

Report to the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

Protection of Academic Freedom under International Human Rights Law

I. Executive Summary

1. Threats to academic freedom are widespread and growing.¹ Attacks on the higher education space occur in both democratic and authoritarian states, in the developed and developing world alike. They emerge from state and non-state actors, including government authorities, police and military forces, militias and extremist groups, and members of the higher education community. Growing authoritarianism places academic freedom at increased risk, which represents a challenge to entire societies.
2. This is because universities serve both crucial individual and social functions. They are engines of knowledge production, discovery, innovation, skills development, cultural preservation, and national progress. They model democratic discourse and international cooperation, as well as the search for self-realization and moral truth. And they are wellsprings for other professions that are foundational to well-functioning civil society, including law, journalism, and human rights advocacy.
3. Attacks on higher education and erosions of academic freedom thus harm not only the individuals directly targeted or the institutions where they teach, research, and study, but entire societies. They shrink everyone's space to think, question, and share ideas freely and safely, impairing public discourse and damaging social, political, cultural, and economic development.
4. Academic freedom is cognizable under existing international human rights standards. Academic freedom is fully and independently grounded in freedom of opinion and expression, the right to education, and the right to the benefits of science, respectively, and has elements of freedom of association, freedom of movement, and other rights. Numerous international statements from state and non-state sources, including within the higher education sector, reaffirm the right of academic freedom under these standards.
5. As described in detail below, academic freedom has been defined to include, but is not limited to, the "freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom [of higher education personnel] 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

¹ As described *infra*, Scholars at Risk, through its Academic Freedom Monitoring Project, has reported on more than 1190 verified incidents involving more than 1650 attacks on higher education, in 103 countries and territories, since the project's 2011 inception. <https://www.scholarsatrisk.org/academic-freedom-monitoring-project-index/>

academic bodies.”² It also includes institutional autonomy, defined 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.”³

6. Despite protections for academic freedom under existing international human rights standards, academic freedom claims are rarely presented, even when actions are brought under other human rights standards based on the same conduct. For example, an academic imprisoned in retaliation for publishing a research paper may bring a freedom of expression or arbitrary detention claim, but would typically not include a parallel claim for violation of academic freedom. The failure to bring independent academic freedom claims obscures the obstructive or retaliatory intent of the wrongful conduct; fails to address the wider chilling effects of the wrongful conduct on the academic community and society; and frustrates evolution of understanding of academic freedom and the available protections.
7. Under these existing international human rights standards, states have affirmative obligations (positive and negative) to protect and promote academic freedom. These include obligations: to refrain from direct or complicit involvement in violations of academic freedom; to protect higher education communities against such violations; to support victims of such violations; to deter future violations, including by investigating violations holding perpetrators accountable; to promote the exercise of academic freedom, including by supporting higher education and international research cooperation; and to promote greater understanding of academic freedom and its benefit to society.⁴
8. Despite these obligations, States—as well as non-state actors, higher education officials, and individuals—frequently obstruct or punish academic expression and inquiry using a variety of methods including violence, imprisonment and prosecution, termination and expulsion, harassment, surveillance, restrictions on travel, closures and occupation of universities, and targeted administrative regulations, among others.
9. States, the higher education sector and society have responsibilities to respond to the growing threats to academic freedom, including by recognizing publicly threats to academic freedom when they arise; responding to violations of academic freedom directly, including assisting victims and holding perpetrators accountable; and promoting academic freedom in law as well as in national and institutional policy.

² UNESCO, Recommendation concerning the Status of Higher-Education Teaching Personnel, adopted by the General Conference at its twenty-ninth session, Paris, 21 October - 12 November 1997, 11 November 1997, para. 27. (“RSHETP”)

³ *Ibid.* at para. 17.

⁴ See ICCPR Art. 2(1); RSHETP paras. 17-19; UNESCO Recommendation on Science and Scientific Researchers (2017), paras. 32-33; Global Coalition to Protect Education from Attack principles on state responsibility to protect; Safe Schools Declaration & Guidelines for protecting schools and universities from military use during armed conflict (2015).

10. This report calls on the General Assembly, the Human Rights Council, and their respective State Members to reaffirm their commitment to the protection of academic freedom under existing international human rights standards and to take affirmative actions to ensure protection and understanding by States, the higher education sector and society. Such actions might include, in particular, establishment of a Special Procedure within the UN system dedicated specifically to academic freedom; and engagement on the issue by mandate holders within the UN system and their regional counterparts; further development of jurisprudence around academic freedom at the regional and State levels; and adoption, at the national and institutional levels, of laws and policies designed specifically to promote greater understanding of and protection for academic freedom.

II. Academic Freedom under International Human Rights Law

11. Academic freedom is fully cognizable under existing human rights standards protecting freedom of opinion and expression, the right to education, and the benefits of science, respectively, and has elements of freedom of association, freedom of movement, and other rights.

a. Freedom of Opinion & Expression

12. International human rights law protects the right of everyone to hold opinions without interference and “the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [one’s] choice” (ICCPR: art. 19, para. 2). Teaching, academic inquiry, scholarly debate, the right to seek knowledge, and other forms of academic expression and inquiry naturally fall within the scope of these rights.
13. In his 2000 Thematic Report on Freedom of Opinion and Expression, previous Special Rapporteur Abid Hussain explicitly recognized this connection, listing as examples of violations of freedom of opinion and expression:

suppression of research on such controversial topics as a national independence movement that was active in the past; a ban on campuses of any independent organizations that are considered political; refusal of permission to hold a seminar on human rights; State-supported harassment of independent libraries that were established to provide access to materials to which there is no access in State institutions; charges of having published a play that was considered blasphemous; charges against and conviction of the head of a political science department, who was also a contributor to a student magazine, for having defamed the religion of the State”.⁵

⁵ See, e.g., Special Rapporteur on the Right to Freedom of Opinion and Expression (2000) “Thematic Report on Freedom of Opinion and Expression,” presented at the fifty-sixth session of the U.N. Human Rights Commission in 2000, para. 37).

14. Further, notwithstanding the connections of academic freedom to higher education institutions and people, it is not an exclusive right. The broad language of Article 19, in particular its protection of the right of “everyone. . . to seek, receive and impart information and ideas of all kinds,”⁶ suggests a broad public interest in the protection of academic freedom. Such a broad public interest was recognized in the context of press freedom in 2012 by previous Special Rapporteur Frank LaRue.⁷ Recognizing essential role of academic research, teaching and discourse in processing and explaining innumerable complex issues of paramount importance to the public--from climate change, to pandemics, to information ethics, and beyond--the same language should be applied to academic freedom:

An attack against [an academic] is not only a violation of his or her right to impart information, but also undermines the right of individuals and society at large to seek and receive information, both of which are guaranteed under 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights respectively. Indeed, without respect for freedom of expression, and in particular [academic freedom], an informed, active and engaged citizenry is impossible. An attack against [academics] is therefore an attack against the principles of transparency and accountability, as well as the right to hold opinions and to participate in public debates, which are essential for democracy.⁸

b. The Right to Education

15. Academic freedom is likewise fully grounded in ICESCR Article 13’s protection of the right to education. As several international authorities have noted, the practical and effective enjoyment of this right requires the protection of academic freedom and institutional autonomy. Indeed, the Committee on Economic, Social and Cultural Rights has specifically found that the right to education “can only be enjoyed if accompanied by the academic freedom of staff and students.”⁹

The CESCR further stated:

Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfill their functions without discrimination or fear of repression by the State or any other actor, to participate

⁶ ICCPR Art. 19.

⁷ *See also* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank LaRue, 4 June 2012 A/HRC/20/17, para. 54.

⁸ *Ibid.* para. 54.

⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), 8 December 1999, para. 38.

in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction.¹⁰

c. Benefits of Scientific Progress (ICESCR Art. 15)

16. Finally, ICESCR Article 15(3) requires State parties to “respect the freedom indispensable for scientific research and creative activity.” According to the Committee on Economic, Social and Cultural Rights, States have an obligation not only to refrain from preventing participation in scientific progress, but also “a positive duty to actively promote the advancement of science through, *inter alia*, education and investment in science and technology.” The Committee continued:

This includes approving policies and regulations which foster scientific research, allocating appropriate resources in the budgets and, in general, creating an enabling and participatory environment for the conservation, development and diffusion of science and technology. This implies *inter alia* protection and promotion of academic and scientific freedom, including freedoms of expression and to seek, receive and impart scientific information, freedom of association and movement; guarantees for equal access and participation of all public and private actors; and capacity-building and education.¹¹

d. Other rights protections

17. Some aspects of academic freedom implicate other rights protections, including freedom of association (e.g. where a group of students or scholars is sanctioned for organizing an academic union or public event), freedom of travel or movement (e.g. where a scholar is prevented from entering or exiting a country based on past academic work), and freedom from arbitrary detention (e.g. where a scholar is imprisoned based on an academic article she wrote).¹² This is particularly true where the restriction or violation intentionally targets members of the higher education community or obstructs or retaliates against academic conduct or expression.

¹⁰ *Ibid.* Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), 8 December 1999, para. 39.

¹¹ Committee on Social, Economic and Cultural Rights, General comment No. 25 on Science and economic, social and cultural rights Art. 15.1.b, 15.2, 15.3 and 15.4. (2020), para. 46. The Committee previously stated that “indispensable freedom” not only excludes censorship, but it also imposes a positive obligation on the State parties to encourage “scientists, artists and others to take part in international scientific and cultural research activities, such as symposiums, conferences, seminars and workshops.” General comment No. 21: Right of everyone to take part in cultural life (Article 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, para. 49 (c) and 52(e).

¹² See para. 45, *infra*.

e. State obligations to protect and promote academic freedom

18. States have both positive and negative obligations to protect and promote academic freedom.¹³ This includes an obligation not only to refrain from restricting the right to academic freedom, e.g. by engaging in intimidation or harassment of a scholar, but also to take proactive steps, when needed, to guarantee the right to academic freedom. As the UN Human Rights Committee has noted, this includes an obligation on the part of States to “put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.”¹⁴ Such measures may include specific steps to ensure the safety of a scholar or other member of a higher education community who faces direct threats in retaliation for academic expression or status.¹⁵

f. Determinations about the scope of academic freedom

19. The scope of academic freedom as recognized in the international human rights standards cited above intersects with, but is distinct from, various rights including freedom of opinion and expression. As to these, the core right of academic freedom includes expressive activity or conduct of members of the higher education sector, acting as such, within or related to the individual’s expertise, field of study, or institution. Such activity or conduct is protected regardless of whether it takes place within the higher education sector, known as ‘intramural expression,’ or in venues or with persons outside the higher education sector, known as ‘extramural expression,’ including with members of the public. Expressive activity or conduct of members of the higher education sector, acting not as such but in a general capacity and outside the individual’s expertise, field of study, or institution, may be protected by the right of freedom of opinion and expression, but is outside of the direct protection of academic freedom.

¹³ See ICCPR Article 2(1): “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

¹⁴ UN Human Rights Committee, General Comment No. 34 on Freedoms of opinion and expression (Article 19), 12 September 2011 at para. 23. CCPR/C/GC/34. The Committee has also noted that States’ positive obligations to protect against violations are not necessarily limited to acts by the State or its agents:

The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.

UN Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004. CCPR/C/21/Rev.1/Add.13. para. 8.

¹⁵ See UN Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004. CCPR/C/21/Rev.1/Add.13. para. 8.

20. In order to safeguard the core right, determinations of whether expressive activity or conduct falls within academic freedom protections must be made within the higher education sector, according to the standards of the respective discipline. Intrusions by state or nonstate actors alike, outside of the higher education sector, into such determinations are improper and erode the right. This has been recognized by UNESCO, the UN agency charged with promoting education, in its 1997 Recommendation on the Status of Higher Education Teaching Personnel elaborating on the right of academic freedom as including:

freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom [of higher education personnel] 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.¹⁶

21. Recognizing that agency to make determinations about the scope of academic freedom must be within the higher education sector does not, however, suggest that the scope of such determinations is either unlimited or immune to external examination. Again UNESCO in its 1997 Recommendation on the Status of Higher Education Teaching Personnel (among other instruments), has elaborated on other core values of higher education to which actors are constrained to adhere. These include principally institutional autonomy; accountability, equitable access and social responsibility.

22. As noted by UNESCO, institutional autonomy is

17. ...that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards,

¹⁶ UNESCO, Recommendation concerning the Status of Higher-Education Teaching Personnel, adopted by the General Conference at its twenty-ninth session, Paris, 21 October - 12 November 1997, 11 November 1997, para. 27. See also, UNESCO Rec. on the Status of Science and Scientific Researchers (approved 2017, updating 1974). Relatedly, the UNESCO Recommendation on the Status of Science and Scientific Researchers (1974; rev'd 2017), underscores the overlap between academic freedom and scientific freedom. The Recommendation specifically recognizes, inter alia:

(a) the significant value of science as a common good;(b) that a cadre of talented and trained personnel is the cornerstone of an indigenous research and experimental development capability and indispensable for the utilization and exploitation of research carried out elsewhere;(c) that open communication of the results, hypotheses and opinions-as suggested by the phrase 'academic freedom'-lies at the very heart of the scientific process, and provides the strongest guarantee of accuracy and objectivity of scientific results; "open communication of the results, hypotheses and opinions-as suggested by the phrase 'academic freedom'-lies at the very heart of the scientific process, and provides the strongest guarantee of accuracy and objectivity of scientific results;"

UNESCO goes on to recommend that States afford scientific researchers the rights, inter alia, "to work in a spirit of intellectual freedom to pursue, expound and defend the scientific truth as they see it, an intellectual freedom which should include protection from undue influences on their independent judgement;" *Ibid.*, Para 16(a)(i); *id.* at (ii); See also RSHETP para. 22(b) (articulating an obligation to maintain "a commitment to quality and excellence in . . . teaching, scholarship and research functions, and an obligation to protect and ensure the integrity of . . . teaching, scholarship and research against intrusions inconsistent with [scholars'] academic missions[.]")

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.

18. Autonomy is the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions.

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

The CESCR in its General Comment No. 13 on the Right to Education adopted this standard, first noting that “[t]he enjoyment of academic freedom requires the autonomy of institutions of higher education.”¹⁷ (The Council of Europe, the Inter-American Commission on Human Rights, and other bodies have likewise recognized the crucial importance of institutional autonomy.¹⁸)

23. Accountability is the institutionalization of clear and transparent systems, structures or mechanisms by which the state, higher education professionals, staff, students and the wider society may evaluate—with due respect for academic freedom and institutional autonomy—the quality and performance of higher education communities.¹⁹ It includes, *inter alia*: “effective communication to the public concerning the nature of their educational mission;” “effective support of academic freedom and fundamental human rights;” and “ensuring high quality education for as many academically qualified individuals as possible subject to the constraints of the resources available to them.”

The CESCR stated, in relation to university autonomy, that self-governance

must be consistent with systems of public accountability, especially in respect of funding provided by the State. Given the substantial public investments made in higher education, an appropriate balance has to be struck between institutional autonomy and accountability. While there is no single model, institutional arrangements should be fair, just and equitable, and as transparent and participatory as possible.²⁰

¹⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), 8 December 1999, para. 40.

¹⁸ See paras. 28-29, *infra*.

¹⁹ See RSHEP paras. 22-24.

²⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), 8 December 1999, para. 40, *see also* RSHEP at para. 22 (a),(c) and (d).

24. Equitable access is derived from ICESCR Article 13(2)(c), which provides:

Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education. . .²¹

The CESCR has elaborated on this position, stating: “[e]ducational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. . .”²² and noting further that accessibility includes three overlapping dimensions: non-discrimination and equal treatment; physical accessibility; and economic accessibility. The UNESCO RSHETP echoes this equality principle, providing: “Access to the higher education academic profession should be based solely on appropriate academic qualifications, competence and experience and be equal for all members of society without any discrimination.”²³

25. Social responsibility is the duty to use the freedoms and opportunities afforded by state and public respect for academic freedom and institutional autonomy in a manner consistent with the obligation to seek and impart truth, according to ethical and professional standards, and to respond to contemporary problems and needs of all members of society. The UNESCO RSHETP states:

Higher-education teaching personnel should recognize that the exercise of rights carries with it special duties and responsibilities, including the obligation to respect the academic freedom of other members of the academic community and to ensure the fair discussion of contrary views. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research on an honest search for truth. Teaching, research and scholarship should be conducted in full accordance with ethical and professional standards and should, where appropriate, respond to contemporary problems facing society as well as preserve the historical and cultural heritage of the world.²⁴

26. Actors outside of the higher education sector acting in good faith may properly examine academics’ adherence to these values autonomy, accountability, equitable access and social responsibility, without eroding the right of academic freedom. But in order to safeguard the core of the right, such good faith examinations should presume that academic freedom is to be broadly and not narrowly implemented; that academic actors, including students, should never suffer violence or coercive restrictions or consequences for exercising

²¹ ICESCR, Art 13(2)(c).

²² Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), 8 December 1999, paras. 6(b), 31-37.

²³ RSHETP para. 25. *See also* UNESCO Convention against Discrimination in Education (1960), noting that States should “make higher education equally accessible to all on the basis of individual capacity. . .”

²⁴ RSHETP para. 33.

academic freedom through nonviolent expressive activity or conduct; and that any such violence or coercive restrictions should be presumed invalid.

III. Protections for Academic Freedom in Regional Human Rights Systems

27. Regional jurisprudence likewise has increasingly recognized the right of academic freedom, particularly in the context of the right to free opinion and expression.

a. Europe

28. In 2006, the Parliamentary Assembly of the Council of Europe approved Recommendation 1762, “Academic freedom and university autonomy.” Relevant sections include the following:

4. In accordance with the Magna Charta Universitatum,²⁵ the Assembly reaffirms the right to academic freedom and university autonomy which comprises the following principles:

4.1. academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction;

4.2. the institutional autonomy of universities should be a manifestation of an independent commitment to the traditional and still essential cultural and social mission of the university, in terms of intellectually beneficial policy, good governance and efficient management;

4.3. history has proven that violations of academic freedom and university autonomy have always resulted in intellectual relapse, and consequently in social and economic stagnation;

...

6. With the advent of the knowledge society, it has become obvious that a new contract has to be reached between university and society to reflect and recognise new developments. In such an understanding, the social and cultural responsibility and accountability of universities to the public and to their mission are to be considered as the unavoidable other side of academic liberties.”

29. In November 2018, the European Parliament adopted a report on a recommendation to make academic freedom a human rights consideration in the European Union’s (EU)

²⁵ The Magna Charta Universitatum (1988) lays out principles of academic freedom and institutional autonomy as a guideline for good governance and self-understanding of universities. It was adopted by the Standing Conference of Rectors, Presidents and Vice-Chancellors of the European Universities (CRE), and has since been endorsed by 904 universities from 88 countries. See <http://www.magna-charta.org/magna-charta-universitatum/signatory-universities>.

foreign policy.²⁶ The report explicitly acknowledges both the right to education and freedom of expression aspects of academic freedom, and adopted the standards set forth in the UNESCO RSHETP as well as the definition of academic freedom contained within the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education.²⁷ It then explicitly identifies a set of democratic values that are necessary for the realization of academic freedom, noting that:

[the Lima Declaration’s] definition must be grounded in core democratic values, including equitable access and anti-discrimination principles, accountability, critical and independent thinking, institutional autonomy and social responsibility; [and that] there can be no democracy without the academic freedom that enables informed debate,²⁸

The report then, crucially, makes explicit the link between academic freedom and societal and democratic advancement:

E. whereas academic freedom is a key element to advance to sustainable development, in particular to the achievement of the Sustainable Development Goals enshrined in the 2030 Agenda, where quality education, scientific research and innovation occupy a central place. . .²⁹

European Court of Human Rights

30. The largest body of regional case law concerning academic freedom has been within the European Court of Human Rights and Article 10 of the European Convention on Human Rights, which is substantially identical to the ICCPR.³⁰

²⁶ European Parliament recommendation of 29 November 2018 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on Defence of academic freedom in the EU’s external action (2018/2117(INI)).

²⁷ The Lima Declaration, adopted in 1988 by the World University Service (WUS) defines academic freedom as “the freedom of members of the academic community, individually or collectively, in the pursuit, development, and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing.”

²⁸ *Ibid.* at D.

²⁹ *Ibid.* at E.

³⁰ ECHR Article 10 provides:

Freedom of expression 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

31. In the judgment of *Sorguç v. Turkey*, the Court “underline[d] the importance of academic freedom, which comprises the academics’ freedom to express freely their opinion about the institution or system in which they work and freedom to distribute knowledge and truth without restriction” (emphasis added).³¹ In the case of *Riolo v. Italy*, the Court accepted that the publication of an academic work in a newspaper entitled the applicant to the same level of protection as journalists under Article 10.³² And in the case of *Aksu v. Turkey*, the Court further held that its case law required it “to submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings.”³³
32. In the case of *Mustafa Erdoğan and Others v. Turkey*, the Court affirmed the principle that academic freedom is to be broadly and not narrowly implemented:

[Academic freedom] is not restricted to academic or scientific research, but also extends to the academics’ freedom to express freely their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence. This may include an examination of the functioning of public institutions in a given political system, and a criticism thereof.³⁴

33. More recently, in the case of *Kula v. Turkey*, the Court found that a reprimand imposed on an academic for taking part in a television program, against the instructions of his employer, amounted to an interference with his academic freedom:

Reiterating that Article 10 of the Convention also protects the form in which ideas are conveyed [...], the Court considers that the present application relates essentially to the exercise by the applicant of his right to freely express his views as an academic during a television programme organised outside his city of residence. In the Court’s view, this issue unquestionably concerns his academic freedom, which should guarantee freedom of expression and of action, freedom to disseminate information and freedom to “conduct research and distribute knowledge and truth without restriction.”³⁵

The Court further noted that, notwithstanding the modest nature of the sanction, it could nonetheless result in a “chilling effect” on the exercise of academic freedom.³⁶

b. Americas

34. Within the inter-American system, protections for freedom of opinion and expression are substantially identical to those at the global level.³⁷ The Inter-American Commission on

³¹ ECtHR, *Sorguç v. Turkey*, 23 June 2009, no. 17089/03, para. 35.

³² ECtHR, *Riolo v. Italy*, 17 July 2008, no. 42211/07, para. 63.

³³ ECtHR (Grand Chamber), *Aksu v. Turkey*, 15 March 2012, nos. 4149/04 and 41029/04, para. 71.

³⁴ ECtHR, *Mustafa Erdoğan and Others v. Turkey* (2014), supra n. 19, para. 40.

³⁵ ECtHR, *Kula v. Turkey*, 19 June 2018, no. 20233/06, para. 38.

³⁶ *Ibid.*, para. 39.

³⁷ See American Convention on Human Rights, Article 13.

Human Rights has spoken directly to academic freedom protections under this provision. In recent thematic reports and public communications, the IACHR has expressed specific concern about attacks on academic freedom and freedom of opinion and expression as means of silencing political opponents. For example, in the report on Nicaragua, the IACHR clearly establishes the relationship between democracy and academic freedom:

170. The IACHR once again points out that the right to education is the epitome of the indivisibility and interdependence of all human rights, as it serves as a catalyst for generating critically minded, participatory citizenship and shaping the development of individuals and society. In higher education, especially, the academic liberty of teachers and students and the autonomy of academic institutions are fundamental pillars for strengthening democratic structures and avoiding political pressures or interference. The Commission also underscores the fact that the right to education helps mitigate the psychosocial impacts of emergency or conflict situations, reinforces capacity to help those affected by the crisis, and provides tools for restoring stability and for social reconstruction.

171. Given the negative impacts triggered by the aforementioned context on the right to education, especially at the secondary and tertiary levels, characterized by instability and underlying risks posed for students, the IACHR deems it necessary that the State take steps to investigate the complaints by students of instigation by university authorities or pro-government student leaders and to guarantee the autonomy of universities as forums for academic freedom and freedom of thought for their students. Prompt steps are likewise needed to facilitate and guarantee a propitious environment for recovering lost classes, while according priority to the safety and protection of students. If necessary, the State must make whatever adjustments are needed, bearing in mind the essential features of availability, accessibility, acceptability, and adaptability.³⁸

c. Africa

35. The African Charter on Human and People’s Rights provides similar protections for the rights to freedom of opinion and expression³⁹ and right to education.⁴⁰ Within this framework, the African Commission on Human and People’s Rights explicitly recognized a violation of academic freedom in the case of *Kenneth Good v. Botswana*. In *Good*, an Australian professor of political studies had criticised that country’s law of presidential

³⁸ See Serious human rights violations in the context of social protests in Nicaragua (Washington: CIDH, 2018), paras. 170-171; IACHR Press Release, April 5, 2019, *IACHR Observes Persistent Human Rights Issues in Venezuela* (expressing concern about, *inter alia*, attacks on university professors and students, and stating that “academic freedom of teachers and students and the autonomy of institutions are crucial pillars to strengthen democratic structures and prevent politically driven pressures and interventions.” available at https://www.oas.org/en/iachr/media_center/PReleases/2019/091.asp (accessed on June 7, 2020)).

³⁹ African Charter on Human and People’s Rights, Article 9: “1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.”

⁴⁰ African Charter on Human and People’s Rights, Article 17: 1. “Every individual shall have the right to education. 2. Every individual may freely take part in the cultural life of his community.”

succession, and was summarily deported without the opportunity to contest the order. Finding that the scholar’s rights under Article 9(2) of the African Charter had been violated, the Commission held that “[t]he expulsion of a non-national legally resident in a country, for simply expressing their views, especially within the course of their profession, is a flagrant violation of [freedom of expression].”⁴¹ The Commission underscored the particular importance of academic freedom in this context: “[t]he opinions and views expressed [resulting in expulsion are] critical comments that are expected from an academician of the field; but even if the government, for one reason or another, considers the comments offensive, they are the type that can and should be tolerated. In an open and democratic society like Botswana, dissenting views must be allowed to flourish, even if they emanate from non-nationals.”⁴²

IV. Higher education and civil society recognitions of academic freedom

36. Academic freedom has been recognized in numerous international declarations endorsed by states, the higher education sector, and civil society alike, which taken together suggest that recognition of the core right of academic freedom is universal, and may qualify as customary international law.
37. Most recently, the Safe Schools Declaration (2015) and the related Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict recognize an inter-governmental commitment to protect students, teachers, schools, and universities from the worst effects of armed conflict. They represent an explicit commitment to right to education at all levels, including higher education. To date, the Safe Schools Declaration has been adopted by 104 States (and was explicitly referenced by the European Parliament in its 2018 recommendation on defence of academic freedom in the EU’s external action).⁴³
38. Higher education and civil society statements on the right of academic freedom include:
 - a. the 1982 Declaration on Rights and Duties Inherent in Academic Freedom, adopted by the International Association of University Professors and Lecturers (IAUPL) in Sienna, Italy;
 - b. the 1988 Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, adopted by the World University Service (WUS);⁴⁴
 - c. the 1988 Magna Charta Universitatum, adopted by the Standing Conference of Rectors, Presidents and Vice-Chancellors of the European Universities (CRE);
 - d. the 1990 Dar es Salam Declaration on Academic Freedom and Social Responsibility of Academics, adopted by staff associations of higher education establishments in Tanzania in 1990;

⁴¹ *Kenneth Good v. Republic of Botswana*, 313/05, African Commission on Human and People’s Rights (May 2010) at para. 200.

⁴² *Ibid.* at para. 199.

⁴³ 2018/2117(INI) at 1(j).

⁴⁴ See Note 27, *supra*.

- e. the 1990 Kampala Declaration on Intellectual Freedom and Social Responsibility, adopted in 1990 by the Council for the Development of Social Science Research in Africa (CODESRIA) at a symposium held for that purpose by members of the African intellectual community; and
- f. the 2004 Amman Declaration on Academic Freedom and the Independence of the Institutions of Higher Education and Scientific Research, adopted by the Conference of Academic Freedom in the Arab Universities.

V. Recognition of the right of academic freedom in domestic law and practice

- 39. The right of academic freedom is explicitly enshrined (with various constructions) in the constitutions of at least 77 states, as reported by the Academic Freedom Index (AFI) developed by researchers at the Global Public Policy Institute (GPPi), Varieties of Democracy project (V-Dem), Scholars at Risk, and the Friedrich-Alexander-Universität Erlangen-Nürnberg.⁴⁵
- 40. Many States include additional recognition and protections for academic freedom in statutory law, including national and intra-regional higher education laws, policies and practices. Similarly many higher education institutions, and likely the vast majority of the world’s leading universities, include academic freedom among the key principles enshrined within the institution’s statement of mission or purpose.

VI. Threats to Academic Freedom

- 41. Threats to academic freedom, and attacks on scholars, students, staff, and their institutions generally, are a global phenomenon, occurring in democracies and authoritarian states alike, with alarming frequency. While such attacks range in severity from lethal violence to more subtle actions, such as restrictions on academic travel, they share a common motivation: to control or silence higher education institutions and personnel, including scholars, students, and staff. Since 2011, Scholars at Risk has documented more than 1190 verified incidents involving more than 1650 verified attacks in 103 countries and territories, while recognizing that these are only a small fraction of likely total incidents.⁴⁶ Further, these numbers also do not account for the instances of self-censorship or other follow-on impacts that predictably accompany attacks.

⁴⁵ See Spannagel, J, Kinzelbach, K, Saliba, I: The Academic Freedom Index and Other New Indicators Relating to the Academic Space: an Introduction, https://www.v-dem.net/media/filer_public/0d/a3/0da3981c-86ab-4d4f-b809-5bb77f43a0c7/wp_spannagel2020.pdf at 10-11 (accessed May 30, 2020), terms used as indicators of protective provisions included: “freedom to impart knowledge and information”, “right to freely engage in teaching”, “freedom of creative, scientific and technical work”, “exercise of art and scientific research are free”, “liberty of teaching”, “instruction is free”, “educational freedom”, and “freedom of education under state supervision.” Another indicator of protection, albeit indirect, is the fact that 172 States have ratified the ICESCR without any reservation to Article 15 and its recognition of the obligation to protect and promote scientific and creative endeavors.

⁴⁶ See Scholars at Risk Academic Freedom Monitoring Project, <https://www.scholarsatrisk.org/academic-freedom-monitoring-project-index/>

a. Sources of threats

42. Threats to academic freedom may arise from one or more of the following:

- State actors including: military,⁴⁷ police,⁴⁸ ministries of education,⁴⁹ and other government and political actors.
- Judicial actors,⁵⁰ particularly in the context of prosecutions.
- Non-state and quasi-state actors,⁵¹ including paramilitary organizations⁵² and extremist groups.⁵³
- Commercial actors.
- Societal/cultural actors (including mob violence⁵⁴ and coordinated non-violent pressures).⁵⁵
- Higher education leadership,⁵⁶ administration,⁵⁷ colleagues, and students.⁵⁸

b. Types of threats

43. Threats to academic freedom may arise directly as retaliation for or restrictions on conduct or expression related either to the content of an individual’s discipline or topic, or to the individual’s status as a member of the higher education sector.⁵⁹ These include threats targeting both intramural and extramural expression.⁶⁰

44. Threats to academic freedom may also arise indirectly from pressures, threats or attacks on individuals, entities or locations that are sufficiently proximate to higher education communities such that they would reasonably impair, chill or otherwise limit the exercise of academic freedom in practice.

⁴⁷ <https://www.scholarsatrisk.org/report/2019-01-12-various-institutions/>

⁴⁸ <https://www.scholarsatrisk.org/report/2019-11-18-jawaharlal-nehru-university/>

⁴⁹ <https://www.scholarsatrisk.org/report/2020-03-27-gafargaon-government-college-barisal-government-womens-college/>

⁵⁰ <https://www.scholarsatrisk.org/report/2020-01-31-bogazici-university/>

⁵¹ <https://www.scholarsatrisk.org/report/2020-04-28-dhamar-university/>

⁵² <https://www.scholarsatrisk.org/report/2019-06-27-east-nile-university-college/>

⁵³ <https://www.scholarsatrisk.org/report/2015-04-02-garissa-university-college/>

⁵⁴ <https://www.scholarsatrisk.org/report/2017-04-13-abdul-wali-khan-university/>

⁵⁵ <https://www.scholarsatrisk.org/report/2017-12-29-drexel-university/>

⁵⁶ <https://www.scholarsatrisk.org/report/2020-04-20-university-of-buea/>

⁵⁷ <https://www.scholarsatrisk.org/report/2019-12-22-khwaja-moinuddin-chishti-urdu-arabi-farsi-university/>

⁵⁸ <https://www.scholarsatrisk.org/report/2020-02-28-university-of-punjab/>

⁵⁹ In Turkey, for example, the government placed more than 2000 members of a group known as Academics for Peace under criminal investigation after they signed a petition criticizing state and military actions in the predominantly Kurdish southeastern part of the country. Signatories of the so-called “Peace Petition” signed in some cases acting within their professional discipline, and in all others in their capacity as professional academics. Signatories were terminated from their positions at universities, prosecuted, stripped of their passports, and subject to other sanctions. See <https://www.scholarsatrisk.org/report/2016-01-11-various-institutions/>

⁶⁰ See para. 19, *supra*.

45. Such direct and indirect threats to academic freedom manifest through a wide range of conduct, from violent or coercive attacks higher education personnel, students, institutions or systems, to procedural or administrative policies which impinge upon the agency of academics to determine the scope of the right in a given circumstance. Common types of threats to academic freedom include:

- a. **Killing, violence, and disappearances** including targeted, mass attacks on universities by government, paramilitary, or armed extremist groups;⁶¹ disappearances of student protesters;⁶² violent attacks on individual members of higher education communities in retaliation for academic expression;⁶³ on-campus-political violence between and among groups of students on campus;⁶⁴ and failures by state or university authorities to address patterns of violence on campus. These attacks erode academic freedom by making the campus space less safe, in particular for targeted individuals, ideologies, and identities.
- b. **Arbitrary detention/wrongful prosecution** including detention without charge in retaliation for or to obstruct academic conduct or expression;⁶⁵ detention/prosecution on pretextual grounds (i.e. retaliation for academic conduct or expression in the form of a false charge alleging a violation of an unrelated crime); prosecution under a duly constituted national law that nevertheless violates fundamental rights, especially including national security related laws,⁶⁶ and laws

⁶¹ See, e.g. Bacha Khan University, Pakistan, where armed extremists entered a university campus and killed more than 20 in January 2016, <https://www.scholarsatrisk.org/report/2016-01-20-bacha-khan-university/>; Garissa University College, Kenya, where five militants stormed the campus and killed nearly 150 people and injured more than 70 more.

⁶² See, e.g. Raúl Isidro Burgos Rural Teachers' College of Ayotzinapa, Mexico, where 43 student protesters were disappeared in September 2014 -- the case remains unresolved <https://www.scholarsatrisk.org/report/2014-09-26-ra%c3%bal-isidro-burgos-rural-teachers-college-ayotzinapa/>; <https://www.scholarsatrisk.org/report/2015-04-02-garissa-university-college/>

⁶³ See, e.g. Rajshahi University, Bangladesh, where an unidentified individual targeted and killed Rezaul Karim Siddiquee, a professor of English, writer, and organizer of cultural programming in Rajshahi. <https://www.scholarsatrisk.org/report/2016-04-23-rajshahi-university/>

⁶⁴ See, e.g. University of Punjab, India, where rival political/religious student groups clashed violently in February 2020. <https://www.scholarsatrisk.org/report/2020-02-28-university-of-punjab/>

⁶⁵ See, e.g. Sudan, where government troops arrested a group of at least 30 students in connection with the nationwide protests ongoing in December 2018. The students were never charged with a crime, and in April 2019, following the ouster of President Omar al-Bashir, were released. <https://www.scholarsatrisk.org/report/2018-12-23-university-of-sinnar/>

⁶⁶ See, e.g. Iran, where Ahmadreza Djalali, a dual Swedish-Iranian citizen and scholar in disaster medicine who was arrested in 2016 while traveling in Iran to attend a series of academic workshops. He was accused of collaborating with scholars from states Iran considers to be enemy states. He remains detained in Evin prison as of this report. <https://www.scholarsatrisk.org/report/2017-02-01-university-eastern-piedmont-vrije-universiteit-brussel/>

prohibiting lèse majesté (or defaming the crown),⁶⁷ blasphemy,⁶⁸ and criminal or civil defamation.⁶⁹

- c. **Deprivations of the right to due process/fair trial** including sweeping legal actions against multiple individuals within the higher education sector, resulting in abbreviated or cursory trials,⁷⁰ lengthy delays and procedural irregularities within criminal trials,⁷¹ and trial of civilians before military tribunals.⁷²
- d. **Legal coercion** including civil actions designed to target academic conduct or expression directly, or to intimidate or harass members of the higher education community. Such actions are of particular concern where they are brought by State actors, who can marshal State resources to overwhelm and even bankrupt private civil defendants, rendering the suit itself—regardless of the outcome—a form of punishment.⁷³

⁶⁷ See, e.g. Thailand, where student activist Jatupat “Pai” Boonpattaraksa was charged with lèse majesté after he shared an article about the new king over social media. <https://www.scholarsatrisk.org/report/2016-12-03-khon-kaen-university/>

⁶⁸ See, e.g. Pakistan, where Junaid Hafeez, a comparative literature scholar and former lecturer at Bahauddin Zakariya University in Pakistan, who was detained and charged in 2013 after a group of students accused him of making blasphemous statements on social media. Despite a lack of any evidence, the case against him was pending for more than six years, which included significant time spent in solitary confinement. <https://www.scholarsatrisk.org/report/2014-04-17-bahauddin-zakariya-university-multan-pakistan/>.

⁶⁹ International law prohibits arbitrary arrest and detention, and deprivations of liberty “except on such grounds and in accordance with such procedure as are established by law” (ICCPR Art. 9(1)). The UN Working Group on Arbitrary Detention defines detention as arbitrary when it is (i) impossible to invoke a legal basis to justify the deprivation of liberty; (ii) the deprivation results from the exercise of rights guaranteed in, *inter alia*, Article 19 of the UDHR and ICCPR; or (iii) there is grave and total or partial non-observance of the norms of fair trial. (See Report of the Working Group on Arbitrary Detention, A/HRC/16/47 ¶ 8) A deprivation of physical liberty that is intended to obstruct or retaliate for academic conduct or expression, is thus arbitrary per se, as it arises from the exercise of, *inter alia*, UDHR Article 19 and ICCPR Article 19. See R. Quinn and J. Levine, Intellectual-HRDs and claims for academic freedom under human rights law, *International Journal of Human Rights*, 2014, Vol. 18, Nos. 7-8, 906).

⁷⁰ See e.g., widespread prosecution of scholars in Turkey based on allegations that their use of a particular messaging application, or possession of certain types of foreign currency, established their membership in a terrorist organization. <https://www.scholarsatrisk.org/report/2018-05-26-istanbul-technical-university/>

⁷¹ See, e.g., the case of Junaid Hafeez, discussed *supra*, whose 6-year-plus trial on blasphemy charges was marked by a lack of evidence against him, consistent procedural irregularities, prolonged delays, and threats to defense counsel, including the murder of one of Mr. Hafeez’s attorney.

⁷² See, e.g. Egypt, where government regulations placed universities (among other institutions) under military jurisdiction, requiring that alleged crimes occurring on campus be referred to military courts, leading to the military prosecution in 2014 of a number of students at Al-Azhar and Zagazig Universities. <https://www.scholarsatrisk.org/report/2014-12-29-al-azhar-university-zagazig-university/>

⁷³ See, e.g. Poland, where the country’s ruling political party brought civil (as well as criminal) actions against law professor Wojciech Sadurski after he made public statements criticizing the party over social media. <https://www.scholarsatrisk.org/report/2019-01-20-university-of-warsaw/>

- e. **Grave violations of university autonomy** including occupation of a university by government troops or paramilitary forces;⁷⁴ legislative pressures such as the targeting of particular academic departments or disciplines; or government closure of a university. Significant recent examples have included the creation of administrative regulations that appeared designed to target a specific university on political grounds;⁷⁵ and the State-ordered closure of fifteen separate universities as part of an emergency decree.⁷⁶
- f. Government closures of universities which are intended to obstruct or retaliate against academic conduct or expression, or against actual or imputed expression or opinion of members of the university community. Such actions likewise are violations of university autonomy.
- g. **Intimidation and harassment** including campaigns by private actors to target specific members of the higher education community. Social media has made it easier for state and nonstate actors to engage in targeted harassment of scholars, students, and other members of the higher education community. Recent incidents have included online efforts to “expose bias” on the part of professors or students, by circulating surreptitious recordings or descriptions of in-class statements or public communications, as well as their personal information. The targets of these campaigns are then overwhelmed with phone calls, emails, and other communications that sometimes include threats of violence or death, including threats against colleagues and family members.⁷⁷

⁷⁴ See, e.g. Yemen, University of Sana’a, in which members of the Houthi militia reportedly shut down the university and occupied the campus in the course of the larger national conflict, and reportedly arrested 55 students. <https://www.scholarsatrisk.org/report/2018-10-06-university-of-sanaa/>

⁷⁵ In December 2018, Hungary’s Central European University (CEU) announced that it was being forced to leave Budapest and move its operations to Vienna, Austria, following a series of changes to Hungary’s higher education law that appeared to target CEU exclusively. See <https://www.ceu.edu/article/2018-12-03/ceu-forced-out-budapest-launch-us-degree-programs-vienna-september-2019>; Authorities had amended the law in early 2017 to require that foreign-accredited higher education institutions maintain a campus in their countries of accreditation. When CEU, which was accredited in the United States, sought to comply with the law by entering into an agreement to engage in joint teaching activities on the campus of a New York college, Hungarian officials refused to approve the agreement. The apparently exclusive impact on CEU, coupled with strong criticisms of the institution and its founder, George Soros, by government authorities and their allies, strongly suggested that the changes to the law were aimed at CEU directly. CEU reopened in Vienna in September 2019. See Scholars at Risk, Free to Think 2018, available at <https://www.scholarsatrisk.org/resources/free-to-think-2018/>

⁷⁶ In Turkey, on July 23, 2016, during the immediate aftermath of a failed coup attempt one week earlier, authorities issued an emergency decree ordering the immediate and permanent closure of 15 Turkish universities affiliated with the exiled cleric Fethullah Gülen—whom Turkish authorities blamed for the attempted coup—affecting more than 55,000 students and leaving more than 2,800 university personnel unemployed. <https://www.scholarsatrisk.org/report/2016-07-23-various-institutions/>

⁷⁷ See, e.g. United States, where George Ciccariello-Maher, a professor of politics and global studies at Drexel University was subjected to sustained online harassment after posting a sarcastic, political message to Twitter. The university placed him on administrative leave citing “concern for his safety”, leading ultimately to his resignation in December 2017. <https://www.scholarsatrisk.org/report/2017-12-29-drexel-university/>; see also United States case of Professor Albert Ponce of Diablo Valley College, who received sustained, violent threats via social media, email, and

- h. **Travel restrictions:** including restriction on travel into, within, or out of a State territory⁷⁸ or deportation, for the purposes of inhibiting cross-border research or academic exchange, or obstructing or retaliating for academic conduct or expression. States generally have the right to exercise control over who may enter their territory, and in what manner. However, such control must be exercised consistent with the state's obligations under human rights law, including those relating to academic freedom. Travel and freedom of movement have been recognized as essential to academic freedom and quality higher education.⁷⁹ The ICCPR addresses this in recognising that the right to freedom of expression "shall include freedom to seek, receive and impart information and ideas of all kinds, *regardless of frontiers.*" (ICCPR Art. 19(2)(*emphasis added*)). Thus, where the purpose of a restriction on travel is to retaliate for or prevent academic expression, inquiry or exchange, such restriction presumptively violates international human rights law.⁸⁰
- i. **Loss of privilege/position/expulsion** including discharge, demotion, loss of promotion, or other professional penalty for a scholar's academic work or exercise of other protected rights, including statements made in the classroom, writings, research, professional association/union activity, engagement with (and criticism

voicemail, after a lecture he gave was recorded and broadcast in October 2017. <https://www.scholarsatrisk.org/report/2017-10-01-diablo-valley-college/>

⁷⁸ See, e.g. Hong Kong, where in 2019, authorities refused to permit a political science scholar enter the country in apparent retaliation for public statements he had made concerning democracy and human rights in the region. <https://www.scholarsatrisk.org/report/2019-09-28-unaffiliated/>

⁷⁹ UNESCO RSHETP para 13: "The interplay of ideas and information among higher-education teaching personnel throughout the world is vital to the healthy development of higher education and research and should be actively promoted. To this end higher-education teaching personnel should be enabled throughout their careers to participate in international gatherings on higher education or research, to travel abroad without political restrictions and to use the Internet or video-conferencing for these purposes."

⁸⁰ It must be emphasized that not all restrictions on travel by an academic are necessarily violations. For example, a State may refuse entry to a scholar on legitimate security grounds (even if the scholar intends to enter the territory for academic purposes), or on grounds unrelated to that scholar's academic work. Likewise, an arbitrary restriction on travel may impact a scholar without specifically targeting academic activity (in which case such restriction may be a human rights violation, but not necessarily a violation of academic freedom). See <https://www.scholarsatrisk.org/report/2018-09-28-kabarak-university/> (where Zambian officials refused entry to a Kenyan law professor in an apparent effort to prevent him from delivering a university lecture for which he had been invited). However, there is ample evidence of states denying entry to scholars because of specific academic activity, or because of their academic profiles more broadly. Regional tribunals have found such restrictions to violate human rights. See, e.g. *Cox v. Turkey*, ECtHR Application No. 2933/03, 20 May 2010, in which an American scholar living and working in Turkey for a number of years had expressed opinions during her lectures on the politically sensitive issue of Armenian and Turkish history, and was denied a routine visa to re-enter Turkey after a trip abroad on the grounds that such expressions constituted a threat to national security. Finding that the scholar's rights under ECHR Article 10 (which is materially identical to ICCPR Article 19) had been violated, the court held: [T]he ban on the applicant's re-entry is materially related to her right to freedom of expression because it disregards the fact that Article 10 rights are enshrined 'regardless of frontiers' and that no distinction can be drawn between the protected freedom of expression of nationals and that of foreigners (*Cox v. Turkey*, para. 31). See also *Kenneth Good v. Botswana*, discussed *supra*, finding that the expulsion of a foreign national and political studies professor after he had publicly criticized the country's law of presidential succession constituted a violation of the right to freedom of expression and academic freedom.

of) higher education leadership or education policy. Relevant incidents involving students include dismissal or expulsion from studies based on academic work or student activities, including statements made in the classroom, writings, research, student association/union activity, and engagement with (and criticism of) higher education leadership or education policy.

Where terminations or expulsions occur at the instruction or behest of state authorities, they may constitute violations within the meaning of ICCPR Article 19 and violate institutional autonomy.^{81 82} “Higher-education teaching personnel who secure continuing employment following rigorous evaluation [should] only be dismissed on professional grounds and in accordance with due process.”⁸³ They “should not suffer any penalties simply because of the exercise of” the human rights due all persons, including freedom of expression.⁸⁴ They should have the right to “fulfill their functions without discrimination of any kind and without fear of repression by the state or any other source,” to teach and to carry out research work, without being forced to “instruct against their own best knowledge and conscience” and “without any interference, or any suppression,” subject to accepted professional principles including professional responsibility, intellectual rigour, and standards and methods of teaching and research.⁸⁵

VII. Recommendations

46. Despite existing protections under human rights law, threats to academic freedom are widespread and growing, warranting a concerted response from the UN and regional human rights systems, States, the higher education sector and civil society. In particular, the UN, international tribunals, human rights institutions, national governments, higher education leaders and institutions and other stakeholders should endeavor, above all, to recognize explicitly threats to academic freedom when they arise, to address violations of academic freedom directly, and to promote academic freedom in law as well as in national and institutional policy.

47. Recommendations for the UN and Member States

- a. The General Assembly, Human Rights Council, and their respective State Members should reaffirm their commitment to the protection of academic freedom under existing international human rights standards and to take affirmative actions to

⁸¹See Iran, where in late 2017, authorities acknowledged banning 27 students from academic programs at various universities, in retaliation for their past acts of political expression. A larger group of students—151 PhD students and 398 master’s students—were allowed to move forward in their academic programs, on the condition that they refrain from engaging in political activity. <https://www.scholarsatrisk.org/report/2017-12-11-various-institutions/>

⁸² RSHETP at para. 20.

⁸³ *Ibid.* at para. 46.

⁸⁴ *Ibid.* at para 26.

⁸⁵ *Ibid.*, at paras. 27-29.

ensure protection and understanding by States, the higher education sector and society.

48. Recommendations for bodies within the UN, especially the General Assembly and Human Rights Council

- a. The Office of the High Commissioner on Human Rights should establish a Special Procedure, including possibly a Special Rapporteur or Working Group, focusing specifically on the right of academic freedom, and designed to respond to areas or situations of particular concern, and to promote standards aimed at improving academic freedom around the world.⁸⁶
- b. Where appropriate, Special Procedures addressing the right to academic freedom should engage and work jointly with other UN and regional mandate holders—including especially the UN Special Rapporteur for the right to education and Special Rapporteur on the situation of human rights defenders, as well as their counterparts within the European, Inter-American, and African systems—whose focus relates to academic freedom or other pertinent issues.
- c. In future reports, recommendations, and public communications, political bodies of the UN should specifically recognize academic freedom to include conduct or expression related to the actor’s academic discipline, expertise, institution or status as a member of the higher education sector, regardless of location, audience or venue (that is, including “intramural” and “extramural” expression).
- d. Political bodies of the UN should provide support for protection of/direct assistance for individual victims of threats to or attacks on academic freedom.

49. Recommendations for States

UN Member States should:

- a. Abstain from direct or indirect involvement in violations of academic freedom or attacks on higher education of any type, including by encroachments upon university autonomy, through violent or coercive means, legislative or administrative actions, or restrictions on travel restrictions that punish or deter

⁸⁶ Under analogous circumstances, the international community has taken measures to address sector-focused threats specifically. Such measures have included the creation of a UN Special Rapporteur on the situation of human rights defenders, and the establishment of [UN Draft Plan of Action for the Safety of Journalists](#). The international community has likewise signalled its understanding of the particular threat that these sectors face, as demonstrated by a recent search of recommendations made during the Human Rights Council’s Universal Periodic Review process, which reflected more than 950 references to journalists and more than 1200 references to human rights defenders, but fewer than ten references to scholars or academic freedom. See UPR-Info database of State Recommendations, available at <https://upr-info-database.uwazi.io/>.

nonviolent academic conduct, expression or associations;

- b. Conduct, thorough and transparent investigations of attacks on higher education communities, as well as take all reasonable efforts to hold perpetrators accountable;
- c. Take all reasonable measures to ensure adequate security for all members of higher education communities;
- d. Review laws used to prosecute scholars and students, and amend or repeal them as necessary to ensure that scholars and students can exercise their rights to academic freedom and other constituent rights;
- e. Lift restrictions on the travel, movement, or residence of scholars, students, and other higher education personnel, and refrain from future restrictions that are based on nonviolent academic conduct, expression, or associations; and
- f. Contribute to efforts aimed at reinforcing principles of academic freedom and institutional autonomy, including by reaffirming their commitment in public statements, policies, and practices to the principles that ideas are not crimes and that critical discourse is not disloyalty.

50. Recommendations for Regional Human Rights Systems

Regional Human Rights Systems, including within Europe, the Americas, and Africa, should:

- a. Continue to develop jurisprudence around academic freedom and related issues, by recognizing academic freedom dimensions of cases involving members of the higher education community and/or academic inquiry;
- b. Develop and lead in activities aimed at monitoring and responding to threats against academic freedom at a regional level, and engage in with counterparts in other regions and within the UN system to share best practices and develop strategies for supporting and promoting academic freedom around the globe.

51. Recommendations for the Higher Education Sector

- a. Higher education leaders, administrators, researchers, staff and students should adopt affirmative, proactive statements and policies aimed at promoting greater understanding of and protection for academic freedom and related higher education values, including institutional autonomy, accountability, equitable access and social responsibility.

52. Recommendations for Civil Society, Media and Members of the Public

Members of civil society, the media and members of the public should:

- a. Refrain from engaging or being complicit in threats or attacks on academic freedom;
- b. Where technology is necessary in order to engage in academic expression, research and dialogue, web hosting companies should take all available measures to ensure security of academic conversations, provide clear and explicit instructions and, where necessary, training, to users for ensuring that their communications are secure;
- c. Media organizations and others who publicly evaluate and rank the quality of universities, and are thus in a position of influence over the public perception of higher education institutions around the world, should include within such analyses an academic freedom component, relying where available on analyses by independent experts.

VIII. Appendices

- a. Statements/standards on Academic Freedom
 - i. 1997 UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel, available at http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html
 - ii. Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), 8 December 1999, available at <https://www.refworld.org/pdfid/4538838c22.pdf>
 - iii. Committee on Social, Economic and Cultural Rights, General comment No. 25 on Science and economic, social and cultural rights Art. 15.1.b, 15.2, 15.3 and 15.4 (2020), available at <https://undocs.org/E/C.12/GC/25>
 - iv. European Parliament recommendation of 29 November 2018 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on Defence of academic freedom in the EU's external action (2018/2117(INI), available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0483_EN.html
 - v. 1982 Declaration on Rights and Duties Inherent in Academic Freedom, adopted by the International Association of University Professors and Lecturers (IAUPL) in Sienna, Italy
 - vi. 1988 Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, adopted by the World University Service(WUS), available at: <https://www.wusgermany.de/sites/wusgermany.de/files/userfiles/WUS-Internationales/wus-lima-englisch.pdf>
 - vii. 1988 Magna Charta Universitatum, adopted by the Standing Conference of Rectors, Presidents and Vice-Chancellors of the European Universities (CRE), available at: <http://www.magna-charta.org/magna-charta-universitatum>
 - viii. 1990 Dar es Salam Declaration on Academic Freedom and Social Responsibility of Academics, adopted by staff associations of higher education establishments in Tanzania in 1990, available at: <http://hrlibrary.umn.edu/africa/DARDOK.htm>
 - ix. 1990 Kampala Declaration on Intellectual Freedom and Social Responsibility, adopted in 1990 by the Council for the Development of Social Science Research in Africa (CODESRIA), available at: <http://hrlibrary.umn.edu/africa/KAMDOK.htm>
 - x. 2004 Amman Declaration on Academic Freedom and the Independence of the Institutions of Higher Education and Scientific Research, adopted by the Conference of Academic Freedom in the Arab Universities, available at: http://www.concernedhistorians.org/content_files/file/et/11.pdf

b. Cases Addressing Academic Freedom as Human Right:

- i. ECtHR, *Sorguç v. Turkey*, 23 June 2009, no. 17089/03, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-93161%22%7D>
- ii. ECtHR, *Riolo v. Italy*, 17 July 2008, no. 42211/07, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2242211/07%22%5D,%22itemid%22:%5B%22001-99652%22%5D%7D>,
- iii. ECtHR (Grand Chamber), *Aksu v. Turkey*, 15 March 2012, nos. 4149/04 and 41029/04, available at <http://hudoc.echr.coe.int/webservices/content/pdf/001-109577?TID=ihgdqbxnfi>
- iv. ECtHR, *Mustafa Erdoğan and Others v. Turkey*, 27 May 2014, nos. nos. 346/04 and 39779/04, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-144129%22%7D>
- v. ECtHR, *Kula v. Turkey*, 19 June 2018, no. 20233/06, available at <http://hudoc.echr.coe.int/eng?i=001-184289>
- vi. African Commission on Human and People's Rights, *Kenneth Good v. Republic of Botswana*, 313/05 (May 2010), available at <https://www.achpr.org/sessions/descions?id=195>

c. Reports/data on attacks on higher education/academic freedom:

- i. Scholars at Risk, *Free to Think* reports: <https://www.scholarsatrisk.org/tag/free-to-think/>
- ii. Scholars at Risk Academic Freedom Monitoring Project Index: available at <https://www.scholarsatrisk.org/academic-freedom-monitoring-project-index/>
- iii. Spannagel, J, Kinzelbach, K, Saliba, I: The Academic Freedom Index and Other New Indicators Relating to the Academic Space: an Introduction, available at https://www.v-dem.net/media/filer_public/0d/a3/0da3981c-86ab-4d4f-b809-5bb77f43a0c7/wp_spannagel2020.pdf