-raids-and-arrests-crimea>>.

³⁶⁸ See Halya Coynash, "Mounting religious persecution as Russia imposes monopoly on faith in occupied Crimea", *Kharkiv Human Rights Protection Group* (27 April 2020), online: <<http://khpg.org/en/1587906872>>.

restrict freedom of religion and expression. There is little research or news on the impact of the occupation on Crimean Tatar professors or research on Crimean Tatar language, religion, and culture within Crimean universities themselves. However, the book ban and the anti-missionary laws, seen alongside statements from Crimean university professors who affirm the Russian authorities in their hunt for “missionary activity” demonstrate an academic environment that is extremely hostile to religious minorities, particularly Crimean Tatars.

CRIMEAN TATARS AND LANGUAGE

Barriers facing religious minorities in Crimea cannot be examined without the impact of Russian policies on language in Russian-occupied Crimea. As Austin Charron has noted, “although Ukrainian remains an official language of Russian-occupied Crimea, its use is anathema in most places, and access to Ukrainian language education and media has been almost entirely curtailed.”³⁶⁹ However, if the impact on Ukrainian has been grave, the clampdown on the Crimean Tatar has been even harder. Even before annexation, there were only 18 Tatar schools on the Crimean Peninsula, entailing that only “one in 10 children had the opportunity to have education in their native Crimean language.”³⁷⁰ Since the occupation, the Russian government decided to prohibit and stop training teachers in Crimean language and literature, and only “3% of Crimean Tatar schoolchildren have had the opportunity to study in their mother tongue.”³⁷¹ This absence of the Crimean Tatar language has also been felt in universities - even in Ukraine. Currently, the Crimean Tatar language can only be mastered in two universities.³⁷²

³⁶⁹ Charron, *supra* note 350 at 333.

³⁷⁰ *Ibid.*

³⁷¹ Murad Guliyev, *Crimean Tatar's Discrimination After Russia's Annexation*, (Master of Arts Dissertation, Central European University, 2020) [unpublished] 1 at 61.

³⁷² See Alice Smahina, “When your native language is on the verge of extinction. How they save Crimean Tatar in Ukraine” (21 February 2021), online: *Rubryka* <<https://rubryka.com/en/article/save-krymskotatarska-mova/>>.

Discussions of Crimea and its occupation within Russian universities themselves feature narratives that downplay Crimean resistance and self-determination. The impacts of Russia's occupation in Crimea are not felt in Crimea alone, but have also impacted academic discourse and research in Russian universities. The notion of a distinct Russian civilization, "with its own unique history and its own special fate," has been noted by scholars to be a prominent theme within dissertations in the social sciences and humanities in Russian universities.³⁷³ Within these civilizational narratives being promoted in universities, an important one is a historiography of Crimean-Tatar and Russian cooperation.³⁷⁴ This can be seen, for example, in how "supposedly academic studies such as *The Policy of Recognition of Indigenous Peoples in International Law* and in the *Legislation of the Russian Federation* have been devoted to proving" Crimean Tatars are only a national minority and dismissing any claims of Crimean Tatar indigeneity.³⁷⁵

³⁷³ Kåre Johan Mjør & Sanna Turoma, *Russia as Civilization: Ideological Discourses in Politics, Media and Academia* (New York: Routledge, 2020) at 87.

³⁷⁴ See Wilson, *supra* note 344.

³⁷⁵ *Ibid* at 7.

CONCLUSION

This report has attempted to detail various barriers to the fullest realization of academic freedom across Nigeria, Cameroon, India, and Russia. This report has reviewed the political, historical, and legal context of each country alongside monitoring and documenting the major threats to academic freedom. This report has documented numerous instances of violations across Nigeria, Cameroon, India, and Russia, calling for further analysis and research in these spaces and support for academics and students alike to be able to thrive in spaces that protect their capacities to share their work.

As has been explained throughout this paper, the definitions of academic freedom remain blurred in their parameters, providing breathing room for expansive understandings of both obstacles to and solutions for academics to engage in their work freely. This report has traversed these gradients: from more orthodox understandings of academic freedom such as government censorship, to sociopolitical and economic barriers such as sexual harassment in the classroom and internet access. Fundamentally, this report has sought to elaborate upon the intersectional means through which academics may face difficulties in conducting and sharing their research and teaching.

This rethinking provides a base from which academic freedom must continue to be envisioned: holistically. In addressing the social, legal, economic, and political settings of each state, this report provides nuance that can hopefully contribute to further research and support for academics. Indeed, the contexts of India, Russia, Nigeria, and Cameroon remain underexplored but are equally pertinent to understanding academic freedom in its various iterations across the world.