

Academic Freedom International Study

BURMA

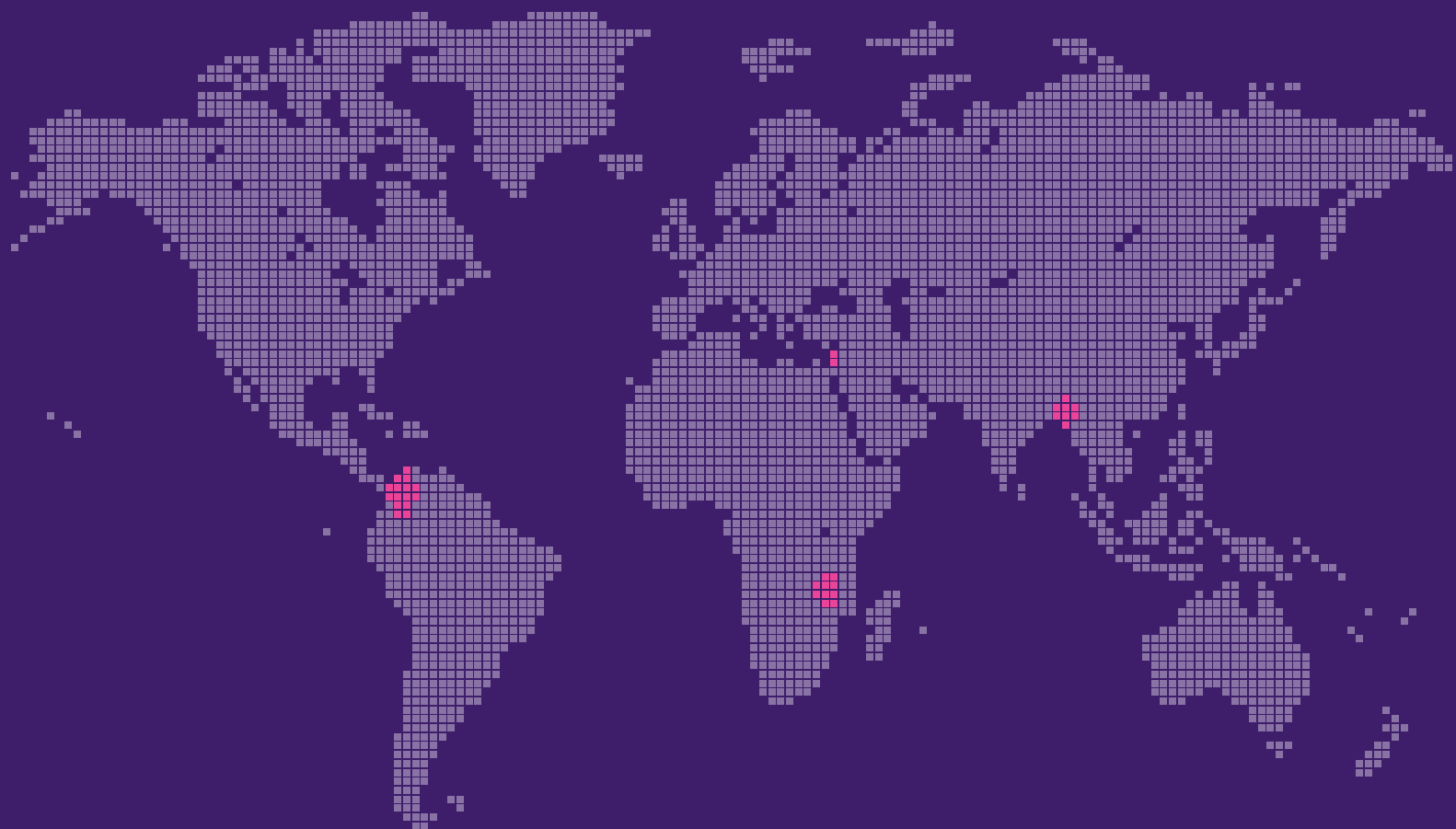
COLOMBIA

ISRAEL

PALESTINE

ZIMBABWE

James Cemmell *May 2009*



UCU
University and College Union



Education International
Internationale de l'Éducation
Internacional de la Educación

This paper about Colombia is a chapter from a larger report looking at academic freedom in five countries (the others are Burma, Israel, Palestine and Zimbabwe), which has been made available as five individual 'single country' chapters for quicker downloading and easier reading. The other four chapters, as well as the whole report, can be downloaded from UCU's website at www.ucu.org.uk.

Author's biographical note

James Cemmell (jamespearl@hotmail.com) presently works as a regulatory consultant in London, UK. His longstanding interest in internationalism in the higher education sector was stimulated while a student at the University of Leeds. Upon graduation in 2000 he was elected as the sabbatical Education Officer at Leeds University Union and was subsequently elected as Convenor of West Yorks Area NUS. He completed a four year appointment at ESU/ESIB (European Student Union) to a committee concerned with emerging policy practices and regulatory frameworks in international education. Along the way he completed an MA in International Development at the University of Bradford and spent a year at the University of Bristol in the Graduate School of Education Centre for Globalisation, Education and Societies where he pursued diverse interests in the GATS, Bologna and higher education reform issues in Kosovo. When time, family and injuries permit, James pursues interests in Shotokan Karate.

James Cemmell asserts his moral right to be identified as the author of this study.

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Foreword

Academic freedom is a core value of higher education, one which provides the basis for the integrity of university teaching and research. The trade unions in the sector give a high priority to the defence of academic freedom. We welcome this report by James Cemmell, which sets out the range of threats to academic freedom in some of the most difficult environments in the world, where to be an academic or a trade unionist may be literally to put your life on the line

The report has its origins in the interest taken by the University and College Union in the United Kingdom, in academic freedom in five of those countries, expressed in motions to the UCU Congress in 2008. UCU has commissioned this piece of independent research from Education International, and James Cemmell was employed to carry out the research and prepare the report. The report will be used to inform and carry forward UCU policy, and will be presented to UCU annual Congress at the end of May, and we hope that it will also underpin EI's global work on academic freedom. We wish to pay tribute to the work James has done to produce a thorough and authoritative report against a very tight time deadline. We hope it will be widely read and used by colleagues in the higher education sector in the United Kingdom and elsewhere.

Sally Hunt

General secretary, UCU

Preface

Academic freedom is a long-standing principle in higher education, which for centuries has put the responsibility on higher education teaching personnel to exercise their intellectual judgment and to explore avenues of scientific and philosophical discovery for the benefit of their discipline, their institutions, their immediate society and the international community.

As advocated by the 1997 UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel, *academic freedom lies at the very heart of higher education and provides the strongest guarantee of the accuracy and objectivity of scholarship and research.*

The 1997 recommendation expresses concern regarding the vulnerability of the academic community to untoward political pressures which could undermine academic freedom. This study demonstrates that regrettably, such pressure remains a reality in a number of countries. Throughout the past decade, there has also been an increasing trend towards the commercialisation of education, which has posed itself as a further threat to academic freedom.

Education International has worked tirelessly on this issue. It is a matter of extreme importance to higher education staff and unions worldwide. EI publishes reports on the implementation of the academic rights enshrined in the 1997 Recommendation on a three-year basis. These reports are presented to CEART (the Joint UNESCO/ILO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel) and are used for CEART's report on the application of the mentioned recommendation.

EI welcomed the approach by the University and College Union to commission research on academic freedom in five countries in which academic freedom faces particularly severe challenges. This comprehensive study will be used as input for EI's next report to CEART, which is due in the coming months. EI would like to thank UCU for taking this initiative and for their collaboration on this project and James Cemmell for the extensive work that he has done.

Fred van Leeuwen

General secretary, Education International

...there is strong evidence that economic and political freedoms help to reinforce one another... Similarly, social opportunities of education and health care, which may require public action, complement individual opportunities of economic and political participation and also help to foster our own initiatives in overcoming our respective deprivations.*

Amartya Sen, 1998 Nobel Laureate

This study was written over five weeks in Spring 2009 and highlights key constraints on the availability of academic freedom in five countries: Burma, Colombia, Israel, Palestine[†] and Zimbabwe. The choice of countries to be profiled was purposeful—each provides, due to the specifics of the national situation, a clear illustration of the interplay between society and the academy’s ability to operate properly and free from unwarranted interference.

The forces exerted on the higher education (HE) sector vary with each national setting. In each country study, demonstrable acts of resistance by the university sector to maintain and uphold academic freedoms can be seen. Unfortunately it is also possible to provide evidence in each national setting of severe restrictions on academic freedoms whereby resistance has either not been effective or is not in evidence. Extreme examples include the use of paramilitary organisations as strike breakers in Colombia, the forcible re-education of university teachers in Burma, the conduct of party political violence on campus in Palestine, the absence of job security for many junior faculty in Israel and the summary detention of student activists in Zimbabwe.

Interdependence of freedoms

The country profiles consider that freedoms within a society are mutually reinforcing. As a consequence, the availability of economic, political, social and cultural freedoms have a bearing on pedagogical and academic freedoms. The profiles consider the national political and social situation in order that the debates concerning academic freedom can be considered in an appropriate context; as a result, each profile differs in structure. However, the basic outline is to consider the national situation, the trade union situation and then the higher education sector. The cases profiled demonstrate key polarizing elements of the national situation—such as the presence of armed movements in Colombia and the restrictions on movement in and between the West Bank and Gaza caused by Israeli actions.

Trade unions, as key social actors, operate in a position of contest within societies. As a consequence, much can be understood about the availability of academic freedoms by considering the situation in which trade unions operate in

within the country. It is significant that in countries where there are severe restrictions on academic and political freedoms—such as in Zimbabwe, and Colombia, national resistance has formulated around trade union actors. Similarly, student and academic movements have formed the vanguard of resistance in countries considered in this study, such as Burma, but also in other countries outside of the present study such as Serbia, South Africa and China.

The role of UNESCO

The 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel provides an important regulatory instrument for assuring free and fair conduct of academic livelihoods. Appended to the Recommendation are fifty international conventions and other legislative instruments which, if implemented, ensure that the academy can operate in a responsible and autonomous manner.

The status of the Recommendation is reviewed jointly with the ILO through the Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) which meets every three years—the next session will be held this year. CEART is an influential mechanism that provides for national cases to be referred for additional study and has previously considered representations made with respect to countries such as Ethiopia and Japan.

Recognising the global nature of HE, there are incremental benefits to all academics from the redress of restrictions on academic freedoms in any individual country. It should also be noted that the availability of academic freedoms requires a balance to be maintained within politics the economy and society. As such, academic freedoms are permanently under threat: even in enabling and more just societies. Surveillance of the status of academic freedoms for consideration by the CEART takes on an important function in the nurturing of democratic practices in different societies that has impact beyond the livelihoods of higher education personnel.

Process

The review was carried out over a five week period in Spring 2009 and considered available data without the benefit of a dedicated country visit. As a consequence of the time

restrictions, the profiles should not be considered as exhaustive reviews—it has not been possible to explore all possible data sources and I have had to make sometimes difficult decisions to include or omit certain illustrative cases in the country profiles.

I would like to thank the following for helpful discussion and direction with regard to specific countries: for Burma, Martin Gemzell and Susanna Lif, formerly of the Olof Palme International Centre; for Israel, Yaniv Ronen, a researcher at the Knesset and Bar-Ilan University; and for Zimbabwe, Simon Chase of ACTSA. The above mentioned provided valuable input on a personal basis and are not responsible for any errors, omissions or inaccuracies in the text which remain my sole responsibility.

In addition, the teams from Education International (EI) and the University and College Union (UCU) provided clear direction while demonstrating sensitivity to the time constraints of the project: at UCU, Paul Bennett and Paul Cottrell; at EI, Monique Fouilhoux and Nina Gustafsson.

Bastian Baumann, Secretary-General of the Magna Charta Observatory, Almira Zejnilagic of GPW Ltd and Chris Weavers, generously made themselves available for helpful discussion.

* Extract from Amartya Sen, 'Development as Freedom', OUP 1999.

† Palestine is the name listed in the UN lists of Missions: <http://www.un.int/protocol/documents/HeadsofMissions.pdf>. Other UN agencies, such as UNDP and UNICEF have used the common term 'Occupied Palestinian Territories': see <http://www.undp.ps/en/aboutundp/aboutpapp.html>, <http://www.unicef.org/infobycountry/oPt.html>

MATRIX OF ACADEMIC FREEDOM COMPONENTS

Examples of autonomy/freedom issues by category

	HEIs/Teachers	Students
Political	<p>Statutory enabling provisions for the protection of academics ● Participation in governance and legislative structures ● Formal status of representative bodies ● Appointment / dismissal process ● Freedom to pursue research ● Restrictions or mandatory syllabus that must/forbade to be taught ● Protest/association rights</p>	<p>Access to decisionmaking structures ● Position in decisionmaking structures (limitations on representation/grievances adhered to) ● Protest/association rights</p>
Economic	<p>Freedom of the institution to enter into contracts ● Freedom to fundraise / set fees ● Living wage ● Collective bargaining ● Properly resourced to do research ● Fixed/ permanent contracts ● Participation in budget process</p>	<p>Access free of economic constraints (fees, books, accommodation, ICT) ● Resources provided (study space, facilities, journals) ● Advice/counselling available ● Scholarships available (for who) ● Parity with private sector</p>
Cultural	<p>Teaching in native language ● Minorities included in the institution ● Local content (eg history, local text books) provided/required/restricted?</p>	<p>Access to instruction in local language ● Local language textbooks/content available ● Minorities treated fairly/encouraged ● Refugees catered for ● Religious restrictions/requirements eg Catholic HEI</p>
Social	<p>Disabled staff enabled ● Gender balance ● Racial minorities protected/subject to specific programmes</p>	<p>Age to attend ● Demographics ● Gender dimension addressed ● Disabled students enabled ● Minorities protected</p>
Pedagogic	<p>Access to ongoing training ● Access to pertinent academic networks ● Standards upheld by proportionate and effective means</p>	<p>Exams conducted fair/transparent ● Burdensome/disproportionate assessment procedure ● Transparent assessment and completion process</p>



COLOMBIA

Academic freedoms in Colombia are maintained by national legislation

and international commitments entered into with UNESCO and the ILO. The domestic situation is problematic—the system is heavily commodified and the financial situation in public institutions restricts the ability of academics to fully engage in world class research. In addition, women are significantly under-represented in the academy and the requirement for national level exams prior to graduation undermines the independence of the university curriculum.

However, academic freedoms are severely curtailed by the presence of violent, non-state, armed movement actors who often maintain a visible presence on campus. The longevity and pervasiveness of armed groupings has placed a number of restrictions on the allocation of public funds, further contributing towards a higher education funding shortfall. The severe human rights abuses committed by these bodies has caused Colombia to evidence the second highest number of internal refugees and to account for over 50% of the murdered trade unionists globally. The presence of armed groupings at all levels of the political process impacts significantly on Colombian higher education reform processes and represents a severe restriction on the availability of academic freedom and related political freedoms.

Government

The Republic of Colombia is governed by a constitution adopted 5 July 1991. The executive branch is lead by President Alvaro Uribe Velez (President Uribe) who functions as both head of state and head of government. Since coming to power on 7 August 2002, President Uribe has been re-elected (in May 2006) with 62% of the vote—his mandate will expire in May 2010 (CIA 2009⁴³).

Despite significant violence during the election campaigns, Organisation of American States (OAS) election monitors concluded that the May 2006 election day itself was largely free from violence and that the election result represents a legitimate mandate—despite an abstention rate of 55%. Santiago Murray, the head of the OAS mission concluded that:

‘While it is known that Colombia is undergoing a difficult situation in terms of public order, which includes assassinations, intimidation and kidnappings by groups operating outside the law, this electoral process demonstrated improved conditions for campaigning, which in contrast to previous elections, allowed the different candidates to carry out some public activities’ (OAS 2006⁴⁴)

President Uribe’s present cabinet is plural and contains representation from three of the major political parties (PSUN, PC, CR), in addition, a number of independents are also represented. The executive branch of the government is dominant over a bicameral Congress (CIA 2009⁴⁵).

PDI (Independent Democratic Pole) was formed and backed by substantial trade union support, including the largest education trade union, FECODE (The Colombian Federation of Educators), along with ASPU (Association of University Professors) and Sintraunical (National University Workers Union of Colombia), key representative unions of the HE sector. PDI contested the 2006 election in concert with AD (Democratic Alternative) as PDA. The PDA candidate, Carlos Gaviria, placed second to Uribe with 22.04% of the vote.

Armed movements

A peculiarity of Colombian politics is the presence of pressure groups with significant military capacity. Armed activity has

been a constant feature of Colombian politics for the previous four decades. The conflict has been fuelled by a number of factors including extreme economic inequality—among the highest in the world with a Gini coefficient of 0.538 - a varied and rich endowment of natural resources (including fossil fuels, mineral deposits and prime agricultural land) and ongoing narcotics wars related to the sizable cocaine and heroin industries.

Groups include left wing guerrillas such as the FARC (Revolutionary Armed Forces of Colombia—founded 1964) and the ELN (National Liberation Army—founded 1966) and right wing paramilitaries such as the AUC (United Self-Defense Forces of Colombia—founded 1997). The organisations have considerable resources at their disposal. For example, the umbrella AUC organisation, prior to its official disbandment in 2006, was estimated to have access to over 31,000 members (US Department of State 2008⁴⁶).

A long-running violent conflict between the government and the organisations developed in its modern form in the 1960s (Justice for Colombia 2009⁴⁷). The establishment of FARC as the military wing of the Colombian Communist Party in 1964 signified the initiation of the wide-scale violence still in evidence today (Global Security 2009⁴⁸).

Paramilitary organisations and the state

Over the previous four decades, the Colombian state has maintained a complex and changing relationship with the armed groups. At various times the relationship has taken the form of active cooperation between the state and the right wing paramilitary groups, working as an extension of policing/military capacity, while at other times the state and armed groups have been engaged in open conflict with each other (Reliefweb 2008⁴⁹).

This relationship is particularly evidenced with reference to AUC whereby AUC paramilitary and government military forces have been known to engage in joint operations and to operate under unitary command structures (Justice for Colombia⁵⁰). A case brought before ILO accused the Vice-Chancellor of the University of Córdoba of engaging UAC to attempt to break a collective agreement upheld by the local union (ILO 2006⁵¹).

The ubiquitous presence of armed organisations complicates private and public activities; however, it also impacts on private sector investment arrangements. For example, in 2007, Chiquita Brands International, a global food company, was required to pay a fine of \$25m by the US Department of Justice for making \$1.7m of protection payments to AUC leader Carlos Castaño for ‘security services’ (US Department of Justice 2007⁵²). The ever present role of armed and criminal organisations is required to be considered whenever political or commercial initiatives are undertaken in Colombia.

Demobilisation initiative

‘Demobilisation’ is a key and controversial manifesto commitment of President Uribe’s designed to reduce the prominence of the armed groups. Scaling back the conflict had taken on a priority importance following a marked escalation of the conflict during the 1990s. His policy of ‘demobilisation’, whereby right wing paramilitary leaders were encouraged to renounce violence in return for immunity from prosecution and extradition to the US, has so far incorporated over 30,000 paramilitaries. Uribe’s presidency has declared success due to the marked decrease in the number of deaths associated with the conflict, a decrease that the government has attributed to the demobilisation programme.

However, demobilisation initiatives are seen as controversial due to the leading cadres of paramilitary groups such as the AUC remaining free to benefit from their former criminal activities while enjoying immunity from sanctions. Trade unions and other critics have argued that the programme not only rewards war criminals but has also made a limited impact on the conflict by displacing former AUC leaders into newly formed, alternative criminal organisations (HRW 2009⁵³).

The complexity of the situation alludes a simple discussion. Researchers at the Harvard Weatherhead Center for International Affairs have posited the requirement for additional conflict resolution measures. These include the requirement of the state to fill the void left by the demobilised groups and the need for the international community to encourage FARC and the other left wing militarised groupings to similarly engage in a meaningful peace process (Theidon 2006⁵⁴).

Persecution of trade unionists

The conflict remains severe with Amnesty International estimating that 305,000 people have been displaced and 1,400 people have been killed in 2007 alone; in addition, over 2000 trade unionists have been murdered since the mid-1980s (Amnesty 2008⁵⁵). These are most likely underestimates due to the reluctance of victims' families to report crimes due to the fear of reprisals (Novelli 2009⁵⁶). It should be noted that members of education unions comprise the majority of trade union victims (EI 2007⁵⁷).

A key criticism levelled at the Colombian institutions by advocacy groups such as Amnesty is the impunity with which violations are committed with murders significantly outweighing convictions. It has been estimated by the CCJ (and subsequently referenced by HRW) that there is an impunity rate of 96.7%. In context, the ITUC (2008 annual study of violations⁵⁸) has estimated that over 50% of murders of trade unionists globally were committed in Colombia.

During one particularly brazen act, AUC publicly threatened to murder Antonio Flores, Milena Cobos, Ariel Diaz, Carlos Gonzalez, Eduardo Camacho and Alvaro Villamizar of the Sintraunical leadership. AUC's letter reasoned that: *'we must eliminate the communist threat against our educational establishments. We will have to take armed action against this threat because we receive no assistance from the legal authorities who we have informed of your activities.'* (AUC 2004⁵⁹)

Trade unions are under particular pressure from paramilitaries due to a clash of both ideological and economic interests. The paramilitary organisations have profited through the operation of protection rackets in relation to foreign investors initiatives in Colombia. To this end, the organisations have encouraged the development of a liberal trading regime with a limited role for trade unions. The former head of AUC, Carlos Castano (now deceased), outlined his organisation's policy vis a vis violence with specific regard to trade unionists thus:

When asked in 2001 about their apparent willingness to blindly attack civilians, Carlos Castaño, who was then the head of the AUC paramilitary coalition, responded: *'Blind attacks? Us? Never! There's always a reason. The trade unionists, for*

example. They keep people from working! That's why we kill them.' (Human Rights Watch Testimony to the US House of Representatives 2007⁶⁰)

Higher education trade union activity

The trade union sector in Colombia has a long tradition of activism and is well established within national political frameworks. CUT (Central Union of Workers in Colombia) is active on the national stage and pursues cross sector policies such as minimum wage rights, rights for collective bargaining and the guarantee of human rights for trade unionists, among other initiatives (CUT 2009⁶¹).

ASPU ASPU (Association of University Professors) is constituted to represent all university professors to ensure that international labour standards, such as those entered into by the state with the ILO are met. Specifically the union is mandated to:

'a) study the characteristics of the profession and the salaries, allowances, fees, safety and accident prevention and other economic, academic, social and working on their members to seek improvement and defense.' (ASPU Constitution retrieved 2009⁶²).

and to subsequently undertake representations on behalf of members to university and other appropriate authorities. ASPU is presently active in campaigns to protest against the casualisation of the labour force and has been actively involved in debates concerning national salary levels and pension arrangements.

Anti-privatisation initiatives ASPU has a statutory responsibility to strengthen the state education system (ASPU statutes *ibid*). As has been recognised by numerous national and international unions, the reforms undertaken in Colombia in the field of HE represent radical moves to privatise the sector and to stimulate private sector competition. ASPU has taken action to resist privatisation measures. A CAUT liaison with ASPU noted that opposition to governmental privatisation agendas was a mainstay of their representative activities:

'Colombia is one of the countries in the Americas which

has been most ruthless in the execution of neoliberal policies on a continent where this is common practice. 'These policies condemn more than half of the country's population to living in poverty. In a document published in October 2001, ASPU states that 23 million of Colombia's 40 million inhabitants cannot satisfy their basic needs and 7.5 million live in conditions of extreme poverty. Average per person income has fallen from \$2,716 U.S. in 1997 to \$1,986 U.S. in 2000. Since new legislation affecting them was passed in 1993, social security and publicly funded health care have deteriorated rapidly... 'Colombia is very complex, because practices of surveillance and of intimidation by terror, of ownership concentration (of the media, of land, of large enterprises) and of the relentless erosion of social support provided by the state, as well as the growing importance of the military, police and intelligence services, can all occur while maintaining a quasi-democratic political system with regular presidential and congressional elections.' (Misgeld/CAUT 2009⁶³)

ASPU has been active in alliance building with other sectoral interests such as student associations via the Asociación Colombiana de Estudiantes Universitarios (ACEU). An ASPU submission to government on the topic of pension reform outlines the shared interests of the various actors in opposing the governmental privatization programme:

'The crucial moment of crisis and aggression against the Colombian Public University by the privatization policy of the national government and the financial situation of suffocation and a budget which has been submitted, it requires more than ever the unity of all university the leadership of their managers, and building strategic alliances with other institutions, especially the National University of Colombia, to address in a single society, formulate proposals for a time of imagination and challenges, and thus defend and keep open the main body of knowledge.' (ASPU 2005⁶⁴)

ASPU and ACEU oppression by armed factions Both ASPU and ACEU have been affected by and have in turn protested against the activities of armed militias on campus. Student

members of ACEU have been targeted by the right-wing paramilitary groups who have accused them of membership of and/or sympathy with the left wing guerrilla movements such as FARC. A recent release from ACEU protested the receipt of death threats delivered to the union membership by demobilised paramilitaries. One of the death threats read:

'We are an organization of former combatants of the AUC, and we believe that we must liberate our universities, suburbs and country of people like this...the death threat is against all the students of Manizales and its organizations...Particularly against the political and student organizations: Student Federation of the University of Caldas-FEUC-Colombian Association of University Students ACEU-Communist-Youth-JUCO-Shirts Rojas.' (ACEU 2009⁶⁵)

ASPU have similarly suffered threats and murders—and have taken action in concert with Sintraunicol to highlight the breaches of human rights to the Inter-American Court of Human Rights (IACHR). In 2004, the court granted precautionary measures in favour of Board Directors of the unions. The court accepted the following evidence:

'Available information indicates, inter alia, that on November 14, 2003, the AUC sent to the headquarters of the National Board Directors of SINTRAUNICOL a communiqué declaring that 15 directors of the trade union are military targets, including the Chair of the University Section of Córdoba and the national directorate from this university. Risk Report No. 006 of the Office of the National Human Rights Ombudsman on February 6, 2004 confirms that the professors, workers, and retired staff who have reported the influence exerted by self-defense groups in the University have been declared allies of the insurgents and therefore are liable to threats. In addition, on May 5, 2004, a public debate was held in Congress, with support from the officers of SINTRAUNICOL and ASPU, on crimes perpetrated by the AUC in the Department of Córdoba, which has increased the risk for the leaders threatened by the Commander of the AUC-ACCU, Salvatore Mancuso.' (OAS 2004⁶⁶)

Sintraunicol Sintraunicol (University Workers Union of Colombia) is focused on the higher education sector. It represents employees and workers of post-secondary education institutions including a number of teachers (Sintraunicol statute⁶⁷).

Sintraunicol has attracted significant violence from paramilitary organisations due to its active opposition to privatisation and national austerity measures undertaken in recent decades in Colombia. The violations of rights committed against Sintraunicol members have ranged from murder (denial of right to life), arbitrary detention (denial of freedom of movement) to breaches of UNESCO and ILO codes designed to protect rights of freedom of association and rights to livelihood.

Case No. 2489 examined by the Committee on Freedom of Association of ILO investigated claims that the Vice-Chancellor of the University of Cordoba had worked jointly with AUC (United Self-Defence Forces of Colombia) to force Sintraunicol by threat of violence against its members to renegotiate a collective agreement. Following the appointment of the new Vice-Chancellor, the union held a meeting at the university which was deemed by the new authorities as an unwarranted strike—a position subsequently upheld by the government in representations to ILO.

In December 2005, and subsequently (last occasion was November 2008, G.B.303/9/1⁶⁸), ILO requested the government of Colombia to invalidate their decision which categorised the work stop-page as illegal. ILO also called for the urgent investigation of the claims relating to AUC involvement in the dispute.

FECODE FECODE was formed in 1962 and is the largest education focused trade union in Colombia with over 250,000 members from the primary and secondary sector. It is the national Colombian Education International (EI) member. The union is influential within CUT and maintains a high level of activity in national politics through the opposition PDA grouping. Due to their presence on the national stage and level of access to the Ministry of Education, FECODE have attracted occasional criticism from commentators who have levied accusations of conservatism with regard to

government proposals to reform the higher education sector in the 1990s, specifically with regard to the 1994 decentralisation law (Wilson Center/Lowden 2004⁶⁹). However, it should be recognised that the proposals provided for a decentralisation of education governance and an increased role for the private sector. Both of these policies would harm the capacity of FECODE to maintain its influence over national education policy and to ensure high levels of union representation.

Human rights violations suffered by university trade union members

FECODE has sought to respond to the violations of human rights committed against its members by launching an initiative in conjunction with the Colombian Ministry of Education to support at-risk teachers—the programme was initiated under Decree 3222. The programme provides relocation assistance for teachers at all levels under threat of harm from military organisations. Education International has highlighted the importance of this approach, most recently with reference made to the murders of two teachers in 2008 (EI 2008⁷⁰).

Violations of trade unionist rights in Colombia have been thoroughly documented in many studies. Following the summary detention of FECODE members Raquel Castro and Samuel Morales, Education International (EI) passed the following policy:

Congress is outraged over the sentencing to six years' imprisonment (following two years in prison on remand) without fair trial or due process of two FECODE activist (Samuel Morales and Raquel Castro) on specious charges of rebellion.

Congress believes that Samuel and Raquel are being held because they witnessed the murder by Colombian Government forces of regional trades union leaders engaged in a human rights campaign. (EI policy 2007⁷¹)

UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel

In Colombia, academic freedom and trade union rights are ensured by national, pan-American (OAS) and international

(UN, ILO, related agencies) legal instruments. The UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel 1997 is the most targeted UN instrument for ensuring the rights of teachers in higher education. Its drafting contains clear reference to the specificities of the profession such as considerations relating to tenure, institutional governance and freedom of research.

The Recommendation builds upon a rich tradition within international law, specifically with reference to the Recommendation Concerning the Status of Teachers, 1966 (UNESCO). The Recommendation itself contains, within an annex, details of other relevant international instruments which together form a regime within which the rights of teachers can be secured globally.

Contained within the annex are a range of ILO instruments relating to rights of freedom of association (1948) and rights relating to collective bargaining (1949)—Colombia has ratified both of these ILO Conventions and has an obligation to uphold them.

Enforcing the UNESCO Recommendation in Colombia

UNESCO Recommendations are normative in nature; a moral obligation is conferred onto UNESCO member states to respect the aims and intent of the instruments. As a consequence, enforcement is not as readily manageable as for legal instruments such as GATS which contain methods of enforcement integral to the agreement.

A number of commentators have drawn attention to the difficulty of ensuring compliance with UNESCO Recommendations. Assefa and Page⁷² (both 2007) have both illustrated breaches of the convention and Page has posited that states should be required to adopt specific enabling legislation. Within Colombia, a partnership led by ASPU, ACEU and FECODE would be a natural lead for such an effort due to their recognised status as the representatives of the education community.

UNESCO monitors the status of Recommendations and has the power to publicise breaches of the various codes. The Recommendation concerning the status of Higher-Education Teaching Personnel is monitored by The Joint ILO/UNESCO Committee of Experts on the Application of the

Recommendation concerning the Status of Teachers (CEART). A 2005 briefing note prepared for CEART (2005 WP.229) examined issues surrounding Colombian education policy reform and concluded that with reference to social dialogue between FECODE and the government:

'According to Lowden (ND), Colombia has had to learn the hard way. Textually, he states that given the forces in play and national political history, culture and context, that may well have been the only way possible. Put in other words, perhaps the very perverseness of the situation which evolved by 2001 may prove to be the best stimulus for achieving better educational results in the future (Lowden, N.: n/d). The climate of political instability and high levels of violence, including against teacher unionists, has not helped the situation' (ILO 2005⁷³)

ILO activity: academic freedom and trade union violations (case study)

Colombia has ratified ILO Conventions C87 and C98: Freedom of Association and Protection of the Right to Organise Convention, 1948; and Right to Organise and Collective Bargaining Convention, 1949 (ILO⁷⁴). The Conventions require that signatories undertake to ensure that their domestic laws do not impair rights to organise and undertake collective bargaining arrangements.

ILO Conventions are monitored by a 'Committee of Experts' who produce an annual report, 'Report of the Committee of Experts on the Application of Conventions and Recommendations'. The 2009 report strongly criticised the government of Colombia for failing to uphold the conventions to which it is a signatory, despite ILO having made repeated requests for compliance.

Specifically, the report outlined long standing concerns with Colombian government provisions to restrict the legality of strikes, require pre-authorisation for the establishment of trade unions, require compulsory arbitration and define the conditions under which a union may be established. FECODE have previously made representation against all of these complaints.

ILO further noted that 2008 had seen an increase in the number of murders committed against trade unionists and considered that the government was generally dismissive of the rights of trade unionists. The report concluded:

‘Observing that it has been making comments for many years, the Committee expresses the firm hope that the Government will take the necessary measures without delay to amend the legislative provisions commented upon and bring them into conformity with the Convention. The Committee requests the Government to provide information on any measures adopted in this respect.’ (ILO 2009⁷⁵)

In addition, an ILO report in 2008 ‘Freedom of association in practice: Lessons learned’ (ILO 2008), further outlined that:

‘In the case of Colombia, the supervisory bodies have noted with concern the considerable increase in complaints concerning the use of cooperatives, subcontracting arrangements, and the use of commercial and civil law contracts to disguise employment relationships and prevent unionisation. They have also noted collective ‘accords’ with non-unionised workers and their impact on unions and collective bargaining in that country.’ (ILO 2008⁷⁶)

Deunionisation measures such as those described above are commonplace within the Colombian private education sector.

Due to longstanding concerns regarding breaches of ILO Conventions and norms, a permanent office was established by ILO in Colombia. The opening of the office was widely welcomed by trade unions. The Colombian government has previously proven responsive to external pressure and there are hopes that the office will act as an important catalyst for a meaningful reform of the basis for social dialogue in the country. The office was established to:

‘Under the “Tripartite Agreement on Freedom of Association and Democracy”, the Government of Colombia undertook to enter into an agreement with the ILO, supported by the social partners, on a renewed presence of the Organization through a representation for promoting decent work, and for promoting and defending

the fundamental rights of workers, their trade union leaders and their organizations, specifically as regards their physical integrity, trade union freedoms, freedom of association and of speech and collective bargaining, as well as free enterprise for employers.’ (ILO 2007⁷⁷).

Academic freedom in the University of Pedagogy and Technology

Case No. 2356 before the ILO was classified as a ‘Freedom of Association Case’ (ILO 2006⁷⁸). The case was a class action brought by a number of trade unions against the government of Colombia alleging breaches of ILO conventions. One of the participating trade unions, the Academic Trade Union Association of Lecturers of the University of Pedagogy and Technology of Colombia (ASOPROFE-UPTC) alleged that two trade union leaders were illegally dismissed as they were covered by trade union immunity at the time of dismissal.

One of the elements of the case concerned action taken by the university to initiate proceedings against Luis Bernardo Diaz Gamboa, chairperson of the union. Mr Diaz Gamboa had represented a trade union member who had brought a grievance for unfair dismissal against the university. The university had alleged that Mr Diaz Gamboa, a trained lawyer, though a full-time university lecturer since 2003, had acted improperly in making representations.

As a public servant under Article 39 Decree No.196 of 1971, he was forbidden from practicing as a lawyer and specifically from litigating against the nation or other public bodies. He had countered that his representations were made in his capacity as a trade unionist and not as a lawyer.

ILO upheld his complaint on the grounds that there was a requirement to fully guarantee Mr Diaz Gamboa’s right to carry out his trade union activities and that his actions had been undertaken as a trade unionist, not a lawyer.

This case presents a clear and representative example of the restrictions on academic freedom that persist in Colombia, which has a generally robust legal framework and an equally capable and well managed union tradition. However, the significant distrust with which workers and management engage—against a backdrop of prevalent political violence—weakens the legislated protections of teacher trade unionists.

A social dialogue built on foundations of mutual respect and trust is a key precondition to ensuring that academic freedom and the rights of HE staff can be upheld in Colombia.

**Higher education sector description:
data from UNESCO 2008 Global Education Digest
(published 2009)**

Statistics relate to 2006 data⁷⁹; an IAU Overview of the sector is included as Annex 1⁸⁰.

1,373,000 students are enrolled in tertiary institutions, for a Gross Enrolment ratio of 32%. 16,290 students study abroad, mainly in the USA. (7,078), France (2,028), Venezuela (1,206), Germany (1,074), Spain (929). Colombia's public expenditure per student in US\$ PPP for ISCED levels 5-6 is significantly lower than the leading spending countries in the region (Mexico, Brazil, Costa Rica, Venezuela) at 1,882. Colombian higher education has undergone significant growth in enrolment with a 300% growth in student number between 1990 and 2005. In order to support the increase, the government has looked to the private sector to fill the gap in provision.

Restrictions on academic freedom in higher education The Education International barometer country study of Colombia has recognised that the Colombian system, and the society in which it operates, indirectly restricts academic freedom: *'Academic freedom is not legally restricted, but paramilitary groups and guerrillas maintain a presence on university campuses. National tests and standards are reported as obstacles to academic freedom. Control of private universities is also seen as a deterrent to academic freedom. Educators and their students at all levels have been victimised by all sides in the conflict. Guerrillas murder, threaten and kidnap academics and their family members for financial and political reasons'* (EI 2007⁸¹).

Sintraunicol have drawn attention to the problems encountered by the university in modernity. National policies to massify the sector, increase the role played by private provision and develop national testing and quality assurance mechanisms have contributed towards a loss of status of academics. Sintraunicol made representations at a public hearing of the Senate on 3 April 2008. J Gonzalo Arango

represented concerns, shared across the trade union sector that the modernisation of the sector was weakening institutional autonomy, adversely affecting the working conditions of university employees with subsequent implications on quality.

The latter reference was qualified with an estimate that 75% of teachers are now on temporary contracts with a commensurate increase in working hours. Sintraunicol have often had a turbulent relationship with the government, during his representation to the Senate, he argued that:

'What is the quality of teaching provided by teachers who lack the time necessary for preparation of lessons, care of students, qualification tests, plus the essential training and update?...the need to retain students to obtain favourable coverage indicators has led to the relaxation of regulations...and show us a picture close to the fateful 'automatic promotion'...It is necessary that the whole country take notice and deal with civil resistance and decisiveness...' (Sintraunicol 2008⁸²).

Rights of women in higher education There is an insignificant gender imbalance among students when total enrolment is considered with a gender parity index of 1.09 in favour of women—this represents among the most evenly balanced ratio in Latin America and the Caribbean. However, despite females representing 52% of the cohort at ISCED level 5 (undergraduate level), representation at ISCED level 6 (advanced research degrees) drops significantly to 38%. As a consequence, the percentage of female teaching staff is low compared to both the region and global standards at 35%.

Education International, in the barometer study (EI 2007⁸³), indicated that gender inequality is pervasive in Colombia and that women face disproportionate hardship in many diverse areas of life. The pervasive sexual inequality found in Colombia may account for the gender difference found in the population of academics.

Women have featured heavily in persecution statistics. A report in *Times Higher Education Supplement* in 2003, outlined a case of gender specific persecution against women students:

'In Cúcuta, paramilitaries imposed a 10.30pm curfew on young people, and female students were banned from wearing tight tops and jeans. The delegation heard that those unfortunate enough to attract the attentions of the paramilitary groups were punished with acid attacks' (THES 2003⁸⁴).

Rights of indigenous people in higher education The Inter-American Commission on Human Rights (an entity of the OAS) holds policy on 'The Rights of Indigenous People in Colombia'. OEA/Ser.L/V/II.84 Doc.39rev.14 October 1993 recognises that:

'According to official figures, there are nearly 600,000 indigenous people whom the Colombian State regards as an invaluable part of the nation and a cultural and social treasure. They are organized into 81 groups, speak 75 different languages and inhabit 25% of the national territory' (OAS 1993⁸⁵).

Chapter XI, Section D requires that the National University of Colombia sets aside places:

'Some 2% of the slots available in the National University of Colombia are reserved for students of indigenous origin and the "Alvaro Ulcué" Scholarship Fund has been set up to assist them financially with their pre-university studies and undergraduate studies. By law, indigenous persons are exempt from military service' (OAS 1993⁸⁶).

Rights of refugees in higher education UNHCR has recognised that Colombia has among the highest number of internally displaced people (IDP) in the world with more than 200,000 registered in 2006 alone, from a population of 42,000,000 (UNHCR 2008⁸⁷). When cumulative studies are undertaken, IDPs account for 5.4% of the national population and 21.8% of rural inhabitants (Ibanez 2008⁸⁸). Significant migration flows occurred during the surge in paramilitary activity in the 1990s. Despite numerous government measures undertaken to promote the absorption of refugees, the higher education sector has not always been able to respond.

THES reported that:

'Gloria Hernandez (not her real name) was forced to flee

to Bogotá from Barranquilla on the Caribbean coast. She had been teaching linguistics at the Universidad del Atlántico. She was a member of the ASPU trade union, and had been receiving death threats from paramilitary groups since 1998.

'She was among staff and students pressing the local authorities to provide protection for those at risk of violence. When no assistance materialised, she was advised by the authorities to go to Bogotá. On arrival in the capital, she was afforded no help whatsoever, neither with finding another job nor with her eligibility for social security' (THES 2003 ibid⁸⁹).

Amnesty International have released numerous studies which illustrate that due to the violent situation on campus, researchers have undertaken self-censorship and many trade unionists have been forced to leave their homes as internal refugees—further impacting their economic rights—the latter forms the basis of ongoing work by the International Organisation for Migration (IOM).

Political dimension

Colombian universities are tied to the state through quality assurance and accreditation mechanisms. Ivan Pacheco, a former Ministry of Education quality assurance expert, addressed the issues in the context of university autonomy—specifically with reference to the standard requirements for students to undergo two public examinations while members of a university—one before they enter the system and a second before they graduate (ECAES exam). He described the requirements as necessary for the purposes of accountability. With reference to autonomy, he argued that the tests are independent of university protocols; however, he recognised that universities may set a minimum level to be obtained before graduation is permitted (International Higher Education 2007⁹⁰).

Within the same journal, Consuelo Uribe argued that as 70% of students attend private higher education institutions, the institutions themselves—both public and private—benefit from strong accreditation and quality assurance processes. However, he also recognises that a mixed system restricts the

