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# **MIGRANT TEACHERS, ACADEMIC FREEDOM AND THE RIGHT TO EDUCATION**

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This project “Migrant Teachers, Academic Freedom and the Right to Education” has been conducted in fulfillment of the Applied Research Project requirement (Track Specialization: Migrations, Mobilities and Boundaries) at the Geneva Graduate Institute (IHEID) in collaboration with the Office of the High Commissioner of Human Rights (UN OHCHR).

The following is an addendum with a specific focus on Academic Freedom of migrant teachers and students.

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# I. INTRODUCTION

Academic freedom is a foundational element of the right to education. Reports of abuses of academic freedom and the imprisonment of academics are on the rise (1). Moreover, repressive regimes recognize the power held by academic institutions, and thus attack them as a first step of their consolidation of power (2). The impact of academic freedom transcends ideological exchange. Shared governance is a common practice in universities whereby elected faculty and staff members actively participate in decision making and influence the internal governance of an institution (3). Therefore, academic freedom's reflection of civil and political rights deem it an instrumental part of this report. Furthermore, as it holds more individual significance to the research questions than the rights previously covered, we see that an addendum is a suitable format to elaborate on it. In what follows, we begin by providing a working definition of academic freedom and proceed to overview the international legal instruments and their recommendations with regards to academic freedom. Additionally, we analyze existing research and reports on academic freedom in general and its enjoyment by migrant teachers in specific, touching upon freedom of expression and freedom of movement. Finally, we conclude by providing recommendations to states, International and Non Governmental organizations and trade unions.

## II. DEFINITION OF ACADEMIC FREEDOM

The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education defines academic freedom as, "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 in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction"(4). This definition is not sufficient because it only addresses freedom of expression. Nevertheless, the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel provides a better definition outlining that "Higher-education teaching personnel have a right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigor, scientific inquiry and research ethics. They should also have the right to publish and communicate the conclusions of the research of which they are authors or co-authors"(5). Additionally, academic freedom is mostly defined negatively, meaning it is measured by "the absence of legal, physical, or structural interference by state or non-state actors in a researcher's personal autonomy, independence and integrity(6)". This addendum chooses the latter definition due to its simplicity and specificity to academia. Because this addendum is an accessory to the previous report and both fall under the overarching theme of the right to education, we conceive of academic freedom as the interaction between the right to education and freedom of expression. As the line between academic freedom and freedom of expression blurs, we perceive freedom of expression as an element of academic freedom.

(1) Scholars At Risk

(2) Interview with Scholars At Risk director, Robert Quinn

(3) Academic Freedom, American Federation of Teachers. Available at <https://www.aft.org/position/academic-freedom>

(4) E/C.12/1999/10, para. 39, with reference to the Lima Declaration on Academic Freedom and

Autonomy of Institutions of Higher Education, art. 1 Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf>

(5) UNESCO (1997), Recommendation concerning the Status of Higher-Education Teaching Personnel. Available at <https://en.unesco.org/about-us/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel#:~:text=Higher%20Education%20teaching%20personnel%20should%20contribute%20to%20the%20public%20accountability,for%20the%20advancement%20of%20knowledge>.

(6) Grimm, J. and Saliba I. "Free Research in Fearful Times: Conceptualizing an Index to Monitor Academic Freedom." In: Interdisciplinary Political Studies, Issue 3(1) 2017: 41-75. DOI: 10.1285/i20398573v3n1p41

## III. International Bodies on “Academic Freedom”: Conventions, Reports and Recommendations

In resonance with the previous sections on the human rights of migrant teachers, where the child-based approach has alienated migrant teachers from being the policy subject when discussing their cultural, social and economic rights – the following section will review the present conventions, recommendations and reports by the concerned instruments. In this section however, the focus will be on ‘academic freedom’ as a civil and political right of migrant teachers and students. The section will nonetheless explore similar conventions, reports and recommendations–albeit with a more tailored approach towards academic freedom.

As already defined, academic freedom encloses at its very core the principles of freedom of expression. It is imperative therefore to begin with the very first articulation of this freedom in the Universal Declaration of Human Rights, Article 19 states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” In its preamble, the Declaration maintains that such rights should be upheld by teaching and education (7). Which therefore brings us to the subject of this report–academic freedom conceptualized in the framework of migrant teachers and students.

The same is reiterated in the International Covenant on Civil and Political Rights (ICCPR) with more elaboration on what these rights and freedoms entail, however this one is a legally binding treaty to all those who ratify it(8). Therefore providing more specific legal obligations on states and other enforcement mechanisms. As part of the recommended course of action, this report specifically addressed trade unions in upholding the economic rights of migrant teachers. It is important to note however the political and civil responsibility of these unions in protecting migrant teachers’ right to academic freedom.

The (ICCPR) therefore stipulates in Article 22, Section 1, “Everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.(9)” The article does not mention migrant teachers per say, but they are included within the overarching proposition ‘everyone’.

In a less binding manner however, the Joint Committee (ILO/UNESCO) in Annex 2, Article 17 of their 1997 Committee of Experts assembly, refers to the specific right of teachers on freedom of association and the right to organize(10). It is worthy of noting that this report highlights ‘volunteer’ teachers–conceptualizing them as those of more vulnerable backgrounds and/or an answer to teacher shortages. In the early stages of the report, we demonstrate hiring patterns in South Sudan and Thailand, where migrant teachers are recruited on the same basis (11). The Joint Committee Report expects therefore that ‘voluntary’ teachers also enjoy the same rights of association. On specific elaboration concerning the academic freedom in itself–and not academic freedom as a consequence of labor rights, the Joint Committee states that, “The teaching profession should enjoy academic freedom in the exercise of its professional duties. More specifically, teachers should be given the essential role in the choice and adaptation of teaching material, textbooks and methods, within the framework of approved programmes and with the assistance of the educational authorities.” Here, the activities mentioned represent the practice of academic freedom, similar to the UNESCO definition mentioned prior (12). A way by which this right is safeguarded is by protecting teachers through long-term contracts, where a termination of employment would thus constitute a breach of contract as a result of an arbitrary decision.

(7) Universal Declaration of Human Rights (UDHR), adopted 10 December 1948, UNGA Res 217A (III), UN Doc A/810, at 71 (1948).

(8) As opposed to the Universal Declaration of Human Rights–a more umbrella treaty with no grounds for implementation instated through its sections.

(9) International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.

(10) UNESCO. (1966). Special Intergovernmental Joint Conference by UNESCO/ILO: Paris. (p. 38)

(11) Although the ILO/UNESCO Joint Committee report does not further define these vulnerable groups as ‘migrants’, the descriptive components of their definition matches with that of other conventions covering migrants.

(12) The 1997 UNESCO Recommendations concerning the Status of Higher-Education Teaching Personnel, Section VII., Article 34, lists in detail all the practices which fall under academic freedom.

Academic freedom as a civil and political right has also emerged in security-based policies. In their 2019 Global Education Monitoring Report, UNESCO noted that schools in the United Kingdom and the United States of America have committed to policies which limit academic freedom. These policies are rooted in the fear of what academic freedom, for both migrant students and teachers alike, could produce with regards to violent extremism<sup>(13)</sup>. The 1997 UNESCO Recommendations notably remark the importance of ensuring that the, “Research is conducted according to the laws and regulations of the state in which the research is carried out, that it does not violate international codes of human rights, and that the results of the research and the data on which it is based are effectively made available to scholars and researchers in the host institution, except where this might place respondents in peril or where anonymity has been guaranteed<sup>(14)</sup>.” This situation therefore puts academic freedom at the intersection of the universality of civil and political rights and respecting state sovereignty. It is a peculiar intersection seeing as one could easily override the other and infringe on the rights of those affected.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families discussed in Article 13, “Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.”

The sections of this article conform to the aforementioned UNESCO definition of academic freedom and by extension could be interpreted as an article protecting migrant workers’ (teachers) rights for academic freedom. And although the article itself was not insinuating ‘academic freedom’, it anticipates future repercussions similar to what U.S. and British policy makers anticipated. Article 13 thus limits this freedom to national security, public order and morals of the States concerned, and the prevention of potential violent and extremist propaganda. It is important to note that various categories whom this report is concerned with are excluded from the Convention under Article 3. These groups are refugees, stateless persons, students and trainees. The previous articles on academic freedom therefore may apply to migrant teachers, but not to students—and only to migrant teachers falling under the ‘economic migrant’ category. <sup>(15)</sup>

The right for academic freedom manifested itself beyond an explicitly discussed right, but also as a result of various different areas of policy. These areas include labor laws (trade unions as advocates of academic freedom), security and politics as potential limitations of academic freedom, and finally the importance of respecting the cultural nature of the host states. This therefore begs the question of whether academic freedom must be therefore a universal right—or should it be tailored per state, curriculum, and even subject?

<sup>(13)</sup> Such policies are extremely biased and proven in the same report as ineffective. There is no correlation between migrants escaping violent extremism and the reproduction of such ideas due to ‘academic freedom’.

<sup>(14)</sup> UNESCO. (1997). Records of the General Conference: 14th Session, Paris.

<sup>(15)</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted 18 December 1990, G.A. Res. 45/158, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/RES/45/158 (1990), entered into force 1 July 2003.

# IV. EMPIRICAL EVIDENCE OF MIGRANT TEACHERS' AND STUDENTS' ACADEMIC FREEDOM

Despite the rich sources of legal instruments attempting to guarantee academic freedom, the migrant status has formed a constraint on the teachers' and students' freedom to produce knowledge, publicly contribute to debates and move across borders with secure visas. Academic freedom as elaborated above is an extension of political rights. Nonetheless, it is difficult to frame academic freedom or infringements of it within the scope of migrant teachers(16). Essentially, the bulk of literature, reports available focus on the limitations of academic freedom within a specific national/ regional context. For instance, the IEMed academic yearbook of 2018 covers the theme of academic freedom in the MENA region. It outlines the decline of said freedom in the aftermath of the Arab Spring as hopes of reigniting academic freedom, bypassing censorship and becoming agents of political transition were squashed. The report also draws interesting patterns wherein countries that evolved into full fledged conflict (Yemen, Syria, Libya), universities become barely functional(17). Yet, where prominent scholars and/or student activists are viewed as crucial to groups seeking control over a certain territory, these people are subjected to torture, disappearance and intimidation. An estimation shows that 2000 scholars were displaced as a result of the war in Syria. The number is probably higher if unrecorded cases are accounted for(18). There is a general understanding or assumption that the social sciences can be a dangerous discipline that leaves scholars vulnerable to persecution as evidenced by the previous reports on the state of academic freedom post-Arab Spring. Nonetheless,

Scholars at Risk (SAR) director warned from such assumptions: "And I think we really need to resist calling certain areas, troublemaking or dangerous disciplines, because that's what



power wants. Power wants us to isolate those areas. And therefore label those people who ask those questions troublemakers, and so that good members of society don't do that kind of thing." This has been especially relevant during the Covid-19 pandemic where scientific research became loaded with political undertones and academic freedoms were limited(19).

When it comes to migrant teachers specifically, an article by American Association of Academic Professors (AAUP) scrutinizes the trend of off-shore North American universities in the Gulf. while the economic payoff of these increasingly popular ventures is attractive, issues pertaining to the maintenance of a "cultural zone" around campuses arise(20). NYU Abu Dhabi was to essentially benefit from similar protections as a "trade free zone". Nevertheless, AAUP expressed concerns over both the fickle nature of these protections (limited to NYU's campus) and the sense of privileged and selective enjoyment of rights which does not include native citizens of the UAE nor residents(21). Scholars at Risk is one of the few institutions that work directly with professors/researchers at risk of persecution regardless of legal status. SAR also serves as a monitoring device on violations of academic freedom through their Academic

(16)The definition of migrant teachers provided in the report includes professors/scholars.

(17) Saliba, I. (2018). Academic freedom in the MENA region: Universities under siege. European Institute of the Mediterranean (Ed.), Mediterranean Handbook, 313-316.

(18) Hattam, J. "Science, Interrupted," Discover Magazine, viewed 11 October 2017, <http://discovermagazine.com/2017/sept/science-interrupted>.

(19) Jones, D. G. (2022). Academic Freedom, COVID-19 and Other Challenges to Academic Debate. Medical Research Archives, 10(4).

(20) Ross, A. (2011). Human rights, academic freedom, and offshore academics. *Academe*, 97(1), 14-17.

(21) Ross, A. (2011). Human rights, academic freedom, and offshore academics. *Academe*, 97(1), 14-17.

(22) <https://www.scholarsatrisk.org/academic-freedom-monitoring-project-index/>

Freedom Monitoring Index(22), which shows that in 2022 alone, there have been 221 attacks on higher education, ranging from killings to loss of positions. Academic freedom as an extension of civil and political rights transcends the confines of classrooms or universities. In SAR director's words:

"They allowed the public to think academic freedom is only about professors, and not about the public. And that then means tenure is only about professors and not about and we need the public to understand that academic freedom protects the public and protects democracy and protects human rights. Protect gender rights, checks, diversity".

## A. Freedom of expression

The analysis in this section mainly covers the right to access, produce, disseminate information, develop, express and apply knowledge and the right to publicly contribute to public debates within their fields of expertise or study. Although many countries have placed greater emphasis on "understanding and respect for all peoples, their cultures, civilizations, values and ways of life" and "readiness on the part of the individual to participate in solving the problems of their community, country and the world at large" in their national curricula, the teaching materials do not sufficiently match the stated curricular priorities(23). For instance, content about conflict prevention and conflict resolution was only included in around 10% of social science textbooks from 2000 to 2011(24). Furthermore, freedom of speech and expression in education were limited or deprived by some policies against violent extremism which increased law enforcement involvement in education(25). Turkey entered a State of Emergency after coup attempts in 2016. This national crisis was then used as justification for the enactment of restrictive and regulatory laws that limited academic freedom in educational institutions. Especially, the migrant status puts scholars and students at greater risk when it comes to conflict studies. Due to their suspected connections to the Gülen movement, which the government accuses of being responsible for the

military coup on July 15, 2016, almost all university professors and lecturers have become targets of prosecution(26). Aside from the sensitive topics about conflict and security, some other teaching restrictions based on national values show the loss of academic freedom of migrant teachers as well. For example, a US/European lecturer was prohibited by her Gulf region university from "teaching about Jewish or gay sociologists, i.e., Zygmunt Bauman and Michel Foucault"(27).

## B. Freedom of movement

Freedom of movement is fundamental to academic freedom as it advances the exchange of new ideas and bolsters international academic collaborations. The report of Special Rapporteur Promotion and Protection of the Right to Freedom of Opinion and Expression emphasizes that freedom of expression is "regardless of frontier"(28), indicating that scholars enjoy the right to pursue and acquire work in all academic fields, as well as to disseminate their own work or share the work of others across national boundaries(29). Besides, the progression of the Higher Education Research Area and the implementation of a more robust education and lifelong learning policy since 2000

(23) UNESCO. (2018). Results of the 6th Consultation on the implementation of the 1974 Recommendation.

(24) UNESCO. (2018). Global Education Monitoring Report 2019: Migration, Displacement and Education: Building Bridges, not Walls. Paris, UNESCO. 194. Available at: [Global education monitoring report, 2019: Migration, displacement and education: building bridges, not walls - UNESCO Digital Library](#).

(25) UNESCO. (2017). Preventing Violent Extremism through Education: A Guide for Policy-makers.

(26) Saliba, I. (2018). Academic freedom in the MENA region: Universities under siege. European Institute of the Mediterranean (Ed.), Mediterranean Handbook, 313-316.

(27) Morley, L., Alexiadou, N., Garaz, S. et al. (2018). Internationalisation and migrant academics: the hidden narratives of mobility. High Educ 76, 537-554.

(28) International Covenant on Economic, Social and Cultural Rights. Article 19 (2).

(29) Kaye, D. (2020). Promotion and Protection of the Right to Freedom of Opinion and Expression, UN General Assembly Seventy-fifth session, 20.

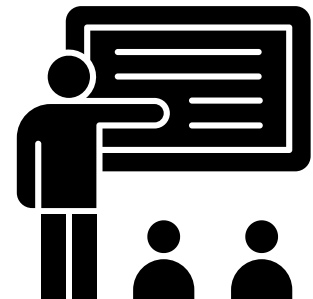


have resulted in the incorporation of “knowledge mobility” as the “fifth freedom” throughout Europe – a fundamental concept in the Bologna Strategy and the policy advancements of the European Union(30). Migrant teachers and students play an important role in mobilizing knowledge yet their freedom of movement and freedom to share knowledge and collaborate with others is impeded by the lengthy governmental process of security clearance and approval before issuing the research visa(31), travel restrictions to certain countries and policies in response to Covid-19 pandemic, etc.

States have the right to control entry into their territories consistent with their obligations under domestic and international law. Some governments deny scholars’ and students’ entry, deport members of the academic community, and enact policies that seek to or unintentionally limit or frustrate academic travel, including for fieldwork, conferences, study abroad, and taking up employment offers. These may violate academic freedom, freedom of expression, and other internationally recognized freedoms. The policy of restrictions has a disproportionately negative impact on higher education and may result in the violation of state obligations to protect the right to education and freedom of expression, even though they prioritize the protection of national security and public health and/or the support of other legitimate state interests(32). Travel restrictions are deeply embedded in the political dynamics between states considering ideology, etc. For instance, executive order No. 13780 was issued in 2017 and remained in effect until January 2021, which restricted travel from Iran, Libya, Somalia, Sudan, Syria, and Yemen. Prior to the executive order, the six Muslim-majority countries sent more than 17,500 students and scholars to the US(33). The order was commonly referred to by human rights and higher education groups as the “Muslim Ban” given that it discriminated against Muslims and did little to address national security concerns which was the purported intent of the US authority(34).

Among all the visa-related factors, work authorization is most closely associated with the access of skilled migrant workers to employment mobility and professional development, etc. When staying in the host country, skilled migrants tried to switch to visa statuses that facilitated their pathways to qualification-matched employment(35). For the teachers and students specifically, the issuance of their visa is highly determined by their previous publications and activities and current areas of study, etc. For example, In 2017, an American teacher of Cameroonian origin was blocked from leaving Cameroon, arrested and blacklisted from Cameroon in retaliation for his article critical of the government(36). He was later released from detention and deported to the US yet reportedly banned from returning to Cameroon where he holds dual citizenship. Likewise, Zambia’s government detained and deported Professor Lumumba, a Kenyan law professor who was invited to deliver a lecture on Chinese-African relations in 2018, probably because the topic is politically sensitive due to the Zambian government’s heavy reliance on Chinese loans(37).

Furthermore, the COVID-19 pandemic and the policies in response hindered scholars and students to engage in international academic travel. Governments enacted strict travel restrictions in 2020 that limited the entry of citizens and permanent residents and required self-quarantine upon arrival. As higher education institutions suspended on-campus activities and applied online



(32) Scholar at Risk. (2021). Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project.

(33) Institute of International Education. (2022). Open Doors, Available at <https://www.iie.org/Research-and-Insights/Open-Doors>.

(34) Scholar at Risk. (2021). Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project.

(35) Shirmohammadi, M., Beigi, M. & Stewart, J. (2019). Understanding skilled migrants’ employment in the host country: a multidisciplinary review and a conceptual model, *The International Journal of Human Resource Management*, 30(1), 96-121.

(36) Scholars at Risk AFMP, (2017), Protecting scholars and the freedom to think, question, and share ideas. Available at <https://www.scholarsatrisk.org/report/2017-12-07-suny-stony-brook/>.

(37) Scholars at Risk AFMP. (2018). Protecting scholars and the freedom to think, question, and share ideas. Available at <https://www.scholarsatrisk.org/report/2018-09-28-kabarak-university/>.

learning instead, most scholars and students abroad were called to return home. Despite the necessity to address the health challenge of COVID-19, the travel restrictions lead to systemwide disruptions to research, teaching, conferences, and other academic activities that benefit from freedom of movement<sup>(38)</sup>.

To sum up, the freedom of movement of migrant teachers and students is largely determined by how states perceive their field of studies, opinions, influence and necessity of travel based on the trade-off including national security, political interest, global health, etc. The negative perception is mainly demonstrated by the low efficiency of visa issuance, detainment, and denial of entry, which forms an obstacle to knowledge exchange and violates the protection of academic freedom and the right to education.

# VI. CONCLUSION AND RECOMMENDATIONS

This addendum focuses on the academic freedom of migrant teachers and students, which is a crucial aspect of the right to education. Academic freedom is increasingly being violated, especially by repressive regimes. Various international declarations, conventions, and reports recognize and provide recommendations for safeguarding academic freedom. Empirical evidence shows that migrant teachers and students face constraints on their academic freedom due to their migrant status and specific political contexts. These constraints affect their freedom of expression, including accessing information and participating in debates, as well as their freedom of movement for knowledge exchange and collaborations.

## A. States should consider:

1. Facilitating visa application for teachers and students to increase academic mobility
2. Enhancing resilience towards emergency situations to mitigate the travel restrictions brought by emergencies to the teachers and students.
3. Agreeing to the admission of international monitoring mechanisms which would accurately reflect the situation.
4. Guaranteeing independent funding channels to ensure the transparency and non-alignment of research.

## B- NGOs and IOs should consider:

1. Publicizing information around violations of academic freedoms.
2. Providing legal assistance to migrant students and teachers facing infringement on their academic freedom rights.
3. Organizing international hybrid events of idea exchange to encourage migrant teachers and students to express freely.

## C. Schools and Universities should consider:

1. Protecting the privacy of migrant teachers and students, especially of those escaping prosecution of their country of origin.
2. Detecting the potential risks of certain research topics in certain countries and reminding the scholars and students with field work.
3. Collaborating with national governments to develop and implement policies that explicitly recognize and protect academic freedom for migrant students and teachers.

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