Lecture title: 
Bringing Claims for Violations of Academic Freedom Under Human Rights Law

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Summary:

Healthy higher education communities are engines of democratic life and bulwarks against authoritarianism. They impart skills and knowledge necessary for meaningful democratic participation, and are models and teachers of the rejection of violence and force as determinants of outcomes, in favor of process, evidence, reasoned discourse and quality information. In this unique function, healthy higher education communities matter enormously to the independence, prosperity and stability of every nation.

But to be healthy, higher education communities must be grounded in core values—access, accountability, academic freedom, autonomy and social responsibility. Where core values are respected, where academic freedom—including freedom of inquiry, expression, debate, travel and association—is allowed to flourish, higher education communities not only contribute necessary skills and services to society, but maximize the capacity of individuals to think and make informed, creative contributions to democratic life. Without these core values, higher education becomes little more than replication and training in the service of an existing (generally undemocratic) status quo. Without core values, provision of higher education and the social, political and cultural functions of education narrow. Attempts to broaden these are interpreted as destabilizing threats, creating a pretext for violent attacks against education leaders and communities.

Many states have acknowledged in international treaty obligations and domestic constitutional commitments that include protections for academic freedom and related higher education values. But despite these obligations, claims for violations of academic freedom are rarely brought under human rights law. As a result the standards are underdeveloped relative to other human rights violations and the scope of academic freedom violations globally. This may be in part due to lack of familiarity with issues of academic freedom and the available standards for protection among human rights advocates (a fact which becomes negatively reinforcing as failure to invoke the standards contributes to their underdevelopment and lack of familiarity). This may also be due in part to the fact that attacks on academic freedom often manifest as violations of other rights under which claims are brought. For example in the case of a professor imprisoned in retaliation for publishing a paper—an academic freedom violation—a claim may be brought for wrongful detention alone. In the case of a scholar tortured because of the content of lectures, a claim may be brought alleging torture, without mentioning the academic freedom violation which preceded it.

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1 “Claim” is understood broadly and includes, but is not limited to, complaints, petitions and other advocacy before United Nations, regional, sub-regional and national institutions competent to address alleged violations of human rights, including courts, tribunals, committees, commissions, ombudspersons and other regular or special procedures and mechanisms.
Including a claim for academic freedom violations in such cases can provide an additional basis for relief, while strengthening the claim for relief on the manifested violation (e.g. wrongful detention or torture) by providing evidence of motive and intent. Including a claim for academic freedom violations also has a separate, independent value, in that it can address the wider harms to the claimant-victim and society generally that result from intentional attacks on intellectual expression and are not reached by the claims for relief on the manifested violation alone. These include harms the claimant-victim’s current and future creative, intellectual or expressive work, and the widespread chilling effects on research, experimentation, creativity, teaching, publication and the free exchange of knowledge and information throughout the society. The paper presented is intended to assist human rights advocates in developing familiarity with these issues and standards with the hope of encouraging the inclusion of such claims in appropriate cases.