THE ROLE OF ACADEMIA IN HUMAN RIGHTS' PROTECTION AND PROMOTION

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CONTENT

INTRODUCTION

This working paper explores the position and the roles of Academia in the National Human Rights System. It also gives an overview of how all the components of Academia work with human rights.[1]

The National Human Rights System (NHRS) is a system where the state effectively respects, protects and fulfils the human rights of everyone and where non state actors, such as civil society, Academia and business sector respect and promote human rights.[2] The notion of a system underlines that human rights protection and promotion entails continuous processes of interaction and communication between a complex whole of state and non-state actors within a given legal and policy framework. Envisaging the NHRS as a whole provides insight into the efficiency of the state human rights infrastructure, while capturing the interactions between state and non-state actors of the NHRS, and their cooperation with international and regional human rights mechanisms.

Academia is a complex actor. Definitions of Academia encompass higher education and research institutions, the individuals enrolled in or working for these institutions and the work they produce. In this respect, Academia covers universities and other high-level education and research institutions. It also covers the academic staff (professors, lecturers and, other researchers), PhD students working at these institutions, as well as the students. Finally, it englobes the activities taking place at these institutions such as teaching and learning, research, publication, dissemination of knowledge, etc.

For the purpose of this working paper, Academia is defined as a community of institutions, the individuals engaged in high level education and research activities and the education and research activities themselves.[3] The paper focuses on Academia as a whole, not on its components: individuals, research projects, courses, etc.

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[1] This working paper has been developed in parallel with the production of two documents for the Human Rights System Toolbox of the Danish Institute for Human Rights' International department (A concept note on 'Academia and human rights' and a method document on 'Research in partnership'). An academic article, co-authored with Eva Maria Lassen, is to be published at the end of 2018.

[2] Lagoutte, S.: Understanding and conceptualising the role of state actors within the national human rights system, 2018 (to be published in 2019).

[3] See for example the definition of the Oxford Dictionary: "The environment of the community concerned with the pursuit of research, education and scholarship" (https://en.oxforddictionaries.com/definition/academia);

Academia is not always considered as an actor of the NHRS. The sparse literature existing on NHRS focuses on courts, parliament, government and administration including law enforcement, national human rights institutions as well as civil society and to some extent businesses. When we look at Academia as part of the NHRS we must keep in mind that the academic institutions that constitutes Academia can be public or private actors, and enjoy various degree of independence in theory and in practice. Academic institutions can be both right holders and duty bearers, and as such participate in respecting and promoting human rights at domestic level. For instance, if academic institutions and researchers must be granted academic freedom, it is the role of the academic institution (duty-bearer) to protect the independence and freedom of its individual members (right-holder). At the same time, academic institution have a right to autonomy that the state must protect.[4]

Academia, especially universities, also play an increasing role in the field of human rights through human rights education and human rights research. Human rights Master's programmes are established everywhere in the world[5] while education in most legal and social science subjects offer some form of human rights training. Further, human rights research institutions are created both within, and outside, universities. International and regional organisations also support human rights teaching and research and international donors finance the capacity building of human rights training and research in development countries.

This paper shows that Academia plays a role in the NHRS and that this role encompasses three main types of activities: human rights education, human rights research coupled with the dissemination of knowledge and outreach to other actors of the NHRS. This paper builds on an overview of the literature existing on or related to the role of Academia in the protection and promotion of human rights, as well as practical experiences (institutions, programmes, development aid projects, etc.).

There is very little literature that deals with the role of Academia in the protection and promotion of human rights or on the position of academic institutions and researchers within the NHRS. A 2004 Harvard publication discusses the role of the university in the

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or in the Collins Dictionnary: "Academia refers to all the academics in a particular country or region, the institutions they work in, and their work"
(https://www.collinsdictionary.com/dictionary/english/academia).

[4] See below section 3 on Academic freedom.

[5] See, for instance, the European Inter-University Centre (EIUC) and its Global Campus of regional masters in human rights (www.eiuc.org/education/global-campus-regional-masters.html).

human rights movement.[6] The publication is a transcript of an interdisciplinary discussion between renowned human rights scholars.[7] It focuses on the engagement of universities and researchers with human rights, through working with for instance NGOs or intergovernmental bodies; its necessity and the risks it represents in terms of losing scientific rigour in its work and political independence. The Harvard discussion also reflects some of the more general trends that can be identified in the literature on the role of Academia in society and on academic freedom. More recently, a colloquium in honour of Professor Manfred Nowak was held at the University of Vienna on "The University as a Human Rights Agent".[8]

In order to analyse the role of Academia in the protection and promotion of human rights, this working paper will first take a holistic view of the shifting position and role of universities in the wider society in various context (2) and on academic freedom as a very specific characteristic of the work of Academia (3). It will then look into the overall role of Academia within the NHRS (4). Finally, the working paper will examine the various roles of academic institutions and scholars in developing and carrying out human rights education, doing human rights research and reaching out to other actors of the NHRS (5). In this respect, it will look into the capacity building of Academia (institutions and researchers) in development aid projects.

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[6] *The role of the university in the human rights movement. An interdisciplinary discussion held at Harvard Law School in September 1999*. A publication of the Harvard Law School Human Rights Program, 2004.

[7] Including Philip Alston, Kevin Boyle, Andrew Clapham, Rebecca J. Cook, Claudio Grossman, Joseph Oloka-Onyango, Christian Tomuschat and David Weissbrodt.

[8] Colloquium "The University as Human Rights Agent" on the occasion of the 50th anniversary of the United Nations International Covenant on Civil and Political Rights, in honour of Manfred Nowak, organised by the University of Vienna and the Ludwig Boltzmann Institute of Human Rights and held in Vienna on the 17th December 2016. There is no transcript of this meeting.

1 THE ROLE OF ACADEMIA IN SOCIETY

To paraphrase Tomuschat, Academia is part of society and, in most cases, no better.[9] This is true for all actors of the NHRS. They are as good, performant, independent, etc. as the framework developed for them by society and the state. The role of Academia shifts with changes in society whether it is the emergence of mass university education, IT developments, economic crisis or more contextual political changes. In addition, Academia is as free as politicians, parliament and governments allow them to be.

Therefore, before looking at the role of Academia in the protection and promotion of human rights, this working paper will give an overview of the position of universities and research in society. The working paper presents two main trends: first, the shifting from autonomous academic institutions to "knowledge production" institutions and second, the diversity of the position of Academia in a globalised world. Finally, the paper looks more briefly in the role of Academia in human rights debates.

1.1 FROM AUTONOMOUS ACADEMIC INSTITUTIONS TO KNOWLEDGE PRODUCTION INSTITUTIONS

In 1994 Gibbons et al published their work analysing the development of research and knowledge production in higher education institutions; ultimately claiming the process of research was experiencing a dramatic shift.[10] Their thesis can be summarised as drawing a distinction between what has been termed 'Mode 1' and 'Mode 2' university models. Mode 1 is characterised by an emphasis on the autonomy of researchers and institutions, as well as producing work that often reinforces the classification differences between disciplines. Alternatively, Mode 2 focuses on 'knowledge production' that is application focused and often cross-cuts various disciplines.[11]

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[9] Tomuschat in Harvard Law School publication 2004, p.33.
[10] Nowotny, H. Scott, P and Gibbons M., "Introduction: Mode 2 Revisited: The New Production of Knowledge" in Gibbons, M. et al. *The New Production of Knowledge: The Dynamic of Science and Research in Contemporary Societies*, London: Sage, 1994.
[11] Nowotny, H. Scott, P and Gibbons M., 1994, *op. cit*.

Academia holds a privileged position within the Mode 1 model as academic institutions have responsibility for developing new research and technology, for educating the next generation of policy and service providers, and providing objective evidence and reviews of current governmental policy.[12] Embedded in this model are three "communal norms" of academics that emphasises: the objectivity of academics' work and results; their contribution to the progression of knowledge and learning, and finally their social function in protecting the interests of vulnerable members of society.[13] This 'social function' of Academia is visible in the human rights field where scholars have established or participated in legal aid clinics dealing with human rights violation; have been members of NGOs and have written briefs for these organisations; and finally have been appointed independent experts of intergovernmental bodies such as the UN treaty bodies.

Therefore, historically, the role of universities in society was as a relatively autonomous observer with researchers conducting their work in their "ivory tower," engaging tangentially with the private sphere and acting as a check and balance on the actions of the public sphere. However, Gibbons asserts there is now a global shift towards a greater emphasis on the commercialisation of knowledge.[14]

Unlike mode 1, which finds an intrinsic value in the act of research and learning, the mode 2 university model values research that has a practical application, for example through policy. Due to the interdependence of societal factors, a policy development demands the holistic solutions best provided by trans-disciplinary research. This has had ramifications for the perceived societal role of universities. Mode 1 sees universities' societal relevance as being premised on the institutions' freedom to explore. However, mode 2 universities must prove their worth and justify their use of public funds through direct, measurable outputs.[15] In part, this shift has been facilitated by the emergence of alternative knowledge producers such as consultancy firms, think-tanks and activist organisations.[16] As these alternative sources of research can produce policy oriented work, without the restrictions of providing education, it has been argued they create a "marketplace of ideas" that undermines universities' abilities to encourage and support effective governance.[17]

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[12] Organisation for Economic Cooperation and Development, *Understanding the Regional Contribution of Higher Education Institutions a Literature Review.* Education Working Paper No. 9, 2007.

[13] Organisation for Economic Cooperation and Development, 2007, *op. cit*.

[14] Nowotny, H. Scott, P and Gibbons M., 1994, *op. cit*.

[15] Organisation for Economic Cooperation and Development, 2007, *op. cit*.

[16] Nowotny, H. Scott, P and Gibbons M., 1994, *op. cit*.

[17] Organisation for Economic Cooperation and Development, 2007, *op. cit*.

Whether this mode 2 shift is a positive development is debatable. Gibbons argues that mode 2 is not intrinsically antithetical to positive societal change because it embeds social responsibility throughout the research through its focus on output.[18] Unfortunately, while positive developments may be seen in research areas which have been deemed important from a policy basis, Gibbons fails to account for the negative repercussions of mode 2 for areas of research that fall outside these parameters. The increased competition for government and private funding, driven by the availability of alternative research resources, can push universities to focus on policy goals mores single-mindedly. This creates incentive structures that value certain results over others, shifting the role of universities to that of an entrepreneur.[19] Further, governments benefit from the result of continuous, long-term studies which are suitable for producing more in-depth analysis. Universities are best positioned to provide this type of research but are being financially rewarded if they couch their research with short-term aims.

This shift from mode 1 to mode 2 also poses questions for the internal structure of universities. Universities are internally structured by discipline; however, the research produced under mode 2 is increasingly inter-disciplinary in nature.[20] Universities organise themselves as centres where interdisciplinary research is carried out as well as interdisciplinary education.

Over the past two decades interest in the study of the theoretical and practical implementation of human rights standards has been growing. Human rights research and teaching includes the obvious subjects of law, philosophy, history and political sciences; but also encompasses a large range of social sciences such as sociology, economy, anthropology and development studies. These disciplines contribute to the field of human rights implementation by analysing the dynamics of human rights (non-)implementation in real life, mapping actual implementation gaps, gathering qualitative and quantitative data on human rights implementation, carrying-out case-studies on root-causes to implementation gaps as well as possible solutions, etc.[21]

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[18] Gibbons, M., *What Kind of University? Research and Teaching in the 21st century*, Beanland Lecture, Victoria University of Technology, 1997.

[19] Soo, D, *Envisioning a Regional Role: Comprehensive Universities and Conceptions of the Regional Contributions,* Dissertation, University of Pennsylvania, 2011.

[20] Gibbons, M., 1997, *op. cit*.

[21] See for instance the work carried out on human rights implementation: Risse, Thomas; Ropp, Stephen C.; Sikkink, Kathryn (eds.): *The persistent power of human rights: from commitment to compliance*, Cambridge: Cambridge University Press, 2013; Hafner-Burton, Emily M.: *Making human rights a reality*. Princeton: Princeton University press, 2013; Simmons, B.: *Mobilizing*

Academia has reflected this through the establishment of large interdisciplinary human rights research centres at many universities,[22] as well as the creation of interdisciplinary master programmes,[23] to educate future human rights professionals. The UN has also participated in this effort through establishing UNESCO Chairs on human rights worldwide[24].

1.2   GLOBAL DIFFERENCES IN THE ROLE OF UNIVERSITIES

Despite globalisation and the interdependence it brings, it would be amiss to treat the perceived role of universities in society as homogenous across the globe. Understanding contextual differences is essential.[25]

Educational institutions were present in Africa pre-colonial times, often in the form of religious teaching institutions for instance in Egypt, Ethiopia or in Timbuktu (Mali).[26] In the Middle East educational institutions date back to the 7th century in the form of madrasas, religious teaching institutions, and Beit al Hikma (House of Wisdom) which focused on the scientific fields.[27] Despite these legacies, the colonial era has been instrumental in shaping the position and role of universities throughout these regions today.

The establishment by colonial powers of western-style educational institutions in the colonised territories was not done with the intention of addressing socio-economic

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Human Rights: International Law in Domestic Policies. Cambridge: Cambridge University Press, 2009.

[22] For instance: the Human Rights Centre of the University of Essex (www1.essex.ac.uk/hrc), the Centre for the Study of Human Rights at LSE (www.lse.ac.uk/humanRights), the research department of the Danish Institute for human rights (www.humanrights.dk/research), the Maastricht Centre for Human Rights (www.maastrichtuniversity.nl).

[23] For instance: MA in Human Rights at UCL, UK; MA in Human Rights studies at Columbia University, NY, USA; Interdisciplinary Master's Degree in Human Rights at the UFS, RSA. See also the European Inter-University Centre (EIUC) and its Global Campus of regional masters in human rights (www.eiuc.org/education/global-campus-regional-masters.html).

[24] The UNESCO Chairs in human rights are in most cases of interdisciplinary nature. They propose teaching and research as well as engage with policy-makers, civil society, and local communities. They exist all around the world, for instance in Luxembourg, Greece (Thessalonica), Palestine (An Najah National University), Benin (Abomey-Calavi), Costa Rica (De la Salle), etc.

[25] Harvard Law School publication 20014, p. 26

[26] Woldegiorgis, E. and Doevenspeck, M., The Channing Role of Higher Education in Africa: A Historical Perspective, *Higher Education studies* Vol. 3(6), 2003, 35-45.

[27] Romani, V., The Politics of Higher Education in the Middle East: Problems and Prospects*, Middle East Brief*, Issue 36, 2009.

concerns in Africa and the Middle East.[28] Instead, the goal of these universities was two-fold: colonial administration and to further a policy of assimilation.[29] The purpose of higher education systems was to create an indigenous elite class, educated in colonial ways, which could administer the colonial system.[30] In Africa, universities retained no autonomy from the colonial powers. This extended to funding, where old learning centres and Islamic religious centres received no funding because their teachings conflicted with colonial policy.[31] Thus, modern African and Middle Eastern universities did not evolve from the mode 1 model valuing the production of knowledge for its intrinsic value; instead, their history is that of externally imposed "instruments of domination."[32] That being said, in some parts of the world universities played a significant role in the struggles for decolonization.[33]

Following independence, these universities came under state control and were repurposed to be the creators of national and regional identity.[34] In Africa, nation building fell to universities because of the weak institutions left behind after the colonial powers withdrawal.[35] However, due to increasing levels of national debt, African governments entered into aid agreements with foreign organisations. These organisations required the states to focus on primary and secondary education; which was seen at the time to be a more important development factor than tertiary education.[36] Once again, the course of higher education was not dictated by the demands of the people or the society.

In post-colonial context, higher education institutions and Academia at large are a volatile political tool. In some context, the students and the staff remain affiliated to major trade unions and political parties that are either supporting or contesting the power in place.[37] Governments are therefore wary of campuses where large youth population gather as they provide a public space where opposition movements can gain a voice. The response

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[28] Rupp, R., Higher Education in the Middle East: Opportunities and Challenges US Universities and Middle East Partners, *Global Media Journal*, Vol. 8(14), 2009.

[29] Woldegiorgis, E. and Doevenspeck, M., 2013, *op. cit*.

[30] Rupp, R., 2009, *op. cit*.

[31] Romani, V., 2009, *op. cit*.

[32] Woldegiorgis, E. and Doevenspeck, M., 2013, *op. cit*.

[33] Professor Upendra Baxi in the Harvard Law School publication 2004: political functions served by universities p. 28

[34] Barbosa, A., "Modern Colonialism in African Education: The Wave of Foreign Investment in Sub-Saharan Africa." *The Vermont Connection*, Vol. 31, 2010, 31-36.

[35] Woldegiorgis, E. and Doevenspeck, M., 2013, *op. cit*.

[36] Barbosa, A., 2010, *op. cit*.

[37] Professor Upendra Baxi in the Harvard Law School publication 2004: political functions served by universities p. 28

by states to this threat of loss of control includes under-prioritising universities in state budgets, the closing of universities, intelligence services on campus and suppression of academic freedom.[38]

Nowadays African universities are also facing problems of lack of resources and huge influx of students. Especially in Francophone West Africa, opting for mass public university education for the past 15 years has been conducive to a massive degradation of the quality of the education provided in many universities.[39] As an other consequence of this extreme situation, the production of academic research is almost non-existing.

Interestingly, the current growth of privately funded universities in both Africa and the Middle East means, once again, the role of universities in these societies is taking on a new form. Privatisation, offers a unique opportunity for growth of academic freedom and greater access to higher education in these contexts. In Africa, private funding has allowed other sectors of society to access universities: women are accepted into private universities at a greater proportion than men, while the government can now repurpose funds to develop higher education in rural communities.[40] A similar trend can be observed in the Middle East where private universities based in the region offer an alternative avenue of education for women who were unwilling or unable to travel abroad.

However, the growth of private universities and private funding can have negative consequences. In Africa, private institutions could encourage the state to reduce their involvement in the provision of higher education as the slack is picked up by private institutions.[41] Further, partnerships with foreign donors are increasingly becoming one mark of a successful African university.[42] Problematically, foreign financial contributions can influence the content of what is studied and taught, disrupting the academic freedom of the institutions. This can increase disparity within a nation as poorer universities may suffer disproportionately from donor pressure because of their reliance on funding, while wealthier universities may have a greater capacity to protect academic freedom. A similar trend is occurring in the Middle East but the financial contributions are coming from within the region itself. State funding for foreign, private universities by Middle Eastern governments is affecting the flexibility of the institutions. The states' funding allows the

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[38] Romani, V., 2009, *op. cit*.
[39] Ahadzi-Nonou, Koffi: « L'université africaine face à son avenir: entre impasse et espoir », in *Démocratie en question. Mélanges en l'honneur du Professeur Théodore Soro*, Presse de l'Université Topulouse 1 Capitole, 2017, 33-47.
[40] Woldegiorgis, E. and Doevenspeck, M., 2013, *op. cit*.
[41] Barbosa, A., 2010, *op. cit*.
[42] Barbosa, A., 2010, *op. cit*.

government a voice to restrict the level of academic freedom, the content of the curriculum and the hiring practices of universities with regards to religious and sexual identities.[43] In this way, universities are themselves becoming violators of human rights through their restrictive hiring practices and the censorship of their students and faculty.

The role that Academia plays in engaging with human rights varies a lot in history and from country to country. It is not the purpose of this working paper to tell the story of the involvement of the Academia in the human rights movement worldwide;[44] but it can be noted that there are many examples where academics have participated in manifestos and calls for action in favour of human rights. In the USA and France, there is a tradition of heavy involvement by universities and academics in favour of peace, human rights and social justice.[45] In other parts of the world the role of Academia has been more nuanced. For example, in Latin America there have been periods where universities have actively supported dictatorships, followed by periods where universities played "a progressive role in nurturing an open society".[46]

Recent events in 2016 and 2017 in Turkey and Hungary have seen universities and Academia worldwide take a stance on the situation in their peer institutions in the two countries. In both situations, they called for a respect and protection of the faculty's academic freedom and basic human rights.[47] However, it seems that human rights activism on the part of Academia is less strong now than it uses to be, as Academia is trying to maintain a balance between a preoccupation with academic excellence (and other success/results criteria) and being familiar with and engaged in issues of public life.[48]

To conclude on the role of Academia in society, changes in time and variations in places have had an effect on the type of teaching undertaken and the research being produced at universities. In this respect, strengthening the role of universities in the protection and promotion of human rights requires to strengthen the production and dissemination of relevant human rights knowledge by Academia through teaching and outreach to other actors of the NHRS.

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[43] Rupp, R., 2009, *op. cit*.
[44] The Harvard Law School publication 2004, *op. cit.*, gives an insight into this history.
[45] For instance, during the Algerian war, the "Manifesto of the 121" was signed in France by many academics in September 1960 and denounced the use of torture by the French army.
[46] Prof. Juan Mendez, in Harvard Law School publication 2004, p. 29.
[47] See below section 3.4 on the erosion of academic freedom.
[48] Prof. Juan Mendez, in Harvard Law School publication 2004, p. 29.

2 ACADEMIC FREEDOM

Academic freedom is protected by international human rights standards; it is both a collective and an individual right and includes the right to institutional autonomy for academic institution and the right of individual academics to engage into public debate.

2.1   THE LEGAL AND POLICY FRAMEWORK FOR ACADEMIC FREEDOM

Two main international standards deal with academic freedom.

(1) The CESCR and ICESR
The first one is General Comment No. 13 ("GC 13") of the UN Committee on Economic, Social and Cultural Rights (CESCR). Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also protects the right to education. Even if article 13 does not mention academic freedom, the CESCR deals with academic freedom in GC 13 where a subheading is specifically dedicated to "academic freedom and institutional autonomy".[49]

The point of departure of GC 13 is that it specifies "the right to education can only be enjoyed if accompanied by the academic freedom of staff and students".[50.] If academic freedom exists throughout the whole education sector, the Committee is concerned with the fact that "staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom".[51] In GC 13, the CESCR also delineated between academic freedom for individuals and the academic freedom of institutions manifested through their autonomy. They held these as equally important for the realisation of the right to education.[52]

The Committee defines academic freedom as the freedom "to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing".[53] Academic freedom is therefore closely

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[49] CESR General comment No. 13, 1999 (E/C.12/1999/10), para. 38-40.
[50] *Ibid*, para. 38.
[51] *Ibidem.*
[52] *Ibid*, para. 19.
[53] *Ibid*.

linked to freedom of opinion and expression, freedom of assembly and the prohibition of discrimination.[54]

(2) The ILO/UNESCO Recommendations
The other relevant standard is set by the ILO/UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel from 1997 ("The 1997 ILO/UNESCO Recommendation").[55]

These ILO/UNESCO standards were created following consultation with "Academia and legal experts, NGOs including the International Labour Organisation, and with member states".[56] Even though the 1997 ILO/UNESCO Recommendation is not legally binding, member states do have an international *political obligation* to follow reporting mechanisms and follow-up procedures put in place by such soft law instruments. Thus, the 1997 ILO/UNESCO Recommendation provides the function of solidifying the concept of academic freedom into a less abstract form while signalling to member states the acceptable standard of adherence to the principles.[57] For example, the 8th session of the joint committee of ILO/UNESCO members met in 2001 to assess, amongst other things, allegations brought by member state teacher's associations on academic freedom grounds. These allegations ranged from illegal termination of teachers with anti-government views to government refusal to negotiate teachers' salaries.[58] In this sense, the 1997 ILO/UNESCO Recommendation allows issues of academic freedom protection to come to life at the international level.

The 1997 ILO/UNESCO Recommendation's importance to international discourse on academic freedom is further drawn from the recommendation's reference to other international texts. In its preamble the recommendation refers to the Universal Declaration of Human Rights (1948), Article 13 of the ICESCR (1966), the UNESCO

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[54] Rajagopal considers academic freedom to be protected under ICCPR Article 19: Rajagopal, B., Academic Freedom as a Human Right: An Internationalist Perspective, *Academe*, Vol. 89(3), 2003, 25–28.

[55] See also the User Guide made by ILO and UNESCO in 2008: ILO and UNESCO, *The ILO/UNESCO Recommendation Concerning the Status of Teachers (1966) and the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997) A User Guide*, ILO/UNESCO, 2008 ("ILO/UNESCO 2008 User guide").

[56] Karran, Terence, Academic Freedom in Europe: Reviewing Unesco's Recommendation, *British Journal of Educational Studies* Vol. 57(2), 2009, 191–215.

[57] Matsuura, K., "Foreword" in *Standard-Setting in UNESCO Volume I: Normative Action in Education, Science and Culture*. Paris/Leiden: UNESCO Publishing and Martinus Nijhoff, 2007.

[58] Beiter, K. D., *The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights*, Coll. International Studies in Human Rights, Vol. 82. Leiden & Boston: Martinus Nijhoff Publishers, 2006.

Convention against Discrimination in Education (1960) as well as ILO instruments covering freedom of association, right to organise and equality of opportunity and treatment (ILO and UNESCO 2008). Through this, the recommendation helps to embed academic freedom as a concept to be protected at an international legal level by increasing the intersections at which international law is called upon to protect academic freedom.

2.2 THE IMPORTANCE OF ACADEMIC FREEDOM

Outside of these definitions, it is important to understand academic freedom's role in the promotion and protection of human rights. (Academic) freedom of expression and speech is offered protection at a higher degree than other forms of expression for both the perceived quality of contribution to public debate and the quality of the opinion given.[59] As discussed in section 3 of this paper, the research and teaching that occurs at universities is essential for the functioning of societies. It contributes to creating a productive work and administrative force while producing research and information that can shape policy and drive innovation. However, academics do not only contribute to their societies in terms of teaching. As mentioned above, throughout history academics have been a vocal opposition to the exercise of coercive or oppressive powers by monarchies, religious institutions and governments. Further, academic freedom acts as a check and balance against the actions of the business sector as well.[60] This is an increasingly important function as universities move from mode 1 to mode 2 business structures.[61] With the increase in privately funded research at universities, and commercially funded research in the business sector, there is a risk that the research agenda could become distorted in the quest to pursue funds.[62] Academic freedom provides a platform for academics to criticise corporations, government and their own universities and hold them accountable.[63]

Academic freedom helps universities to better contribute to their role in society as a facilitator of "social development, economic growth and support for production of

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[59] Vrielink, J., Lemmens, P., Parmentier, S. and the League of European Research Universities (LERU) Working Group on Human Rights, Academic Freedom as a Fundamental Right, *procedia Social and Behavioural Sciences*, Vol. 13, 2011, 117-141.

[60] Thompson, J., *Academic Freedom*, Paper presented at the Atlantic Association of Registrars and Admissions Officers Interchange' 1996 Conference, University of New Brunswick at Saint John, 1996.

[61] See section 1.1. of this working paper.

[62] Eisenberg, R. S., Academic Freedom and Academic Values in Sponsored Research *Texas Law Review*, Vol. 66, 1987, 1363–1404.

[63] Sjoberg, G., Democracy, Science and Institutionalized Dissent: Toward a Social Justification for Academic Tenure. *Sociological Perspectives*, Vol. 41, 1998, 697–721.

competitive goods and services, in the formation and preservation of cultural identity, the maintenance of social cohesion and finally, in the combat against poverty and the promotion of a culture of peace".[64] Thus, the erosion of academic freedom can pre-empt the erosion or limitation of other rights within society. It is best to then understand academic freedom as "a right of the people, not a privilege of a few".[65] Academic freedom refers to individual, collective and institutional rights.[66] These separate branches will be discussed below.

2.3 THE INSTITUTIONAL AUTONOMY AND THE INDIVIDUAL RIGHT TO ACADEMIC FREEDOM

This right to institutional autonomy is enshrined in section V of the ILO/UNESCO 1997 Recommendation titled "Institutional rights, duties and responsibilities". It defines institutional autonomy as "that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights".[67]

This institutional autonomy refers both to the interactions between the institution of Academia and external actors and to the decision making process within the academic institution itself.[68] Thus, the ILO/UNESCO 1997 Recommendation describes the rights of teaching personnel to "take part in the governing bodies and to criticise the functioning of higher education institutions, including their own" and "the policy of participation of all concerned in the internal decision making structures and practices".[69] The American Association of University Professors highlighted three ways in which the inclusion of a faculty voice can enhance the overall level of academic freedom within an institution:

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[64] Sanchez-Sosa, Juan Jose, and Salomon Lerner-Febres, Academic Freedom and Social Responsibility: The Role of University Organisations and Possible Instruments for International Monitoring, *Higher Education Policy* Vol. 15 (4), 2002, p. 385.

[65] Machlup, F., Some Misconceptions Concerning Academic Freedom, *AAUP Bulletin*, Vol. 41, 1955, 753–784.

[66] Vrielink, J.; Lemmens, P. and Parmentier, S., *Academic Freedom as a Fundamental Right*, Advice Paper, League of European Research Universities, 2010.

[67] ILO/UNESCO 1997 recommendation, Section V, sub-section A, part 17. See also: ILO/UNESCO 2008 User guide.

[68] Vrielink, J.; Lemmens, P. and Parmentier, S., 2010, *op. cit.*

[69] ILO/UNESCO 1997 recommendation, section VI, sub-section B, part 31 and 32. See also: ILO/UNESCO 2008 User guide.

1. The universities' teaching objectives are better reached with input from faculty members within their discipline as they are better suited to make decisions about curriculum, entrance standards etc.
2. As faculty carry the central task of the university through research and teaching, they should be afforded status and a voice within the university structure.
3. As they exist within the discipline, faculty are the best equipped to decide what falls within the scope of academic speech.[70]

However, substantive institutional autonomy is not a guarantee of academic freedom and contextual realities play a role. For example, South African universities have been described as facing a "double dilemma." While the previously white only universities have a strong sense of institutional autonomy, they lack social accountability and equal representation of citizens. However, the formerly black universities have a strong sense of the universities' role in social accountability, but have less independence and are more internally bureaucratic.[71]

The ILO/UNESCO 1997 Recommendation's definition of academic freedom draws attention to the importance of Academia's deference to public accountability with respect to the government funding of universities. Kaya analyses two views of state interference in Academia which delineates between "state steering" and "state interference".[72] "State steering" describes the positive influence of a democratically elected government on the structure of Academia. Namely, the state has the ability to bring positive changes to "equity, access and redress" within the university setting.[73] In this sense, public accountability and oversight as a result of public funding can enhance the academic freedom of staff and students.

However, dependence on government funding and the arbitrary exercising of government power possesses a significant threat to Academia.[74] For example, in Ghana

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[70] American Association of University Professors, On the Relationship of Faculty Governance to Academic Freedom, *Academe* Vol. 80 (4), 1994, 47–49.

[71] Bentley, K. A.; Habib, A.; Morrow, S. and Council on Higher Education (South Africa), *Academic Freedom, Institutional Autonomy and the Corporatised University in Contemporary South Africa*, Pretoria: Council on Higher Education, 2006.

[72] Kaya, H. O., "Academic Freedom, Institutional Autonomy and the Search for Relevancy in Higher Education in South Africa", in *CHE Regional Forum on Government Involvement in Higher Education, Institutional Autonomy and Academic Freedom, Johannesburg, South Africa*, 2006 (http://www.che.ac.za/sites/default/files/publications/d000115_Academic_freedom_Kaya_2006 .pdf.)

[73] *Ibidem.*

[74] Kaya, H. O., 2006, *op. cit.*

political figures have been able to erode university autonomy by claiming Academia is out of touch with the interests and realities of the society.[75]

What has been highlighted in this section is the multi-layered reality of institutional autonomy. While, autonomy from the state can protect universities from undue interference or oppression, the state can also be a facilitator of academic freedom in university environments that are resistant to such a change. Further, at a substantive level institutional autonomy can enhance the academic freedom of a university setting through the involvement of staff and faculty. Alternatively, staff involvement does not necessarily guarantee increased freedoms. Thus, it is important to "enhance the power of the academic administrator vis-à-vis the state bureaucrat, but also…empower the individual academic in relation to the institutional manager".[76]

Analysing academic freedom at a more micro level looks to the individual right held by faculty and students in tertiary education. At a researcher and faculty level this right is defined in the ILO/UNESCO 1997 Recommendation as "the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies".[77] While elements of the individual right are inwardly focused into the institution, academics also hold an individual right to engage in public debate in their area of expertise.[78] In addition, the ILO/UNESCO 1997 Recommendation also highlights the importance of safeguarding tenure as well as academics' right to participate in the university governance structure.[79]

2.4 THE EROSION OF ACADEMIC FREEDOM

Recent events in Europe have shown that academic freedom can come under massive pressure from the political power. Following the coup attempt of July 2016, the Turkish government made "moves to dismantle much of the structure of Turkish higher education

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[75] Bentley, K. A.; Habib, A.; Morrow, S. and Council on Higher Education (South Africa), *Academic Freedom, Institutional Autonomy and the Corporatised University in Contemporary South Africa*, Pretoria: Council on Higher Education, 2006.

[76] *Ibidem*.

[77] ILO/UNESCO 1997 Recommendation, section VI, sub-section A, part 27.

[78] Van Ginkel, H., Academic Freedom and Social Responsibility—the Role of University Organisations, *Higher Education Policy*, Vol. 15 (4), 2002, 347–351.

[79] Chatham House, (2010). "Academic Freedom and the Law." *Summary of the International law discussion group meeting held at Chatham House.*

through purges, restrictions, and assertions of central control", including a call for the resignation of all public or private university deans.[80] In April 2017, the Hungarian parliament passed legislation which seemed to target directly the famous US Hungarian Central European University (CEU). By establishing a number of criteria for private universities to operate in Hungary, the Parliament could effectively shut down an institution that was known for its independent and high quality teaching and research.[81] Inasmuch as these political assaults on academic freedom create outcries within the international academic community;[82] they still show that academic institutions, even in countries where there is a well-established tradition for strong universities, are vulnerable and can easily be curtailed for political or economic reasons. Academic freedom remains a fragile political and legal achievement.

The situation is even more complex when the limitation of academic freedom almost seems to be a structural challenge such as in the case of Academic freedom in religious institutions. In principle, universities should be "morally and intellectually independent of all political and religious authority."[83] However, the purpose and institutional mission of religious universities is to have some degree of relationship with a religious authority. This undermines institutional independence as the guiding hand of the sponsoring religious authority (e.g. a church) exercises influence over the curriculum and teaching standards of the university.

Academic freedom, as discussed above, encourages a fluid notion of truth in which what is truth and fact is open to debate based on scientific methods of inquiry. Where religious institutions differ is their conception of truth is religious. This creates doctrinal boundaries around the level of inquiry permitted to staff and students. A religious university holds certain truths to be self-evident and allowing debate on religious axioms would undermine the religious mission of the institution. Interestingly, it has been argued that a

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[80] See the Statement by the Council of the American Studies Association, July 28, 2016 (https://www.theasa.net/about/advocacy/resolutions-actions/resolutions/statement-academic-freedom-turkey)

[81] According to the new law, it would much harder for scholars from other countries to teach there. It also requires foreign universities in Hungary to have campuses in their home country, which is not the case of the CEU.

[82] See for instance, regarding the situation in Turkey in 2016, the statement of the ASA concerning Turkey (above) or the European Universities Association (EUA) statement of solidarity with universities and scholars (http://www.eua.be/activities-services/news/newsitem/2016/10/31/autonomy-and-academic-freedom-under-further-pressure-in-turkey-eua-statement-of-solidarity-with-universities-and-scholars)

[83] See for instance, the Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1762 (2006) on university autonomy and academic freedom, para. 7.

secular application of academic freedom to a religious university would make the institution indistinguishable in teaching from a secular university.[84] This would ultimately undermine the institutional mission of the university which is the core of the organisation.

Finally, as with many other human rights, academic freedom may be subjected to some limitations provided that they serve a legitimate purpose and are proportionate to the aim they purport to achieve. Hence, the Human Rights Committee (HRC) of the UN has considered that the French Law that prohibits the contestation of crimes against humanity[85] and hereby may put an end to academic work that wants to prove the non-existence of a Nazi plan to exterminate Jewish people in gas chambers, does not violate the right to academic freedom.[86] The HRC is of the opinion that the limitation that this law puts on academic freedom is proportionate to its legitimate purpose.[87]

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[84] Thiessen, E. J., Academic Freedom and Religious Colleges and Universities: Confronting the Post-modernist Challenge," *Paideusis*, Vol. 10(1), 1996, p.3-16.

[85] Law No. 90-615 of 13 July 1990 on the punishment of racist, xenophobic or anti-Semitic acts.

[86] Human Rights Committee, *Robert Faurisson v. France*, Communication no. 550/1993 (19 July 1995)

[87] *Ibid*, para. 9.6: "Since the statements made by the author, read in their full context, were of a nature as to raise or strengthen anti-Semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism. The Committee therefore concludes that the restriction of the author's freedom of expression was permissible under article 19, paragraph 3 (a), of the Covenant."

3 THE ROLE OF ACADEMIA IN THE NATIONAL HUMAN RIGHTS SYSTEM

The role of the Academia in the NHRS is not as self-evident as the role played by other actors such as government, parliament, courts, law enforcement agencies, media or NGOs. Even though universities can be both public and private actors, there are often considered to be part of civil society, which is one of the non-state actors of the NHRS.[88]

Building on information extracted from university human rights capacity development programmes and projects,[89] this section presents some general reflections on the role of Academia in the NHRS.

3.1 CONCEPTUALISING THE OVERALL ROLE OF ACADEMIA IN THE NHRS

Academia, understood as all the components defined in this paper (community of institutions, individuals engaged in high level education and research, as well as the education and research activities carried out),[90] plays two main roles in the NHRS. First, it produces *independent human rights knowledge* and, second, it offers *high level training in human rights*. These two main roles allow Academia to provide relevant independent human rights knowledge and qualified professionals to the NHRS, which is paramount to its proper functioning. These two main roles can be played by both public/state and private universities if they are able to function independently from state and private ideological, political, economic or other pressures.

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[88] *Manual for Embassies of the EU Member States: Strengthening the National Human Rights Protection System,* Human Rights Division of the Ministry of Foreign Affairs of the Netherlands, Czech Presidency of the European Union, 2009, 91-98.
[89] The paper builds on unpublished programme documents of the Danish Institute for Human Rights regarding capacity development of universities and academics in Asia and West Africa. It also builds on information accessible on the Internet re. capacity development projects and programmes with universities.
[90] See introduction.

More specifically, the Academia participate in the development of a *human rights resource base* that enables sustainable enhancement of human rights protection and promotion. The knowledge that is produced by research is based on scientific methodologies and submitted to peer academic scrutiny and quality control. It is accessible to the national and international academic communities and is disseminated through teaching and outreach to other actors of the NHRS. The last part also requires pedagogical and communication capacity development of Academia, as well as a will and capacity among other actors of the NHRS to interact with Academia and be the recipient of such knowledge production.

Through all these components Academia participates in the development of research projects with the involvement of researchers and other actors. Academia then works to disseminate these ideas to stakeholders and to mainstream human rights in various disciplines through the establishment of human rights curriculum. All these activities are important elements in building a human rights culture within Academia and in society. In this respect, the human rights capacity development of Academia is an important process that involves many actors of the NHRS. Parliament's work adopting research and high-level education budgets is vital while the establishment of a general framework for university curricula by education and research ministries provides a foundation on which to build. Finally, the many civil society and business actors which can be associated to academic human rights research and training in various ways. In addition, developing human rights curricula and research projects while making use of a human rights based approach[91] helps developing a human rights culture where both the substance of human rights and the human rights compliant processes are in focus. Finally, during these various interactions and cooperation, human rights are discussed, questioned and their implementation is scrutinised, informally monitored and evaluated. In this respect, Academia also plays an important role in "translating"[92] and "localising" [93] international human rights to national contexts. Designing and carrying out human rights research projects and teaching modules participates in making human rights understandable, relevant and implementable.

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[91] See a. o. the work done by the UN on human rights based approach (HRBA) at: http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies.

[92] On the concept of translation of human rights into domestic contexts, see: Merry, S.E.: *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago, IL: Chicago University Press, 2006.

[93] On the concept of localising human rights see: De Feyter, K.; Parmentier, S.; Timmerman, C. and Ulrich, G. (eds.), *The Local Relevance of Human Rights*. Cambridge: Cambridge University Press, 2010.

When looking into the role of Academia within the human rights systems, it is essential that efforts are made to bridge theory and practice. Academia as an actor of the NHRS has a role to play in participating in the effort of protection and promotion of human rights even if only indirectly through research and training. Nevertheless, these activities must be relevant to the realities of human rights protection and promotion. Therefore, academic institutions and individuals must be able to make research and training relevant to all stakeholders by connecting theoretical and conceptual work to context and realities. This does not in any way prevent =Academia from carrying out fundamental research disconnected from immediate concrete implications, which is one of the raison d'être of Academia. It only underlines that when conceptualised as an actor of the NHRS, Academia also needs to be in touch with the contexts and practical realities of human rights protection and promotion. This can for example be done through involving human rights stakeholders into the designing and carrying out of action research or courses for and by academics and human rights practitioners. It can also be done through outreach to other actors of the NHRS in the form of advising public bodies, doing clinical work or engaging in other ways with state actors or civil society.

Finally, just like any other actors of the NHRS, Academia is a port of entry to the NHRS. Interventions with Academia can lead to contact with other actors of the NHRS through teaching and research dissemination activities. This is especially true in contexts where there is a lack of will among other state actors to engage directly with human rights work. Creating a research and teaching space where discussion about human rights is possible and engaging in human rights discussion in a scientific, i.e. documented and objective, way, can open opportunity for broader political and public debates on human rights issues. In contexts where human rights contestation is sometime predominant, the Academia can help understand and debate this contestation. Moreover, mainstreaming human rights in the curriculum of law, political sciences or sociology studies will participate in the sensitising and training of future legal practitioners, civil servants and public managers.

This overall presentation of the role of Academia in the NHRS cannot overlook the fact that the position of Academia in relation to other human rights actors of the NHRS is facing challenges.

3.2   CHALLENGES AND DILEMMAS

Academia faces many challenges and dilemmas as an actor of the NHRS.

First, Academia is a complex actor. Universities as we mentioned earlier can be public or private institutions. Public universities can be both a facilitator (teaching and research), an actor (engaging for instance with NGOs and human rights defenders), and a direct violator of human rights (for instance by discriminating against students).[94] Private universities will also have to respect the law of the land, including for instance, laws on the prohibition of discrimination in education.

Second, universities and researchers can lack legitimacy and traction in given contexts by being considered to be affiliated to the executive power or too close to the opposition.[95] We have for example observed that in some West African countries, as for instance Niger or Mali, when there is a change of regime, universities become the refuge of the opposition until the next election. Under these circumstances, universities are perceived as places of political opposition, where it is easy to gain access to the educated youth of the country. Even though these types of pendula movements between government and Academia are not per say detrimental to the quality of the research and the teaching carried out at academic institutions, they may have consequences in terms of public policies and financing of universities and research institutions. The executive power in place may be unwilling to support such academic places. Therefore, it is important that the Academia (institutions and individuals) are able to maintain an objectivity and a scientific quality in their research and teaching endeavours both in practice and in appearance.

Finally, engaging in counselling, dissemination and outreach activities with political powers, civil society and the media may blur the image of Academia as a neutral place of production and transmission of knowledge. The Harvard Law School discussion of 2004 pointed at the dilemma that can exist for universities when engaging with civil society working for human rights and the question of whether Academia (universities and researchers) is part of the human rights movement or is outside of it, as perhaps a critical friend.[96] More generally, it can be difficult for universities and academics to maintain a neutral distance from global and local issues of human rights. Within human rights research, this difficulty has been the starting point of a large and interdisciplinary reflection on methodology and methods of human rights research. It has been acknowledged that a large part of human rights research has had the purpose to advance

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[94] Examples of violation of human rights are numerous as mentioned several places in the Harvard School of Law publication, 2004: exclusion of some persons from the university, treatment of women, treatment of vulnerable minorities and disabled persons, language domination in post-colonial context, etc.
[95] See section 3.1 on the role of Academia in society.
[96] Harvard School of Law publication, 2004.

the implementation of human rights standards, which has been conducive to some methodological sloppiness in terms of framing of the issues at stake or the methods used in legal and other social science research.[97] Today, this downside of human rights research is being corrected through major methodological and capacity building efforts of all the components of the Academia: institutions, academics, research and human rights education. In practice, if Academia is to have an important role in the NHRS, it must strengthen its capacity to produce research and carry out education that is based on a balanced and objective approach towards human rights as well as on scientific methodology and methods. This is true for all the types of actions that the Academia is supposed to undertake: human rights education, human rights research and outreach to the other actors of the NHRS.

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[97] Andreasen, B. A.; Sano, H-O.; McInerney-Lankford, Siobhán (eds), *Research Methods in Human Rights*, Edward Elgar, 2017, p.2; see also: Grünfeld, P. and Kamminga, M. T. (eds), *Methods of Human Rights Research*, Intersentia, 2009, and especially Brems, Eva on "Methods in Legal Human Rights Research", 77-90.

4 SUPPORTING ACADEMIA AND HUMAN RIGHTS IN DEVELOPING COUNTRIES CONTEXTS

In the national human rights system (NHRS), it is vital that Academia has a multi-faceted approach to creating and disseminating human rights knowledge that incorporates both theoretical and practical elements. In practice, there are three main avenues in which human rights can be incorporated into the work of Academia:

1. First, the incorporation of human rights within and across university curricula by establishing new courses or larger human rights programmes. Alternatively, mainstreaming human rights in several courses across several disciplines.
2. Second, the production and dissemination of human rights research.
3. Finally, Academia has a role to play within the NHRS through its involvement in human rights information, training and advising activities directed towards all actors of the NHRS.[98]

Based on documents from programmes and projects aiming at the capacity development of Academia,[99] this section provides an empirical overview of the concrete interventions carried out with the aim of enhancing the production of human rights knowledge and carrying out human rights education by Academia in developing contexts. These practical interventions focus on the activities that are central to the role of Academia within the human rights field: human rights education, human rights research and outreach to other actors of the NHRS. This section covers these three elements as well as the establishment

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[98] See section 3.1.

[99] This section builds on unpublished programme documents of the Danish Institute for Human Rights (DIHR) regarding capacity development of universities and academics in Asia and West Africa. DIHR has had long-standing partnerships for almost two decades with both the Chinese Academy of Social Sciences (CASS) and the Chaire UNESCO on Democracy and Human Rights in Benin. In addition, DIHR has been engaged in cooperation with researchers, universities and higher education and research institutions in West Africa (Benin, Burkina Faso, Mali, Niger and Senegal), in East Africa (Tanzania, Kenya and Uganda), in Asia (Nepal, China, Thailand, Vietnam and Myanmar) and in the MENA region (Tunisia, Morocco, Jordan, Palestine, Egypt and Lebanon). The section also builds on information accessible on the Internet re. capacity development projects and programmes with universities.

of legal aid clinics and documentation centres which are two of the most prominent meeting points of human rights education, research and outreach work.

4.1   HUMAN RIGHTS EDUCATION AT ACADEMIC LEVEL

When developing human rights education at the academic level, capacity development projects focus on the integration of human rights in academic curricula (mainstreaming of human rights or new courses) and in the establishment of larger human rights programme. Inter-disciplinarity or multi-disciplinarity is a common theme to interventions strengthening human rights teaching at universities. Recent projects targeting human rights education at universities do not only focus on transferring knowledge to the students but also include two other components of human rights education: empowering the students (making them aware of their human rights and of the situation of human rights within the community) and creating a human rights compliant learning environment.[100]

Integrating human rights in legal education curricula can be carried out in various ways. First of all, in countries where human rights are seen as a new topic or discipline, human rights are often only a small part of the law studies curriculum. They are taught in constitutional law or public international law courses, where constitutional protection of rights and international human rights treaties and mechanisms are taught as parts of a broader courses. These courses lack a particular focus on actual implementation through legislation and regulation or in practice, and human rights are not part of courses on administrative law, family law or even criminal law.

Second, law faculties can choose to create a human rights law course, as a mandatory or optional course. Such courses usually look at human rights law as a whole and bring together international and domestic aspects of human rights law. Human rights law courses can be more or less specialised and they may focus on specific human rights issues and context, for instance rights of minorities or women's rights.

Finally, human rights may be mainstreamed in other law courses such as administrative law, criminal law, civil law, etc. This approach requires that there is an awareness of and a capacity to deal with all the implications of human rights in domestic law.

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[100] *Best practice guide for human rights education in universities in the Westen Balkans*, Executive summary, HEART project, EU Tempus Programme, 2013. See also on Human Rights based approach to human rights education: *The human rights education toolbox: a practitioner's guide to planning and managing human rights education*. Danish Institute for human rights, 2012, 14-19.

Even though human rights capacity building projects often starts with supporting human rights training at law faculties, human rights can also be taught at other faculties such as social sciences, humanities or even medical studies. Here again, incorporating or creating human rights training at these faculties requires a certain level of awareness of the implications of human rights in non-legal matters as well as an understanding of how to approach human rights from a non-legal perspective. Along the same lines, human rights can be incorporated into the curricula of high-level professional schools for legal professionals. The later can be seen in the example of West Africa where high-level civil servants and judges get their education outside the university. The curricula of these *Ecoles Nationales (Administration and Magistrates)* is now slowly integrating human rights training that is tailored to these professions.[101]

Finally, capacity development of Academia may take the form of larger interventions seeking to support master programmes in human rights. These programmes often have a regional reach (more than one country) and some elements of interdisciplinarity. They seek to train a critical mass of human rights professionals in one country or one geographical region. Supporting these programmes requires long-time commitment and efforts to integrate the three dimensions of HRE, i.e. knowledge, skills and attitudes/values in order to develop sustainable human rights Master programme. As these programmes often have a regional reach, they need practical support (scholarships) for students from neighbouring countries to participate in the programme.[102]

Capacity development intervention in this field mostly includes the designing of the human rights courses, the training of the faculty in human rights and teaching methodologies based on cases and critical discussions, as well as methodological support to teaching staff and financial support to administration and sometime to students. It is

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[101] The DIHR has had long-standing partnerships with higher education institutions which train police, judges and civil servants, as for instance the Ecole Nationale d'Administration et de la Magistrature (judges and Administration school) in Niger and Burkina Faso or the Police school in Nepal.

[102] For instance, the Chaire UNESCO on human rights and democracy (Chaire UNESCO des droits de la personne humaine et de la démocratie) is a partner of the DIHR since 2000. The Chaire is placed at the University of Abomey-Calavi in Benin. The main areas of the partnership between the Chaire UNESCO and DIHR have been the organisation of an annual regional human rights course for human rights actors from francophone Africa, the attribution of scholarships to students, the participation in DIHR's guest researcher programme, the organisation of courses, seminars and a conference, and the publications of research reports and books. The DIHR has also provided financial support and help with the selection of publications for the Human rights documentation centre of the Chaire.

often supplemented with the establishment of a resource centre and some support to developing or strengthening human rights research.

4.2 HUMAN RIGHTS RESEARCH

Supporting human rights research and, most often, legal research about human rights requires a minimum level of understanding about what human rights mean and what academic research entails. Therefore, programmes and projects aiming at the capacity development of human rights research often starts with projects strengthening the human rights knowledge and the research methodology skills of the junior and senior research staff at partner universities.[103]

There is a large variety of research: from very theoretical fundamental research to policy-oriented research and analysis. This variety exists in the same way within the field of human rights research. [104] However, research capacity building programmes are mostly interested in human rights implementation, and especially the documentation and the assessment of human rights implementation in a given context. Therefore, the main purpose of these capacity development efforts is to build empirical and research-based knowledge about human rights as well as to support the strengthening of the methodologies used to gather data and document knowledge about human rights and human rights protection.

In practice, this research is financed through development aid and is almost always linked to programming and project work. For instance, context or legal analysis serve as basis for baseline and programming, action research is carried out in cooperation with legal practitioners and disseminated to decision-makers, data and documentation are gathered and analysed to assess and evaluate programmes and projects, etc.[105] In addition,

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[103] Since 2017, the DIHR is engaged with two faculties of law (University of Dagon and University of East Yangon) in the training of their legal researchers to design and conduct human rights research. The DIHR has provided methodological training on identifying research questions, legal methods, interviews and other qualitative methods, and academic writing. The researchers have received both written guidance and feedback as well as individual one-on-one coaching and supervision on their papers.

[104] See above section 3.1 on the role of Academia in the NHRS.

[105] For instance, the DIHR worked closely with Tunisian academics on a publication, which analyses the state actors of the Tunisian human rights system. This publication is being used in on-going programming work in Tunisia, for instance working with the new independent constitutional bodies (Lagoutte, S., Kristiansen, A. et al., *Study of state actors in the Tunisian human rights system*, Danish Institute for Human Rights and Faculty of legal, political and social sciences of Tunis, Carthage University, 2018).

international organisations, such as the World Bank, the ILO, the EU, UN special procedures or agencies, and international NGOs sponsor research carried out by their own researchers in cooperation with universities. These programmes are not per say capacity development programmes of researchers and academic institutions but, when they involve academics and institutions from developing countries, they participate into this effort of human rights research capacity development. This type of arrangements will often favour applied research and policy analyses that are relevant to the work of the organisations commissioning them.

Capacity development projects sometimes support academic research through supporting guest researcher programmes and scholarships, publication of research reports and working papers, and if possible academic publications. Guest researcher programmes are sometimes faced with the dilemma of choosing between an established researcher and inexperienced ones. An established researcher will be able to publish at the level required for an academic publication. That being said, an inexperienced researcher would benefit from a stay in a good research institution and learn from methodological courses and research supervision. However, they might not reach the level required for academic publication.

Finally, dissemination of research results is often an important part of the human rights research programmes and projects financed through development aid. Research results must therefore be disseminated in order to feed into public debates and decision-making on human rights issues. In general, researchers will try to involve all stakeholders in their research process through scoping consultation, practitioners' reference groups and public events and seminars.[106]

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[106] The objective of the DIHR's West Africa research project on Women and Divorce (2012-2014) was to document and analyse the problems women face at the dissolution of marriage, and to explore the legal and non-legal solutions that would ensure a better protection of rights in the family context. The project included the capacity development of a team of researchers from several West African countries in terms of research project design, methodology and the conducting of a well-documented and objective study. Among other things, the project looked into the role played by civil courts and other actors (NGOS, religious authorities) in divorce matters. Early on in the process, the research project was presented in the respective countries at seminars gathering various relevant actors: academics, officials, religious leaders, NGOs and donors. In addition to a regional publication in French and in English[8], the national reports on Mali, Niger and Senegal were communicated at national workshops where the research results were extensively discussed. The publication has been circulated and used by scholars and organisations in the region and beyond.

This increased close connection between Academia and human rights practice can be found through the establishment of legal aid clinics at universities.

4.3   ESTABLISHING LEGAL AID CLINICS

Historically, legal education was conducted with a scientific approach that focused on theoretical learning of rules and norms with little engagement with the practical elements of legal practice. In parts of the Western world it was the emergence of civil rights movements, feminist movements and anti-poverty movements which helped highlight the need for a social justice dimension to be present in the conceptualisation of the legal education and profession.[107] This legal realist perspective conceives of law as an instrument of social justice. Out of this school grew the 'legal aid clinic' which has become a staple of many legal curriculums in developed and developing countries.[108]

Incorporating legal aid clinics into law curriculums allows students to contribute to making human rights real and accessible for all parties involved. This effect can be divided into three levels of society.[109] At a personal level, individual law students gain an understanding of the merger of the theoretical and the practical elements of law. Also, individual clients who would not have otherwise been able to afford or access legal support now can. At a group level, communities and demographics who were oppressed within society and did not have access to justice now have an alternative means to protect their human rights. The legal profession, and lawyers as a group, are also being imbued with a desire to contribute to improving social justice and viewing the practice of the law as tangibly linked with realising human rights and social justice in society. Finally, at a societal level this leads to greater numbers of citizens having access to justice, and knowledge of their human rights. It also increases confidence in the justice system as a whole as citizens see the law working for and with them, rather than as a tool of oppression.

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[107] Hovhannisian, L., "Teaching Human Rights to Advance Social Justice in Russia" in *Proceedings of the Annual Meeting (American Society of International Law),* 2010, 104.
[108] See, as an example, the UCLA international human rights clinics offered to their students, including Civil rights and Police accountability clinic and Immigrants' rights policy clinic: https://law.ucla.edu/academics/areas-of-focus/international-human-rights/clinics/
[109] Phan, P., Clinical legal education in China: In pursuit of a culture of law and a mission of social justice, *Yale Human Rights and Development Journal*, Vol. 1(8), 2005, Article 3.

However, these multiple purposes can create tension in the administration of the legal aid clinics.[110] The responsibility for provision of legal services for disadvantaged groups of persons ultimately lies with the state and those in the legal profession, not law schools. That being said, as future members of the legal profession, it is beneficial for law students to be exposed to clinic cases. This can cause tension within funding. However, in the context of developing countries where resources are scarce for both education and legal aid, capacity development projects that support legal aid clinic as part of the legal curriculum at Universities can strengthen human rights education, as well as the communities' access to human rights information and remedies to human rights violations. It is also a way to link more elitist academic institutions, such as law faculties, to more vulnerable groups of population in the community around the university. In developing context, legal aid clinics most often deal with practical issues that are often far away from the more academic and sometime very theoretical teaching on human rights. While students hear about international human rights standards, history of human rights and constitutional developments during classes at university, they also get to help people with practical land rights or family rights issues and orientate them towards the legal as well as non-legal remedies available to them.

It must be noted that the introduction of legal aid clinics does not in and of itself guarantee an increase in human rights protection within society. For instance, human rights clinics established by a Russian university suffered because there was a failure to develop a values curriculum within the legal education, in tandem with the legal aid clinics.[111] This highlighted the need for the entire legal education system to be geared towards supporting and integrating human rights, otherwise the benefit of the legal aid clinics could be lost.

Along the side of legal aid clinics, there is the 'community justice model'. This incorporates community development and outreach into student curricula outside of law in order to increased awareness and protection of human rights.[112] This model starts from the premise that community development aimed at improving the quality of life of marginalised groups requires the creation of a line of communication and understanding between these groups and the local municipalities/governments. Importantly, this model recognises the good work being done by communities but also understands the struggle

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[110] Aiken, J. and Wisner, S., Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, *Fordham Law Review*, Vol. 73, 2004, 997 – 1011.
[111] Hovhannisian, L, 2010, *op. cit*.
[112] See for example the "Essen Model of Neighbourhood Management: Fehren, O., Who organises the Community? The university as an intermediary actor, *Gateways: International Journal of Community Research and* Engagement, Vol. 3, 2010, 104-119.

they can face communicating with state actors. The solution offered is for representatives of the university (students and staff) to act as intermediaries between these two actors, facilitating the "civic mainstreaming" of public institutions.

Academia is in a prime position to offer this support in a number of areas. For example, in the Essen model a BA study program for Social Work offered a three semester in depth project in which the students worked directly with community led projects. This merges an academic component with practical benefits for the community. Through this, students can recognise how their future work can directly impact individuals and their enjoyment of human rights. It personalises their studies which helps contribute to professionals who have an understanding of their role in the NHRS. Further, on a more immediate basis, it improves access to human rights protection for the communities who are being supported. Another avenue of support can come through the research conducted by the university. Here, the research focus should be on "action research" where research is conducted and then the results are passed on to the local community to support their action. Again, like the legal clinic, the focus is on making rights real. Here emphasis is placed on the research as a means of supporting the community in obtaining human rights, improving their position in society etc. Finally, universities can also offer support to the local municipalities in reorganising their administration. Universities may have insight about how to make the administration more community oriented and can offer training and qualifications for municipality staff in this.

Both the legal aid clinics and the community justice model are beneficial ways of merging the theoretical side of Academia with the practical only when they have continued focus on active engagement. The essence of both these models is the focus on encouraging engagement between the students and those members of society seeking to assert their human rights. As is demonstrated by the concept of a national human rights system, human rights requires the interconnected support of various actors in society. Adopting this outlook in relation to curriculums integrated with practical assignments is essential to furthering the course of human rights in a society. By allowing students to engage with human rights at an early stage and to have meaningful personal contact with individuals and communities seeking to assert their human rights, one takes steps towards integrating human rights at all levels of society.

4.4   DOCUMENTATION CENTRES

In developing context, lack of legal and other material is a major hindrance to human rights research and education. Many capacity development programmes directed toward universities comprise a large component relating to establishing (human rights)

documentation centres and libraries. They include identifying relevant material, getting access to official documents, purchasing books, reviews, and other publications as well as training librarians in accessing online resources.

4.5   OUTREACH TO OTHER ACTORS OF THE NHRS

There are many debates as to whether universities must engage in debates with other public and private actors and a strong feeling that the Academia is an important avenue for documented discussion of scientific or societal matters. However, even though engaging in debate seems to be one of the mission of the Academia, it may also compromise the objective distance of the university and its academic staff, their political independence and their scientific rigour.

Interaction and reaching out to other actors of the NHRS take various forms that each poses different types of challenges.

Supporting coordination and cooperation between Academia and civil society is very common in many capacity development projects. For instance, legal aid clinics are often closely linked to civil society initiatives (indigenous people's NGO, women's organisations, etc.) within the community where they operate. Linking up with civil society is a way for universities to get access to the local communities. This access allows for collecting data for research projects and disseminating results of research in the community. It can also give the students the possibility to do practical human rights work that is both beneficial for their own courses and for the community. In difficult political or cultural contexts, targeting some specific civil society organisations may pose problem as it can associate Academia to specific human rights agenda that can be detrimental to receiving state funding.

There is an interest to support dialogue between Academia and state actors in order, here again, to get access to some state actors in difficult contexts. Academia can provide state actors, and especially decision-makers, with data, documentation and analysis in context where there is very little capacity to gather substantial documentation on human rights issues. This dialogue can take various forms: scholars may advise the government or other state actors on human rights law issues in a formal way (written and oral hearing), through organising seminar or training for government officials, or on a more individual basis, as consultant.

Finally, Academia can also provide for scholars who become members of international human rights bodies, such as human rights courts, UN committees or UN special

procedures. It must be noted however that public resources to finance these positions are often very scarce and that neither the state nor the Academia usually have the resources to enter such a cooperation with international organisations without raising proper (external) funding for it. This is even less accessible for experts coming from the poorest countries.

CONCLUSION

The situation of Academia varies very much depending on academic and political tradition in the country, cultural views on universities as well as the place given to universities in the construction of the state and of the national identity. In most contexts, Academia (including all its components) is a prestigious institution, but in a few other contexts, it is a dead-end in terms of employability, career, or economical future. It is important to understand and relate to these different contexts and to understand what they imply in terms of partnership with academic institutions and individuals.

Supporting the Academia in providing quality human rights research and education to be used by all actors of the NHRS is of paramount importance in order to strengthen the whole functioning of the NHRS as well as to support the development of a critical mass of well-documented and locally produced knowledge about human rights in a country.

The academic freedom of university staff and researchers and the autonomous status of universities are central to the functioning of Academia. No matter whether universities and research institutions depend on public or private funding, they need to have the autonomy to decide how to use the money that is allocated to them and to be able to secure the academic freedom of their faculty staff and researchers.

What is true for all public actors of the NHRS is also true for Academia: political will to make these institutions work, and the related continuous allocation of financial and human resources, is paramount to the actual role that the Academia will play within the field of human rights protection and promotion. Economic security is in particular a requisite for generating a continuous flow of knowledge. Even though constraint on resources available to Academia remains a global phenomenon, the involvement of Academia in human rights research and high-level teaching is strengthened everywhere, either through the states' own budget or as part of development efforts from international donors. In developing countries, this require a long-term engagement with the Academia as well as an overall view of how to strengthen the role of Academia within the national human rights system.