

A decorative border at the top of the page features numerous stylized hands in various colors (orange, green, blue, purple, teal) reaching out from the edges. The hands are arranged in a circular pattern around a central black rectangular area.

# ACADEMIC FREEDOM IN LATIN- AMERICA

## A HUMAN RIGHTS APPROACH

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**ACADEMIC FREEDOM IN LATIN-AMERICA: A HUMAN RIGHTS  
APPROACH**

*From Theory to Practice*

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## GENERAL CONTEXT

What happens to a society when academic experts cannot give their professional comments on problems that are their expertise? How is it possible that key issues in some societies cannot be analysed because of the fear of possible retaliations? And how is it possible that universities cannot be able to face problems that must be scientifically debated?

The following two examples of violations of academic freedom that are in the context of the Covid-19 pandemic illustrate a common consequence: a society in darkness that cannot further develop itself. The first example dates from March 2020 when university professor and director of the Graduate School of Medicine at the University of Zulia, Freddy Pachano, was threatened by the state governor after he expressed his concerns on the Covid-19 pandemic. After these threats, Pachano saw himself forced to flee the country and could no longer speak out on this important topic. A couple of months later, in May 2020, Diosdado Cabello - the President of National Constituent Assembly in Venezuela - threatened the Academy of Physics, Mathematical and Natural Sciences. In his national TV program he threatened experts who published a study that warned a possible high increase of COVID-19 cases in Venezuela. In his speech, Diosdado Cabello accused them of unnecessarily spreading fear in the country.

The situation of academic freedom and the autonomy of higher education institutions in Latin-America raises many concerns<sup>1</sup>. States are increasingly developing practices such as discrimination and criminalisation of protest against universities and academicians whereby they use violence against vulnerable groups within the

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<sup>1</sup> Some of these concern were originally published by: Gómez, D. Aponte, E. (2020: 32-33, 92-94) in “*Academic Freedom as a Human Right and the Need to Ensure its International Protection*”, “*International Law Quarterly*”, Vol XXXVI, no. 1, 2020.

universities. Moreover, this became to be a repeated pattern executed by States and aggravated over time. This constitutes a serious threat against the democratic institutions of the States themselves.

History has shown how dictatorships are known to attack academic freedom, universities and academicians. Authoritarian regimes often restrict the freedom to research, to express and to inform in and out of universities, which consequently hinders the production of scientific knowledge and critical debate within society. Latin-American history vindicates the importance of academic freedom through the disastrous experience of the dictatorships, which closed universities and imprisoned faculties in actions aimed to annihilate critical thinking. This is, however, a pattern that is not only seen with authoritarian regimes. Some of these threats also arise in democratic societies<sup>2</sup>. To illustrate the importance of academic freedom for democracies, a case was mentioned in the Inter-American Commission on Human Rights thematic hearing on academic freedom in The Americas held in Bolivia on February 15<sup>th</sup> (171 period of sessions). The San Andres Mayor University in Bolivia produced scientific reports demonstrating the non-viability of some government projects. As a consequence, its authorities, as well as the university itself, were subjected to retaliatory actions to reduce critical scientific research that was uncomfortable to the government in power. Galileo's scientific thesis was equally uncomfortable at its time. Universities, as centers of production of knowledge and critical thinking, are targets of governments or even of private actors with power within them. Hereby, the criminalisation of protest against universities unfortunately also repeats itself in the region.

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<sup>2</sup> In 2017 most of the episodes monitored by Scholar at Risk (SAR) in USA involved the university being used as a political tool, highlighting the practice of recording university professors, circulating personal information about them and encouraging hate speech. At the normative level there are provisions that refer to sanctions for student leaders promoting censorship within the university campus. See Scholar at Risk (SAR) "Free to Think" Report, 2018.

Universities represent the necessary space for the scientific knowledge production within democracies, in which the critical debate from academicians (professors, researchers, students and different societal actors) is more than necessary; it is binding.

The increasingly threatening situation for universities has attracted the attention of various international human rights bodies. The Inter-American Commission on Human Rights (IACHR) in its 171<sup>st</sup> session carried out the aforementioned regional thematic hearing before the recurrence of situations and patterns of violations of academic freedom, higher education institutions autonomy, as well as discrimination practices and the criminalisation of protest. Different violations of the above-mentioned rights were denounced in Bolivia, Brazil, Canada, Colombia, Cuba, Chile, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Venezuela and the United States, among others. The Cuban, Venezuelan and Nicaraguan current contexts are the most serious, as a consequence of the restriction of professor and student rights and for breaking down the notion of democracy and freedom<sup>3</sup>.

In both Venezuela and Nicaragua there have been a call to violence against university actors from the National Executive. On November 21<sup>st</sup> in 2018, the “de facto” President of Venezuela Nicolás Maduro, asked students to form "University Militias" in order to defend the "revolution" while supporting his regime "with weapons in their hands"<sup>4</sup>. In Venezuela, between 2010 and 2018, at least 50 judicial decisions violated the university's institutional autonomy and consequently academic freedom. These decisions avoided the election of university authorities and the contest of the opposition

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<sup>3</sup> See: 1) Report Free to Think 2018, SAR <https://www.scholarsatrisk.org/wp-content/uploads/2018/10/Free-to-Think-2018.pdf>. 2) “Informe: manifestaciones, detenciones y muertes de estudiantes universitarios en protestas de junio de 2017” in: <http://aulaabiervenezuela.org/wp-content/uploads/2016/10/Informe-Junio-sobre-manifestaciones-UniVE-Def..pdf>. 3) “Informe: manifestaciones, detenciones y muertes de estudiantes universitarios en protestas de mayo de 2017” in: <http://aulaabiervenezuela.org/wp-content/uploads/2016/10/Informe-Tema%CC%81tico-Manifestaciones-Mayo.pdf> 4) “Informe: Detenciones arbitrarias, malos tratos y muerte de estudiantes universitarios en protestas de abril de 2017” in: <http://aulaabiervenezuela.org/wp-content/uploads/2016/10/Informe-Tema%CC%81tico-Manifestaciones.pdf>

<sup>4</sup> See <http://aulaabiervenezuela.org/index.php/2018/11/26/apologia-de-odio-nacional-maduro-propone-crear-milicias-universitarias/>

for university professors had to be suspended. Moreover, autonomous universities were forced to accept the impositions of quotas for new students income made by external agents. Lastly, judicial decision even intervened in the celebration of the graduation ceremonies in which students are granted their diplomas. The Electoral Chamber of the Supreme Court of Justice issued on November 2018 the sentence No. 102, which violates The University of Carabobo's university autonomy, imposing an illegitimate student government<sup>5</sup>.

In Nicaragua, between April and November 2018, the criminalisation of protests against university students intensified, with over 500 students deprived of liberty. Many of the students, were victims of torture, cruelty, and inhumane degrading treatment. Professors and administrative staff have also been victims of government reprisals. At least 40 people have been fired between July and August 2018 from the National Autonomous University of Nicaragua – Managua (UNAN by its acronym in Spanish)<sup>6</sup>. There are serious concerns on the dismissals as retaliation for criticising the policies within Daniel Ortega's government.

A policy of restrictive actions has been developed by Venezuelan and Nicaraguan governments to criminalise protests, attacks and break-ins at university campuses. Through the presence of military personnel, police officers and armed civilians who exercise control and surveillance, they intervene in actions within (and in the surroundings of) universities. Actions have also been noted that are aimed to restrict the freedom of speech, association, peaceful assembly and demonstrations, which in turn has also restricted academic freedom and the right to education. Unfortunately, the practices and patterns are repeated by several governments in Latin-America.

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<sup>5</sup> See <http://aulaabiertavenezuela.org/index.php/2018/11/27/comunicado-en-rechazo-a-las-decisiones-del-poder-judicial-venezolano-que-vulneran-la-autonomia-universitaria-y-la-libertad-academica/>

<sup>6</sup> See report on the situation of professor Freddy Quezada and the patterns on criminalization of protest in Nicaragua at: , <http://derechosuniversitarios.org/index.php/2018/11/21/patrones-de-violacion-a-la-libertad-academica-y-autonomia-universitaria-se-repiten-en-nicaragua/>

On unlawful trials and detentions, some students and professors have been victims of administrative, civil or criminal irregular procedures, arrests without fair cause, interrogations and/or detentions due to false or illicit reasons, which administrative or governmental entities have carried out. In May of 2018, students of the National Autonomous University of Honduras (UNAH by its acronym in Spanish) were brutally repressed and detained in a protest against the privatisation of universities<sup>7</sup>. Consequently, university actors are inhibited from exercising their right to freedom of speech nor academic freedom through the violation of other rights: life, integrity, expression, association, peaceful assembly and demonstration, among others.

With regard to the violation of economic, social and cultural rights in university environments and discrimination in the sphere of higher education, there are some concerns related to the practice of dismissals, loss of positions or expulsions as sanctions for academic work. The academic work in these cases consists out of, for example, statements in the classroom, published writings in specialised magazines or blogs, professional or student union activity, demonstrations by student movements, criticism of leadership or higher education policy in Latin-America<sup>8</sup>. The situation of violence against women and sexual harassment in university campuses is also concerning<sup>9</sup>. Serious concerns also persist regarding access to higher education in Latin-American countries. In Colombia, difficulties in accessing higher education due to high costs stand out. Likewise, the polarisation in the discussion of topics linked to "post-conflicts" in universities also represent a threat. In Chile, access to public university represents a great challenge currently. In Argentina and Bolivia, the

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<sup>7</sup> See: <http://www.resumenlatinoamericano.org/2017/08/23/honduras-crisis-universitaria-es-el-reflejo-del-autoritarismo-del-regimen/>

<sup>8</sup> In Brazil, the university campuses were immersed in campaigns of political activism in the framework of the elections of October 2018. Many professors were questioned and material about the electoral process was confiscated by agents of the State. Although the Constitutional Court of Brazil stopped the attack against universities, there are still great risks for university autonomy.

<sup>9</sup> In 2016, "Distintas Latitudes", surveyed 173 students from 14 countries in the Americas, revealing that 67% of them have heard about at least one case of sexual harassment in their academic institution. See: "Violencia sexual en las universidades de América Latina: omisiones, obstáculos y opacidad", 27 de noviembre de 2016, in: <https://distintaslatitudes.net/violencia-sexual-universidades-america-latina>

discussions about the demands of university students to increase the budget for higher education and the improvement of salary conditions for professors emerge.

The current situation on restrictions and reprisals on academic freedom and higher education institutions in Latin-America that is mentioned above calls the attention of international organisations, human rights bodies, governments, civil society institutions and especially also universities to produce a serious debate on the matter. It is necessary to discuss the meaning of academic freedom, its nature, scope and limits, to determine the grounds of academic freedom in the framework of International Human Rights Law because it should no longer be considered as a simple domestic law issue. It is also important to determine academic freedom's relationship with other human rights such as freedom of speech, freedom of association and the right to education, as well as its relation to the principle of higher education institutional autonomy as an instrument aiming to guarantee academic freedom.

To elaborate further on the challenges to academic freedom in Latin-America from a human rights approach, the book is subdivided into four main chapters:

- I. Academic freedom and University Autonomy: Historic and conceptual approach;*
- II. Higher Education System in Venezuela: Overview and Challenges to Academic Freedom, University Autonomy and Quality Education;*
- III. Restrictions on academic freedom in relation to freedom of expression: Identifying common patterns in Latin-America; and,*
- IV. International Advocacy and Strategic Litigation: Towards a Plenty Recognition of Academic Freedom as a Human Right.*

# I

## ACADEMIC FREEDOM AND UNIVERSITY AUTONOMY: HISTORIC AND CONCEPTUAL APPROACH

*Karla Velazco Silva - David Gómez Gamboa*

For society, the definition of freedom may seem simple. The complex issue of academic freedom, however, is a lot more complicated to grasp. Therefore, the following questions are relevant: Have you heard the term academic freedom before, do you know its definition or scope, and do you know that it is a human right protected by national and international regulations?

Indeed, academic freedom is an inherent human right and is also one of the most important democratic freedoms.

### **1. Conceptual approach to academic freedom<sup>10</sup>**

Hampshire and Searle (s/f) point out that academic freedom can be defined by a special theory and a theory of the university. The first theory came from German universities in the 19th century, that brought importance to the notions of freedom to learn and freedom to teach, while the second theory brought more importance to protect the academic process against authoritarianism.

In this sense, academic freedom refers to the rights of professors in their teaching, including the freedom of doing research. Similarly, the Encyclopedia Americana (quoted by Schoijet Glembotzky, 2013) states that academic freedom is a right for students who have the possibility to "...receive honest education, to form their own

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<sup>10</sup> Some contents were taken from original source in Spanish: "Libertad Académica: Aproximación histórico-conceptual (Gómez et al, 2019:17-20)

conclusions, the right to express and hear opinions and to be heard in a reasonable manner regarding the content of their studies.

In a nutshell, academic freedom allows teachers and students to pursue or seek knowledge. It is essential to the search for truth and, therefore, it is necessary to be able to investigate without fear. In this sense, Fuentes (2011) assures that academic freedom is necessary so that research can concentrate on the search for knowledge without the academician having to fear dismissal and without the need to submit to government contracts, fill out forms or bow to any creed or fashion.

Clark (quoted by Centeno and Guada, 2013:36) points out that academic freedom encompasses freedom of research, freedom of teaching and freedom of learning. A general and complete definition of academic freedom is offered by Madrid Ramírez (2016: 674) citing note 15 of the Apostolic Constitution *Ex Corde Ecclesiae*: *"Academic freedom is the guarantee given to all those engaged in teaching and research, of being able to investigate within their own specific field of knowledge and in accordance with the methods proper to that area and of being able to teach and publish the results of such research, bearing in mind that the above criteria are safeguarding the rights of the individual and of the community within the requirements of truth and the common good"*.

From the above, it should be emphasised that academic freedom allows the development of education, research and publication of the results. For Marin (2011) it is a guarantee to those who teach and research and those who seek the truth and want to publish it to have no limitations. It implies freedom within the law to question and test acquired knowledge, propose new ideas and hold controversial opinions without running the risk of losing the position or powers that were achieved within the institutions.

Moreover, it also allows the exercise of other rights such as cultural rights, civil rights (Fundamental or Public Freedoms) and political rights. Herein, cultural rights entail the right to quality education, freedom to teach, non-discrimination in education

and freedom of research. Civil rights consists of the freedom of expression, peaceful assembly. Finally, for the political rights it also involves the right of participation. In response to the Sustainable Development Goals (SDGs), Goal 4 concerns education. It points out that it is the basis for improving life and sustainable development; therefore it must be inclusive and equitable. To this end, academic freedom should be the main focus. The pursuit and exercise of academic freedom is guaranteed by the principle of the autonomy of higher education institutions, because autonomy is the degree of self-government necessary for effective decision-making related to academic work.

Academic freedom is related to other rights that are inherent to individual rights to be able to pursue academic goals in the field of higher education.

<b>Academic freedom and other rights</b>	
<b>Individual rights approach</b>	<b>Institutional rights approach</b>
<ul style="list-style-type: none"> <li>a. Expressive freedoms:                             <ul style="list-style-type: none"> <li>• freedom of speech</li> <li>• freedom conscience</li> <li>• freedom association</li> <li>• freedom information</li> </ul> </li> <li>b. Right to study and learn</li> <li>c. Right to teach</li> <li>d. Right to research</li> <li>e. Right to publish and disseminate the results of research (without prior restraints);</li> <li>f. Intellectual property rights vis-à-vis the research.</li> </ul>	<p>Academic freedom is regarded as a right with collective dimensions, belonging to institutions (universities, faculties, etc.)</p> <ul style="list-style-type: none"> <li>a. Autonomy of institutions of higher education.</li> </ul> <p>“The enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities”.</p>

According to Bernasconi (2017:32), academic freedom allows universities to achieve their functions of creation, cultivation, dissemination and application of

knowledge. Therefore, it is necessary that professors, who are the ones who carry them out, enjoy freedom to research and to teach, and students also have it, both to learn and to research (if they participate in that activity). Muñoz states (2011: 2): *"...the Declaration of the Principles on Academic Freedom and Academic Tenure (1915) and the Statement of Principles on Academic Freedom and Tenure (1940) aim to define academic freedom as "the freedom to exercise the academic profession in accordance with the standards of that profession". This concept goes back to the Declaration's drafters' purpose of "ensuring that institutions of higher education remain subject to professional standards rather than being politically or financially dependent on public opinion"*.

It is evident from the above that academic freedom is fundamental to achieve the objectives of universities to be focused on conducting research, teaching and being able to have the discussion of scientific knowledge without political subjugation.

As the "Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education"<sup>11</sup> states, academic freedom means 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, teaching, lecturing, and writing". Academic freedom is essential for those in education, research, administrative, and service functions. All members of the academic community have the right to fulfill their functions without discrimination of any kind and without fear of interference or repression from the State or any other source".

According to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) (General Comment No. 13), academic freedom includes the liberty of individuals to freely express opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State

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<sup>11</sup> Lima, 10 September 1988 (Principle 3).

or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognised human rights applicable to other individuals in the same jurisdiction.

## **2. Brief historical background of academic freedom <sup>12</sup>**

Academic freedom has a long and controversial history. For the purposes of this research, it is the authors' opinion that academic freedom has existed since the very beginning of education. This was before there existed any type of norms for teaching.

During the classical period in Greece, education was based on the contributions of poets, orators and sophists. Braga (2014) hereby mentions that the case of Socrates stands out since he turned away from the teaching of the Sophists. Because of this, he was accused of corrupting the youth and of teaching beliefs contrary to the State religion. On the other hand, in Rome the instrument of education was oratory and rhetoric which did not impose any rules of teaching.

According to Hocevar (2017), the first universities in Latin America were established in the 16th and 17th centuries. They were mostly inspired by the model of the University of Salamanca. The concept of academic freedom was, however, still unheard of. Nevertheless, the term *libertas philosophandi* (a precedent for academic freedom) was used in 1622 for Tomasso Campanella's defense of Galileo Galilei. Although there was no formal recognition of academic freedom in universities yet, academics of that time could enjoy considerable freedoms such as immunity, the right to give themselves their own rules and to decide how and what to teach.

Academic freedom arose at a time when the school became part of the state and the teacher became a state official. As a result, the need to seek an educational freedom

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<sup>12</sup> Some contents were taken from original source in Spanish: Velazco K, y Gómez, D, "Libertad Académica: Aproximación histórico-conceptual (Gómez et al, 2019:20-26)

of their own was born. Some point out that the freedom of teaching and lecturing originated in France when it was included in the 1830 Constitution after the Revolution.

For centuries, civil authorities imposed restrictions on the academic community in areas such as teaching and research. For example, the Catholic Church forbade the teaching of theological and scientific doctrines within the university that were contrary to its own dogmas. As Altbach (2000) notes, Martin Luther, a professor of theology, confronted church leaders about their views on theology and resulted in the dismissal of his professorship. As a result of several struggles, and the rise of a nineteenth-century research-based university, freedom of expression gradually expanded and the faculty gained greater freedom in their teaching and research. However, academic freedom has always been an unpeaceful terrain.

Contradictory as it may seem, academic freedom was trampled on in Nazi Germany, despite the fact that this country shaped the modern concept of academic freedom. Altbach (2000:5) states "... not only were there direct restrictions on what could be taught at German universities; professors who were unhappy with the new ideology, whether Jewish or politically dissident, were fired.

During the anti-communist movements in the United States of the 1950s, academic freedom was challenged by government authorities seeking to get rid of allegedly communist universities. Altbach (2000:5) states: *In many cases, as was also the situation with public universities in California and New York, many professors were forced to abandon their positions by state regulation. In other cases, the investigations served to "air" leftist university professors, leading to layoffs and forced resignations. Some universities protected their staff in the name of academic freedom, while others surrendered to outside pressure and ended up firing their professors. Although only a few faculties were closed during this period, academic freedom was at risk in this atmosphere of repression and fear of further layoffs.*

In Europe, academic freedom developed itself in two stages. The first stage was in the 11th century where, in rejection of feudalism, the development of corporations

took place that were known in Medieval Latin as *universitas*. They formed a way of social organization and were used to determine the processes of exchange between professors and students. This exchange defined the teaching-learning process (Thorens, 2006 cited by Centeno and Guada, 2013).

The second stage involved the struggles between the *universitas* and the local, civil and religious authorities. The concept of academic freedom at the origin of the *universitas* was a privilege granted to the institution and its members by the monarchs or the Pope that excluded them from the influences of the local authorities.

Germany, however, was marked by Humboldt's university concept. Centeno and Guada (2013) state that professors in the early 19th century had absolute academic freedom to research and teach, but did not have the complete freedom of expression relating to political issues. Since the 19th century, the definition of academic freedom has expanded in the West and gained greater importance in the 20th century.

Also, Latin America's history has contributed to the debate on academic freedom. The idea of university autonomy established by the 'Reformas de Córdoba' of 1918 has since that time become an example for the whole region (Walter, 1968 quoted by Altbach, 2000). What began as a student protest became a decisive transformation for universities in Argentina and also for others throughout Latin America. As Altbach (2000) points out, the idea of autonomy gave significant protection to professors and students during periods of political tension. However, such protection was not absolute, especially during the military dictatorship in the 1960s and 1970s, but it has nevertheless been a central aspect of reflection on higher education.

In countries with colonial governments, academic freedom is less protected. The powers of colonization always feared unrest from their subordinates, Altbach (2000:5) explains: *When the universities were first established in the colonies, there were generally a lot of freedoms that were not given even though they existed in the metropolitan headquarters. Such fears of rebellion were almost always met, since intellectuals and students were often at the forefront of independence movements. A*

*history of rebellion is difficult to erase; universities, especially in developing countries, remain centres of dissent, and when conflicts arise, academic freedom is easily forgotten.*

In this sense, as Miñana (2011) points out, the first constitutional text that guaranteed freedom of science was the Imperial Constitution of the Church of St. Paul in Frankfurt in 1849 and the German Constitution of Weimar in 1919, which in Article 142 stated: "Art, science and their teachings are free. The State provides their protection and participates in their promotion.

From the above, it can be seen that the first constitutional text that enshrined academic freedom is the German Constitution. Likewise, the freedom to teach established the irremovability of professors in a Royal Decree of 4 August 1836 in Spain. It is in this context that the debate arose at the beginning of the 20th century as to whether professors as civil servants are accountable to the State or whether they are autonomous and free. But at that time, "... *the German jurists proposed that academic freedom should be conceived as an institution, not as an individual freedom and that science is protected in its idealistic and complete sense. It is not the individual scientist who is to be defended, but science itself...*" (Miñana, 2011:83). "*German philosophers of the 19th century made, regarding the study on academic freedom, a distinction between "the individual academic freedom to teach, the *Lehrfreiheit*, and the freedom to learn, the *Lernfreiheit*"*" (Miñana, 2011:83).

For the great Humboldt there was a distinction between the concept *Wissenschaft* (knowledge, learning, science), supra-disciplinary, which corresponds to a trained sage and *Ausbildung* (education) which links education and training, professional development. With *Akademische Freiheit* (academic freedom) it refers to both students (*Lernfreiheit*) and teachers (*Lehrfreiheit*), and includes the freedom to change courses and to suspend, a concept which is outside the British system and more subject to academic pressure which focuses on the freedom of the teacher (Miñana, 2011). After the colonial schools and the old colleges disappeared in the United States, new

prestigious universities appeared that followed the British Oxbridge model. Miñana (2011: 83) states: *The legal embodiment of the concept of academic freedom in the United States dates back to 1860, [...] when Professor Morgan Hart returned from Germany and wrote a treatise on American universities. With this work, the German "Lerhfreiheit" (freedom to teach), which was associated with the methodical research of science, was introduced into the context of the American university (...).*

Although the freedom of speech that was conceived in the nineteenth century has its basis in the bourgeois liberal tradition of individual rights and freedoms (negative freedom, to express their opinions without being censored) and enshrined in the first declarations of rights (American and French in the late eighteenth century), in reality it was mostly shaped from the German tradition, that is, within the framework of subjective public rights, according to Miñana (2011:84): *Although the "public rights granted to individuals, not in an original and autonomous way but rather derived from the individual's belonging to the State" elaborated by the German ius publicists. In other words, an active policy is required on the part of the public authorities to guarantee and promote the right (idem, 52). The strictly liberal approach to individual freedom has been much more influential in the Anglo-Saxon tradition and in private universities (even today), but in the world of state-funded public universities, the influence of the German tradition has been decisive.*

In this sense, Madrid (2016) explains that the concept of academic freedom as an explicit subjective right came formally to existence in the context of the German University during the Enlightenment. This guarantee consisted in the fact that the professors - who were employees of the Ministry of Education, according to Metzger (quoted by Madrid San Martín, 2016) - could "determine the content of their courses and teach the results of their research without having to seek ministerial approval, or fearing disapproval from the ministry".

From what has been said, there is no doubt that the right to academic freedom has had an extensive history full of much controversy up to the present day where

university students continue to struggle for the recognition of this right as a human right.

### **3. University autonomy<sup>13</sup>**

Autonomy means independence and self-determination of an entity or an organ. This requires that they are related to another in such a way that in this relationship the first can be considered as the original and the second as a derivative, which allows us to maintain that the autonomy of the second is the greater or lesser scope of independence or self-determination that it holds, taking the first as a reference" (Peña Solís, 2012: 355-354). Historically, this concept arises in the relations between the State and the political-territorial relations.

Therefore, as Parra (2011:29) indicates, "...autonomy is always equivalent to independence, even if it has several degrees. Autonomy consists out of governing its own interests through its own regulations and powers, highlighting the central issue of what the autonomy of any institution, entity or public or private power means, which wishes to effectively carry out its own plans, projects and initiatives (Altuve, 2008).

Rondón de Sansó (2000: 129) points out:

"... autonomy is qualified as self-determination and, it is in such sense referring to the functional autonomy, constituted by the set of faculties generally agreed to a strongly decentralized body, which allows it to be an independent action in several spheres of its competence, and even in all, appearing in them such action, detached from the instructions and orders that operate in the hierarchical structures".

Autonomy has some constitutive elements, Peña Solís (2012) mentions the following:

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<sup>13</sup> Some contents were taken from original source in Spanish: Faría I y Velazco K, "Autonomía Universitaria" (Gómez et al, 2019:43-91)

- A. A relative and limited independence of the subjective holder of the autonomy, in relation to the subjective holder as a reference;
- B. A capacity of self-determination permitted to the autonomous subject in order to be able to provide for the care of the interests that are proper to them;
- C. A position never originating, always derived, from a legal order on order from which it obtains powers, duties and guarantees.

### **3.1. Conceptual approach to university autonomy**

For Ávila and Gillezeau (2010:170) university autonomy aims to guarantee the universality of knowledge and thought that contributes to the process of the transformation of society. It is enshrined in law and the normative instrument what the university can and cannot do with, for example, its properties, in its relationship with other institutions or with its members and how it chooses its authorities, its students.

The concept of university autonomy involves the following elements: (a) it is an indispensable condition that the university institution must have; it is therefore not a privilege granted by anyone; (b) this condition is a requirement of thought to express itself freely, without constraint; (c) the objective pursued by free thought is to discover the truth. Not the truth in isolation, but the set of truths that, properly systematized, result in scientific knowledge; (d) this scientific knowledge has as its ultimate goal the service of humanity (Pacheco Prado, undated).

The most widespread and generally accepted concept was set forth in 1953 by the Union of Latin American Universities (quoted by Ornelas Delgado, undated: 3) which establishes the following:

"The autonomy of the University is the right of this Corporation to determine its own internal rules and to regulate exclusively over

them; it is the power of the University to organize itself and to administer itself. Such autonomy is inherent in its own existence and not in a grant that is given to it - and must be ensured - as one of the constitutional guarantees".

There are three key aspects of university autonomy: the self-government, academic and financial aspect. The first allows the university to legislate on its own affairs, to organize itself as it wishes and to choose its authorities according to the requirements that they themselves indicate. The second implies that the university can appoint and remove its academic staff according to agreed procedures, select students according to the examinations it applies, draw up its curricula, issue certificates, and so on. It also guarantees academic freedom, which should not be confused with autonomy itself. And the third allows the university to freely dispose of its patrimony, as well as to develop and control its own budget (Marsiske, 2010).

"Autonomy has not been given to us and is not recognized... the State implicitly accepts that without this attribute our House of Studies will not be able to be an authentic university, nor will it be able to carry out effectively its tasks of research, teaching and dissemination of culture. "If the primary functions of any university consist of research and teaching, and these require, by their intrinsic nature (and not by decision of the public authorities), unrestricted freedom, the autonomy that allows university institutions to plan, organize and carry out these tasks freely, cannot have its origin in acts of a political authority, but rather in the fact that the primary functions of any university consist of research and teaching. These require by their intrinsic nature (and not by decision of the public authorities) an unrestricted freedom and, therefore, the autonomy that allows the university institutions to plan, organize and carry out these tasks in a free manner. It cannot have its origin in acts of a political authority, but in activities whose ultimate goal is the search for, knowledge and

dissemination of the truth, regardless of any other purpose and to the exclusion of any dogma (García Máñez, 1979 cited by Marsiske, 2010: 4).

About the origins of university autonomy in Latin America, in most Latin American countries (García Laguardia, 1977; cited by Marsiske, 2010), the first thirty years of the 20th century are the years of university autonomy. University autonomy was first recognized in 1908 at the University of Montevideo.

But it was in the Manifesto of Cordoba, Argentina, that "... the spark of university reforms in Latin America and part of Europe was lit, which is why it is considered one of the most important manifestos and of greatest significance in the world... (Altuve, 2008: 7). Currently:

"... this right is also recognized with its exceptions, even though the laws provide for it. Nevertheless it is expressed as the most eminent way of university management that translates into the quality of its teaching, the growth of its research and the link with the communities, through its extension" (Marsiske, 2010).

The Liminar Manifesto, a key document of the Cordoba reform, was addressed to the "free men of South America" and stated:

"The Argentine Youth of Cordoba to the Free Men of South America Men of a free republic. We have just broken the last chain that, in the middle of the 20th century, tied us to the old monarchical and monastic domination.

We have resolved to call all things by the name they have. Cordoba redeems itself. From this day on, we have one less shame and one more freedom for the country. The pains that remain are the freedoms that are missing. We believe that we are not mistaken. The

resonances of the heart warn us: we are stepping on a revolution. We are living in the moment of truth for America.

The reform movement embraced the demand for university autonomy and led, in many cases, to a legal order. In Argentina, the student movement in Córdoba of 1918 confronted the new problems caused by the changes in the social structure. The University of Cordoba, the oldest in Argentina and a bastion of the Catholic Church and the Cordoba oligarchy, was only one of the five universities in Argentina. The others were the University of Buenos Aires in the early nineteenth century, the University of the Litoral, the University of Tucumán and the University of Santa Fe in the early twentieth century (Marsiske, 2010).

All were governed by the so-called Avellaneda Law, which president Avellaneda had enacted in 1885. This law authorized each university to give itself its own statute. The life and development of each institution depended on its faculty, the rector who was elected every four years and the university assembly. The university had the possibility of reforming curricula, certifying exams and awarding degrees. Only the appointment of permanent professors remained in the hands of the executive branch, which thus established the universities' dependence on the State.

At the end of 1917 there were already expressions of discontent in some faculties of the University of Cordoba but it was in March 1918 when the students of the Faculties of Law, Medicine and Engineering decided to go on strike. The direct reason was because the authorities did not agree with their requests to reform the current system of providing chairs and to lift the suppression of the boarding school for medical students at the Hospital de Clínicas. In July, the First National Congress of Students was organized, which formulated a University Law and Statutory Bases Project (Marsiske, 2010).

Much of this project was incorporated into the university's new statutes, approved by the government in 1918 after a prolonged student movement. The students succeeded in having many of their demands, apart from autonomy, included in a broad

university reform. This included: 1) the election of the university's governing bodies by the university community itself and the participation of its constituent elements; teachers, graduates and students; 2) the introduction of competitive examinations for the selection of teaching staff and the frequency of lectures; 3) free teaching; 4) free attendance; 5) the modernization of teaching methods; and, 6) social assistance for students and thus a democratization of university entrance.

In the university reform movement of Cordoba in 1918, university autonomy appeared as an element of struggle against an oligarchic society with the support of a government representing the middle classes.

However, the students' relationship with autonomy was contradictory. On the one hand, they referred to the historical experience of the development of the universities. They legitimized their proposal for autonomy in the following way: the State should limit its intervention in the university to the granting of the budget and the struggle against harmful, i.e. clerical, influences in university life. On the other hand, they had no hesitation in calling on the government to impose its aims. In fact the student rebellion in Cordoba was won through government intervention.

In addition, it is found that in Mexico there are autonomous universities since 1929, such as the Universidad Michoacana which was included in its Constitution of 1917. This was nevertheless, limited in the following organic laws until 1939 when it was declared a state institution (Marsiske, 2010). However, the student movement of 1929 did not include university autonomy as a central point of its demands but rather spoke for the self-determination of the university. However, it was an idea that was in the university environment (Marsiske, 2010).

Nonetheless, in Mexico the idea of an autonomous university has been present since the bill for a National University of Mexico was presented by Justo Sierra to the National Congress in 1881. In the following ten years, various projects for university autonomy were presented each time the university was affected by political decisions. For example, in 1914, in the face of the imminent militarization of the University, the

discussion around autonomy revived and several projects were presented. One of them was that of Félix Palavicini who was in charge of the office of Public Instruction and Fine Arts (Marsiske, 2010).

In 1917 with the enactment of the new Constitution, the Secretariat of Public Instruction, on which the University depended, disappeared. The time seemed right for a new initiative of university autonomy. In July of that year a group of professors and students led by Antonio and Alfonso Caso, Alfonso Pruneda, Manuel Gómez Morín, Antonio Castro Leal, Vicente Lombardo Toledano and others, took a memorial to the Chamber of Deputies where they asked for full autonomy for the University or, at least, that the autonomy of the University Department that had been part of the disappeared secretariat would be respected (Marsiske, 2010).

In November of the same year a group of senators led by José L. Novelo presented a project in favor of university autonomy, repeating almost entirely the Palavicini project. Finally, the University and Fine Arts Department were able to survive and was incorporated into the new Public Education Secretariat (Marsiske, 2010).

Also during the following years, many projects of university autonomy elaborated by student groups and university professors followed one another: the idea of giving autonomy to the National University emerged every time there was a problem in the relationship of the University with the government. However, the concept of autonomy was then interpreted in very different ways: as independence from the Ministry of Public Education, but directly dependent on the federal Executive; as privatization of professional education; as the University's abstention from militant politics; and also as academic freedom (Marsiske, 2010).

In 1928, at the end of Alfonso Pruneda's term as rector, the reform of the Organic Law of the University was discussed, including a certain degree of autonomy. This project can be considered as the most immediate antecedent of the new Organic Law of 1929 (Marsiske, 2010).

In Venezuela, it was not until 1949-1951 that various student conflicts occurred in the oldest universities: the Central University of Venezuela and the University of the Andes. This culminated in the acceptance of the first university law in 1958. In 1970, the content and meaning of university autonomy was reformed and included in Article 9 (Altuve 2008). With the enactment of the Constitution of the Bolivarian Republic of Venezuela in 1999, university autonomy acquired a constitutional status, as Article 109 explicitly states that the State shall recognize university autonomy as a principle and hierarchy.

On the other hand, we must not forget the institutional and student relations between the universities of the continent. For Latin American students the International Congress of Students was of great importance, which was held in Mexico City from September 20 to October 8, 1921, with the full support of the rector José Vasconcelos. According to the students, this convocation had been a minute of vision and hope in the timetable of humanity that is restless and that builds with eternal matter (Marsiske, 2010).

### **3.2. Content and Scope of University Autonomy**

In summary, the concept of university autonomy can be defined in the following terms:

1. Autonomy implies the right to elect and remove its authorities in the manner determined by its statutes;
2. To formulate the regulations for the admission, promotion and withdrawal of academic and administrative personnel and, at the same time, to establish the corresponding tabulators;
3. To draw up with absolute freedom the plans and programs of study for the professional careers it offers and to program, without any interference, the scientific research carried out therein;

4. The management of the financial resources placed at its disposal is not merely a technical, financial or accounting matter, but reveals the major guidelines of the university and its strategic decisions on teaching, research and extension. It must be done in full accordance with the approval of the distribution made by its own authorities;
5. To award, in accordance with its own legislation, the corresponding degrees and certificates.

In order to achieve self-government for their universities, to give themselves the laws that govern them and to manage the resources made available to them, university students throughout Latin America have engaged in multiple struggles. Today, they are engaged in other struggles, whereas, to preserve and exercise the responsibilities that autonomy confers on them. For Pacheco Prado (undated: 4) university autonomy includes various aspects. The fundamental ones being:

"... academic autonomy, institutional autonomy and financial autonomy. Academic autonomy involves two aspects: on the one hand, the freedom to select, maintain and evaluate their staff, and on the other, to formulate and develop their scientific work programmes. Institutional autonomy considers the power to give itself the governance and administration that are appropriate to the development of free thought and science. And financial autonomy implies the freedom to dispose of its patrimony, according to its requirements, which are those of science".

These essential aspects of autonomy do not in any way imply that the interests of the development of science should be set against the interests of the legitimate development of societies. On the contrary, they imply that the university and its autonomy must always be at the service of society and not separated from it. Science is only science if it serves to solve problems. If it does not serve to solve problems, it is not science.

### **3.3. University autonomy in Latin America.**

University autonomy in Latin America is characterized as universities being regulated not only by laws and decrees but also by being established at a constitutional level (in a large number of countries). The following is a review of the regulation and evolution of autonomy in some Latin American countries. Tünnerman, (2008:29) states:

"In several Latin American countries, university autonomy has been elevated to the highest rank of the legal hierarchy, as it has been incorporated into the Political Constitutions as one of the fundamental principles of the State. This undoubtedly guarantees greater respect on the part of the authority and of course any state intervention that harms an aspect within the autonomy which can be denounced as violating the country's Magna Carta. The existence of constitutional precepts that assign a certain percentage of the State budget to public higher education also helps to guarantee the true financial autonomy of universities, although even in these cases there are often controversies about the calculation of this percentage, since depending on the wording of the precept, it can be on ordinary tax revenues or on the total State budget. The problems of interpretation of the provision usually generate serious conflicts between the State and the universities".

This is followed by a review of the legal regime of university autonomy in some Latin American countries.

#### **3.3.1. Argentina**

Since the university movement of the Reform of Cordoba in 1918 until the mid-1990s, successive democratic and de facto governments have not succeeded in deepening the university-state relationship in terms of autonomy. Moreover, they also

did not succeed in establishing distinctions within this complex attribute, despite the fact that the 1949 Constitution includes it as a university attribute:

“Autonomy was always, rather, a condition that was held in check by the university and sometimes subjugated by the political power. In this sense, for almost eight decades the understanding of both actors on the subject seemed to have no development beyond the founding of the Liminar Manifesto of the youth of Córdoba. Even during the democratic periods there were tensions that caused a crisis in the relationship. Mistrust, suspicion and a certain precariousness in the dialogue seem to have continuously crossed the link between university and state" (Plenkovich et al, 2015:77).

Plenkovich et al (2015) explain, however, that the 1918 University Reform, which enshrined full university autonomy, did not give rise to a university law of such scope. Nevertheless, its achievements were fundamental in terms of autonomy, as successive laws passed between 1947 and 1955 reduced it, despite the fact that the legal discourse of laws 13031/47 (Guardo Law) and 14297/55 characterized the universities as autonomous. During this period, autonomy was greatly restricted and its traditional guarantees lost effectiveness. However, it is stated in these laws that the State must have an active presence to put them at the service of the nation, and although no provision is made for possible intervention by the Executive, this appears almost obvious given the spirit of the law and the administrative control of the legality of the acts, which was widely exercised.

Between 1955 and 1967, there was a return to the notion of autonomy being was broader in scope, but sometimes contrary to reality. According to decree law 10775/56, "the statute of each university shall be published in the Official Gazette and shall enter into force ten days after its publication, and the provisions of law 1597, decree law 6403/55 and any other legal or regulatory provisions that oppose it shall no longer be in force" (art. 9). Consistent with this idea of autonomy, there is no provision in this

legislation for intervention and no hierarchical recourse is allowed. However, during its validity there was the so-called night of the long sticks (29 July 1966) when the military dictatorship decreed the intervention of the national universities, ordering the police to repress students and teachers.

From 1967 to 1995, different governments succeeded each other, both civilian and military. Each of them passed university legislation. With the exception of Law 23068 of 1984, most of those in place during those twenty years referred to "academic and teaching autonomy" and "administrative, economic and financial autarchy" (Laws 17245/67, 20654/77 and 22207/80). However, in reality the university was subjugated during the periods of dictatorship by the State. There was repression, persecution and killings of authorities, professors, assistants and students. The academy was stained with blood and silenced resistance (Plencovich et al, 2015).

The Constitutional Reform of 1994 was a significant milestone in the evolution of autonomy and opened the way for public education. The charter granted a new legal status to universities. Through Article 75, inc. 19, the so-called prosperity or progress clause was incorporated into the powers of Congress. Herein, autonomy is considered to be academic, scientific and pedagogical, as well as statutory, administrative and financial.

Law 24,521 on Higher Education of 1995, which is currently in force, takes up the issue of autonomy and regulates the general principles of the constitutional reform of 1994. Article 2 places the responsibility for education under the guardianship of the State, which it characterizes as an "educational service".

### **3.3.2. Bolivia**

In reviewing the history of university autonomy in Bolivia, Hastie (n.d) explains that in Cochabamba, in 1928, the First Congress of Bolivian Students was held and the Bolivian University Federation was organized. Both represented university students

with a strongly anti-imperialist political stance who proposed the University Reform in Bolivia.

The movement achieved that in the provisions of the Public Education Statute, established on July 25, 1930 and the Constitutional Reform promulgated by the Decree Law of November 27, 1930, that universities: "... will appoint their rectors, professors and officials", unlike the existing appointments made by the government itself, through the Ministry of Education, on which the universities depended. Likewise, they established the University Councils being formed by the deans and by half of the student delegates with a real number of council professors (Hastie, undated).

The autonomy gained in 1930 included the Bolivian university system as a whole, which was organized by university districts and incorporated the Normal and Fine Arts Schools into the autonomous regime, thus providing for the integrality of higher education in the country.

In its IV National Conference, held on December 30, 1938, the Bolivian University Federation outlined the institutional concept of university autonomy by establishing that it fought for a university considered as a decentralized public service with sufficient technical, economic and administrative autonomy; a widely democratic internal organization (FUB, 1949, cited by Hastie, undated). The Bolivian university students, however, not only fought for the respect of university autonomy but also understood that "only in a new society will new teaching and a new university be possible" (FUB, 1949: 309, cited by Hastie, undated). The University Federation, in its document, explains that education is subject to economic and social conditions, therefore it responds to the class interests of those who govern the country. The Political Constitution of the State regulates university autonomy in articles 92 and 93. Furthermore, as for the reforms that have been achieved, it is resolved that:

"The current Organic Charter of the Executive Committee of the Bolivian University (CEUB) establishes among its principles: the autonomy and hierarchical equality of public universities, economic

autonomy, university jurisdiction (ideological independence, free confrontation of ideas), academic freedom, freedom to teach, freedom of research, freedom of study, joint teacher-student government, inviolability of the premises and grounds. In this way, the current institutional framework includes university autonomy, incorporating administrative, ideological and academic aspects and the inviolability of the premises".

In the constitutional conception of university autonomy, there are clear definitions regarding economic administration, issuance of academic degrees and participation mechanisms. However, these sections do not make any reference to the concepts of joint teacher-student government, the freedom to teach, parallel teaching and competitive examinations, free attendance, social outreach and the inviolability of property, while all of which are fundamental elements of Bolivian university autonomy. Moreover, the constitutional text submits accountability to the executive and legislative body of the State, requires the establishment of academic decentralization programs "according to the needs of the State" and to assist in the creation of Pluricultural Community Universities and Institutes (Hastie, undated).

Article 5 of the Organic Statute of the Bolivian University establishes the principles of autonomy and hierarchical equality and economic autonomy, in the following terms:

(a) The autonomy and hierarchical equality of the public universities that comprise it, autonomy being understood in accordance with article 185 of the Political Constitution of the State, means the free administration of resources, the appointment of authorities, teaching and administrative staff, the preparation and approval of statutes, study plans and annual budgets by each university in accordance with the principles, aims and objectives of the Bolivian University at the head of the Executive Committee of the Bolivian University (Hastie, n.d)

(b) Economic autonomy consists of the right to freely administer its resources, to participate as a percentage in national, departmental and municipal income and in special taxes, as well as in the subsidies that the State has the obligation to provide and to receive and to approve and execute its budget, to negotiate loans and to sign agreements (Hastie, nd).

### **3.3.3. Brasil**

The history in Brazil in this sense is very different from that of the Spanish colonies. Higher education was considered inappropriate within the Portuguese colony. In this way, Portugal blocked any cultural growth that could cultivate the teaching of science, letters and the arts. What predominated was Jesuit teaching, which functioned to train priests and cadres for the control apparatus (Plencovich et al, 2015).

Therefore, historically Brazil lived its own concept of a university more recently than the Latin American countries of Spanish origin. While the Spanish-American universities have developed itself from the early 16th century following the medieval model from Europe, Brazil rejected the idea of a university from the colonial period until the beginning of the Republic. Thus in 1882, for example, in Almeida Oliveira's official speech against the university at the Congress of Education, one finds the argument that Brazil, as a new country, should not implement a medieval and obsolete institution; it should, rather, "maintain its special schools because teaching has to enter the phase of profound specialization, the old university cannot be restored". He justified his position in this way: "We cannot have a university because we do not have a culture for it. The university is the expression of a culture of the past and we are going to have a culture of the future that no longer needs it" (Plencovich et al, 2015).

With the mass exodus of the elite from Portugal to Brazil due to the threat of Junot's invasion of Portugal in the Napoleonic era, a total of 36 ships transported the civic, religious and military hierarchies, members of high society, professionals, financiers and the entire administrative cast of the government to Bahia. In January 1808, as soon as the ships carrying the essential elements for the creation of a sovereign

State anchored in American waters, the implementation of political measures began, which implied the rupture of the entire existing colonial system. With that rupture, for the state to become sovereign, the crown needed to train its own officers and the professionals that would make the society

The University Reform of 1968 took place with the authoritarian governments that followed after 1964, in the monopolistic capitalism excluding the State and with the presence of the techno bureaucracy in the heart of the power block. Reflecting a socio-economic structure of development based on industrialization and internationalization of the economy, the university model implemented postulated academic modernization through principles of efficiency and rationalization of the media and representative democratization.

The reform proposed an implementation of a model based on the essential co-presence of teaching and research that is focused on the production of knowledge and which is not structured at the level of academic courses (or chairs), but in departments. Universities extended their teaching, research and extension functions so that higher education was supposed to produce knowledge in many different areas. For this reason, starting in the 1970s and as a consequence of university reform and development policies in science, Brazil substantially increased the number of master's and doctoral programs.

The principle of university autonomy was incorporated into the Federal Constitution of 1988, where article 207 states that universities enjoy teaching and scientific autonomy, administrative autonomy and autonomy in financial and asset management, and shall obey the principle of the indissociability of teaching, research and extension. In 1996, two paragraphs were added to this article, by means of an amendment: 1. Universities are authorized to admit foreign teachers, technicians and scientists, in accordance with the law. The provisions of this article apply to institutions of scientific and technological research. (Borges Ribeiro, 2016:117).

### **3.3.4. Colombia**

Amaya and others (2007) explain that in Colombia education, as part of the integral development of the human being, is understood in accordance with article 1 of the 1991 Constitution as an essential end of the social state under the rule of law. In this sense, the right to education has been conceived as the pillar that makes it possible to exercise other constitutional rights, from dignity, equality and the free development of personality, to the right to work and the free choice of profession and trade. Education also enables the realization of democracy through citizen participation in all areas of public life (Constitutional Court, Ruling T- 974, 1999 and Ruling T- 925, 2002 in Constitutional Court, Ruling T- 264, 2006, cited by Amaya et al.)

Furthermore, the Constitution enshrines university autonomy as a right and a freedom for higher education institutions to set the general rules for their actions, within the limits established by the Constitution and the law (Constitutional Court, Decision T- 492, 1992, cited by Amaya and others, 2007).

The above translates into the capacity for self-regulation and self-determination that universities hold (Constitutional Court, Judgment T-310, 1999 in Constitutional Court, Judgment T-264, 2006 cited by Amaya et al.) Consequently, each institution of higher education is entitled to have its own academic, administrative and disciplinary rules among others. University autonomy therefore makes it possible for each institution to establish the educational and student model it aspires to form, in accordance with constitutional values and principles and in the exercise of its social function.

However, autonomy is not an absolute right as it is based on respect for the values, principles and rights that make up the legal system (Constitutional Court, Ruling T-215, 1997 in Constitutional Court, Ruling T-263, 2006, cited by Amaya et al.) In this sense, the Constitutional Court has considered that autonomy is a limited and complex right: limited by constitutional law (Constitutional Court, Ruling T-156, 2005, cited by Amaya et al.) and complex, because it is a scenario in which other rights

are involved, such as education, free development of personality, academic freedom, and participation, among others. Therefore, it is necessary to weigh autonomy against those rights (Constitutional Court, Ruling T-574, 1993, cited by Amaya et al.).

### **3.3.5. Costa Rica**

According to Baudrit (quoted by Muñoz Valera, 2013), Article 84 of the Costa Rican Constitution establishes six powers for the public university, based on the observance of university autonomy:

1) independence in their functions, 2) full legal capacity to acquire rights and contract obligations, 3) full legal capacity to give themselves their own government, 4) full legal capacity to give themselves their own organization, 5) own patrimony or university finances, 6) financing from the State. In addition, the creation by the Political Constitution of the legal nature of the University of Costa Rica highlights (...) that its legal personality is original. (Baudrit, 2009: 3, cited by Muñoz Valera, 2013).

In other words, its existence and high legal status do not derive from the State administration, nor does it derive from a legislative act. In this sense, the University of Costa Rica cannot be considered a minor public entity, that is, a public entity of lower hierarchy than the one corresponding to the central administration. There is no such hierarchical relationship, no such relationship of dependency or subordination. (Muñoz Valera, 2013).

However Baudrit emphasizes (quoted by Muñoz Valera, 2013) that the constitutional powers conferred on the public university have been tightened in the framework of what he calls a process of "recentralization" of Costa Rican state institutions, which can be dated back three decades. This process, according to this same academic, has been entrusted and assumed in a special way by the General Comptroller of the Republic (CGR).

In Baudrit's view (quoted by Muñoz Valera, 2013), the legal hierarchy of the public university cannot be assimilated to the purposes and functions that have been placed in the hands of any other institution in the country. This is a substantive difference, which currently the courses of action promoted by the CGR tend to blur and rarify. And, to the extent that it is transferred and seeks to establish in the university the codifications, for example, of an organizational rationality and of accountability that are not properly those that correspond to it, the constitutional and institutional status that is proper to it is distorted. Instead, university autonomy is placed in a situation of stalking and delegitimization.

Fronzizi (1971: 273) points out that for four decades now, the factors that undermine university autonomy, "... because they are of an extra-university order, have been disturbing the normal functioning of the institution. At present, within the changes that from public policy and other institutions of public universities are being sought, some of which are pointing in different directions: a) review and modification of the training project, in terms of curriculum, academic offer (increase the offer of technical careers) and pedagogical approach (competitiveness, spirit of innovation); (b) redirecting research, in terms of innovation and mostly linked to the public policies through which the recentralization of State institutions has been instituted in Costa Rica, which could also be called an institutional counter-reform of the social State based on the rule of law, the public university has been repeatedly questioned, especially with regard to the exercise of university autonomy. In this regard, it has been pointed out that autonomy represents an obstacle that prevents the development of an adequate and necessary transformation of the university. (World Bank/Government of Costa Rica, cited by Fronzizi, 1971).

The demand made of the university is that it should make a positive practice of university autonomy. This institution is accused of being very slow in developing the necessary transformations, where there is also an academic community that presents excessive resistance to change. To this is added the indication that because of the particular structure of management and distribution of powers that exists in the

university, this does not allow it to be timely, efficient and effective in making decisions. The university would be suffering from an excessive and inoperative dynamic of deliberation and a laxity of participation that hinders and makes difficult the development of changes.

Therefore, it is argued that the university, in order to present and maintain such organizational and management conditions, is doing nothing more than falling behind, losing its academic activities relevance to the needs that society demands it to meet today. Thus, for example, it is pointed out that by sustaining this deliberative and not very positive exercise of autonomy, the university maintains a training project whose curricular structure is now obsolete, unnecessarily extensive and which, for this very reason, involves a high cost that has no justification. To this end, a positive application of autonomy would have to be that of "rationalizing spending" and proceeding to carry out the corresponding surgical interventions in the curricular paths of the curricula.

However, in its academic scope university autonomy is related to a whole society project, which involves a conception of the university in a broad sense where all the diverse areas of knowledge merge and, in the same way, where knowledge, dissemination and service to society and the needs of national development has as its main reference the critical, reflexive and dialogical nature of thought.

When one speaks of university autonomy, then one is not only speaking of a category "objective", belonging to positive law, but also of the production of meanings in the field of social interactions in which the institutions of society are deployed.

The representation that university autonomy adopts is thus played out within the framework of specific relationships (institutional, historical, political, cultural, societal), in which in each case it is up to the university to assume its functions and tasks.

### **3.3.6. Cuba**

In Cuba, the actions called "University Revolution of 1923" were conceived and developed in the period 1921-1925. The center of this was the University of Havana, the only institution of that level that existed in Cuba at that time, extending to public and private high schools. The students were its driving force and it had the support of broad layers of the proletariat, intellectuals and citizens of the petty bourgeoisie.

It should be noted that the Constitution of the Republic of Cuba currently in force establishes "The State guides, encourages and promotes education in all its manifestations. In the initial paragraphs of Article 39, among other objectives, it states that: education is free; the State maintains a broad system of scholarships and provides multiple facilities for the study of workers; it specifies the integration and structure of the national education system. In its paragraph e) it states "creative and research activity in science is free. The State stimulates and makes research viable and gives priority to research aimed at solving problems that are in the interest of society and for the benefit of the people".

The Constitution regulates that educational services are free at all levels of education; this is a significant expression of the State's social responsibility, while the role assigned to science supports university autonomy in fulfilling the missions of HEIs. In 1976, Law 1306 created the Ministry of Higher Education, part of the improvement of the National Education System:

"...the implementation of the Government's policy on higher education shall be the responsibility of the governing body both of the institutions directly subordinate to it and of those attached to other bodies. It shall exercise methodological, technical-teaching and administrative management of the universities, institutes and centres of higher education directly subordinated to it and, in the case of centres that are subordinated to other bodies, it shall exercise methodological management".

This favoured social responsibility while the closer relationship with HEIs allowed for better support of institutional initiatives; these purposes continue to be enhanced.

### **3.3.7. Chile**

In Chile, freedom of education and autonomy are legally and constitutionally linked. Freedom of education must be sought from Article 19 No. 11 of the Chilean Constitution, which states that "Freedom of education includes the right to open, organize and maintain educational establishments". This right to create and maintain educational establishments is developed in the General Education Law (DFL No. 2 of 2010), which provides:

"Art. 3. The Chilean education system is built on the basis of the rights guaranteed in the Constitution, as well as in the international treaties ratified by Chile and especially the right to education and freedom of education. It is also inspired by the following principles:

(...)

Autonomy. The system is based on respect for and promotion of the autonomy of educational establishments. It consists of the definition and development of their educational projects, within the framework of the laws that govern them.

However, specifically on higher education institutions, the General Education Act states that:

"Autonomy' means the right of each institution of higher education to govern itself, in accordance with its statutes, in all matters relating to the fulfilment of its aims and includes academic, economic and administrative autonomy.

"Academic autonomy includes the power of higher education institutions to decide for themselves how to carry out their teaching, research and extension functions and to determine their curricula.

"Economic autonomy allows such institutions to dispose of their resources to satisfy their own purposes in accordance with their statutes and the law.

"Administrative autonomy enables each institution of higher education to organize its operation in the manner it deems most appropriate in accordance with its statutes and the law.

Article 105 of the Act states that: "Academic freedom includes the power to open, organize and maintain educational establishments, meeting the requirements established by law, and to seek and teach the truth in accordance with the rules of reason and the methods of science.

It should be noted that in this legislation the rights of autonomy and academic freedom are recognized to the founder who creates and maintains an educational establishment, and to the establishment itself insofar as it exercises that right on a daily basis or claims its protection. Even the clause on academic freedom in article 105 of the General Education Act uses the notion of academic freedom in two senses: as a synonym for what the Constitution calls freedom of education, that is, the right to open, organize and maintain educational establishments, and in the sense where freedom of research and teaching that applies to academics, although by extension it is said to exist for the institution.

This specific regulation, for the field of education, an autonomy that in any case is a constitutionally recognized and protected right of the intermediate bodies or associations that exist between the individual and the State. All voluntary associations have the right to a certain autonomy, insofar as they are an expression of the constitutionally guaranteed freedom of association of individuals. Whether they are

social clubs, companies, trade unions, or foundations, the associative bodies arising from the freedom of the individual deserve the legal protection necessary to organize themselves for their own purposes, provided that they comply with the law. Educational institutions are also protected by the freedom of education, which reinforces this area of independence from the public authorities.

But this generic autonomy of the associative bodies only extends to universities and other private educational entities. This is because the universities formed and supported by the public authorities, that is, the State, are not the result of the right of association and cannot base their autonomy on it with respect to the State that created them and under whose authority they function. Consequently, for state universities there can be no autonomy other than the "special" autonomy derived from their own exclusive function around knowledge.

### **3.3.8. Ecuador**

University autonomy was a source of permanent conflict between the higher institution and the State. Until 1925, when the first Law on Higher Education was passed, the State ruled over three aspects of university life: a) the definition of plans and programs, b) institutional administration, and c) the appointment of authorities. The construction of legislation regulating the right to autonomy would be completed in 1945.

University autonomy acquired constitutional status in 1945. Article 143 states that "The universities are autonomous in accordance with the law and shall pay special attention to the study and resolution of national problems [and] to the dissemination of culture among the popular classes".

For Galvez (2016) the term university autonomy in our country has been misused, mainly by actors who have made public institutions of higher education bastions of popular struggle in order to achieve political gains, as well as sources of bureaucracy and inefficiency, which has led to a poor image before society. The current

Constitution (Article 75) and the LOES, have been oriented to the recovery of the concept of the university as a public good, where concepts such as university autonomy, free and equal opportunities are defined, always under a principle of responsibility, with the purpose of having a quality higher education as a fundamental pillar for the development of the country.

### **3.3.9. El Salvador**

In the efforts of the Reform, in El Salvador, the issue of universities and of higher education itself, seems to be somewhat isolated and alien to the process. Paradoxically, the first agreements began at this educational level with the discussion and subsequent approval of the Higher Education Law in November 1995, merging the axes of modernization and quality.

The perception of "isolation" may have been linked to the issue of university autonomy, an area in which the Ministry of Education had played little role, because the autonomy or freedom of universities had been understood with an inadequate hermeneutic. In the case of the Universidad de El Salvador, the problem has been linked to ideological and political confrontation, and in the private universities it was interpreted with the free will of their initiatives.

### **3.3.10. México**

With respect to Mexico, it is found that, along with the constitutional reform to Article 3 promulgated in 1980, university autonomy strengthens educational institutions, separating their activities from any political conflicts that may arise. Without being merely a bureaucratic body, the universities find through autonomy a space free of partisan affectations. In this sense, autonomy supports the university because it becomes a space for reflection and criticism of political power, regardless of which group governs the nation. Likewise, it allows the selection of authorities not to pass through organizations of the Executive or Judicial Branch. Likewise, it guarantees that the universities themselves develop, according to their needs, the study plans and

programs that they judge ideal to fulfill their mission and vision (Plencovich et al, 2015).

A final strength that autonomy provides is the academic freedom of its teachers, both in teaching and research. In Mexico, academic freedom is undoubtedly a pillar of the education system. From this freedom, it has been possible to characterize, theorize and criticize the public reality of the country.

In budgetary terms, universities must be attentive to the economic changes affecting the country, since they themselves are in a situation of dependence. On the other hand, they need to establish broad administrative systems that monitor not only internal but also external conditions. That is to say, they must have monitoring apparatuses that prevent the interference of external factors, sectors or persons, giving priority at all times to the resolutions that are taken within their organs of authority.

The initial objectives of the 1923 University Revolution were: to eradicate scholasticism, dogmatism and the archaic methods of teaching in force at the University and to replace them with modern, scientific methods in which education was combined with research; to purge the university faculty,

"... by replacing unfit, absent and immoral professors with academic and morally impeccable ones... to make the University independent from the direction and control of the governments of the Cuban neo-colonial republic, which made that house of studies a victim of its anti-national, demagogic and corrupt practices; to implement university autonomy in the academic, teaching, administrative and financial spheres; and the democratic government of the University, through the participation in it of professors, workers, students and university graduates" (Polanco, 2014: 281).

### **3.3.11. Perú**

Thus, university autonomy historically turns out to be a conquest for which Latin American universities, so prone to the nefarious influence of a vertical and anti-democratic public power, have fought so hard for.

At present, a large part of national legislation has constitutionalized this fundamental right of the university. The Peruvian Constitution regulates it in its article, economic, normative and administrative, within the law". This law to which the norm makes reference is the university law (L. 23733) which, in its article 4 develops the notion of autonomy, extending it to the normative, academic, economic and administrative fields.

However, university autonomy, as a condition and guarantee of academic freedom, cannot be a pretext for the development of an "ascetic" or "chemically pure" science of social content.

### **3.3.12. Venezuela**

In Venezuela, the first attack on this principle of autonomy took place in 1849, through the Code of Public Instruction, which allowed the Executive to: "remove those professors from their positions who were disaffected with the government or with the democratic spirit of the system of the Republic" (Márquez, 2003).

Subsequently, autonomy went through a series of cycles of injury and ignorance of it, until the fall of the dictatorship of Pérez Jiménez, in January 1958, with the Law on Universities of December 5, 1958, which with some reforms remains in force until today.

The story that follows is also sobering. Since the 1969 Academic Renewal reform movement that established the principle of parity, the modification to the Universities Act of 8 September 1970 which maintained the autonomous system, weakened fundamental aspects of autonomy, specifically in the power of the executive to dismiss

university authorities and damage the principle of inviolable territorial autonomy. The 1999 Constitution can be seen as the culmination of a cycle of strengthening autonomy by raising university autonomy to constitutional status. Undoubtedly, this experience of cycles of respect and injury to autonomy has its origin in the struggle for power, regardless of the ideological tendency of the forces in contention.

The Law on Universities of September 8, 1970, defines in its article 2 the universities as institutions at the service of the Nation. Moreover, in its article 8 it classifies them as National or Private. It establishes that National Universities will acquire legal personality with the publication in the Official Gazette of the Republic of Venezuela of the Decree of the National Executive by which they are created. On the other hand, private universities require the authorization of the State for their operation, in accordance with Articles 173, 174, 175 and 176 of the aforementioned law. It is in Article 9 where it is stated that the Universities are autonomous. Such autonomy is covered by the provisions of the Law and its Regulations:

- 1.- Organizational autonomy, by virtue of which they may dictate their internal rules;
- 2.- Academic autonomy, to plan, organize and carry out research, teaching and extension programs that may be necessary for the fulfillment of their purposes;
- 3.- Administrative autonomy, to choose and appoint their authorities and to designate their teaching, research and administrative staff.
- 4.- Economic and financial autonomy to organize and administer its assets.

Article 10 regulates the National Experimental Universities, which are created by the National Executive in accordance with the provisions of the Education Act and after hearing the opinion of the National Council of Universities, in order to test new orientations and structures in Higher Education.

The National Experimental Universities enjoy autonomy within the special conditions required by educational experimentation. Their organization and functioning is

established by executive regulation and they are periodically evaluated in order to take advantage of the results that are beneficial for the renewal of the system and to determine the continuation, modification or suppression of their status.

The aforementioned Article 10 provides that the National Executive, after hearing the opinion of the National Council of Universities, may also create or authorize the operation of Institutes or University Colleges, whose regime will be established in the regulations it issues, and which will not have representatives in the National Council of Universities.

With the entry into force of the Constitution of the Bolivarian Republic of Venezuela, it is given constitutional rank, as it is enshrined in Article 109:

"The State will recognize university autonomy as a principle and hierarchy that allows professors, teachers, students, and graduates of its community to dedicate themselves to the search for knowledge through scientific, humanistic, and technological research, for the spiritual and material benefit of the Nation. The autonomous universities will give their rules of government, operation and the efficient administration of their patrimony under the control and surveillance that the law establishes for this purpose. University autonomy is enshrined in the planning, organization, development and updating of research, teaching and extension programs. The inviolability of the university campus is established. The national experimental universities will achieve their autonomy in accordance with the law".

With the mentioned article, the university autonomy is given constitutional rank and the universities are integrated to the general structure of the State, elevating them to the hierarchy of entities of constitutional rank, placing them in a hierarchical level superior to

the functionally decentralized entities of the National Public Administration.

#### **4. Inviolability of the University Campus**

The Executive Council of UDUAL, in 1966, endorsed the Tokyo declaration, adding that "autonomy and its full exercise also lie in the space of the university campus, which has been inviolable for centuries, and that if it is not now by the dictates of law, it is by mandate of history and tradition, since it constitutes a guarantee for the dignity of professors and students in the free exercise of their university life". It should be understood, however, that the inviolability of the university campus does not mean 'extraterritoriality', much less impunity for ordinary crimes. The public forces, with prior authorization from the competent university authorities, can enter the university premises when it comes to the commission of common crimes, for which autonomy should not serve as a shield" (Tünnermann, 2008: 26).

In fact, when speaking of university autonomy, one of the issues that always arises is that of the inviolability of its headquarters or as it is also called autonomy.

In the Law of December 1961, the Dominican Republic declared that all land and buildings used and reserved for the University City are the property of the University.

In Venezuela, the law passed in 1958 declared the university campus inviolable. Later Rafael Caldera stated that "we want an autonomous University, but not as a kind of sovereignty and extraterritoriality where the laws or institutions of the State do not reach Article 7 of the 1970 Universities Act, which is still in force, regulates the inviolability of the university campus:

"The campus of the universities is inviolable. Its surveillance and the maintenance of order are the competence and responsibility of the university authorities; it cannot be raided except to prevent the

consummation of a crime or to comply with the decisions of the Courts of Justice.

The university campus is understood to be the space that is precisely delimited and previously destined to the realization of teaching, research, academic, extension or administrative functions of the institution.

The national and local authorities are responsible for the surveillance of avenues, streets and other sites open to free access and circulation, and for the protection and security of buildings and constructions located within the areas where the universities operate, and other measures that may be necessary to safeguard and guarantee public order and the safety of people and property, even when these form part of the University's heritage.

The inviolability of the university campus is enshrined in the Constitution of the Bolivarian Republic of Venezuela (Article 109). In Chile, on June 5, 1971, Salvador Allende, in issuing the University Statute, declared that he was in favor of "the most absolute respect for university autonomy and its territorial inviolability.

Article 2 of the 1970 Universities Act states that universities are institutions at the service of the nation, and later Article 9 states that 'universities are autonomous. Therefore, it is inferred that autonomy is a privilege of universities in general, since where it does not distinguish the legislator should not distinguish the interpreter.

The 1999 Constitution establishes that the State "...will recognize university autonomy as a principle and hierarchy that allows professors, teachers, students, and graduates of its community to dedicate themselves to the search for knowledge through scientific, humanistic, and technological research, for the spiritual and material benefit of the Nation," without excluding private universities, which is why they are considered included.

The article continues by stating that autonomous universities, within which both National and Private Universities are considered, will give their rules of government, operation and the efficient administration of their patrimony under the control and surveillance that the law establishes for such purposes, while enshrining university autonomy to plan, organize, develop and update research, teaching and extension programs.

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## II

# **HIGHER EDUCATION SYSTEM IN VENEZUELA: OVERVIEW AND CHALLENGES TO ACADEMIC FREEDOM, UNIVERSITY AUTONOMY AND QUALITY EDUCATION**

*David Gómez Gamboa - Karla Velazco Silva - Ricardo Villalobos*

This chapter is focused on higher education system in Venezuela and challenges to academic freedom. In the same matter, it analyzes the administrative structure of universities and self-government bodies and percentages of student and professor dropouts. Moreover, this chapter explores general patterns on violations to academic freedom and university autonomy in Venezuela.

### **1. Context**

During the past eighteen years, the Venezuelan educational system has gone through a transformation process that impacted all stages of education negatively causing the annihilation of democracy and the violation of human rights, especially in the university environment.

This transformation has its genesis in the ideals of the late Hugo Rafael Chávez Frías, former President of the Bolivarian Republic of Venezuela in 1999-2012. Chávez stated "we have to demolish the old regime on an ideological level ... it is not the facts, it is not the surface that must be transformed, it is the man<sup>14</sup>". His premise has its source in the phrase of Ernesto "Che" Guevara in his book *The New Man* (1965), which was read more than once by the late Hugo Chávez: "We will build the man of the 21<sup>st</sup>

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<sup>14</sup> Chávez, Hugo. 2004. Strategic lines of action for the coming years. Speech at the Theater of the Military Academy. 12th of November. Available at: <http://www.rebellion.org/noticia.php?id=10448>.

century ourselves. We will forge ourselves in daily action, creating a new man with a new technique” (Aguiar, 2012).

Gradually, this "new man" idea came to life. In 2004, Chávez inaugurated The New Stage, The New Strategic Map of the Bolivarian Revolution<sup>15</sup>. This was based on a process called "The Five Motors of the Socialist Revolution<sup>16</sup>". In words of Asdrúbal Aguilar (2012) its purpose was the dismantling of the current constitutional scaffolding.

It should be noted that these ideals were part of the legacy that was passed on to Nicolás Maduro Moros, the current President of the Republic. Since his arrival in Miraflores in 2013, he further deepened regressions in the satisfaction of the right to education. Regressions that first appeared as slight trends but have been consolidated (Provea, 2016).

One of those so-called "Motors" was the establishment of *socialist education*. This popular education was known as "Moral y Luces" (Moral and Enlightenment) and had as its goal to educate within the values of socialism. "The motor of popular education makes noise so people know that there is no going back to the idea of sharing with Cuba and its Constitution of the ultimate goal: to build a communist society" (Aguiar, 2012 p.325).

During 2007 the ideal of “unique thinking” in Venezuela was strengthened through three main events. First, a Decree with force of Organic Law was issued creating the Central Planning Commission<sup>17</sup> which was entrusted with the design and orientation of the socialist model. Second, the 2007-2013 Economic and Social

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<sup>15</sup> Presidency of the Republic. 2005. Bolivarian Revolution: "The New Stage" The New Map Strategy "The Revolution With in the Revolution" Presidency of the Republic ". Available at: <http://slideplayer.es/slide/7309749/>

<sup>16</sup> The 5 constituenten gines were part of the proposal of Hugo Chávez to consolidate Socialism, after being invested for his second presidential term in 2007. These 5 motors contained 1. Enabling Act (dictate national laws), 2. Reform of the Bolivarian Constitution of Venezuela; 3. National day called Moral and Lights (initiate popular education), 4. The geometry of Power (restructuring of the political, economic, social and military) and 5. Constitute the communal power.

<sup>17</sup>See: [http://www.badellgrau.com/upl/comisi%D3n\\_central\\_de\\_planificaci%D3n.pdf](http://www.badellgrau.com/upl/comisi%D3n_central_de_planificaci%D3n.pdf)

Development Plan named "Simón Bolívar National Project: First Socialist Plan<sup>18</sup>" was adopted. Its text states that the purpose of the System is oriented towards Socialism. Third, the president promoted the constitutional reform in which its explanatory memorandum mentioned "the construction of Venezuelan socialism."

When the reform was rejected by the people, the National Assembly approved the Organic Law of Education in 2009 by submitting it to the priorities of the Economic Development Plan. This left the education system at all levels under the administration of the so called State Teachers. According to Narváez (2005)<sup>19</sup>, this was born from the political will of the State to provide and control the education that citizens are to obtain.

Romero Lozano (1993)<sup>20</sup> states that after the independence and the configuration of the new states in Latin America, the purpose was evident of incorporating and developing education as an institution and a public service, with the "Teaching State" being installed with a secularist, positivist and liberal ideology.

On the other hand, a controversial aspect in the debate about the "Teaching State" is based on the very first moment it was implemented in Venezuela. This position indicates that the idea of a "Teaching State" arises from the first Republic. In the Constitution of 1811 in article 9 the provincial governments were given the power to create schools, academies and colleges (Universities). Others explain that its explicit establishment was in article 53 of the 1947 Constitution<sup>21</sup>, and its unequivocal definition as a doctrinal and administrative foundation of education in the articles included from 1 to 6 of the Organic Law of Education of 1948 (Narváez, 2005).

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<sup>18</sup> See: <https://www.mppeuct.gob.ve/sites/default/files/descargables/proyecto-nacional-simon-bolivar.pdf>

<sup>19</sup> See: [http://saber.ucv.ve/ojs/index.php/rev\\_docu/article/view/4695/4504](http://saber.ucv.ve/ojs/index.php/rev_docu/article/view/4695/4504)

<sup>20</sup> See: <https://www.oei.es/historico/oeivirt/rie01a01.htm>

<sup>21</sup> **Article 53.** All the inhabitants of the Republic are guaranteed the right to education. Education is an essential function of the State, which will be in the obligation to create and sustain institutions and services sufficient to meet the educational needs of the country and provide the Venezuelan people with the indispensable means to overcome the cultural level. See: <http://americo.usal.es/oir/legislatina/normasyreglamentos/constituciones/Venezuela1947.pdf>

In spite of the above mentioned, the idea of the educational State in Venezuela has been strengthened with the aim of annihilating the “plural thought”, manifested especially in the repeated attacks against universities in the country.

This chapter analyzes the administrative structure of universities and self-government bodies and the percentage of students and professors’ dropout. Besides, it explores general violation patterns to academic freedom and university autonomy in Venezuela.

## **2. Higher Education System in Venezuela: Academic Freedom, University Autonomy and Quality Education under threat?**

### **2.1. Some figures in the framework of the “misinformation” public policy.**

While the socioeconomic context affects the education in Venezuela, neither Education Ministry nor Higher Education Ministry presented credible "Accountability Annual Reports" since 2016. It seems to be a public policy of disinformation, folded in many cases of information without sustenance and information that is even proven to be contradictory.

On April 2016, the Minister of higher education said that 410,189 university places were allocated: 75% public lyceum, 56% women, 3,127 indigenous groups (0.8%) and 1301 people with disabilities (0.3%). But, on May 7<sup>th</sup> of 2016 the Minister gave other figures: applications 317,723 and assigned 222,999. Remaining 94,684 granted in September Provea in 2016<sup>22</sup> (quoted by Professor Gómez, 2019<sup>23</sup>)

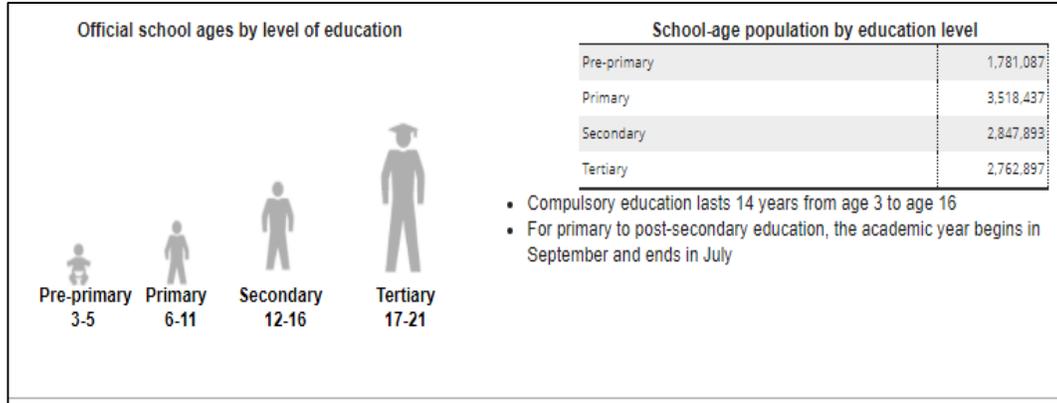
Also, Unesco has said that school ages of the tertiary level in Venezuela vary between 17 and 21 years old and count of approximately 2.762.897 students. However,

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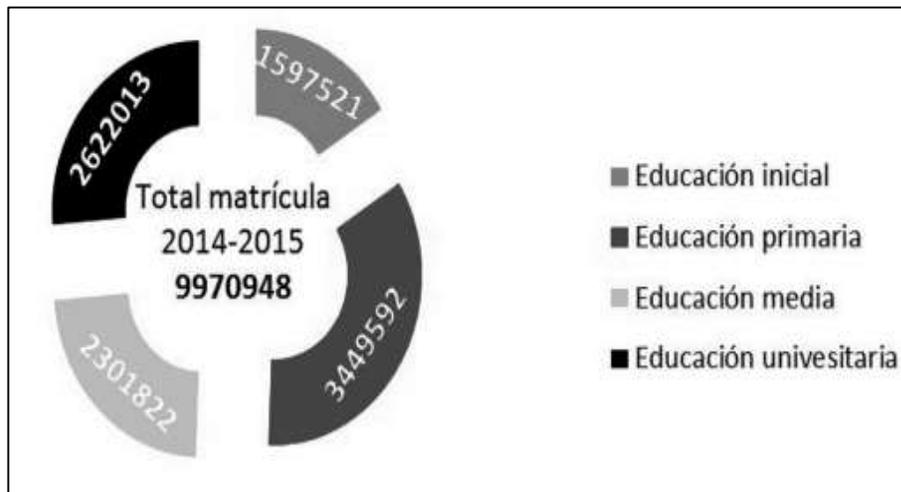
<sup>22</sup> Programa Venezolano de Educación Acción en Derechos Humanos, PROVEA (2016). Derecho a la educación. Informe de Provea enero-diciembre 2016. <https://www.derechos.org/web/wp-content/uploads/06Educacio%CC%81n.pdf>

<sup>23</sup> Gómez Gamboa, David (2019). Academic freedom in Venezuela: Context, restriction and Challenges. Cuestiones Jurídicas Revista de Ciencias Jurídicas de la Universidad Rafael Urdaneta Vol. XIII, No. 2 Julio - Diciembre 2019

the accessibility to higher education amount according to Provea (2016 quoted by Professor Gómez, 2019<sup>24</sup>) was about 2.222.013 students.<sup>25</sup>



**Image N°1: Official school ages by level of education<sup>26</sup>**



**Image N°2: Accessibility to education (Provea, 2016)**

<sup>24</sup> Gómez Gamboa, David (2019). Academic freedom in Venezuela: Context, restriction and Challenges. Cuestiones Jurídicas Revista de Ciencias Jurídicas de la Universidad Rafael Urdaneta Vol. XIII, No. 2 Julio - Diciembre 2019

<sup>25</sup> Programa Venezolano de Educación Acción en Derechos Humanos, PROVEA (2016). Derecho a la educación. Informe de Provea enero-diciembre 2016. <https://www.derechos.org/ve/web/wp-content/uploads/06Educacio%CC%81n.pdf>

<sup>26</sup> See: <http://uis.unesco.org/en/country/ve>

According to the Ministry of Popular Power for University Education, Science and Technology (MPPPEUCT), the High Education System Population in 2016 consisted of 2.800.000 students, which were distributed within: 7 National universities<sup>27</sup> (365,000 student), 27 Private Universities (290.000 students), Sucre Mission<sup>28</sup> (200,000 students) and Experimental universities, University colleges, University institutes and Institutes of advanced studies. On January 10<sup>th</sup> 2019, President Nicolas Maduro declared in an official speech that by 2018 the student population in Venezuela (basic level and higher education level) is of 10.4 million students. However, this figure is inconsistent<sup>29</sup>.

## **2.2. Groups with Special Protection Needs**

Constitution of the Bolivarian Republic of Venezuela<sup>30</sup> (1999) guarantees the right to equality and non-discrimination (Article 19) and recognizes that “every person with a disability or special needs has the right to full and autonomous exercise of their capacities and their family and community integration”<sup>31</sup>.

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<sup>27</sup> Universidad Central de Venezuela; Universidad Centro Occidental Lisandro Alvarado; Universidad de Carabobo; Universidad de Los Andes; Universidad de Oriente; Universidad del Zulia and Universidad Simón Bolívar.

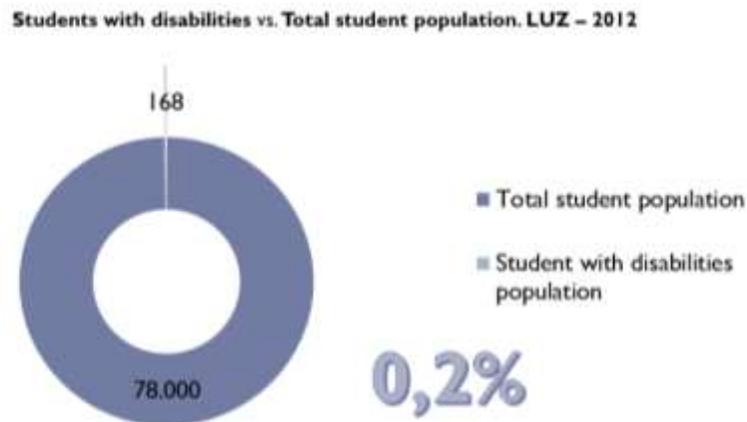
<sup>28</sup> Parallel system: Bolivarian University of Venezuela and UNEFA

<sup>29</sup> Gómez Gamboa, David (2019). Academic freedom in Venezuela: Context, restriction and Challenges. *Cuestiones Jurídicas Revista de Ciencias Jurídicas de la Universidad Rafael Urdaneta* Vol. XIII, No. 2 Julio - Diciembre 2019

<sup>30</sup> Constitution of the Bolivarian Republic of Venezuela (1999). All persons are equal before the law, and, consequently: 1. No discrimination based on race, sex, creed or social standing shall be permitted, nor, in general, any discrimination with the intent or effect of nullifying or encroaching upon the recognition, enjoyment or exercise, on equal terms, of the rights and liberties of every individual. 2. The law shall guarantee legal and administrative conditions such as to make equality before the law real and effective manner; shall adopt affirmative measures for the benefit of any group that is discriminated against, marginalized or vulnerable; shall protect in particular those persons who, because of any of the aforementioned circumstances, are in a manifestly weak position; and shall punish those who abuse or mistreat such persons. 3. People will only be officially addressed as Citizens, except for diplomatic forms. 4. No titles of nobility or hereditary distinctions shall be recognized.

<sup>31</sup> Constitution of the Bolivarian Republic of Venezuela (1999). Article 78.

Also, the Law for Persons with Disabilities (2006)<sup>32</sup> states the protection to educational rights of persons with disabilities, attributing responsibility to the State in order to regulate and execute modalities for education of people with disabilities. However, in 2012 the University of Zulia only had 0.2% of all students with disabilities, counting 168 students. Likewise, in this university 700 were indigenous students, which constitutes the 7.3%<sup>33</sup>.

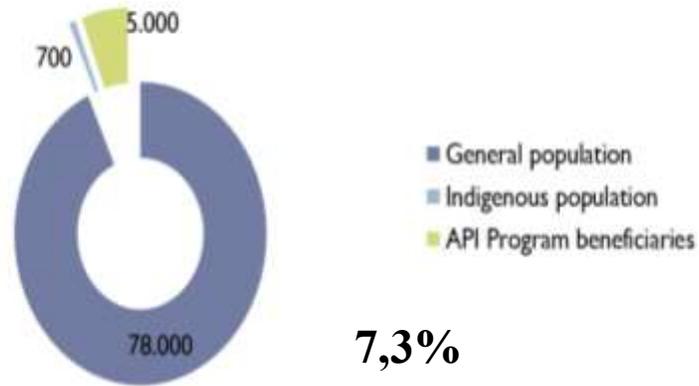


**Image N°3:** students with disabilities in LUZ

<sup>32</sup> Law for Persons with Disabilities (2006) available at [https://www.medicinalaboraldevenezuela.com.ve/archivo/ley\\_discapacitados.pdf](https://www.medicinalaboraldevenezuela.com.ve/archivo/ley_discapacitados.pdf)

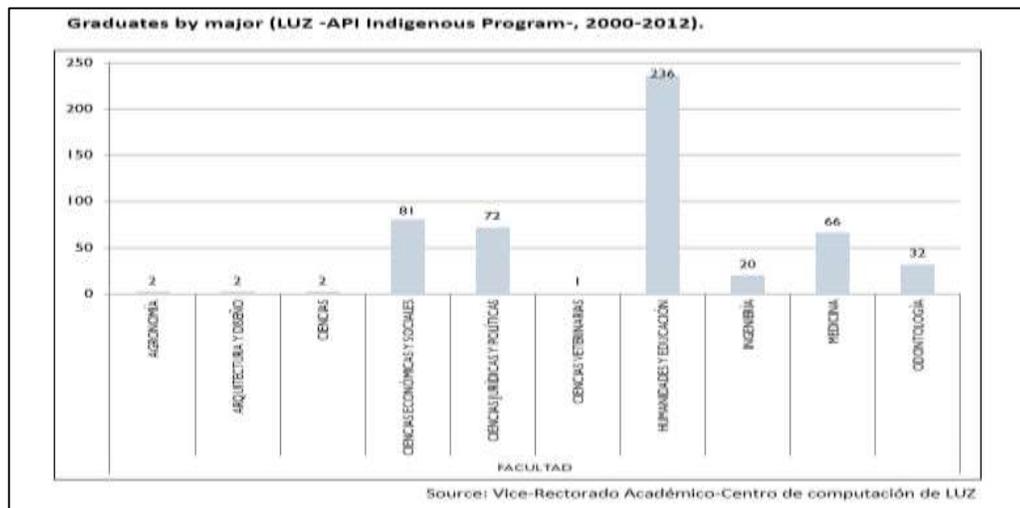
<sup>33</sup> Gómez Gamboa, David (2019). Academic freedom in Venezuela: Context, restriction and Challenges. Cuestiones Jurídicas Revista de Ciencias Jurídicas de la Universidad Rafael Urdaneta Vol. XIII, No. 2 Julio - Diciembre 2019

**General student population vs indigenous student population 2012 (LUZ)**



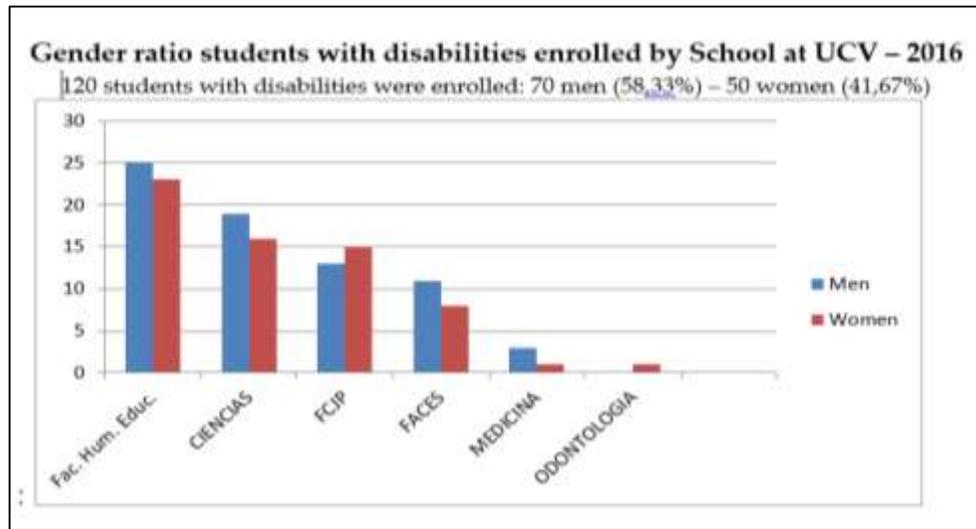
**Image N°4:** Indigenous student population in LUZ

In the University of Zulia, with the indigenous program (2000-2012) 236 students graduated with a degree on education, 81 in economic science and 72 in Law and Political Sciences.



**Image N°5:** Graduates of Indigenous population in LUZ

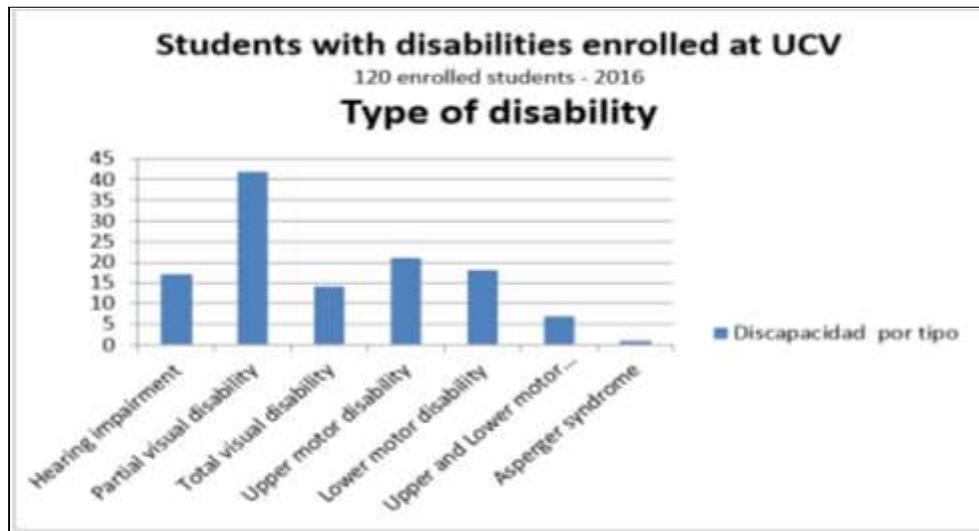
Within Central University of Venezuela, between 2008 and 2012, the student population was of 44,975.6 students and the 0.26% was of students with disabilities<sup>34</sup>. In 2016, UCV had 120 students with disabilities, 70 men and 50 women. The faculty of education had more students with disabilities and the most common type of disability was partial sight with 45 students<sup>35</sup>.



**Image N°6:** students with disabilities in UCV

<sup>34</sup> Report Secretaria UCV, available at [http://www.ucv.ve/fileadmin/user\\_upload/secretaria/Boletin\\_2012.pdf](http://www.ucv.ve/fileadmin/user_upload/secretaria/Boletin_2012.pdf)

<sup>35</sup> Gómez Gamboa, David (2019). Academic freedom in Venezuela: Context, restriction and Challenges. Cuestiones Jurídicas Revista de Ciencias Jurídicas de la Universidad Rafael Urdaneta Vol. XIII, No. 2 Julio - Diciembre 2019



**Image N°7:** Type of disability in UCV

It is also important to mention that main places of higher education institutions do not have the minimum conditions of accessibility and walkability for people with disabilities.

Regarding women access to higher education varies between 50% and 65%: In the UCV Faculty of Engineering there is 52% of female students, participation of women in management positions at UCV is of 14 members and council has 36 women. Besides of the 11 faculties at UCV have 6 women deans and from 44 centers of students more than 50% have women who were elected as presidents and vice-presidents for these positions. About LGBTI students, there is not a consistent inclusion policy on the matter.

### **2.3. Government and Self-government**

In Venezuela, the higher education system is regulated by many rules, but the most important is Bolivarian Constitution of Venezuela (1999) which recognizes education as human right and a fundamental social duty; it is democratic, free of charge

and obligatory (Art. 102<sup>36</sup>, 103<sup>37</sup>). In this sense, academic freedom and institutional autonomy are also constitutionally recognized.

Also the higher education system is regulated by the Organic Law of Education<sup>38</sup> (2009), Universities Law (1970) and the 2013-2019 Economic and Social Development Plan: Second Socialist Plan.

Regarding government's Role, the Ministry of Popular Power for University Education, Science and Technology and the University and Sector Planning Office (OPSU) operates at National/Federal government.

Concerns about the role from OPSU, a body called to serve as a technical assistant to the National Council of Universities has ended up attributing competences that are of the country's national universities.

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<sup>36</sup> Constitution of the Bolivarian Republic of Venezuela (1999). Article 102. Education is a human right and a fundamental social duty; it is democratic, free of charge and obligatory. The State assumes responsibility for it as an irrevocable function of the greatest interest, at all levels and in all modes, as an instrument of scientific, humanistic and technical knowledge at the service of society. Education, is a public service, and is grounded on the respect for all currents of thought, to the end of developing the creative potential of every human being and the full exercise of his or her personality in a democratic society based on the work ethic value and on active, conscious and joint participation in the processes of social transformation embodied in the values which are part of the national identity, and with a Latin American and universal vision. The State, with the participation of families and society, promotes the process of civic education in accordance with the principles contained in this Constitution and in the laws.

<sup>37</sup> Constitution of the Bolivarian Republic of Venezuela (1999). Article 103. Every person has the right to a full, high-quality, ongoing education under conditions and circumstances of equality, subject only to such limitations as derive from such persons own aptitudes, vocation and aspirations. Education is obligatory at all levels from maternal to the diversified secondary level. Education offered at State institutions is free of charge up to the undergraduate university level. To this end, the State shall make a priority investment in accordance with United Nations recommendations. The State shall create and sustain institutions and services sufficiently equipped to ensure the admission process, ongoing education and program completion in the education system. The law shall guarantee equal attention to persons with special needs or disabilities, and to those who have been deprived of liberty or do not meet the basic conditions for admission to and continuing enrollment in the education system. The contributions of private individuals to public education programs at the secondary and university levels shall be tax deductible in accordance with the pertinent law.

<sup>38</sup> it's unconstitutional, because it have changed the university community, it including administrative staff and maid workers in the election of university authorities and student representatives when in the Constitution of the Bolivarian Republic of Venezuela explain that university community including only students, professors and graduates.

#### **2.4. Higher education financing and accreditation**

Regarding the higher education financing and accreditation, the main source for Universities institutional income is represented by governmental support, but universities may receive private donations as well. Also the lack of adequate budget allocation according to university needs and accreditation is centralized in Ministry offices.

#### **2.5. Law regulations on higher education institutions and restrictions against academic freedom and university autonomy**

The Higher Education institutions autonomy, the right to education and academic freedom are recognized in Articles 102 and 109 of the Constitution of the Bolivarian Republic of Venezuela , Articles 6, 7 and 9 of the University Law Act (LU by its Spanish acronym), effective since 1970, and Article 36 of the Organic Law of Education (LOE by its Spanish acronym). This framework is consistent with Articles 13 and 15 of the International Pact on Economic, Social and Cultural Rights and UNESCO's Recommendation concerning the Status of Higher-Education Teaching Personnel. However, according to the report "Restrictions and Reprisals against Autonomy and Academic Freedom in Higher Education System in Venezuela", through the LOE -amended in 2009- the State applies some articles violating universities' autonomy and academic freedom, derived from a draft reform of the Organic Law on Higher Education approved by the National Assembly (AN by its Spanish acronym) on December 2010 but vetoed by the President in January 2011.

Also, since 2010, more than 50 sentences from judiciary have been registered by different organizations which directly violate the content of academic freedom, university institutional autonomy and consequently the right to quality of education in cases related to electoral processes within universities, selection of professors and university authorities, student admissions, among others, an important case it has been the Constitutional Chamber Judgment N° 0324 (Supreme Court of Justice).

In relation to Judicial Decision 0324, Gómez et al. (2020: 130) comment: The Constitutional Chamber of the Supreme Court of Justice in the before mentioned sentence resolves to decide with the placing of a precautionary measure requested by the rector of the Central University of Venezuela, Cecilia García Arocha and nine other provincial and decanal authorities of the country's autonomous universities. Regarding this decision, some irregularities from the legal point of view are highlighted. First, the Chamber violates article 109 of the Constitution of the Bolivarian Republic of Venezuela by distorting the institution of the university faculty, thus undermining the autonomy of the universities. Second, the application of articles 31, 32 and 65 of the Universities Law is suspended provisionally. Third, it again uses normative jurisdiction as a tool to remove the powers of the Legislative Branch. Lastly, it violates the principle of legal reserve, by creating an electoral procedure different from that provided for in the Law.

It's noteworthy that almost 10 years have passed to pronounce on the request for a precautionary measure and in the decision the Chamber adduces the urgency of the case. In relation to the undermining of article 109 of the Constitution, the Chamber misrepresents the nature of the structure of the university faculty, by including the "staff administrative and workers" of the universities in electoral processes, in contravention of the before mentioned article, which provides "The State will recognize university autonomy as a principle and hierarchy that allows the professors, professors, students, graduates of their community to dedicate themselves to the search for knowledge through scientific, humanistic and technological research, for the spiritual and material benefit of the nation (...)"

However, on February 2020, the Constitutional Chamber of the Supreme Court of Justice in judgment 0047, it "suspends ex officio" a precautionary measure issued through its judgment 0324, which orders to hold on elections for authorities at the

Central University of Venezuela (UCV), in contravention of constitutional article 109 and the current Universities Law<sup>39</sup>.

#### 2.5.1 Violation of the constitutional principle of university autonomy

Decision No. 0324 violates article 109 of the CRBV, by distorting the nature of the structure of the university faculty in which it includes “staff administrative and workers” of the universities in the electoral processes. It is evident that the before mentioned decision ordered to hold on elections to renew expired university authorities, as well as the reform of internal electoral regulations within a period of 6 months. This constitutes a violation of organizational autonomy by virtue of which universities can dictate its internal rules and administrative autonomy, which includes the power of universities to choose and appoint their authorities and designate their teaching, research and administrative personnel. Both of which are contemplated in article 9 of the current Universities Law.

#### 2.5.2 Non-compliance with the Law

The Constitutional Chamber suspends the application of articles 31, 32 and 65 of the Universities Law (LU), based on article 130 of the Organic Law of the Supreme Court of Justice, not in order to ensure the results of the process pending, but in order to bias the validity of a Law that is still in force, since there is no new norm created by the Legislative Power that has rendered it ineffective through the repeal, nor has a repealing referendum been held, which are the two constitutional ways to end the validity of a law in the Venezuelan legal system.

#### 2.5.3 Usurpation of functions of the Legislative Power

Although the Constitutional Chamber under article 335 of the CRBV can interpret the content or scope of the constitutional norms with binding effects for the

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<sup>39</sup> Aula Abierta press, Available at <http://aulaabiertavenezuela.org/index.php/2020/02/28/vicios-de-la-sentencia-0324-se-mantienen-a-pesar-de-la-suspension-del-tsj/>

other Chambers of the TSJ (Supreme Court of Justice) and other courts of the Republic, it cannot therefore become a positive legislator, usurping the proper functions of the Legislative Power. However, the Chamber attributed legislative functions, which are not its own, according to the traditional classification of public functions established in the Constitution by creating an electoral procedure for the election of authorities of the country's autonomous universities. This constitutes a usurpation of functions as a vice of constitutional competence.

#### 2.5.4 Violation of the principle of legal reserve

The Constitutional Chamber violates the principle of legal reserve since the Legislative Power is the only competent body for the creation of procedural norms. However, in judgment No. 0324, the Chamber creates new rules to regulate the holding of university elections.

#### 2.5.5 Advancement of opinion on the merits of the main matter at the precautionary seat

In a precautionary seat the Court cannot rule on the merits of the main matter, which in this case, deals with the nullity due to unconstitutionality of article 34.3 of the Organic Law of Education (LOE). However, the Constitutional Chamber, in its judgment No. 0324, decides to apply the constituent electoral sectors of the university community provided in article 34.3 of the Organic Education Law (LOE), namely: professors, students, graduates, administrative personnel and workers, within the framework of the transitional regime for the election of the authorities of the UCV and other autonomous universities of the country, which constitutes an advance of opinion to the merit of the main matter. Consequently, a reason for recusal of the magistrates who signed the ruling is configured, in accordance with the established in number 15 of article 82 of the Code of Civil Procedure.

### 2.5.6 Violation of article 201 of the Civil Procedure Code

Judgment No. 0324 was issued in the middle of one of the vacation periods of the Courts of the Republic, specifically on August 27<sup>th</sup>, 2019, which took place from August 15<sup>th</sup> to September 15<sup>th</sup>, as provided in article 201 of the Venezuelan Civil Procedure Code (CPC).

In addition, this decision establishes that once a period of six months has elapsed without holding elections, the legal permanence of the university authorities ceases with an expired period leaving the absolute vacancy of the said positions creating a new ground for removal of the university authorities. This results in a new administrative sanction, which is subject to legal reserve, according to the provisions of articles 49.6 of the National Constitution, 10 of the Organic Law of Administrative Procedures and 89 of the Organic Law of Public Administration.

### **2.6. Alarming professors and students dropout rates <sup>40</sup>**

In the context of the deep political, economic, social, and humanitarian crisis, Venezuela is facing an alarming professors dropout rates, as part of a massive citizen exodus, which has been described by international human rights bodies as the largest exodus in the Continent in the last 70 years. The United Nations High Commissioner for Human Rights, on March 7<sup>th</sup>, 2018 stated he was deeply disturbed by the growing exodus of Venezuelans, many of them seeking access to food and basic services<sup>41</sup>. The United Nations High Commissioner for Refugees (UNHCR) has identified the current situation as “One of the largest population exodus in the region (The Americas) since the creation of UNHCR (1950)”<sup>42</sup>. Research work produced at Simon Bolivar

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<sup>40</sup> See: Gómez Gamboa, David (2019). Academic freedom in Venezuela: Context, restriction and Challenges. *Cuestiones Jurídicas Revista de Ciencias Jurídicas de la Universidad Rafael Urdaneta* Vol. XIII, No. 2 Julio - Diciembre 2019

<sup>41</sup>“VENEZUELA. ONU High Commissioner for Human Rights, VenEuropa Canal, YouTube video, 1:17. Posted. March 7, 2018, See <https://www.youtube.com/watch?v=N4wdKwjI75s>.

<sup>42</sup> UNHCR: Venezuelans who migrate from their country need international protection”, Gabriel Bastidas, YouTube video, 8:13. Posted March 13, 2018, (last visited Mar. 20, 2018), See

University in Venezuela concluded that around 4 million of Venezuelans have left the country<sup>43</sup>. The Inter-American Commission on Human Rights (IACHR), in its report “Democratic Institutions, the Rule of Law and Human Rights in Venezuela” and in its Resolution 2-18<sup>44</sup>, considers that there are massive human rights violations in Venezuela and a serious crisis as a result of the shortage of food and medicines, causing an exponential growth of hundreds of thousands of Venezuelans. They have been forced to migrate to other countries within the region in recent years as a survival strategy that would allow them and their families to preserve rights such as: life, personal integrity, personal freedom, healthcare, food, among others”<sup>45</sup>.

In relation to the massive outflow of Venezuelans, also highly remarkable Venezuelan professors and students are leaving the country causing a brain drain in Venezuela. Some human rights organizations have denounced that due to the precarious salary conditions, university professors, who are highly skilled professionals

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<https://www.youtube.com/watch?v=Ga2GDkAio3c>. See also Press Briefing - Aikatarina Kitidi UNHCR’s spokesperson <https://www.youtube.com/watch?v=Ga2GDkAio3c> [United Nations, 13th March 2018]

Concerning a very significant portion of Venezuelans, UNHCR has identified an outflow of around 1.5 million Venezuelans into neighboring countries and beyond. The number of arrivals in neighboring States has steadily increased to 5,000 a day in the early 2018. The newspaper “El País” published a report, in which it denounced that the economic, political and social decomposition in Venezuela generates an exodus that has forced 1.6 million of Venezuelans to emigrate. One million have left the country since 2015, according to the latest data compiled by the International Organization for Migration (IOM). In parallel, asylum applications have also risen: 145,000 worldwide. Many have overcome every obstacle, as shown in the following figures: there are 600,000 residents in Colombia; almost 300,000 in the United States, about 120,000 in Chile. Nevertheless, the outflow has also reached the other side of the Atlantic, with 210,000 in Spain and 50,000 in Italy. See “Radiography of the great Venezuelan exodus” El País, (last visited Mar. 28, 2018) [https://elpais.com/internacional/2018/03/25/actualidad/1521972911\\_769205.html](https://elpais.com/internacional/2018/03/25/actualidad/1521972911_769205.html)

<sup>43</sup> The research identifies two large waves of displacement by Venezuelans, the first one between 2000-2014 and the second one between 2014 and 2017.

See “Research on the USB estimates that 4 million Venezuelans have emigrated” Contrapunto, (last visited Apr. 8, 2018) <http://contrapunto.com/noticia/investigacion-en-la-usb-estima-que-han-emigrado-4-millones-de-venezolanos-194953/>

<sup>44</sup> See “Resolution 2/18 forced migration of Venezuelans”, OAS, (last visited Mar. 20, 2018), available at <http://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf>

<sup>45</sup> The United Nations High Commissioner for Refugees (UNHCR) has identified a variety of reasons for the Venezuelan outflow: threats by armed groups, fear of being targeted on account of political opinions real or perceived, insecurity and violence, lack of food, medicine or access to essential social services as well as loss of income.

with great experience, are emigrating from Venezuela in search of job opportunities<sup>46</sup>. A full-time academic in a Venezuelan university earns a salary equivalent to \$8.70 (until March 19<sup>th</sup>, 2018), while a full-time professor earns \$6.04. According to a survey carried out by NGO Aula Abierta on the situation of university professors (September-December 2018), the 84.8 % of professors (1.036) affirmed that they had thought about migrating to another country due to the extreme low salary they receive in Venezuela. The report concluded that there is a close relationship between the low salaries and the phenomenon of forced migration of university professors<sup>47</sup>.

This leaves the economic factor as one of the main brain drain triggers. Another factor influencing the professor exodus phenomenon is the lack of contributions for professors dedicated to scientific research. For example, within the Research and Innovation Stimulus Program (PEII by its acronym in Spanish), a level “C” researcher (who needs to have a doctorate degree), receives about €0.87 (according to official rate of 54,020.63 x €1). The salary situation of university professors is aggravated because the government does not incorporate the requests of professor union groups, only attending the requests of pro-government groups in the context of the implementation of the parallel system<sup>48</sup>. The preliminary report about situation of academicians in the

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<sup>46</sup> At least 288 professors left The Andes University (ULA by its Spanish acronym). In 2017, figures were at 143 by the end of September. The Central University of Venezuela (UCV by its Spanish acronym) and The Orient University (UDO) have the most alarming dropout figures with an estimate between 20% and 50%. At The Orient University, a figure of 20% was obtained, which only has 120 university professors in an enrollment of 2,500 students (in a separate branch at San Felix) in 2016 only. For Carabobo University (UC) and The Andes University (ULA) the dropout rate is placed between 30% and 40%. In the University of Zulia (School of Agronomy) professorial attrition is about 35%. In the last two years more than 30 concourses were offered, in which only 2 - 3 applicants attended on average. See “International Alarm Before the Exodus of Venezuelan University Professors”, Aula Abierta Press (2018) <http://aulaabiertavenezuela.org/index.php/2018/03/30/international-alarm-before-the-exodus-of-venezuelan-university-professors/>

<sup>47</sup> See: Preliminary report about situation of academicians in the context of the complex humanitarian emergency in Venezuela (2018) in <http://aulaabiertavenezuela.org/wp-content/uploads/2019/01/La-Universidad-venezolana-en-el-marco-de-la-Emergencia-Humanitaria-Compleja.pdf>

<sup>48</sup> In order to understand the implementation of the parallel system in Venezuela during 2003-2017, see: Hocevar, Gómez and Rivas “Threats to Academic Freedom in Venezuela: Legislative Impositions and Patterns of Discrimination towards University Teachers and Students (2017)”, University of Salento, University Librarian Informatics Services (SIBA), Italy; in <https://www.scholarsatrisk.org/wp-content/uploads/2018/01/Threats-to-Academic-Freedom-in-Venezuela.pdf>

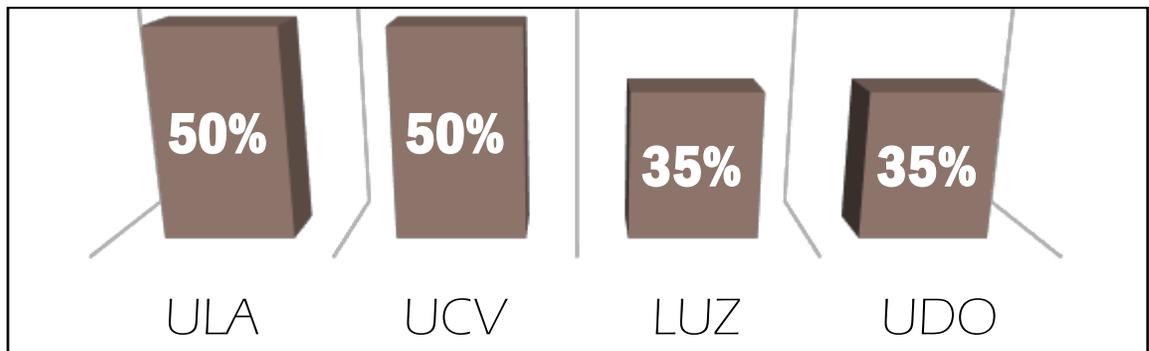
context of the complex humanitarian emergency in Venezuela<sup>49</sup> denounced actions by the government of discrimination and violation of collective agreements, by the exclusion of the Federation of Associations of University Professors of Venezuela (FAPUV) from the spaces to demand the rights of academicians<sup>50</sup>.

In relation to the existence of a high percentage students' dropout, between 2011 and 2016 rates have ranged from 10% to 30% of the total student population. However, in 2017-2018 figures have increased considerably since the allocation of the quotas of public universities in the country has been centralized in the Office of Planning of the University Sector (OPSU) in 2015, contravening higher education institutional autonomy. According to official data, 4.241.000 university students (between 18 and 24 years) were enrolled by August 2017. 2.546.000 of these students were reported as not having attended classes, and 1.602.000 students that did. According to different university human rights institutes, the percentage of student dropout in the Orient University (UDO), the University of Zulia (LUZ), The Andes University (ULA) and the Central University of Venezuela (UCV) ranged between 30% and 60% in 2018.

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<sup>49</sup> See: Informe preliminar: Universitarios en el marco de la emergencia humanitaria compleja venezolana, Enero-Noviembre 2018, in <http://aulabiervenezuela.org/wp-content/uploads/2019/01/La-Universidad-venezolana-en-el-marco-de-la-Emergencia-Humanitaria-Compleja.pdf>

<sup>50</sup> On September 6th, 2018, the MPPEUCT sent an instruction to Venezuelan public universities indicating how they should perform the calculation for the payment of university personnel. The instructive referral was rejected by the universities for violating the labor rights enshrined in the III Collective Convention for the University Sector. The preliminary Report indicates that one of the main violations is the decrease in the base for the calculation of the university professorial scale from 4.75 minimum wages (enshrined in the current collective agreement) to 1.33 minimum wages. See: <http://aulabiervenezuela.org/wp-content/uploads/2019/01/La-Universidad-venezolana-en-el-marco-de-la-Emergencia-Humanitaria-Compleja.pdf>



**Image N°8:** Percentage professors drop-out



**Image N°9:** Comparative Salary Scale between Venezuela and some Other Countries. In Venezuela (in 2018) exists a high percentage of professors' drop-out in ULA, UCV 50% and LUZ, UDO 35%.<sup>51</sup> One cause the professors' drop-out are low wage (5.3\$ per month).

<sup>51</sup> See: [www.aulabiervenezuela.org](http://www.aulabiervenezuela.org)

## **2.7. Inaccessibility to Internet, electricity and communication services<sup>52</sup>**

In 2017 the constant, systematic and accelerated deterioration of Internet and telephone service provided by both the government company “Compañía Anónima Nacional de Teléfonos de Venezuela” (CANTV by its Spanish acronym) and private companies has been evidenced Nationwide. According to a report by the Economic Commission for Latin America and the Caribbean (ECLAC) in 2016, Venezuela was ranked as the country with the lowest access to Internet connection with a speed of 1.9 Mbps. The Internet service in universities is slow and intermittent (0.4 Mbps, while in the Latin American average it is 6.7), which means that access is practically nil. In some cases, the problem was much more serious than Internet access; the Orient University (UDO by its acronym in Spanish) did not have electrical service for a year (2017-2018).

The constant interruptions of the electrical service (nationwide) have created impediments that make students unable to learn under sufficient conditions. Therefore, the right to receive a quality education is violated. University students are also affected by this crisis over other services like public transportation and the shortage of cash flow. Students and educators alike have lived under this environment for years and this has forced them to seek a better quality of life abroad<sup>53</sup>. This humanitarian crisis that the Venezuelan society is experiencing also extends to the university sector, and it is characterized by recurrent conflicts, weak government, continuous food crisis, collapse of livelihoods and little institutional capacity to react to these difficulties<sup>54</sup>. The government has not shown the ability to renew itself in the face of the complex humanitarian crisis. No efforts have been coordinated with international organizations

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<sup>52</sup> Gómez Gamboa, David (2019). Academic freedom in Venezuela: Context, restriction and Challenges. *Cuestiones Jurídicas Revista de Ciencias Jurídicas de la Universidad Rafael Urdaneta* Vol. XIII, No. 2 Julio - Diciembre 2019

<sup>53</sup> See Aula Abierta Press, Limitations on access to goods and services undermines quality education in Venezuela, available at <http://aulaabiervenezuela.org/index.php/2018/03/15/limitaciones-al-acceso-a-bienes-y-servicios-atenta-contra-la-educacion-de-calidad-en-venezuela/>

<sup>54</sup> See Aula Abierta Press, the complex university emergency, <http://aulaabiervenezuela.org/index.php/2018/05/07/la-compleja-emergencia-universitaria/> (2018)

and experts from Venezuelan universities to initiate the early recovery and rehabilitation of political, economic and social development, with the aim of reducing the vulnerability of society.

## **2.8. A parallel system of Higher Education subordinated to the State**

The policy against autonomy began in 2003 with a parallel system of Higher Education subordinated to the State, under the name of *Sucre Mission*. This policy absorbed all universities lacking autonomous status where the State has created a *pensée unique* (single thought)<sup>55</sup> university model” instead. This system also allows exclusion of autonomous universities from Higher Education Policies and has been used for purposes of proselytism and indoctrination. 6. The application of this policy to the entire university sector was made explicit in the “Homeland Plan” 2013-2019<sup>56</sup>, which condenses the policy guidelines of the National Executive Power and unconstitutionally became law on December 4<sup>th</sup>, 2013.

Regarding other modalities of Universities in Venezuela, the articles 8 and 9 of the Universities Law (1970)<sup>57</sup> indicate the existence of three types of Universities: 1) National, 2) Experimental National and 3) Private. However, on March 24<sup>th</sup>, 2009, through Decree 6,650 published in the Official Gazette of the Republic No. 368,217, the Alma Mater Mission was created according to its article 1, with the purpose of

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<sup>55</sup> *Pensée unique* (single thought) means the imposition of an ideology that is proposed as the only and unquestionable truth and a set of ideas as the only valid and justified objective.

<sup>56</sup> Plan for the Homeland. See <https://observatorioplanificacion.cepal.org/es/planes/plan-de-la-patria-2013-2019-de-venezuela>

<sup>57</sup> Article 8: Universities are National or private. National Universities will acquire legal personality with the publication in the Official Gazette of the Bolivarian Republic of Venezuela of the National Executive Decree by which they are created. Private universities require the authorization of the State for their operation, in accordance with the provisions of articles 173, 174, 175 and 176 of this law.

Article 9: Universities are autonomous. Within the provisions of this Law and its Regulations, they have:

1. Organizational autonomy, by virtue of which they may dictate their internal regulations;
2. Academic autonomy, to plan, organize and carry out research, teaching and extension programs that are necessary for the fulfillment of its purposes.
3. Administrative autonomy, to choose and appoint its authorities and designate its teaching, research and administrative personnel;
4. Economic and financial autonomy to organize and manage your assets.

"promoting the transformation of higher education and promoting its institutional articulation and territorial". Likewise, such Decree creates other types of universities other than those provided for in the Law on Universities, stating in article 3:

The Alma Mater Mission includes:

- a. The creation of Experimental Universities, having as its academic and administrative genesis Official University Institutes and Colleges.
- b. The leading participation of the communities.
- c. The creation of Territorial Universities.
- d. The creation of specialized universities.
- e. The creation of Specialized Institutes of Higher Education.
- f. The creation of the Bolivarian University of Workers.
- g. The creation of the National Experimental University of the Peoples of the South.
- h. The strengthening of the territorial coverage of university education through the Alma Mater Socialist University Complexes (CUSAM by its acronym in Spanish).

The transcribed norm evidences the inclusion of new figures or modalities of universities other than those provided in the Universities Law, some modalities in general: 1) Territorial Universities and 2) Specialized Universities. But at the same time it creates two other specific ones: 1) Bolivarian University of Workers and 2) National Experimental University of the Peoples of the South.

However, around the creation of these new institutions, a question arises: How is the scope of university autonomy in each of them? In order to clarify this complex panorama, it is pertinent to study what territorial, specialized and Bolivarian universities represent.

### 2.8.1 Territorial Universities

This new modality generates confusion about the purpose for which it was created, because it is based on the affirmation that every university must have a territory to settle. So, what is the purpose of creating this type of territorial universities? To exemplify, on May 2<sup>nd</sup>, 2014, through Decree No. 936 published in Official Gazette No. 411,141, the "José Antonio Anzoátegui Territorial Polytechnic University" was created, as an Experimental University with its own legal personality and its own assets, distinct from that of the Republic.

It should be noted that the Article 7 of the Creation Decree explains that this university arises from the transformation of the "José Antonio Anzoátegui University Institute of Technology", taking into account that the Alma Mater Mission indicates in its Decree No. 6,650 article 3, numeral 1: "The Alma Mater Mission includes: 1. The creation of Experimental Universities, having as their academic and administrative genesis Official University Institutes and Colleges".

Article 2 of Decree No. 936 mentions which is the object of creation, stating: "it will develop projects and academic training programs, intellectual creation, technological development, innovation, advice and social connection throughout the Anzoátegui State... The creation of programs and projects will respond to the requirements of integral territorial development...".

From what is explained above, it is evident that the purpose of this territorial university is very general, with broad terms on its functions. Therefore, a systemic interpretation of the content of Decrees N ° 6,650 and N ° 936 must be made. The first in its article 2 literal of states that the Alma Mater Mission aims to "root higher education throughout the national territory, in close connection with the communities". The second, in motivation, indicates that a function of the Alma Mater Mission is "to deepen the municipalization of university education linked to the vocation and productive, social and cultural needs of territorial spaces..."

The transcribed evidences a State policy aimed to establishing parallel higher (socialist) education in the Anzoátegui State, using the strategy of allowing greater accessibility to universities by the inhabitants of the municipalities, according to article 4 of Decree No. 936 indicates that it will carry out its activities, programs and projects in 21 municipalities of this State.

As for the autonomy of this type of University, according to article 1 of the Creation Decree, it is an experimental national university; therefore it has limited autonomy to its own requirements and is governed by the Executive Regulations issued by the President of the Republic in order to regulate the organization and its operations.

Regarding its academic autonomy, it is observed that it totally lacks it, when establishing in article 3 of its decree of creation that the territorial Polytechnic University is an "instrument for the framework of construction of Bolivarian socialism, through (...) active linking with development projects, socialist companies and communities, based on the Homeland Plan, Second Socialist Plan of Economic and Social Development of the Nation 2013-2019".

Therefore, this university does not enjoy autonomy in the implementation of free programs of the principles established in the Homeland Plan. As Hampshire and Searle (SF) point out, a university without autonomy becomes the center of indoctrination at mercy of the provisions of the current political regime, cutting off the legal nature and the essential purpose for which universities exist.

According to article 11 of Decree No. 936 its organization and operation will be carried out according to regulations issued by the Ministry of People's Power for University Education. It also indicates that it will be created a Social Council, which guarantees "the popular participation in academic activities". Therefore, the university does not have organizational autonomy.

### 2.8.2 Specialized Universities

Regarding this new modality, we have as an example the University of Health Sciences, created by Decree No. 1317 published in Official Gazette No. 415,626 on October 8<sup>th</sup>, 2014, in its article 1 it indicates that it is a national “Specialized” experimental university. Such adjective is used simply to emphasize that this university will work in a specific area of science, in this case, health.

Regarding its autonomy, being an experimental university it is quite restricted. As for academic autonomy, unlike the before mentioned territorial universities, they are not subject to the Homeland Plan, but indoctrination is still present to the extent that the university bears the name "Hugo Rafael Chávez". Also, in article 3 of the before mentioned Decree, it expresses that it must contribute "to the integral and sustainable development of the communities in the framework of the construction of Bolivarian Socialism of the XXI century".

In attention to the autonomy of operation, it has a degree of autonomy because, unlike the territorial universities, the University of Health Sciences will prepare the regulations for Organization and Operation. This will be presented by the Provisional Directive Council of the University to its approval by the Ministry of Popular Power in matters of University Education and health. However, this university has its own assets and its budget depends on the ministry according to articles 7 and 10 of Decree No. 1317.

### 2.8.3 Bolivarian University of Workers

In Decree 6,499 published in Official Gazette 39,051 dated November 4<sup>th</sup>, 2008, the creation of the “Bolivarian University of Workers Jesús Rivero” is provided, which legal nature is determined in article 1 of said Decree, in which it is qualified as an experimental university. Therefore, it has the same level of autonomy as any experimental university.

Likewise, the de facto government assured that in almost 20 years the Bolivarian Revolution has inaugurated 45 public universities<sup>58</sup> in the country. However, The Observatory of Human Rights of the Andes University<sup>59</sup> (2019), ensures that in latter times, at least 38 universities were created, including previously existing university institutes and colleges which were "created again" by presidential decrees. In 2001, the Bolivar State University Institute of Technology (IUTEB)<sup>60</sup> was created. In 2002 the University Institute of Technology la Fría was created, which became the framework of the Alma Mater Mission, at the Polytechnic Territorial University of the North of Táchira Manuela Sáenz (UPTNTMS)<sup>61</sup> in 2010. In 2003, the Sucre Mission also created the Bolivarian University of Venezuela and in 2006 the Sports University of the South (UDS)<sup>62</sup> was created. In 2008 the National Experimental University of the Arts (UNEARTE)<sup>63</sup> was created as well as the Bolivarian University of Workers

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<sup>58</sup> See: <https://twitter.com/NicolasMaduro/status/1050026983839735809>

<sup>59</sup> Observatorio de Derechos Humanos de la Universidad de los Andes (2019). Informe: El-sistema paralelo universitario en Venezuela (2003-2019), available at <http://www.uladdhh.org.ve/wp-content/uploads/2020/02/Informe-El-sistema-paralelo-universitario-en-Venezuela.-2003-2019-Descargar-1.pdf>

<sup>60</sup> Decreto N° 1186, del Presidente Hugo Chávez Frías <https://2.bp.blogspot.com/-UpIQ179M9pA/WvhNcxDVqMI/AAAAAAAAADI/YFz47WwKhxwp3DPghUliSdPMgPxjRUWwCEwYBhgL/s1600/gaceta1.png>

<sup>61</sup> Anteriormente Instituto Universitario de Tecnología La Fría (IUTLAF), fundado por Decreto Presidencial N° 1.949 del 2 de septiembre de 2.002, Gaceta Oficial N° 37.540, de fecha 2 de octubre de 2.002. El instituto fue convertido en Universidad Politécnica Territorial del Táchira, en el marco de la Misión Alma Mater según Decreto Presidencial N° 7.570, Gaceta Oficial N° 5.987, de fecha 16 de julio de 2010. <http://virtual.urbe.edu/gacetas/05987.pdf>

<sup>62</sup> Anteriormente Universidad Iberoamericana del Deporte, creada en 2006. <http://www.uideporte.edu.ve/WEB/pdf/gaceta0001.pdf>

<sup>63</sup> El 6 de mayo de 2008 fue creada, mediante decreto número 6.050 publicado en Gaceta Oficial N° 38.924, la Universidad Experimental de las Artes (Unearte). <http://www.jurisline.com.ve/data/files/794.pdf> UNEARTE se crea en el marco de la Misión Alma Mater y absorbe cuatro institutos universitarios previamente existentes a saber: 1. el Instituto Universitario de Estudios Superiores de Artes Plásticas Armando Reverón" (IUESAPAR), creado el 29 de abril de 1985; 2. el Instituto Universitario de Estudios Musicales (IUDEM), creado el 26 de abril de 1991, 3. el Instituto Universitario de Danza (IUDANZA), creado el 26 de abril de 1991, y 4. el Instituto Universitario de Teatro (IUDET), creado el 18 de julio de 1996.

(UBT)<sup>64</sup> and the Paulo Freire Latin American University Institute of Agroecology<sup>65</sup>. In 2009, the National Experimental University of Security (UNES)<sup>66</sup>, the Venezuelan Hydrocarbon University (UVH)<sup>67</sup>, Yaracuy National Experimental University (UNEY)<sup>68</sup>, and the University Institute of Civil Aeronautics (IUAC)<sup>69</sup> were created.

In 2010, the Territorial Polytechnic University of Alto Apure Pedro Camejo (UPTAAPC)<sup>70</sup>, the Polytechnic Territorial University of the State of Barinas José Félix Rivas<sup>71</sup> and the Bolivarian Military University of Venezuela (UMBV)<sup>72</sup> were created. In 2011, the National Experimental Indigenous University of Tauca (UNEIT)<sup>73</sup> was created. In 2012 the Territorial Polytechnic University of the North of Monagas Ludovico Silva (UPTNMLS)<sup>74</sup> and the Territorial Polytechnic University of the West of Sucre Clodosbaldo Russián (UPTOS)<sup>75</sup> were created. In 2014, the Campesina de

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<sup>64</sup> Oficialmente, la Universidad Bolivariana de Trabajadores (UBT) “Jesús Rivero” se creó en el marco de la Misión Alma Mater mediante Decreto Presidencial N° 6.499, publicado en la Gaceta Oficial N° 39.051 del 4 de noviembre de 2008, pero ya en el 2005 había iniciado sus actividades académicas. <http://www.industriasdiana.gob.ve/Diana/index.php/ubt-jesus-rivero> Reseña histórica de la UBT <https://ubtjrialca.wordpress.com/ubtjr/> Creada Gaceta Oficial 39.051 del 04 de noviembre de 2008. Decreto N° 6,499

<sup>65</sup> Instituto Universitario Latinoamericano de Agroecología “Paulo Freire” (IALA) se crea, mediante Decreto N° 6008, publicado en la Gaceta Oficial N° 38.994, de fecha 15 de abril de 2008 <http://virtual.urbe.edu/gacetas/38910.pdf>

<sup>66</sup> Decreto de creación : <http://repositorios.unes.edu.ve:8080/jspui/bitstream/123456789/76/1/GO0001.pdf>

<sup>67</sup> Se crea según gaceta oficial 39.239 de fecha 11 de agosto de 2009, Decreto 6.864 <http://virtual.urbe.edu/gacetas/39239.pdf>

<sup>68</sup> Para el 2019, según artículo de la web de la UNEY, se cumplen 20 años de su creación <http://www.oney.edu.ve/site/2019/02/11/uneystas-revivieron-losprimeros-20-anos-de-la-institucion/>.

<sup>69</sup> Resolución No. 3.581 publicada en Gaceta Oficial de la República Bolivariana de Venezuela No. 39.135 de fecha 10 de Marzo de 2009 <http://virtual.urbe.edu/gacetas/39220.pdf>

<sup>70</sup> <http://www.correodelorinoco.gob.ve/publicado-gaceta-creacion-seis-nuevas-universidades/>

<sup>71</sup> Anteriormente Instituto Universitario Tecnológico de Barinas, creado en el 2001.

<sup>72</sup> Intervenida el 3 de septiembre de 2010 según decreto N° 7.662, y publicado en la Gaceta Oficial de la República Bolivariana de Venezuela No. 39.502 de esa misma fecha. <http://virtual.urbe.edu/gacetas/39502.pdf>

<sup>73</sup> Gaceta oficial de creación de la Univ. Nacional Experimental Indígena de Tauca [https://www.cpzulia.org/ARCHIVOS/Gaceta\\_Oficial\\_29\\_08\\_17\\_num\\_41224.pdf](https://www.cpzulia.org/ARCHIVOS/Gaceta_Oficial_29_08_17_num_41224.pdf)

<sup>74</sup> Creada bajo la Gaceta Oficial 39.902 Decreto N° 8.802 de fecha 13 de abril de 2012 [http://www.uptnmls.edu.ve/UPTNMLSilva/Documentos/Gacetas/Gaceta\\_Creacion\\_UPT.pdf](http://www.uptnmls.edu.ve/UPTNMLSilva/Documentos/Gacetas/Gaceta_Creacion_UPT.pdf)

<sup>75</sup> Creada bajo la Gaceta Oficial 39.902 Decreto N° 8.804 de fecha 13 de abril de 2012 [http://www.uptnmls.edu.ve/UPTNMLSilva/Documentos/Gacetas/Gaceta\\_Creacion\\_UPT.pdf](http://www.uptnmls.edu.ve/UPTNMLSilva/Documentos/Gacetas/Gaceta_Creacion_UPT.pdf)

Venezuela Argimiro Gabaldón University (UCVAG)<sup>76</sup>, the University of Health Sciences (UCS)<sup>77</sup>, and the Falcón Alonso Gamero Territorial Polytechnic University (UPTAG)<sup>78</sup> were created. In 2016, the National University of Tourism (UNATUR)<sup>79</sup> and in 2017 the Universidad Popular del Ambiente Fruto Vivas (UPA)<sup>80</sup>. In 2018, the National Experimental University of Greater Caracas (UNEXCA)<sup>81</sup>, the National Experimental University of Telecommunications and Informatics (UNETI), and the Martin Luther King National Experimental University<sup>82</sup> inaugurated as the Alma Mater University Complex were created.

In 2019, the National Bolivarian University of the Communes was created, whose creation announcement was disclosed on April 26<sup>th</sup>, 2019.<sup>44</sup> Regarding this latest creation, prophetically, Orlando Albornoz pointed out the following in 2013: " the process of changing the organization of the republican society to the communal state in a new geometry of power, would suppose the transformation of the conventional university by the university of the commune "(Albornoz 2013, quoted by the Observatory of Human Rights of the Andes University).

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<sup>76</sup> Según Gaceta Oficial 40403 de fecha 2 de mayo de 2014 Decreto 939 <http://virtual.urbe.edu/gacetas/40403.pdf>

<sup>77</sup> 8 de octubre de 2014 según Gaceta Oficial N°40.514 mediante Decreto Presidencial N° 1.317. Decreto de Creación de la Universidad de las Ciencias de la Salud <http://virtual.urbe.edu/gacetas/40514.pdf>

<sup>78</sup> Decreto N° 1.223, mediante el cual se crea la Universidad Politécnica Territorial de Falcón «Alonso Gamero», Gaceta Oficial 40547 <http://virtual.urbe.edu/gacetas/40547.pdf>

<sup>79</sup> Gaceta Oficial <http://www.juris-line.com.ve/data/files/3679.pdf> Según la gaceta de creación su sede estaría en Barcelona edo. Anzoátegui, pero la única sede que se conoce es la del Colegio Universitario Hotel Escuela de Los Andes

<sup>80</sup> Solo se conoce la noticia del anuncio de su creación, pero no tiene página web. Ver: Correo del Orinoco <https://www.elimpulso.com/2017/06/09/oficializada-creacion-universidad-popular-del-ambiente-fruto-vivas/>

<sup>81</sup> La Universidad Nacional Experimental de la Gran Caracas, surge de la fusión del Colegio Universitario Francisco de Miranda (CUFM), del Colegio Universitario Profesor José Lorenzo Pérez Rodríguez (CUPJLPR) y del Colegio Universitario de Caracas (CUC).El 27 de febrero de 2018, mediante la Gaceta Oficial Extraordinaria N° 41.349, fue publicado el Decreto Presidencial N° 3.293, por el cual se creaba la Universidad Nacional Experimental de la Gran Caracas (UNEXCA). <http://www.unexca.edu.ve/wp-content/uploads/2019/02/Gaceta-Oficial-41349-Creacion-de-la-Unexca-27-febrero-2018.pdf>

<sup>82</sup> Decreto N° 3477 publicado en la Gaceta Oficial N° 41423 del 20 de junio de 2018, creó la Universidad Nacional Experimental de Lara Martin Luther King

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### III

## **RESTRICTIONS ON ACADEMIC FREEDOM IN RELATION TO FREEDOM OF EXPRESSION: IDENTIFYING COMMON PATTERNS IN LATIN-AMERICA**

*David Gómez Gamboa*

Several patterns on violations against academic freedom concerning freedom of expression have been identified in Latin-America during recent years. There are various situations and practices that, even though they may represent violations of some related human rights (life; health; peaceful assembly; physical, mental or moral integrity; freedom of association; education, among others), also represent direct or indirect violations against academic freedom and freedom of expression and information.

In addition, a summarized compilation of the monitoring work carried out by the Non-Governmental Organization Aula Abierta, along with different human rights centers and civil society organizations is presented. This important work has been focused on the situation of academic freedom and autonomy of the higher education institutions since 2014, aiming to document the restrictions and reprisals not only in Venezuela but also in Latin America and also to promote the creation of international normative standards for the protection of academic freedom in its inherent relationship with democracy and development.

In this context, the following patterns in Latin-America that have been identified are the following: 1. Retaliation against scholars for their scientific research and reprisals against academicians for disseminating information on COVID-19. 2. Reprisals against university authorities engaged in public debates. 3. Criminalization of university actors (scholars and students) who protest, 4. Expulsion and arbitrary

dismissal as a practice of discrimination on political grounds, 5. Censorship in the dissemination and discussion within university campuses. 6. Forced disappearances of students, and 7. Indirect violations of academic freedom.

It is essential to clarify that different situations of violation against academic freedom and other human rights can be configured according to the patterns that are described below. They have been identified in an “unfinished enunciative list”, whose purpose is to nurture the critical debate on this interesting topic. Likewise, it can be noted that certain behaviors may be located as an example of violations in a particular pattern, even though it may also be linked to others.

**1. Retaliation against scholars for their scientific research: Reprisals against academicians for disseminating information on COVID-19 in Latin-America**

The most visible and direct pattern of the violation of academic freedom is that of retaliation against scientific production, academics, and researchers. The most explicit historical representation of this pattern is found in the retaliation and reprisals from power against the investigations of Galileo Galilei in the 16th and 17th centuries, in which case it represents how “disturbing” scientific knowledge can be for those who hold power. This recurrent practice occurs within authoritarian regimes when the production or transfer of scientific knowledge is “annoying” or “uncomfortable” for those in power. In this case it is contained to avoid critical debate in society. This act can also be related to the violation of freedom of expression and information.

Similar practices may occur within institutional contexts, inside universities. Cases of transgression against the production or transfer of scientific knowledge for ideological motivations, budget cuts against conducting specific research topics, discriminatory actions as reprisals, among others, have been documented.

In the context of Covid-19 pandemic, repeated actions against academics who were working to inform and warn the community in their respective countries about

the pandemic's risks and its proper treatment had taken place in Latin-America since March 2020.

In Venezuela, the President of the National Constituent Assembly on May 13th, 2020, threatened members of the Academy of Physics, Mathematics, and Natural Sciences after publishing an academic report which warned about the unreliability of COVID-19's tests conducted by the government. Diosdado Cabello, through his TV broadcast program "Con el Mazo Dando", emphatically directed threats against members of the academia. He invited the security agencies to visit these people and to start Operation "Tun-Tun", which means to knock on the doors of the academics in order to show the "power of the government". Mr. Cabello stated that "academicians do not have a single proof that the government was not making the corresponding exams"<sup>83</sup>.

During March 2020, the university professor and director of the Graduate School of Medicine at the University of Zulia, Freddy Pachano, was threatened by the Governor of Zulia State (Omar Prieto), after speaking out on the Coronavirus pandemic. This made it impossible for doctor Pachano to freely speak out on this crucial topic and forced him to leave the country.

In Nicaragua, Professor Miguel Angel Orozco, who was the Director of the Centre for Health Researches and Studies (CIES) at University of Nicaragua (UNAN-Managua) stated in an interview for BBC MUNDO on March 27th 2020, that the best measures to control Covid-19 are social lockdowns and a border closure. Still, Daniel Ortega's government refuses to implement them. On April 22nd, he and three other professors who worked under his leadership were dismissed by University authorities who openly followed the government ideology. A commission appointed by UNAN-Managua authorities proceeded to dismiss four members of the Board of Directors of

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<sup>83</sup> The "De facto government" attacks academic freedom after threatening scientists who warn of a rebound in COVID-19. See: <http://derechosuniversitarios.org/index.php/2020/05/18/gobierno-de-facto-venezolano-ataca-la-libertad-academica-tras-amenaza-a-cientificos-que-alertan-repunte-del-covid-19/>

the CIES after they shared their opinion a compulsory quarantine and border closure to face Covid-19 pandemic measures that the Government of Nicaragua refused to take and after criticizing house visits by health brigades during the pandemic as an initiative promoted by Nicaraguan Vice-President Rosario Murillo.<sup>84</sup>

Notable of the cases mentioned above in Venezuela and Nicaragua, is the intersectional relationship between academic freedom and other human rights such as the right to health. The Venezuelan and Nicaraguan societies are more vulnerable to the Covid-19 pandemic due to inaccessibility to qualified information based on scientific knowledge on health policies and practices.

There are several other examples of retaliation against scholars as a consequence of their scientific research. In Venezuela, the case of Santiago Guevara, a Ph.D. on Economic Sciences and professor at the University of Carabobo, is striking. He was arbitrarily detained on February 21 in 2017 and brought before military courts after publishing an opinion article on the economic situation in Venezuela. During his ten-month incarceration, professor Guevara lost more than 25 kilograms in weight due to cruel treatment and is currently suffering from multiple health problems. During his trial, the prosecutor presented his books and academic papers as evidence of his crimes<sup>85</sup>.

In Ecuador, Ramiro Ávila-Santamaría, who was a judge of the Ecuadorian Supreme Court of Justice and also a professor at Andina University, was prohibited from a hearing on a constitutional case about mining in the province of Azuay, due to his previous scientific research against extractivism. In the opinion of the Court, his earlier scientific research showed an "interest" in the case.

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<sup>84</sup> CIES researchers from UNAN-Managua are fired after criticizing the government's handling of COVID-19. See : <http://derechosuniversitarios.org/index.php/2020/04/29/despiden-a-investigadores-del-cies-de-la-unam-managua-por-criticas-hacia-el-manejo-gubernamental-del-covid-19/>

<sup>85</sup> Professor Santiago Guevara is released after 10 months of his arbitrary detention. See: <http://aulaabiervenezuela.org/index.php/2017/12/24/profesor-santiago-guevara-es-liberado-luego-de-10-meses-de-su-arbitraria-detencion/>

## **2. Reprisals against university authorities engaged in public debates**

Several reprisals against university authorities who have been engaged in public debates in Latin-American countries have been intensified during recent years. In Venezuela, members of the Venezuelan Association of University Rectors (AVERU by its acronym in Spanish), have suffered multiple reprisals against their struggle defending university autonomy and academic freedom. In August 2020, they were threatened to face a criminal inquiry after they did not recognize the government of Nicolas Maduro. Allegedly, the Official Gazette of the Bolivarian Republic of Venezuela No. 41. 684, dated July 31 2019, compiled a request from the National Council of Universities (CNU by its acronym in Spanish) to the Public Prosecutor's Office. It requested: "the initiation of a criminal investigation against the Rectors of the National Universities grouped in the Venezuelan Association of University Rectors (AVERU), on the occasion of some public pronouncements in which they ignore the legitimate and Constitutional government of the President of the Bolivarian Republic of Venezuela, Nicolás Maduro Moros, as well as for the fact of openly professing and carrying out hostile actions and conspiracy aimed at destabilizing the constitutional order and the legally constituted powers".<sup>86</sup>

In Bolivia, the Rector of the Mayor University of San Andrés (UMSA), professor Waldo Albarracín, had suffered multiple reprisals against him, his family and the university itself after he criticized the government of Evo Morales in the context of their policy on democracy, university autonomy, academic freedom and human rights in general. In his role as Rector, he publicly rejected Evo Morales' violations to the Rule of Law and democracy in Bolivia. Moreover, Waldo Albarracín participated in the Regional Public Hearing on Academic Freedom before the Inter-American Commission on Human Rights, held in Bolivia in its 171 period of sessions on 15 February 2019. Months later, on November 10 2019, his house was set on fire by a

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<sup>86</sup> Rectors of AVERU under threat for questioning the "de-facto" government. See : <http://aulaabiervenezuela.org/index.php/2019/08/02/rectores-de-averu-bajo-amenaza-por-cuestionar-gobierno-de-facto/>

group of people who allegedly are followers of Evo Morales and who were also related to the political party MAS. Waldo Albarracín denounced this situation as an attempt of murder. Not only was he severely injured during this event, even his family members were attacked by State-security-forces during public demonstrations.

On June 2 2018, the Rector of the Central American University (UCA) in Nicaragua, José Idiáquez, received death threats after his participation in the national dialogue in Nicaragua. He defended the pre-eminence of human rights and respect towards universities and expressed his rejection about the excessive use of force by the state security forces. On May 14 in 2018, the Inter American Commission on Human Rights (IACHR) adopted a precautionary measure in his favor<sup>87</sup>.

### **3. Criminalization of university actors (scholars and students) who protest**

Notably, in 2009, former President of Venezuela Hugo Chavez, gave orders to police and military forces to violently repress students on the streets in Venezuela when they protest. He ordered to “*use against the students the most powerful tear-gas*” (“*gas del bueno*”). Unfortunately, violence against university protests or university students is frequently repeated in Latin America through practices from police, military, and in some cases, “*para-police*” groups that is integrated by civilians that are provided with weapons and sources from authorities<sup>88</sup>.

Between 2017 and 2020, Non-Governmental Organization Aula Abierta documented within Bolivia, Colombia, Cuba, Honduras, Nicaragua, and Venezuela, that over 450 university students have been arbitrarily detained during social protests. Also, more than 100 university students have been expelled from the universities. At least 30 students have been murdered, and many others have been

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<sup>87</sup> Rector of the UCA denounces death threats. See: <https://confidencial.com.ni/rector-de-la-uca-denuncia-amenazas-de-muerte/>

<sup>88</sup> This pattern has recurrently been repeated in Venezuela and Nicaragua

wounded, subjected to torture, cruel, inhuman, and degrading treatment for exercising their role as critical thinkers & their right to demonstrate<sup>89</sup>.

On September 4, 24, 25 and 30 of 2019, many students who were protesting in Colombia were arrested in different cities and brutally repressed with tear gas bombs, water cannons and even detonations of firearms<sup>90</sup>. In Honduras, the repression from the State security forces against the students from the National Autonomous University of Honduras (UNAH) was also notable on August 4 and October 18 in 2019.

During 2017, at least 17 professors were arbitrarily detained in Venezuela for publishing critical ideas against State public policies and after participating in demonstrations against the government of Nicolas Maduro. No less than 339 students were arbitrarily detained during mass protests in 2017. In addition to that, during public demonstrations in 2019 at least 43 students were arbitrarily detained.

Non-Governmental Organization Aula Abierta received complaints from at least 60 professors expelled from the University of Nicaragua UNAN-Managua for having participated in the protests against President Daniel Ortega in 2018. Professors Freddy Quezada and Josvell Saintclair were among others expelled<sup>91</sup>.

In Bolivia, Jonathan Quispe was assassinated and 4 medical students from the Mayor University of San Andrés (UMSA) within a Church in La Paz were subjected to torture and cruel treatment in 2018. In February and March 2019, student leaders from the San Francisco Javier University in Sucre-Bolivia were heavily repressed and

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<sup>89</sup> The figures for the criminalization of protest and discrimination against university students in Latin America are alarming. See: <http://derechosuniversitarios.org/index.php/2019/05/10/las-cifras-de-criminalizacion-de-la-protesta-y-la-discriminacion-contra-universitarios-en-latinoamerica-son-alarmantes/>

<sup>90</sup> REDESCA-IACHR. Annual Report 2019 (paragraph 210). See: <http://www.oas.org/es/cidh/docs/anual/2019/docs/IA2019REDESCA-es.pdf>

<sup>91</sup> Preliminary Report: Retaliation against university students in their work as human rights defenders (2018- June 2019). See: <http://aulaabiirtavenezuela.org/wp-content/uploads/2019/06/Aula-Abierta.-Informe-preliminar.-Represalias-contra-universitarios-en-su-labor-como-defensores-de-derechos-humanos-2018-junio-2019.docx.pdf>

arbitrarily detained. Likewise, students and professors from the Mayor University of San Andrés have persistently been victims of reprisals and violence in 2018 and 2019.

#### **4. Expulsion, reprisals and arbitrary dismissal as a practice of discrimination on political grounds**

In Nicaragua, at least 40 students from the National Agrarian University (UNA by its acronym in Spanish) were suspended and expelled after organizing a public demonstration denouncing electoral fraud in the elections for student representatives. On December 11 of 2019, the University Council of the National Agrarian University (UNA) in Nicaragua expelled and suspended more than 40 students and canceled their student scholarships, alleging that the students had committed "very serious acts of indiscipline." The decision was made as a result of the student protests in November, in rejection of the fraudulent election of student representatives to the UNA<sup>92</sup>.

Notably, indoctrination practices in favor of the Ortega's government come from some of the university authorities who are also representatives of the Sandinista Leadership Committees.

In Colombia, Professor Mónica Godoy was fired from the University of Ibagué in 2017 after reporting violence against women within the university. Fortunately, the Colombian Constitutional Court ruled supporting Monica Godoy's human rights<sup>93</sup>. Remarkably, judicial decision T-239-2018 summarized some contents regarding academic freedom, university autonomy, and freedom of expression in favor of women's rights and non-discrimination in university contexts. The decision solves the

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<sup>92</sup> UNA expels more than 40 students for protests in university elections. See:

<http://derechosuniversitarios.org/index.php/2019/12/11/la-una-expulsa-a-mas-de-40-estudiantes-por-protestas-en-comicios-universitarios/>

<sup>93</sup> See <http://www.corteconstitucional.gov.co/noticia.php?Universidad-violo-derechos-a-la-libertad-de-expresion-y-a-la-no-discriminacion-al-despedir-a-profesora-que-denuncio-abusos-sexuales-y-laborales-contra-personal-del-plantel-8614> y <http://www.corteconstitucional.gov.co/relatoria/2018/T-239-18.htm> ... See also: <https://www.eltiempo.com/colombia/otras-ciudades/fallo-ordena-reintegro-de-la-profesora-monica-godoy-a-la-universidad-de-ibague-en-tolima-241196>, <https://www.elespectador.com/noticias/judicial/una-decision-historica-contra-el-acoso-sexual-articulo-799360>

tutelage procedure against University of Ibagué issued by Professor Mónica Godoy, who was fired for reporting sexual and labor abuses against university staff. The Court evidenced discriminatory motives when trying to suppress the discourse of defense of the right of women to live a life free of violence. The Court concluded that the exercise of the university autonomy is limited by the respect to the fundamental rights, being inadmissible any discriminatory reason within universities. It stated that discrimination based on gender constitutes a limit to the exercise of university autonomy in its self-government and contractual freedom phase, being constitutionally proscribed in Colombia.

In Cuba, the university professor and biologist Ariel Ruiz Urquiola was expelled from the Marine Research Center of the University of Havana on May 31th of 2016 after years of harassment and retaliation for his critic environmental work against illegal hunting of sea turtles. In 2018, he was imprisoned for his human rights activism related to public health and agro-ecological issues. He was released after carrying out a hunger and thirst strike that led him to hospitalization, where he denounced to have been inoculated with a highly mutagenic strain of the Human Immunodeficiency Virus (HIV) before his release process<sup>94</sup> as a practice of torture and cruel treatment from the Cuban government<sup>95</sup>.

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<sup>94</sup> On May 3, 2018, Urquiola was deprived of his liberty for the crime of "contempt for authority" after two officers from the Interior Ministry's forest ranger corps entered the lands where he uses the Viñales National Park and did not identify themselves. The next day, he was summoned and detained despite having all the evidence and documentation that enabled him to carry out the investigations where he was released on July 3, 2018, due to the two weeks he had been on a hunger strike that caused him to suffer from "anxious depressive emotional syndrome. On May 11, 2019, Urquiola was arrested for having participated in a peaceful protest for the defense of the human rights of the LGBT community which took place in the Central Park of Old Havana towards the Malecón. Currently, the most worrying situation is Professor Urquiola's alleged that during his incarceration, he was inoculated with the Human Immunodeficiency Virus (HIV) at the Abel Santamaría provisional hospital in Pinar del Río by the Cuban Government itself and of which he has sufficient proof due to the examinations that were performed on June 2019.

<sup>95</sup> The biologist Ruiz Urquiola accuses the Cuban government of inoculating him with the HIV virus. See: <https://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article237951644.html>

Most of the universities and higher education institutions in Cuba are directed by “revolutionary” authorities who follow the ideology and guidelines from the government. Notably, on August 13 of 2019, the Cuban Vice Minister of Higher Education, Martha Mesa-Valenciano threatened professors who “don’t follow Party’s revolutionary policies and the morality and ideology of the Cuban Revolution”.<sup>96</sup>

During 2019, Non-Governmental Organization Aula Abierta documented in Venezuela that at least 11 cases of attacks and/or reprisals against university actors were perpetrated after expressing their opinion in a public manner. Four of them were students and seven university professors.

Notably, during 2018 and 2019, professors Virgilio Castillo and Leobardo Zerpa, and students Marlon Diaz and Franklin Camargo, have faced reprisals:

A. On May 10th 2019, professor Virgilio Castillo, who is the President of the Association of Professors of the University of Los Andes (APULA by its acronym in Spanish), after denouncing labor rights violations, was threatened at his residence by “colectivos” (armed pro-government civilians). They wrote on the walls of his home: "Virgilio, time is running out for you in Merida"<sup>97</sup>.

B. Professor at Experimental University of Yaracuy (UNEY by its acronym in Spanish) Leobardo Zerpa faced retaliation and the temporary suspension of his teaching practice after protesting in criticism to the “de facto government” of Nicolás Maduro in January 2019.

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<sup>96</sup> On August 13, 2019, the Deputy Minister of Higher Education evoking a speech by Fidel Castro from 1981, called for the resignation of university professors who did not ally themselves with revolutionary policies or did not agree with his ideology. In reaction, 14 university professors published a letter criticizing the repressive policies of the Cuban Revolution, which, from the Change.org platform, added more than 3,000 endorsements from academics, intellectuals, artists and professors.

<sup>97</sup> Preliminary Report: Retaliation against university students in their work as human rights defenders (2018- June 2019). See: <http://aulaabiirtavenezuela.org/wp-content/uploads/2019/06/Aula-Abierta.-Informe-preliminar.-Represalias-contra-universitarios-en-su-labor-como-defensores-de-derechos-humanos-2018-junio-2019.docx.pdf>

C. Student Marlon Díaz, who is the President of the Federation of University Centers (FCU by its acronym in Spanish) of the University of Carabobo (UC), has been threatened by the Governor of the State of Carabobo and also injured by “colectivos” (armed pro-government civilians). He also has been harassed by State security forces since 2018<sup>98</sup>. Marlon Díaz has constantly denounced the Rule of Law violations by Maduro's Government and advocated for students' rights.

D. Franklin Camargo, a third-year medicine student at the National Experimental University of the Central Plains Rómulo Gallegos, was arbitrarily expelled on January 2019. During a medicine class, Camargo criticized his professor's claim that the students should swear a “socialist oath” instead of the Hippocratic Oath. This was primarily because the Rector and other authorities had publicly stated their commitment to “socialism” and Nicolas Maduro<sup>99</sup>.

## **5. Censorship in the dissemination and discussion within university campuses**

Any practice of censorship against the critical debate or discussion within a class or academic space represents a violation of academic freedom.

In Venezuela, the ban on the broadcast and discussion of the documentary "Chavism: Plague of XXI Century" within “any university space” was scandalous. On October 8 of 2019, the Court No. 36 of the First Instance in Criminal Matters in Caracas issued a precautionary measure that prohibited the promotion and dissemination of audiovisual material created by Gustavo Tovar called "Chavism: Plague of the 21st Century” within the University Simón Bolívar and “any other public space in Venezuela”. The documentary was supposed to be discussed in an academic dissertation.

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<sup>98</sup> Ibidem

<sup>99</sup> Ideological imposition and protests #Enero2019. See: <http://aulaabiervenezuela.org/index.php/2019/01/30/imposicion-ideologica-y-protestas-enero2019/>

The prohibition of the transmission of the aforementioned documentary film screening was repeated at the Central University of Venezuela, as compliance with the above mentioned judicial decision. On Wednesday, November 27 of 2019, the screening of the documentary was suspended as an order issued by the Public Prosecutor's Office, that was handed over to the Dean's Office by two prosecutors of the entity. The notification stated that if the event would take place, this would be considered as a "hate crime" for which criminal consequences would count according to the so-called Law Against Hate<sup>100</sup>. Remarkably, the Inter-American Commission on Human Rights Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) stated its concerns on the restrictions to exercise the academic freedom in universities<sup>101</sup>.

The practice of Self-censorship after threats has been widely repeated across Venezuela and Nicaragua as well. Notwithstanding the recognition of the freedom of expression and information in articles 57 and 58 of the Constitution of the Bolivarian Republic of Venezuela, citizens throughout the country are afraid of violence and reprisals from the government, policemen or any civilians who support the "revolution". On September 2019, at a conference on "Maracaibo's Day", engineering professors of the University of Zulia did not participate due to fear of retaliation, after they received threats from the State authorities. In Venezuela, experts are not allowed to freely analyze the electrical problems since the country experiences long blackouts. As it was expressed before, critical thinking is not welcomed by authoritarian regimes.

## **6. Forced disappearances of students**

In Mexico, several students from the University of Audiovisual Media in Guadalajara (Salomón Aceves, Daniel Díaz, and Marco Avalos) disappeared on March

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<sup>100</sup> Ibidem

<sup>101</sup> Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights, "III Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA)", See: <http://www.oas.org/es/cidh/docs/anual/2019/docs/IA2019REDESCA-es.pdf>

19 of 2018, after finishing an academic project. It was officially reported that they were killed for being mistaken as gang members.

Highly concerning is also “the forced disappearance of 43 students from the Rural Normal School "Raúl Isidro Burgos" in Ayotzinapa”. This has still been unpunished in a context where the State presented a "historical truth", but which was questioned by the Interdisciplinary Group of Independent Experts of the Inter American Commission on Human Rights (IACHR). The IACHR expected that its Final Report on the Follow-up Mechanism on the Ayotzinapa Case would help guide the implementation of the recommendations made by the IACHR and the Group of Experts. Mexican authorities are aimed to determine the whereabouts of the missing students, the truth of events, and who are responsible<sup>102</sup>.

## **7. Indirect violations of academic freedom**

Non-Governmental Organization Aula Abierta has registered in Bolivia, Venezuela, and Nicaragua budget restrictions that have been used as a sanction against universities. Under the government of Evo Morales in Bolivia, the Universidad Mayor de San Andrés produced scientific reports on the failures of government projects. After this, the researchers, as well as the university itself, were subject to retaliation.

Regarding the budget asphyxiation against public universities in Venezuela, the budget deficit ranges between 70% and 99.8%<sup>103</sup>, which entails severe consequences in the exercise of academic freedom, university autonomy, and, consequently, the right to quality education. The budget deficit seriously impacts the development of

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<sup>102</sup> See: <http://www.oas.org/es/cidh/prensa/comunicados/2018/254.asp>

<sup>103</sup> See: Preliminary report about situation of academicians in the context of the complex humanitarian emergency in Venezuela published by Ngo Aula Abierta (*Open Class*) with the collaboration of the human rights institutes from University of Zulia (LUZ), University of Los Andes (ULA) and Central University of Venezuela (UCV) <http://aulaabiervenezuela.org/wp-content/uploads/2019/01/La-Universidad-venezolana-en-el-marco-de-la-Emergencia-Humanitaria-Compleja.pdf>

scientific research in universities<sup>104</sup>. The budget for the University of Zulia in 2019 had a deficit of 99.86%, which represented the highest deficit allocation in the history of Venezuela<sup>105</sup>. The University of Los Andes only received from the Ministry (MPPEUCT) 26% of the budget requested for 2018<sup>106</sup>, while the Central University of Venezuela (UCV) requested from the Ministry a budget of which only 20% was approved<sup>107</sup>. The University of Carabobo requested from the Ministry a budget of which only 11% was approved.

On September 25 of 2018, the National Assembly officially declared the humanitarian emergency of education in Venezuela<sup>108</sup>. Consequently, the leading public autonomous universities denounced the humanitarian crisis in the context of every university through statements issued on October 3 2018 by the Central University of Venezuela (UCV)<sup>109</sup>, October 15 of 2018, by the University of Zulia (LUZ)<sup>110</sup>, among others. The Federation of Associations of University Professors of Venezuela (FAPUV by its acronym in Spanish) denounced the humanitarian situation faced by academicians on November 15 of 2018<sup>111</sup>.

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<sup>104</sup> Dramatically, in Venezuela, economic assignments for research projects (both individual and collective) in universities range from the equivalent of U.S.\$ 0,0010 and U.S.\$ 0,15. Assignations for a project managed by a university institute with various researchers enrolled is the equivalent of U.S.\$ 0,02. See: <http://aulaabiervenezuela.org/wp-content/uploads/2019/01/La-Universidad-venezolana-en-el-marco-de-la-Emergencia-Humanitaria-Compleja.pdf>. See also: <http://prensa.ula.ve/2017/03/27/directorio-del-cdchta-aprob%C3%B3-incrementos-en-financiamientos-la-investigaci%C3%B3n>

<sup>105</sup> See:

[www.agenciadenoticias.luz.edu.ve/index.php?option=com\\_content&task=view&id=7086&Itemid=148](http://www.agenciadenoticias.luz.edu.ve/index.php?option=com_content&task=view&id=7086&Itemid=148)

<sup>106</sup> See: <http://prensa.ula.ve/2018/10/15/gobierno-nacional-impone-presupuesto-deficitario-la-ula>

<sup>107</sup> See: <https://www.eluniversal.com/politica/15631/rectora-de-ucv-comento-que-el-salario-de-profesores-no-alcanza-para-comprar-productos-de-primera>

<sup>108</sup> See: <http://aulaabiervenezuela.org/index.php/2018/10/22/la-universidad-del-zulia-declara-sobre-la-emergencia-humanitaria-compleja-en-el-sector-educativo-en-venezuela/>

<sup>109</sup> See: <http://aulaabiervenezuela.org/index.php/2018/10/05/declarada-emergencia-humanitaria-compleja-en-la-ucv/>

<sup>110</sup> See: <http://aulaabiervenezuela.org/index.php/2018/10/22/la-universidad-del-zulia-declara-sobre-la-emergencia-humanitaria-compleja-en-el-sector-educativo-en-venezuela/>

<sup>111</sup> <https://www.lapatilla.com/2018/11/16/educacion-venezolana-se-declara-en-emergencia-humanitaria-compleja-entre-condiciones-precarias-y-bajos-sueldos/>

The NGO Aula Abierta denounced the siege against universities from the Venezuelan Judiciary and also from authorities from the national, regional, and municipal levels. Since 2010, more than 50 judgments from the judiciary have been registered by different organizations<sup>112</sup>, which directly violates the content of academic freedom and university autonomy. Some judicial decisions about electoral processes within universities, the appointment of university authorities, and censorship within universities, are very concerning. Since decision No. 110 of 2010, issued by the Electoral Chamber of the Supreme Court of Justice (TSJ), the suspension of elections of the university and student authorities in Venezuela was ordered<sup>113</sup>. The electoral processes are currently suspended from electing rectors, deans, representatives of professors before the National University Council (CNU by its acronym in Spanish), representatives of professors before other instances.

Special mention has to be made about Decision No. 102 (November 27, 2018), issued by Electoral Chamber (TSJ), which intervened the student electoral process held on November 14 of 2018 at the University of Carabobo. It declared nonexistent and without legal effects the student electoral process where student Marlon Díaz had been proclaimed President of the Federation of University Centers.

Main concerns revolve around Judgment 0324 of the Constitutional Chamber of the Supreme Court of Justice, issued on August 27 of 2019, which contradicts constitutional article 109 by creating the electoral procedure for university authorities<sup>114</sup>. The Constitutional Chamber ruled to declare a precautionary measure

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<sup>112</sup> Aula Abierta Ngo in coalition with the University of Los Andes Human Rights Observatory, the Centre for Peace and Human Rights at Central University of Venezuela and the Human Rights Commission at the Faculty of Law and Political Sciences of the University of Zulia.

<sup>113</sup> See Decision No. 2 issued by the Electoral Chamber of The Supreme Court of Justice on January 28th 2010 (Case Universidad Nacional Abierta –UNA, <http://historico.tsj.gob.ve/decisiones/selec/enero/2-28110-2010-10-000004.HTML>) and Decision No. 120 issued by such chamber on August 11th 2010 (Case Universidad Centroccidental Lissandro Alvarado –UCLA- (<http://historico.tsj.gob.ve/decisiones/selec/agosto/120-11810-2010-10-000044.HTML>)).

<sup>114</sup> The judicial decision includes the administrative and worker-personnel for electoral purposes in relation to university government, in contravention of Constitutional article 109, which recognizes the

requested by the Rector of the Central University of Venezuela, Cecilia García Arocha, and nine other rector and dean authorities of the country's autonomous universities, but in a contrary sense than requested. In February 2020, the Constitutional Chamber suspended the decision mentioned above amid nationwide protests<sup>115</sup>.

In relation to the violation of the autonomy of higher education institutions, through the National Council of Universities (CNU) and other State bodies, the Venezuelan government has intervened in the designation of university authorities. The CNU arbitrarily appointed a military officer (Luis Holder) as the new Academic Vice-Rector in charge of Simon Bolívar University since July 2017. CNU also established a commission to verify the validity of the nomination process of Nelly Velasquez as the new President of Center-Occidental University Alvarado (UCLA by its acronym in Spanish), thus questioning the decision issued on September 1 of 2017 by the University Council of this university. The CNU in November 2018 intervened in the appointment of the vice-rector-dean of the University of Los Andes in Trujillo (NURR) against previous decisions from the university council. The CNU in December 2019 appointed Clotilde Navarro as the new Administrative Vice-rector contradicting the provisions of the University of Zulia Council. The decision was forcibly executed during January-February 2020 by the courts in Zulia State under threat of imprisonment against any university councilor who disrespected it.

### **Final Comments**

In recent decades, “targeting some critical universities or academics” has become a familiar pattern of new populist-authoritarian regimes in Latin America, which imposes certain “prohibited critical debates, knowledge production or transference or even certain topics”, as well. However, some violations also have come from university authorities when they have neutralized or silenced the critical thinking

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autonomy of universities as a principle and status that allows professors, students and graduates from its community (...).

<sup>115</sup> See: <http://aulaabiervenezuela.org/index.php/2020/02/28/vicios-de-la-sentencia-0324-se-mantienen-a-pesar-de-la-suspension-del-tsj/>

of scholars or students, even in "democracies". We have already warned theorists of democracy that they must include restrictions on academic freedom as one of the characteristics of Latin American neo-populism and neo-authoritarianism of the late 20th and early 21st centuries.

Authoritarian regimes use the criminalization of protests, arbitrary arrests, unlawful prosecution, enforced disappearance, discrimination, and budget suffocation against universities and university scholars and students, as recurring patterns of violations against academic freedom. Universities, as centers of knowledge production and critical thinking, are targets of authoritarian governments.

Furthermore, the "corpus-iuris" or "normative doctrine" regarding freedom of expression could be used analogously for the construction of clear international standards on academic freedom. Consequently, it is recommended to international human rights bodies:

1. To distinguish academic freedom from freedom of expression. Both are human rights; closely related but different.
2. To develop analogical references of the "corpus-iuris" of freedom of expression to the new international normative body on academic freedom such as:

- a. The individual and the collective notion of academic freedom.
- b. Considering the vulnerability in the context of critical academic work to authoritarian regimes, the doctrine of journalists at risk could apply to academics at risk. Critical scholars are often targeted by authoritarian regimes, as are critical journalists, human rights defenders, or opposition politicians.

Likewise, the doctrine on "actual malice" used to distinguish some assumptions about the responsibility of journalists in the informative exercise could be applied analogously to new situations wherein this field, the academic-researcher has developed with an "actual malice" in the exercise research

development or its dissemination. This could be applicable to distinguish cases where academic freedom does not protect some acts produced within academia. Even relevant to private "investigative" exercise, where there may be many economic interests involved with harmful ends.

c. To consider possible limits to academic freedom based on the content of article 19 of the International Covenant on Civil and Political Rights, and also on the aspects of General Comment 13 (Economic, Social and Cultural United Nations Committee) on limits to the autonomy of higher education institutions.

d. To develop strong standards on indirect violations of academic freedom.

e. The determination of the subjects involved in the protection of academic freedom and its purposes is crucial. Academic Freedom as a human right revolves around the protection of the production and dissemination of scientific knowledge. Therefore, it requires to protect the universities as centers for the production of knowledge and critical thinking, and also to protect scholars and other university actors. Furthermore, it must be considered the “development and democracy” as final purposes of academic freedom.

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## IV

### **INTERNATIONAL ADVOCACY AND STRATEGIC LITIGATION: TOWARDS A *PLENTY* RECOGNITION OF ACADEMIC FREEDOM AS A HUMAN RIGHT**

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Human rights are the greatest achievement of humanity. The recognition process of these rights has gone through a long journey where tears and barbarism have been the recurring protagonists, going from the colonization processes to the two World Wars. In spite of its high cost and difficulty, this path has allowed us to extract a set of basic principles that are developed today in a nurtured and highly structured international human rights law.

The various achievements included in international declarations and instruments have been mostly obtained thanks to the pressure exercised by the civil society, through actions aimed at demonstrating the rejection and general discontent towards situations that promoted inequality, injustice and suffering from precarious conditions for each member that constitutes it. Nowadays, the use of the human rights mechanism through strategic litigation before international human rights bodies has become a key element by striving to achieve progressive standards to full recognition of human rights and, also to those that have not yet been developed by human rights bodies despite of being recognized in the International Human Rights Law.

#### **1. Academic freedom within the International Human Rights Law**

Common actors such as diplomats, representatives of civil society organizations, government institutions and even universities themselves inquire

whether academic freedom could be considered as a human right. In this regard, it is worth mentioning that academic freedom values itself on the principles and general characteristics of such rights and liberties inherent to all human beings, such as the expression of the intrinsic human condition and especially, as a consequence of the need for the development of democratic societies. Academic freedom finds its grounds on the International Human Rights Law.

The freedom to teach and learn without fear of persecution is recognized in the Universal Declaration of Human Rights<sup>116</sup> and in the American Declaration of the Rights and Duties of Man<sup>117</sup>. It is also recognized in Articles 13<sup>118</sup> and 15<sup>119</sup> of the International Covenant on Economic, Social and Cultural Rights (ICESCR); article 13 both of American Convention on Human Rights and its Additional Protocol in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"<sup>120</sup> and in the Recommendation Concerning the Status of Higher-Education Teaching Personnel<sup>121</sup>, among others.

On top of that, the General Comment number 13 of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) upholds that even though, academic freedom is not explicitly mentioned in article 13, it is necessary to make some observations about it, recognizing that: "(...) Members of the academic

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<sup>116</sup> Articles 19 and 26.

<sup>117</sup> Article IV (Right to freedom of investigation, opinion, expression and dissemination).

<sup>118</sup> Article 13. 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

<sup>119</sup> Article 15. 1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

<sup>120</sup> Article 13. Right to Education. 1. Everyone has the right to education.

<sup>121</sup> In paragraphs 17-21, the UNESCO recommendation establishes: A. Institutional autonomy. Later in paragraphs 25-30 it establishes: VI. Rights and freedoms of higher-education teaching personnel. A. Individual rights and freedoms: civil rights, academic freedom, publication rights, and the international exchange of information.

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 fulfil 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. (...) <sup>122</sup>”. Furthermore, , the Committee affirms that the enjoyment of academic freedom requires for autonomy of higher education institutions, which implies the existence of the degree of self-governance necessary for the effective decision-making on behalf of higher education institutions in relation to their academic work, standards, management and related activities. <sup>123</sup>

Despite the undeniable recognition of academic freedom within the international human rights law framework, when it comes to monitoring and issuing its situation as a human right by the human rights bodies, there are still considerable challenges to overcome. The United Nations Special Procedure System for the promotion and the protection of human rights is currently composed by 44 thematic mandates and 12 country mandates, in which is possible to find Special Rapporteurships focused on several issues such as: freedom of expression, right to education, extreme poverty, arbitrary detentions, and right to development, among others. But there is not one specifically focused on academic freedom. In the same trend, within the Inter-American System for the protection of human rights, the Inter-American Commission on Human Rights has 13 rapporteurship focused on many

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<sup>122</sup> In paragraph 39 of the General Comment No.13 to the CESCR, the Committee established: 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 fulfil 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.

<sup>123</sup> Committee on Economic, Social and Cultural Rights (CESCR), “General Comment No. 13 on the right to education”, 1999, p. 237-238, paragraph 40.

human rights topics, however, none of them is specifically aimed to exclusively monitor the academic freedom situation.

## **2. International advocacy on academic freedom: Accomplishments and upcoming challenges for Latin-America**

Regarding the mentioned above, there is a question that should be asked: *Is there a gap in International Human Rights Law regarding academic freedom?* In light of what has been described so far, the answer to such question would be “yes, there is”. The current treatment of international human rights bodies to academic freedom situation makes it necessary to develop international standards on the matter. As a result of a clear understanding of this, the Venezuelan academic community alongside with civil society organizations have been promoting actions aiming for a stronger recognition of academic freedom before international stakeholders such as human rights bodies, parliaments, scholars and universities’ representatives from all over the world. Since 2014, a significant increase in the visibility of academic freedom and others human rights linked to university environments has been occurring, mainly because of the international advocacy and strategic litigation work before the United Nations and the Inter-American systems to protect and promote human rights.

In the following lines, the main actions which have contributed to the referred increase on the visibility of academic freedom cause will be described:

### **2.1. Academic freedom within the United Nations System**

The first steps in the international advocacy and strategic litigation to highlight academic freedom and university students’ situation can be found in the framework of the 58<sup>th</sup> Sessions of the Committee against Torture (CAT, 2014), in which the Human Rights Commission of University of Zulia submitted a join report with COFAVIC (Spanish acronym for Relatives of Victims Committee), the World Organization Against Torture and other Venezuelan civil society organizations. A year later, the ground to advocate in favor of academic freedom was taken in the period of sessions of Committee on Civil and Political Rights (CCPR) on June, 2015. In both stages, the

World Organization against Torture (OMCT) along with Venezuelan civil society organizations such as Cofavic, the Human Rights Commission of the University of Zulia, among others, submitted a report issuing different concerns about human rights violations, which summarized some patterns and practices on criminalization of student protests as well as assaults at, on and in university campuses carried out by police and military forces in Venezuela.

### **2.1.1. Universal Periodic Review (UPR) for Venezuela (2016)<sup>124</sup>**

Even though there is considerable room for Civil Society Organizations' participation, the UPR is mainly known as a mechanism in which the main actors are the States member of the UN, as it is developed within a political body: The Human Rights Council. Through this mechanism, States are exposed to get reviewed and get recommendations from other States regarding respect and promotion of human rights in their jurisdiction.

In 2016, a specialized report on restrictions and reprisals against academic freedom and autonomy of the Higher Education institutions in Venezuela was sent to the United Nations Human Rights Council as a contribution to the second cycle of Universal Periodic Review (UPR) in its 26<sup>th</sup> session by a coalition of Venezuelan university human rights centers. Herein, several patterns are highlighted of the Venezuelan State aiming to erode academic freedom and the freedom to think within the Venezuelan higher education system. These are the main patterns denounced:

A. Interference in internal rules of self-governance and participation, as the Supreme Court suspended any process of election of officers and / or student in 9 public national universities since 2011; B. Policy against the autonomy of the institutions of higher education, as the governmental plan named "Mision Sucre" (Sucre Mission) created a parallel university system under the State, which governs all non-autonomous

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<sup>124</sup> <https://www.examenonuvenezuela.com/derechos-civiles-y-politicos/segundo-examen-periodico-universal-de-venezuela>

universities in a *pensée unique* (single thought) model, established at the Second Socialist Plan of the Nation 2013-2019; C. Attacks to university facilities and insecurity in campuses, with high rates of crime and impunity; D. Regressivity in guarantees for working conditions, regarding that in 2010, the Supreme Court stopped certification standards governing relations between the professors' union and the State. Since 2013, a Single Collective Bargaining (CCU) was imposed and; E. Stigmatization, criminalization and repression against students, professors and researchers, reached alarming levels in 2014 when the Resolution 8610 was issued by the Ministry of Interior, Justice and Peace, authorizing the army to control public meetings using weapons; which can have deadly consequences. In July 2016, the Supreme Court upheld the constitutionality of Resolution 8610.

On top of that, different States issued recommendations to Venezuela related to rights such as, freedom of expression, education, academic freedom; among others. This reflects the interest from international community on the matter. Slovenia asked the Venezuelan State to respect academic freedom, recommending to “Reform the Organic Education Law to achieve compliance with international standards of protection of the right to autonomy and Academic Freedom. Other important recommendations were made by other United Nations members, here are some of them:

Regarding the right to education: A. Palestine: Take the necessary measures to ensure that education promotes respect for human rights and participation in a free society; B. Israel: Urges non-discrimination in education for people with disabilities; C. Guatemala: Ensure that education promotes full respect for human rights and active participation in a free society; D. Iran: Continue to increase investment in education; E. China: Continue to implement policies to improve educational infrastructure; F. South Sudan: Continue to improve the school infrastructure of indigenous communities, to guarantee the increase of intercultural and bilingual education centers; G. Peru: Consider the recommendation of various treaty bodies regarding the elimination of pre-military training in schools.

Also, recommendations on others human rights related to academic freedom, such as: freedom of expression, freedom of association were made by delegations from Italy, Lithuania, Mexico, New Zealand, Chile, Estonia, Georgia, Guatemala, Spain, Switzerland, France and Sweden. To urge the National Government to accept the recommendations regarding Freedom of Association made by the delegations of Canada, Lithuania and Switzerland, since it is part of the principle of Academic Freedom.

### **2.1.2. Office of the High Commissioner for Human Rights**

Fortunately, within the complexity of the United Nations System there exists several mechanism with the mandate of promote and protect human rights, one of the most important is the Office of the High Commissioner of Human Rights, which mandate mainly includes preventing human rights violations, securing respect for all human rights and promoting international cooperation to protect human rights all over the world. Because of its authority, given by the United Nations General Assembly and the International Human Rights legal framework, the office has been monitoring the Venezuelan political, economic and social crisis which affects almost every aspect of its citizens lives.

In this regard, the former United Nations High Commissioner for Human Rights, ZeidRa'ad al Hussein, spoke on March 7<sup>th</sup>, 2018 before the United Nations Human Rights Council where he stated his opinion summarizing the basic concerns about the lack of democracy and human rights violations in Venezuela. He said: “the human rights situation in Venezuela is deeply alarming. Malnutrition has increased dramatically in the country affecting in particular children and the elderly. A credible report indicates that government assistance programs are often conditioned under political considerations. I am deeply alarmed by possible crimes against humanity that have been committed and by the erosion of democratic institutions. The fundamental principle of separation of powers has been severely compromised. My office has also received credible reports of hundreds of extrajudicial killings in recent years during

protests and security operations. I am seriously concerned that this context does not fulfill the minimum conditions for free elections. I am deeply disturbed by the growing exodus of Venezuelans from their country, many of them seeking access to food and basic services"<sup>125</sup>.

These and others concerns have been issued by implementing important actions, which are going to be commented in the following lines:

**A. Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral that seems to have no end**<sup>126</sup>

The Office of the United Nations High Commissioner for Human Rights (OHCHR) published on Friday, June 22<sup>nd</sup>, 2018, a report entitled "Human Rights Violations in the Bolivarian Republic of Venezuela: a downward spiral that seems to have no end" , in which the failure of the Venezuelan State to punish those responsible for serious human rights violations in the framework of the protests, including homicides, excessive use of force against protesters, arrests, is manifested arbitrary, ill-treatment and torture.

After years of documentation and advocacy work before the High Commissioner, in the report it is emphasized the attacks directed at university students in Venezuela, alluding in to complaints made by Aula Abierta, along with a coalition of university centers in the field of human rights, including the Human Rights Commission of the Faculty of Juridical and Political Sciences from The State of Zulia University (La Universidad del Zulia. LUZ), the Observatory of Human Rights of The Andes University (Universidad de los Andes. ULA) and the Center for Peace and Human Rights from the Central University of Venezuela (Universidad Central de Venezuela. UCV). For instance, in segment F called "The situation of human rights

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<sup>125</sup> UN High Commissioner for Human Rights, "Democracy and human rights violations in Venezuela", <https://www.youtube.com/watch?v=N4wdKwjI75s> (Ven Europa Canal, YouTube video, 1:17. Posted: March 7, 2018, consulted on March 20, 2018)

<sup>126</sup>Report: [https://www.ohchr.org/Documents/Countries/VE/VenezuelaReport2018\\_EN.pdf](https://www.ohchr.org/Documents/Countries/VE/VenezuelaReport2018_EN.pdf)

defenders”, it is reported that, during 2017 protests, at least 17 university professors were arbitrarily detained. The reasons were of a different nature: from the publication of critical ideas against state public policies to the participation in demonstrations against the current Venezuelan government. Of these 17 professors, 7 were brought before military justice (See page 35 of the report). This was quoted information from Aula Abierta’s report “Restrictions and reprisals against university students and professors in Venezuela. February-June 2017”. (See page 35 of the UN report).<sup>127</sup>

**B. Academic freedom and autonomy of the institution in the higher education system within the 2018 mandate on Venezuela**

Threats to academic freedom and human rights in Venezuela continued and so did the documentation and advocacy work of Aula Abierta. In the framework of the mandate on human rights situation in Venezuela, given to the High Commissioner of Human Rights by United Nations Human Rights Council in 2018, Aula Abierta was able to highlight before the High Commissioner the State policy of undermining the critical opinions within the Venezuelan Higher Education System.

On March 10<sup>th</sup>, 2020, during the 43<sup>rd</sup> session of the Human Rights Council, Michelle Bachelet, United Nations High Commissioner for Human Rights, stated “We have also documented harassment against some university authorities, so I consider positive the decision by the Supreme Court of Justice to suspend the August 2019 measure that threatened university autonomy.” By doing this, once again the situation of universities and the freedom of its members was included in the United Nations agenda.

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<sup>127</sup> Aula Abierta, Human Rights Commission of University of Zulia, Human Rights Observatory of University of The Andes University and the Center for Peace and Human Rights of University of the Central University of Venezuela. Available on: <http://aulaabiervenezuela.org/wp-content/uploads/2017/08/05-2018Restricciones-y-represalias-contr-estudiantes-y-profesores-universitarios-en-Venezuela-Febrero-Julio-2017.pdf>

**C. Results of the investigation of possible complaints on violations of the human right to life, liberty and physical and moral integrity in the Bolivarian Republic from Venezuela**

More recently, on July 5<sup>th</sup> 2020, during the 44<sup>th</sup> period of sessions of the Human Rights Council, the Office of the High Commissioner of Human Rights presented the report “Results of the investigation of possible complaints on violations of the human rights to life, liberty and physical and moral integrity in the Bolivarian Republic from Venezuela”, in accordance with resolution 42/4 of the Human Rights Council, this report presents an overview of the human rights situation in the Bolivarian Republic of Venezuela between June 2019 and May 2020, which includes the results of the investigation of the allegations of rights violations human to the life, liberty and integrity of people.

In this report, the OHCHR expressed its concerns regarding “threats to the university autonomy, in particular through harassment of some of the authorities”<sup>128</sup>, referring to reprisals against the members of the Venezuelan Association of University Presidents (AVERU by its Spanish acronym) documented by Aula Abierta in its 2019 Annual Report<sup>129</sup>.

As a result of the mentioned above, it is clear that the interest on the rights linked to university environments have been gaining traction among the United Nations and, what is best, the UN is not the only one who has been working on this issue.

**2.2. Academic Freedom and the Inter-American System on Human Rights**

Within the Inter-American System for the protection and promotion of human rights, civil society organizations have found, perhaps, the strongest support to the idea

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<sup>128</sup> Please, see page 7, paragraph 28. Available in: [https://www.ohchr.org/Documents/Countries/VE/A\\_HRC\\_44\\_20\\_UnofficialVersion\\_SP.pdf](https://www.ohchr.org/Documents/Countries/VE/A_HRC_44_20_UnofficialVersion_SP.pdf)

<sup>129</sup> Aula Abierta, Informe Anual 2019, véase: <http://aulaabiertavenezuela.org/wpcontent/uploads/2020/01/INFORME-PRELIMINAR-VIOLACIONES-A-LA-LIBERTAD-ACADÉMICA-AUTONOMÍA-UNIVERSITARIA-Y-OTROS-DERECHOS-DE-LOS-UNIVERSITARIOS-EN-VENEZUELA1.pdf>

of conceiving academic freedom as a human right. Since 2017, the Inter-American Commission on Human Rights has been moving towards a full recognition of Academic Freedom in every statement, not only in Venezuela but also in Latin America. Some of the most important achievements will be discussed in the following lines.

### **2.2.1. Academic freedom in the public hearings before the Inter-American Commission on Human Rights**

The hearings before the IACHR is a mechanism with several purposes, such as: receiving information from the parties concerning a petition or case being processed before the Commission, following to recommendations, precautionary measures, or general or particular information related to human rights in one or more Members States of the OAS. The hearings of a general nature, as they are called by the Rules of Procedure of the Inter-American Commission on Human Rights (2013), have been instrumental in the progressive protection of academic freedom in The Americas. Since 2017, at least six public hearings about the academic freedom and human rights linked with university environments have been held.

#### **-Uruguay: 165 Period of Sessions**

The academic freedom situation as a human right was discussed for the very first time in an IACHR's hearing on the right to education in Venezuela, in the framework of the 165 period of sessions held in Montevideo, Uruguay<sup>130</sup>. Aula Abierta, alongside with the Observatory of the Andes University, on behalf of the main university centers of human rights in Venezuela, denounced the main elements of a State policy aimed at ending critical thinking and universities. A clear set of patterns against the mentioned human rights were described before the Commissioners and the

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<sup>130</sup> IACHR'S 165 period of Sessions. Public Hearing. Available: <https://www.youtube.com/watch?v=tA6i8t8OR6c&t=1351s>

representatives of the Venezuelan permanent mission before Organization of American States, and could be resume as it follows:

**A. Firstly, violations to the autonomy of the higher education institutions: references the legal framework:** Although university autonomy and academic freedom are recognized in the Constitution, as in the Universities Act, the Organic Law of Education (LOE 2009) contains articles that are applied in violation of these rights. Article 6 of the LOE creates the Estado Docente (Educator State), which assigns to the National Executive Power competences of control over the universities' rules and policies of government, income and training. Article 34 states that university autonomy must be interpreted (a) in academia, as the subordination of training programs and research to the plans of the National Executive Power and the priority needs of the country; (b) in the administrative and self-government level, as the obligation to include the administrative staff and workers in the election of university authorities and student representatives; and (c) in the economic sphere, as the centralized State control over investment and expenditure of universities. Articles 37 and 38, reserve to the State the functions of formulation, regulation, monitoring and control of professors' training policies.

The spirit of this unconstitutional article was enforced by the following legislative initiatives: 1. Reform Project of the Organic Law on Higher Education (2010), approved by the National Assembly in 2010 and vetoed by the Executive in 2011 as a result of public demonstrations against it (There is a *de facto* application of the vetoed law, though); 2. The Second Socialist Plan for Economic and Social Development of the Nation 2013-2019, which was unconstitutionally given the force of law in 2013. And promotes the university transformation towards the Bolivarian socialism, conditioning academic activity to a unique ideology; 3. The establishment of a National Constitutional Assembly (2017)<sup>131</sup>, to which the Minister of Popular Power for

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<sup>131</sup> Press release from the NGO International Transparency (Venezuela). Please see: <https://transparencia.org.ve/asamblea-nacional-recibe-respaldo-de-la-comunidad-internacional/>

University Education, Science and Technology publicly “subordinated” the National Council of Universities (CNU), a body supposed to be autonomous.

**B. Secondly, the criminalization of protest and political discrimination against university students due to political grounds.** During the public demonstrations against the establishment of the Constituent National Assembly, selective detention of university professors and students were registered: At least 17 professors were arbitrarily detained and the motives were of different nature: publication of critical ideas against government public policies to participation in demonstrations against the current Venezuelan government. Of these 17 professors, 8 were brought before the military courts, 6 before the ordinary courts and 3 released from the State security forces detention centers. Santiago Guevara’s case, a professor arbitrarily deprived of liberty for over 10 months in 2017, was specially issued. Also, at least 339 students were arbitrarily detained, many of them were deprived of liberty and even brought before military courts.

In the same trend, Aula Abierta documented that at least 92 demonstrations convened by the academic community or that had a wide participation of the same were suppressed. The main repressive organ was the Bolivarian National Guard (GNB by its acronym in Spanish), being responsible for repressing 82% of the demonstrations. What is more, the organization also denounced Irruptions on-campus by state security forces: Allegations of raids on-campus were received without a warrant or justification based on exceptional situations declared or notified in advance and in accordance with national and international standards. There were 21 attacks and/or break-ins in campuses between April and July 2017, being the Bolivarian National Guard (GNB) responsible for the largest number of attacks, with 41%.

**C. Discrimination based on political grounds within the higher education system,** as a third wide category of pattern denounced: Between June 21<sup>st</sup> and July 3<sup>rd</sup>, 2016, Aula Abierta documented that at least 896 students from the Zulia State were

temporarily taken off from the government's Jesus Enrique Lossada scholarship program (JEL scholarships) due to their participation in the process of collecting signatures in favor of the activation of the recall referendum against President Nicolás Maduro. Such disincorporation was related to actions and practices of reprisals and political discrimination exercised by the Governor of the Zulia State, whose governor was a political ally of the National Government. In September 2017, complaints were received that the Governor of the Zulia State coerced the scholarship students to subscribe to voter registration forms in favor of the candidacy of Governor Francisco Arias Cárdenas in the regional elections process of October 2017. Many other cases of discrimination on political grounds have been documented too, including students from the National Polytechnic Experimental University of the National Armed Forces (UNEFA by its Spanish acronym), the Bolivarian University of Venezuela, among others, in retaliatory actions against them for having manifested some criticism linked to the management of the National Government or to belong to some political opposition parties. In all cases, the violation of due process has been reiterated.

**D. Violations of academic freedom and self-governance rights of autonomous universities:** Through the National Council of Universities (CNU by its Spanish acronym) and other bodies, the Venezuelan government has intervened in the designation of university authorities. The National Council of Universities arbitrarily appoints a military officer as the new Academic Vice-President in charge of the Simon Bolívar University in July 2017. In a similar matter, the National Council of Universities established a commission to verify the validity of the nomination process of Nelly Velasquez as the new President of Centre-occidental University Lisandro Alvarado (UCLA by its acronym in Spanish), thus illegally questioning the decision taken on September 1<sup>st</sup>, 2017 by the University Council of this university.

The judicial decisions of the Supreme Court were also alleged as an important part of the State policy of restricting university self-governance, as the Electoral Chamber ordered the suspension of elections process of university authorities in Venezuela through the decision number 110 of 2010. The electoral processes of 9

universities are currently suspended at the national level, to elect presidents, deans, representatives of professors before the University Council, representatives of professors before the Councils of Faculties and Schools, Council of Appeals, representative of the graduates before the University Council and the student elections of Government and Co-government University.

The denounces described above lead the Inter-American Commission to issue serious concerns about the academic freedom situation, both: during and after the hearing. As a sample of the effectiveness of this mechanism, it is worth mentioning that one month after this hearing was held, the IACHR granted precautionary measures to Professor Santiago Guevara, who was finally released by Venezuelan authorities on December 23<sup>rd</sup>, 2017.

#### **- Bolivia: 171 Period of Sessions**

In February 2019, the 171 period of sessions of the Inter-American Commission on Human Rights was held in Sucre, Bolivia. Within this period of session, it was possible to achieve, perhaps, the most significant step so far in the advocacy process towards the plenty recognition of the academic freedom as a human right: the first public hearing in the history of the IACHR issuing restrictions and reprisals against academic freedom and the autonomy of higher education institutions in The Americas<sup>132</sup>. This public hearing was requested by Aula Abierta, the University of Ottawa Human Rights Research and Education Centre<sup>133</sup>, and the Iberoamerican Center for Training in International Law and Human Rights (CIFODIDH by its Spanish acronym). These were the main patterns denounced by Aula Abierta, the Human Rights

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<sup>132</sup> Available on: <https://www.youtube.com/watch?v=CfOv0FHGroE&t=1888s>

<sup>133</sup> In the historic hearing participated professors: David Gómez Gamboa (Aula Abierta and Human Rights Commission University of Zulia), Jesse Levine (Scholar at Risk), Mayda Hocesvar (University of los Andes Human Rights Observatory) and Salvador Herencia (University of Ottawa Human Rights Research and Education Centre). The civil society organizations' representatives requested to IACHR to be focused on the restrictions and reprisals against academic freedom, university autonomy and the right to a quality education, practices of discrimination, criminalization of protest, torture, cruel, inhuman and degrading treatment, as well as other forms of violence against university professors and students in The Americas. See: <http://derechosuniversitarios.org/index.php/2019/02/16/en-audiencia-historica-cidh-reconoce-importancia-de-libertad-academica-en-las-americas/>

Commission of the Faculty of Law and Political Sciences of University of Zulia and the Center for Peace and Human Rights of Central University of Venezuela.

**A. The criminalization of the protest against the university students and professors in The Americas:** Retaliation by the police, military and, in some cases, parastatal groups against the university protest are repeated. Students have been injured by bursts into the university campuses. Some examples are: the detention of more than 22 hours carried out at the Nueva Esparta campus of the University of the East (UDO by its acronym in Spanish) in 2017 (Venezuela); the attacks to the Centro American University of Nicaragua in 2018 and the National University of Nicaragua (UNAN by its acronym in Spanish) on July 13<sup>th</sup>, 2018 with war weaponry and the protest held at the University of San Carlos (Guatemala) in March 2018.

These kinds of patterns have been the cause for the murders of university students: Aula Abierta documented 21 cases in Venezuela during in 2017, at least cases 6 during the public the demonstrations in 2018 in Nicaragua and one case in Bolivia in 2018 (Jonathan Quispe's case). Also, practices of torture and cruel treatment were documented in countries like Venezuela, Nicaragua, Bolivia and Colombia. Being an emblematic example the case of the 4 Bolivian students tortured within a Church in La Paz.

Another pattern within the criminalization of process was the **arbitrary detentions and judicialization of university students**. During the hearing, it was denounced that over 350 students and at least 17 university professors have been arbitrarily detained in Venezuela between 2017 and 2019, many being subjected to military jurisdiction in contravention of international standards. In January 2019, nine Nicaraguan students were convicted for protesting against the regimen of Daniel Ortega. UNAN-Leon students remain detained for several months as political prisoners (Amaya Copens, among others). Unfortunately, the use of criminal elaborations such as "terrorism" or "association to commit crimes" was a repeated pattern.

**B. Discrimination based on political grounds**, as Aula Abierta documented a siege against the university student leadership, in their condition of the political generation of tomorrow. In Venezuela, Franklin Camargo was expelled from the UNELLEZ University for refuting actions of political indoctrination within the university, in the context of the public demonstrations of January 23<sup>rd</sup>, 2019. In the same matter, Marlon Díaz, was declared loser of the student's election process, by a decision of the Electoral Chamber of the Venezuelan Supreme Court due to his critical opinions against the Government, despite having been awarded as the winner of it by the university authorities. Moving to other countries, in Cuba the student Karla Pérez was expelled from the University of Villa Clara in 2017 for criticizing the government and in 2019, student representatives from the San Francisco Javier de Sucre University (Bolivia) suffered retaliation after protesting in favor of free tuition.

**C. Retaliations against scholars due to their scientific research and other academic activities were documented in several countries of The Americas.** In Venezuela, professor Santiago Guevara was brought before military courts for publishing critical articles on the economic policies of the Venezuelan government; In Nicaragua, professors Freddy Quezada and Josvell Saintclair were expelled in April 2018 from UNAN-Managua due to their support to students participating in the public demonstrations against the Government. Finally, in Colombia the professor Monica Godoy was fired from the University of Ibagué (Colombia) in 2017 for reporting sexual harassment.

This information, combined with the cases and patterns exposed by the other civil society representatives, allowed to reinforce before the IACHR an essential idea in this topic: there is an interdependence between academic freedom and other human rights. Therefore, violations of other rights such as: life, integrity, expression, association, assembly and peaceful demonstration, end up inhibiting university students and professor from exercising their critical voice and academic freedom.

In light of the arguments explained and the information shared by the civil society organizations during the public hearing; at the end of it, the Commissioners recognized the need to develop specialized Inter-American standards to give a proper protection to the academic freedom and other human rights linked to university spaces, as the general standards related with other human rights are not enough to completely protect them. The IACHR settled up the grounds for an historical development of the key role of the university and its members in the preservation of democracy.

### **-Jamaica: 172 Period of Sessions**

Another opportunity to keep Academic Freedom in the Inter-American System agenda was the ex-officio public hearing on Freedom of Association, Development and Human Rights<sup>134</sup> in the Americas held in Jamaica. During the 172 period of sessions of the IACHR. This public hearing was particular as Mr. Clement Voulé, the United Nations Special Rapporteur for Freedom of Peaceful Assembly and Association, participated as a guest. The following is a summary of some intervention made in the referred public hearing, which was focused in the criminalization of protest of students and professors in The Americas:

**A. Arbitrary detentions:** The figures in Venezuela, Nicaragua, Bolivia, even Colombia were alarming: Between 2017 and 2019 at least 400 university students have been arbitrarily detained during social protests, more than 100 university students have been expelled, more than 20 students have been killed and many others have been subjected to torture, treatment cruel, inhuman and degrading for exercising his role as a critical thinker. Recently, student leaders and teachers denounce being victims of acts of retaliation, persecution or fear for their lives, for leading university movements or promoting debate, as is the case of Leobardo Zerpa, professor at UNEY in Venezuela suspended for protesting against the government on February 23, 2019. Along these same lines, members of student centers of different faculties of the San Francisco Javier

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<sup>134</sup> Available on: <https://www.youtube.com/watch?v=qb3y4e5eGnA>

University of the Department of Sucre in Bolivia have been arbitrarily repressed and detained by state security forces, for instance, on March 13, 2019 they were brutally beaten by groups of civilians serving the interests of the university authorities, which are accused of calling elections for a Federation of Student Centers without complying with the extremes of law. On April 19, 2019, in Nicaragua a demonstration with wide participation of university students had to take shelter in the Cathedral of Managua as a result of the repression by state security forces, being trapped for several hours. At least two students were injured as a result of the repression.

**B. Other forms to undermine the freedom of association.** There are more “sophisticated” forms of violation of the freedom of association of university community members’: In Venezuela, since 2010 the Judiciary has prohibited student and rector elections, preventing the renewal of university authorities in more than 9 public universities. The student, Marlón Díaz, was ignored by the Electoral Chamber of the Venezuelan Supreme Court five months ago as president of the University of Carabobo Students Federation. The State has created parallel associative figures related to the national government to validate collective contracting processes in which legitimate associations or unions have been excluded. The FAPUV was excluded from the discussion of the “I”, “II” and “III” Collective Convention of the University Sector for privileging the FTUV with a marked pro-government relationship.

This scenario was drawn in order to highlight a concerning reality for scholars and university students. How to decide to associate in university unions, centers or student movements knowing that you may be subject to retaliation? It is necessary to understand the criminalization of protest and discrimination as actions that not only violate physical integrity, life or personal freedom. They are practices that have an inhibiting effect on the right of university students to associate, question social realities and of producing critical debates or "bothersome" scientific findings for some governments.

In this sense, it was stated that a university "inhibited" from generating critical thinking is equivalent to a society with a fragile democracy and seriously disrupted development. In consequence, the human rights centers and Venezuelan civil society organizations ratified the need recognized by the IACHR of building Inter-American standards in favor of academic freedom as an essential human right for the exercise of other rights linked to university environments and democracy itself, through a resolution of the IACHR on the matter.

### **-Haiti: 175 Period of Sessions**

The latest effort of the IACHR to continue monitoring the situation of the human rights linked to the university environment occurred during its 175 period of sessions held in Haiti, where a public hearing issuing the situation of academic freedom and the autonomy of the higher education institutions in Venezuela was held<sup>135</sup>. The main concerns denounced by Aula Abierta were the following:

**A. Siege of Judicial Power against academic freedom and the autonomy of the higher education institutions:** The Judiciary has issued more than 50 decisions that violate academic freedom and university autonomy, affecting at least 37 opportunities in the electoral processes of authorities, student representatives and others university charges. The Constitutional Chamber of the Supreme Court of Justice intends to definitively intervene the autonomous university governments through judgment No. 0324 of August 27<sup>th</sup>, 2019, a new procedure for the election of university authorities was created. Contrary to the National Constitution (art. 109) and the Universities Law in force (1970), threatened to declare the absolute vacancy of the authorities of the Central University of Venezuela in case of not holding elections within 6 months under the unconstitutional parameter created and ordered the Ministry to manage a schedule for the realization of elections in those universities whose authorities

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<sup>135</sup> Available on: <https://www.youtube.com/watch?v=AWXmNY9jyiw&t=1341s>

have expiration periods. Paradoxically, it has been the Court itself that has prohibited the elections of university authorities for almost a decade.

As a result of pressure from the university community, on February 27<sup>th</sup>, 2020, through a simple press release, the Supreme Court of Justice (TSJ by its acronym in Spanish) announced that it had “officially suspended” the 0324 call for elections, but ratified the vices of absolute nullity of the sentence by continuing to order the application of the electoral procedure created by it.

**B. Attacks against self-governance rights of the universities by the National and Regional authorities.** On its part, the National Council of Universities, chaired by the person who usurps the post of Minister of Higher Education, has been used to persecute authorities of public universities critical of the de facto government. On May 30<sup>th</sup>, 2019, the National University Council (CNU by its Spanish acronym) requested the Public Ministry to initiate a criminal investigation against the members of the Venezuelan Association of University Rectors (AVERU by its acronym in Spanish) for “publicly disregarding the government of Nicolas Maduro and openly carrying out hostile and conspiracy activities aimed at to destabilize the Constitutional order (...)”.

The National Council of universities (CNU) has also been used systematically to intervene in universities. On December 10<sup>th</sup>, 2019, it unconstitutionally appointed Clotilde Navarro as Administrative Vice-rector of the University of Zulia, unaware that Dr. María Artigas is the legitimate Administrative Vice-rector in office according to the formal act of appointment by the University Council of the University of Zulia since 2018. Likewise, it was denounced that officials aligned to the regional and municipal Executive of different territorial entities participated in the violation of university autonomy. Unfortunately, The Andes University and the University of Carabobo have also been victims of

harassment by the governors of their respective states in 2016 and 2018 respectively.'

We are convinced that the reported violations could be avoided by reinforcing the legal framework that regulates higher education in Venezuela, establishing special protection for human rights linked to the university environment in accordance with international standards on the matter. For this reason, the added value to the participation in the hearing was the possibility to submit before the representatives of the Venezuelan State before the OAS a law proposal aimed to strengthen the protection and recognition of academic freedom within the Venezuelan legal framework, compromising the public authorities to work on this matter.

### **2.2.2. OAS Reports: key elements to solve the puzzle of Inter-American standards**

The IACHR fulfills its mandate through several mechanisms, one of them is the elaboration of reports, which could be either related to a specific thematic or a country. These reports allow the IACHR to address the human rights situations all over The Americas and, more importantly, develop progressive standards for their protection.

Since 2017, the IACHR has issued several reports that have contributed to develop general grounds to the protection of academic freedom in the continent. Here are the most relevant to our consideration:

#### **-Democratic Institutions, the Rule of Law and Human Rights in Venezuela**

On February 12<sup>th</sup>, 2018, the Inter-American Commission on Human Rights (IACHR) released its third report in 15 years, on human rights violations in Venezuela, entitled "Democratic Institution, Rule of Law and Human Rights in Venezuela." With it, an overview that reflects the serious institutional crisis that the nation is going

through and the systematic violations of human rights by the Venezuelan State, where the following stand out: 1) Democratic institutionalism 2) Social protest and freedom of expression 3) Violence and citizen security 4) Poverty and economic, social, cultural and environmental rights.

In this overview, there are concerns addressed by the IACHR regarding the respect of human rights linked to the university environment, such as academic freedom. This constitutes a milestone and a further step towards the conquest of these rights in favor of humanity, which has been promoted by the Venezuelan human rights movement, especially by Aula Abierta and the set of civil society organizations and human rights centers that make life in the university community.

In the before mentioned report, the IACHR expresses its concern and recognition of the need to respect academic freedom and university autonomy, stating: “The Commission expresses its concern at the complaints regarding interference with university autonomy. Although it is not expressly mentioned in the American Declaration, the IACHR recalls that university autonomy is an essential requirement for academic freedom, which in turn is necessary to fully enjoy the right to education, recognized in the Article XII of the American Declaration (...)” (See page 245, paragraph no. 458).

The main problems pointed out by the IACHR regarding respect for academic freedom and university autonomy were: 1) Existence of norms, decrees and sentences that affect university autonomy 2) Existence of "parallel universities" created and subordinate to the Executive Branch, where there have been cases of students expelled for the simple fact of watching a television channel other than the State one and 3) the existence of discriminatory practices in the sphere of higher education, highlighting the case of the 896 students who were temporarily suspended from the scholarships of the Jesús Enrique Lossada program, provided by the State of Zulia, in retaliation for their participation in the process of collecting signatures for the recall referendum of President Maduro. Aula Abierta and the set of civil society organizations and human

rights centers that are in the Venezuelan university community, such as the Human Rights Observatory of the Andes University (ULA), the Center for Peace and the Human Rights of the Central University of Venezuela, the Center for Human Rights of the Andrés Bello Catholic University (CDH-UCAB) and the Human Rights Commission of the Faculty of Legal and Political Sciences of the University of Zulia; have denounced these situations at the 165<sup>th</sup> session of the Inter-American Commission on Human Rights, held in the Republic of Uruguay in 2017.

Similarly, the IACHR reviews patterns of action by the Venezuelan State that demonstrate the criminalization of the protest against university students. Among these patterns, the following are especially indicated: a) the arbitrary detention of at least 339 students during the protests in 2017 b) the arbitrary detention of 17 university professors, either for their critical opinions on the Government or for their participation in the protests, highlighting the presentation of 8 of them before the military courts and c) the disproportionate use of force by the State Organs, where at least 92 repressed protests were called by the university community. In the same matter, it reviews the practice of torture, cruel, inhuman and degrading treatment against university students (See citations 548, 550, 552, 555, 556, 563 and 565 of the IACHR report), which were denounced by Aula Abierta and the Commission of Human Rights of the Faculty of Law and Political Sciences of the University of Zulia in its "Preliminary report on the situation of human rights in the state of Zulia in the framework of the protest: July-August 2017".

Among these cases, the Commission highlights that of Professor Santiago Guevara, indicating: "According to the information received, the arrest and prosecution of Professor Santiago Guevara would be framed in a context of threats, intimidation or discredit attacks, or acts of criminalization or aggression against professors for their academic activities or work or for their membership in the academic community and because of their professional opinions on the critical situation of services such as health, electricity or infrastructure "(See page 310). In this sense, it must be remembered that Professor Guevara was arbitrarily detained and presented before military justice and

held in detention for over 10 months, for publishing opinion articles on the current situation in Venezuela from the perspective of his academic knowledge of the economy, his case became an obvious violation of academic freedom.

For these reasons, the Commission, within its recommendations, urges the State to abstain from any action or conduct that may limit the autonomy of the universities and to accept an on-site visit to Venezuela, in order to monitor the general human rights situation in the country (See page 257, general recommendation No. 4 and page 265, recommendations on the right to education).

**-Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes against Humanity in Venezuela<sup>136</sup>**

As demonstrations were developing, Aula Abierta started to identify some concerning patterns of human rights violations against universities communities. The organization documented the arbitrary detention of many students and professors that either participated during the public protests or were publicly criticizing the governmental policies in Venezuela. What is more, the work done by the Observatory of Academic Freedom was able to determine other serious practices such as excessive use of force by security forces, extrajudicial executions, tortures, cruel and inhuman treatments and other gross human rights violations.

This information was assembled in light of article 7 of the Rome Statute of the International Criminal Court, which refers to crimes against humanity. As a result, the organization published the report “Restrictions and reprisals against university students and professors in Venezuela. February-October (2017)”, where not only these patterns were described, but also the elements of widespread or systematic attacks directed against civilians.

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<sup>136</sup> To see the report: <http://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>

The General Secretariat of the Organization of American States (OAS) and the Panel of Independent International Experts issued a report on the possible perpetration of crimes against humanity in Venezuela on May 29<sup>th</sup>, 2018. The report highlighted the institutional persecution against any individual who expressed or has expressed contradicting points of views to the ideology of the Bolivarian Government as the issues regarding academic freedom and autonomy in Venezuelan universities<sup>137</sup>. In it, the OAS expresses its preoccupation for the rights of students and university staff.

The report has two parts, the first part was written by the OAS General Secretariat, includes material from witnesses who appeared during the public hearings organized in September, October, and November 2017, as well as all the material collected from organized civil society in Venezuela and intergovernmental organizations. The second part of the Report was drafted by the Panel of Independent International Experts, and it presents a legal evaluation of the information collected, an examination of jurisprudence and relevant international precedents, as well as its conclusions and recommendations.

[In the chapter titled *"Imprisonment or Serious Deprivation of Freedom as Crimes Against Humanity"*, the report highlights information provided by Aula Abierta where it can be seen that during the 2017 protests, at least 17 university professors were arbitrarily detained. The reasons were of different nature: from the publication of critical ideas against political public policies, to the participation in demonstrations against the current Venezuelan government. Of these 17 professors, 8 were brought before military justice, 6 before ordinary justice and were 3 released from the detention centers of the security forces. (See page 151 of the OAS report).

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<sup>137</sup>OAS, Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible perpetration of crimes against humanity in Venezuela, 2018, <http://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>. see quotes 222-226 on pages 177-178

### **-Annual Reports 2018 of the Inter-American Commission on Human Rights and the Special Rapporteurship for Economic, Social, Cultural and Environmental Rights**

Among the different types of reports that the IACHR can produce in the fulfillment of its functions, the annual reports have a special relevance. In view of the thousands of situations monitored by the IACHR, this report considers the concerns for this body during the monitoring year and the most critical points of its human rights agenda. The same applies to the command of the Rapporteurship for Economic, Social, Cultural and Environmental Rights.

The academic freedom and university autonomy situation got to be addressed within the IACHR's and the SRESCER 2018 Annual Reports. As regards the right to education, it was noted with concern that on November 21<sup>st</sup>, 2018, the President of the Republic, in the context of the day of the university student, on a nationwide radio and television broadcast, asked the students to create "University Militia" to defend "the revolution" and support their government "with weapons in hand."

In addition, the IACHR and the SRESCER referred to Aula Abierta's denounces about at least 50 judicial decisions that were issued from 2010 to 2018 and violate the institutional autonomy of the universities, and consequently academic freedom, by avoiding holding elections of university authorities, having suspended the competitive hiring processes for university professors, forced the autonomous universities to accept the impositions of places for new students by outside actors, and even with intervention in the graduations when it comes to giving out university<sup>138</sup>.

The violations to freedom of association against university stakeholders was another concerning topic. It was addressed on November 27<sup>th</sup>, 2018, the Electoral Chamber of the Supreme Court handed down judgment No. 102, which violates

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<sup>138</sup> Please see page 472, quote: 168

university autonomy on failing to recognize the results of the student elections held November 14<sup>th</sup>, 2018, at the Universidad de Carabobo, instead imposing a student government<sup>139</sup>

Along these lines, it was also noticed the recurrent suspension of elections and of the internal rules of political participation at the autonomous universities. The Commission pointed out that since 2011, based on Article 34 of the Organic Law of Education, the Electoral Chamber of the Venezuelan Supreme Court has not allowed the renewal of authorities (rectors, deans, and co-governing bodies). The IACHR also referred as an academic freedom violation the budgetary asphyxia at the universities caused by the Ministry of People's Power for University Education, Science and Technology, and the criminalization of the university protests.<sup>140</sup>

Finally, the IACHR ratified, once again, the interdependence between the right to education, the university autonomy and academic freedom, by stating "While it is not mentioned expressly in the American Declaration, the IACHR recalls that university autonomy is an essential requirement for academic freedom, which in turn is necessary for the full enjoyment of the right to education, which is recognized in Article XII of the American Declaration. In that regard, the Commission urges the State to review and modify, as relevant, any acts that may diminish the autonomy of the universities. In addition, the Commission expresses its condemnation of the reports of arbitrary expulsions of and reprisals against students motivated by political considerations."<sup>141</sup>

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<sup>139</sup> Please see page 473, quote 170.

<sup>140</sup> Please see page 473, quote 172.

<sup>141</sup> Please see page 473

**-Annual Reports 2019: Inter-American Commission on Human Rights (IACHR) and the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (SRESCER)**

The threats against academic freedom and other rights linked to university environment continue to happen in The Americas and, once again, the IACHR and its SRESCER gave an space within their annual reports to highlight this topic, addressing several patterns such as: attacks on the academic community and retaliation against demonstrations by academic sectors that result in arbitrary arrest, criminalization of the protest, and murder of professionals and students. These acts of violence are affectations to the right to education, as well as to freedom of teaching, thinking and expression towards protesters in the academic sector.

On top of that, the Commission and its SRESCER emphasized the importance of the role of universities as centers of academic and critical thinking for the strengthening of democracy. In this sense, they supported the considerations made by the United Nations Committee on Economic, Social, Cultural and Environmental Rights, which stated “the right to education can only be enjoyed if it is accompanied by the academic freedom of the faculty and students. (...) In the Committee's experience, the teaching staff and higher education students are especially vulnerable to political and other pressures that jeopardize academic freedom, the following observations pay particular attention to the institutions of the Higher education, but the Committee wishes to emphasize that the faculty and students across the education sector have the right to academic freedom, and many of the following observations are thus of general application”.

Given the considerations made, the IACHR also described with concern that the suspension of student elections continue, affecting the autonomy of universities in Venezuela. As an example, it referred to denounces issued in a statement about suspension of the electoral process for choosing student representatives for the Federation of University Centers of the Universidad Centro-Occidental Lisandro

Alvarado, ordered by the First Civil, Mercantile, and Traffic Trial Court of the Judicial Circuit of the state of Lara on July 8, 2019.

In this same trend, the IACHR and its SRESCER condemned the acts of political persecution against members of the Venezuelan Association of University Rectors (AVERU), referring to the agreement No. 0082 of May 30<sup>th</sup>, 2019, in which the national Council of universities asked the Office of the Public Prosecutor to “launch a criminal investigation against the rectors of national universities who are members of the Venezuelan Association of University Rectors (AVREU) based on their public statements in which they refused to recognize the legitimate government [...]”.<sup>142</sup>

The situation described led the Commission and its SRESCER to reiterate that is State’s’ duty to respect university autonomy, it is an essential requirement for academic freedom, and thus for the full enjoyment of the right to education, which is recognized in Article XII of the American Declaration.

#### **-Report about the in loco visit to Venezuela 2020<sup>143</sup>**

The Inter-American Commission on Human Rights (IACHR) carried out, from February 5 to 8, a historic visit in loco to monitor the human rights situation in Venezuela. The visit, which was scheduled for execution between February 4<sup>th</sup> and 7<sup>th</sup> in the cities of Caracas and Maracaibo. It was held in the city of Cucuta, Colombia, in the Venezuelan border, after the refusal by the de facto Venezuelan authorities to enter from the IACHR to the country.

During the visit, various student movements, professor associations, and civil society organizations denounced to the Inter-American Commission that academic freedom and university autonomy are threatened in Venezuela.

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<sup>142</sup> Please see page 516, quote 183.

<sup>143</sup> <http://www.oas.org/es/cidh/prensa/comunicados/2020/106.asp>

As reported by professors, managers and students, the National Council of universities, attached to the Ministry of Higher Education, has arbitrarily high university authorities in order to restrict critical thinking to the government and participation in public affairs. Furthermore, denouncing the judiciary has systematically issued decisions ignoring the results of the student elections, forcing universities to abide by arbitrary appointments, and even legislating on electoral procedures for the election of the university government.

In this press release, the Commission stated: “We received complaints about the budget suffocation of the universities, which would harm student services such as food, transportation and access to libraries. As reported by civil society, individual student grants would be around \$ 1 a month, and college lunch plates would be less than 600 calories. These measures, added to the economic crisis, have had an impact on student desertion, which in some schools has exceeded 40%. The economic crisis has also led many teachers to be forced to migrate due to the null or low remuneration they receive, which does not exceed \$ 8 per month. This circumstance particularly affects retired older people in the education sector, who, upon retirement, lose coverage in some health services, and whose pensions are lower than the wages paid during their working life”.

Once again, the IACHR ratified that university autonomy is a requirement for academic freedom, which is part of the right to education, and includes, in turn, the freedom to express opinions about institutions and society in general.

#### **-Other advocacy results**

More recently, the IACHR has also observed, through the Special Follow-up Mechanism for Nicaragua (MESENI), the enlargement of the human rights crisis occurred since April 18<sup>th</sup>, 2018. The Special Rapporteur on Economic, Social, Cultural and Environmental Rights (SRESCER) on September 10<sup>th</sup>, 2018 expressed its concerns about new reports of recurring threats and possible violations to social rights in

Nicaragua<sup>144</sup>. The Special Rapporteur focuses on the reports of arbitrary dismissals, persecution and harassment of students and staff in both health and education sectors. This Special Rapporteur reminds the Nicaraguan State, as pointed out by the IACHR, that academic freedom and autonomy of Higher Education institutions are fundamental pillars for the establishment of democratic structures and the prevention of external pressure and intervention inside the university spaces.

### **2.3. Academic Freedom within National Jurisdiction of Latin-American countries**

In Colombia, the effect generated by the “amicus curiae” submitted to the Constitutional Court by several organizations on the tutelage action filed by Mrs. Mónica Godoy Ferro against the University of Ibagué is remarkable, concerning the protection of academic freedom, the prevention and punishment of crimes of sexual violence and workplace harassment. During the process, the Colombian Constitutional Court attended different opinions and some Amicus Curiae issued by different organizations, outlining arguments about the right to education, academic freedom and university autonomy in accordance with Colombian Case-law precedents on their limits. Among others, the Amicus Curiae received by the Constitutional Court, the following stand out: Scholars at Risk and the Human Rights Clinic of the Human Rights Research and Education Center of the University of Ottawa, Temblores ONG, Colectivo De Género y Semillero de Investigación de Género de la Universidad Javeriana, Observatorio de Intervención Ciudadana Constitucional de la Facultad de Derecho de la Universidad Libre de Bogotá, Corporación Centro de Interés Público y Justicia –CIPJUS- y Dosis Centro de Investigación y Acción por las Mujeres, 154 academics from different universities and educational institutions.

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<sup>144</sup>OAS press release, SRESCER views with serious concern information about arbitrary dismissals and harassment against medical personnel, university professors and students in Nicaragua, [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/203.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/203.asp). (Last visited on Sep. 12, 2018) (An important recognition of the issues that academic freedom is facing in Nicaragua and the rest of Latin America)

## **2.4. Conclusion**

Academic freedom finds its ground in international human rights law. It is recognized in the Universal Declaration of Human Rights<sup>145</sup>, the American Declaration of the Rights and Duties of Man<sup>146</sup>, Articles 13<sup>147</sup> and 15<sup>148</sup> of the International Covenant on Economic, Social and Cultural Rights, Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"<sup>149</sup>, Recommendation Concerning the Status of Higher-Education Teaching Personnel<sup>150</sup>, Article 19 of the International Covenant on Civil and Political Rights (ICCPR), and UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (1997).

Any action or practice that implies or violates it compromises the international responsibility of the States, and any restriction imposed over academic freedom by States or private actors with the aim to punish, restrict, persecute and/or discriminate its exercise will constitute a violation to international human rights law. This human right must be guaranteed as an individual and collective right in the framework of democratic society, because society is interested in the circulation of academic proposals (theoretical models, expert opinions, experimental research), but at the same time the Law must guarantee that the education of the recipients in that society

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<sup>145</sup> Articles 19 and 26.

<sup>146</sup> Article IV (Right to freedom of investigation, opinion, expression and dissemination).

<sup>147</sup> Article 13. 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

<sup>148</sup> Article 15. 1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

<sup>149</sup> Article 13. Right to Education. 1. Everyone has the right to education.

<sup>150</sup> In paragraphs 17-21, the UNESCO recommendation establishes: A. Institutional autonomy. Later in paragraphs 25-30 it establishes: VI. Rights and freedoms of higher-education teaching personnel. A. Individual rights and freedoms: civil rights, academic freedom, publication rights, and the international exchange of information.

(students -participants of the process as actors and recipients- and society itself) is protected.

As it has been in other historical vindicating process<sup>151</sup>, strategic litigation and international advocacy have played an instrumental role in the path of assuring a proper approach when monitoring the situation of academic freedom and rights linked to the university environment. As a result of the use of the different mechanisms to issue human rights violations before the international community, the gap between the international human rights legal framework and its practice within the international human rights bodies systems has gotten closer regarding the academic freedom situation. For instance, from 2014 to 2020, the United Nations system for the promotion and the protection of human rights has issued academic freedom's situation in at least 3 reports, 1 global conference and several grounds related with treaty bodies. In the same period, the Inter-American System of Human Rights has issued the situation of this right in at least 6 reports, 7 public hearings and other initiatives in the framework of its mandate.

One of the biggest achievements is that the Inter-American Commission on Human Rights has contributed to determine the scope of the academic freedom by stating "While it is not mentioned expressly in the American Declaration, the IACHR recalls that university autonomy is an essential requirement for academic freedom, which in turn is necessary for full enjoyment of the right to education, which is recognized in Article XII of the American Declaration". Moreover, we are now in the process of creating official Inter-American Standards to expand the scope of academic freedom and the autonomy of the higher education institutions, as the need of it was recognized within a key initiative in the litigation strategy to highlight the topic before the international community: the first public hearing on the situation of academic freedom and the autonomy of the higher education institutions in The Americas, before the IACHR.

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<sup>151</sup> Such as the indigenous people, the women movement or the afro-descendant cause.

Despite the substantial development achieved highlighting the situation of academic freedom, it is still fundamental to keep promoting a wider and stronger participation of the international human rights bodies in its protection, for instance, the United Nations Special Rapporteur on Education. Considering the pivotal role of the universities in the development of democratic societies, an ideal protection of academic freedom could be found in the creation of a Special Rapporteurship or another specialized body aimed to monitor its situation within the international human rights systems.

All things considered, the importance of the participation of civil society members in the discussion of public affairs is undeniable. The role of the international advocacy and strategic litigation has increasingly been gaining relevance with the discussion being about how to get more progressive standards and better recognition of human rights within the international community.

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## APPENDICES

### APPENDIX A

#### **CESCR General Comment No. 13: The Right to Education (Art. 13), Adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (Contained in Document E/C.12/1999/10)**

1. Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law. The Committee has already adopted general comment No. 11 on article 14 (plans of action for primary education); general comment No. 11 and the present general comment are complementary and should be considered together. The Committee is aware that for millions of people throughout the world, the enjoyment of the right to education remains a distant goal. Moreover, in many cases, this goal is becoming increasingly remote. The Committee is also conscious of the formidable structural and other obstacles impeding the full implementation of article 13 in many States parties.
3. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this general comment focuses on the normative content of article 13 (Part I, paras. 4-42), some of the obligations arising from it (Part II, paras. 43-57), and some illustrative violations (Part II, paras. 58-59). Part III briefly remarks upon the obligations of actors other than States parties. The

general comment is based upon the Committee's experience in examining States parties' reports over many years.

### **1. Normative content of article 13 Article 13 (1): Aims and objectives of education**

4. States parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13 (1). The Committee notes that these educational objectives reflect the fundamental purposes and principles of the United Nations as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in article 26 (2) of the Universal Declaration of Human Rights, although article 13 (1) adds to the Declaration in three respects: education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups. Of those educational objectives which are common to article 26 (2) of the Universal Declaration of Human Rights and article 13 (1) of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality".
5. The Committee notes that since the General Assembly adopted the Covenant in 1966, other international instruments have further elaborated the objectives to which education should be directed. Accordingly, the Committee takes the view that States parties are required to ensure that education conforms to the aims and objectives identified in article 13 (1), as interpreted in the light of the World Declaration on Education for All (Jomtien, Thailand, 1990) (art. 1), the Convention on the Rights of the Child (art. 29 (1)), the Vienna Declaration and Programme of Action (Part I, para. 33 and Part II, para. 80), and the Plan of Action for the United Nations Decade for Human Rights Education (para. 2). While all these texts closely correspond to article 13 (1) of the Covenant, they also include elements which are not expressly provided for in article 13 (1), such as specific references to gender equality and respect for the environment. These new elements are implicit in, and reflect a contemporary interpretation of article 13 (1). The Committee obtains support for this point of view from the widespread endorsement that the previously mentioned texts have received from all regions of the world.<sup>1</sup>

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<sup>1</sup> The World Declaration on Education for All was adopted by 155 governmental delegations; the Vienna Declaration and Programme of Action was adopted by 171 governmental delegations; the Convention on the Rights of the Child has been ratified or acceded to by 191 States parties; the Plan of Action of the United Nations Decade for Human Rights Education was adopted by a consensus resolution of the General Assembly (49/184).

**Article 13 (2): The right to receive an education - some general remarks**

6. While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:<sup>2</sup>
- (a) *Availability.* Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;
- (b) *Accessibility.* Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);

Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;

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<sup>2</sup> This approach corresponds with the Committee’s analytical framework adopted in relation to the rights to adequate housing and food, as well as the work of the United Nations Special Rapporteur on the right to education. In its general comment No. 4, the Committee identified a number of factors which bear upon the right to adequate housing, including “availability”, “affordability”, “accessibility” and “cultural adequacy”. In its general comment No. 12, the Committee identified elements of the right to adequate food, such as “availability”, “acceptability” and “accessibility”. In her preliminary report to the Commission on Human Rights, the Special Rapporteur on the right to education sets out “four essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptability”, (E/CN.4/1999/49, para. 50).

- (c) *Acceptability* - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));
  - (d) *Adaptability* - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.
7. When considering the appropriate application of these “interrelated and essential features” the best interests of the student shall be a primary consideration.

**Article 13 (2) (a): The right to primary education**

8. Primary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.<sup>3</sup>
9. The Committee obtains guidance on the proper interpretation of the term “primary education” from the World Declaration on Education for All which states: “The main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community” (art. 5). “[B]asic learning needs” are defined in article 1 of the World Declaration.<sup>4</sup> While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, the Committee endorses the position taken by UNICEF: “Primary education is the most important component of basic education.”<sup>5</sup>
10. As formulated in article 13 (2) (a), primary education has two distinctive features: it is “compulsory” and “available free to all”. For the Committee’s observations on both terms, see paragraphs 6 and 7 of general comment No. 11 on article 14 of the Covenant.

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<sup>3</sup> See paragraph 6.

<sup>4</sup> The Declaration defines “basic learning needs” as: “essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning” (article 1).

<sup>5</sup> Advocacy Kit, Basic Education 1999 (UNICEF), sect. 1, p. 1.

### **Article 13 (2) (b): The right to secondary education**

11. Secondary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.<sup>6</sup>
12. While the content of secondary education will vary among States parties and over time, it includes completion of basic education and consolidation of the foundations for life-long learning and human development. It prepares students for vocational and higher educational opportunities.<sup>7</sup> Article 13 (2) (b) applies to secondary education “in its different forms”, thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. The Committee encourages “alternative” educational programmes which parallel regular secondary school systems.
13. According to article 13 (2) (b), secondary education “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education”. The phrase “generally available” signifies, firstly, that secondary education is not dependent on a student’s apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all. For the Committee’s interpretation of “accessible”, see paragraph 6 above. The phrase “every appropriate means” reinforces the point that States parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.
14. “[P]rogressive introduction of free education” means that while States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education. For the Committee’s general observations on the meaning of the word “free”, see paragraph 7 of general comment No. 11 on article 14.

### **Technical and vocational education**

15. Technical and vocational education (TVE) forms part of both the right to education and the right to work (art. 6 (2)). Article 13 (2) (b) presents TVE as part of secondary education, reflecting the particular importance of TVE at this level of education. Article 6 (2), however, does not refer to TVE in relation to a specific level of education; it comprehends that TVE has a wider role, helping “to achieve steady economic, social and cultural development and full and productive employment”. Also, the Universal Declaration of Human Rights states that “[t]echnical and professional education shall be made generally available” (art. 26 (1)). Accordingly,

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<sup>6</sup> See paragraph 6.

<sup>7</sup> See International Standard Classification of Education 1997, UNESCO, paragraph 52.

the Committee takes the view that TVE forms an integral element of all levels of education.<sup>8</sup>

16. An introduction to technology and to the world of work should not be confined to specific TVE programmes but should be understood as a component of general education. According to the UNESCO Convention on Technical and Vocational Education (1989), TVE consists of “all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life” (art. 1 (a)). This view is also reflected in certain ILO Conventions.<sup>9</sup> Understood in this way, the right to TVE includes the following aspects:
- (a) It enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities, including the State party’s economic and social development;
  - (b) It takes account of the educational, cultural and social background of the population concerned; the skills, knowledge and levels of qualification needed in the various sectors of the economy; and occupational health, safety and welfare;
  - (c) Provides retraining for adults whose current knowledge and skills have become obsolete owing to technological, economic, employment, social or other changes;
  - (d) It consists of programmes which give students, especially those from developing countries, the opportunity to receive TVE in other States, with a view to the appropriate transfer and adaptation of technology;
  - (e) It consists, in the context of the Covenant’s non-discrimination and equality provisions, of programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities and other disadvantaged groups.

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<sup>8</sup> A view also reflected in the Human Resources Development Convention 1975 (Convention No. 142) and the Social Policy (Basic Aims and Standards) Convention 1962 (Convention No. 117) of the International Labour Organization.

<sup>9</sup> See note 8.

**Article 13 (2) (c): The right to higher education**

17. Higher education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels.<sup>10</sup>
18. While article 13 (2) (c) is formulated on the same lines as article 13 (2) (b), there are three differences between the two provisions. Article 13 (2) (c) does not include a reference to either education “in its different forms” or specifically to TVE. In the Committee’s opinion, these two omissions reflect only a difference of emphasis between article 13 (2) (b) and (c). If higher education is to respond to the needs of students in different social and cultural settings, it must have flexible curricula and varied delivery systems, such as distance learning; in practice, therefore, both secondary and higher education have to be available “in different forms”. As for the lack of reference in article 13 (2) (c) to technical and vocational education, given article 6 (2) of the Covenant and article 26 (1) of the Universal Declaration, TVE forms an integral component of all levels of education, including higher education.<sup>11</sup>
19. The third and most significant difference between article 13 (2) (b) and (c) is that while secondary education “shall be made generally available and accessible to all”, higher education “shall be made equally accessible to all, on the basis of capacity”. According to article 13 (2) (c), higher education is not to be “generally available”, but only available “on the basis of capacity”. The “capacity” of individuals should be assessed by reference to all their relevant expertise and experience.
20. So far as the wording of article 13 (2) (b) and (c) is the same (e.g. “the progressive introduction of free education”), see the previous comments on article 13 (2) (b).

**Article 13 (2) (d): The right to fundamental education**

21. Fundamental education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.<sup>12</sup>
22. In general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education For All.<sup>13</sup> By virtue of article 13 (2) (d), individuals “who have not received or completed the whole period of their primary education” have a right to fundamental education, or basic education as defined in the World Declaration on Education For All.

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<sup>10</sup> See paragraph 6.

<sup>11</sup> See paragraph 15.

<sup>12</sup> See paragraph 6.

<sup>13</sup> See paragraph 9.

23. Since everyone has the right to the satisfaction of their “basic learning needs” as understood by the World Declaration, the right to fundamental education is not confined to those “who have not received or completed the whole period of their primary education”. The right to fundamental education extends to all those who have not yet satisfied their “basic learning needs”.
24. It should be emphasized that enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons. Fundamental education, therefore, is an integral component of adult education and life-long learning. Because fundamental education is a right of all age groups, curricula and delivery systems must be devised which are suitable for students of all ages.

**Article 13 (2) (e): A school system; adequate fellowship system; material conditions of teaching staff**

25. The requirement that the “development of a system of schools at all levels shall be actively pursued” means that a State party is obliged to have an overall developmental strategy for its school system. The strategy must encompass schooling at all levels, but the Covenant requires States parties to prioritize primary education (see para. 51). “[A]ctively pursued” suggests that the overall strategy should attract a degree of governmental priority and, in any event, must be implemented with vigour.
26. The requirement that “an adequate fellowship system shall be established” should be read with the Covenant’s non-discrimination and equality provisions; the fellowship system should enhance equality of educational access for individuals from disadvantaged groups.
27. While the Covenant requires that “the material conditions of teaching staff shall be continuously improved”, in practice the general working conditions of teachers have deteriorated, and reached unacceptably low levels, in many States parties in recent years. Not only is this inconsistent with article 13 (2) (e), but it is also a major obstacle to the full realization of students’ right to education. The Committee also notes the relationship between articles 13 (2) (e), 2 (2), 3 and 6-8 of the Covenant, including the right of teachers to organize and bargain collectively; draws the attention of States parties to the joint UNESCO-ILO Recommendation Concerning the Status of Teachers (1966) and the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997); and urges States parties to report on measures they are taking to ensure that all teaching staff enjoy the conditions and status commensurate with their role.

**Article 13 (3) and (4): The right to educational freedom**

28. Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>14</sup> The Committee is of the view that this element of article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.
29. The second element of article 13 (3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to “such minimum educational standards as may be laid down or approved by the State”. This has to be read with the complementary provision, article 13 (4), which affirms “the liberty of individuals and bodies to establish and direct educational institutions”, provided the institutions conform to the educational objectives set out in article 13 (1) and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1).
30. Under article 13 (4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to “bodies”, i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.

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<sup>14</sup> This replicates article 18 (4) of the International Covenant on Civil and Political Rights (ICCPR) and also relates to the freedom to teach a religion or belief as stated in article 18 (1) ICCPR. (See Human Rights Committee general comment No. 22 on article 18 ICCPR, forty-eighth session, 1993.) The Human Rights Committee notes that the fundamental character of article 18 ICCPR is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of that Covenant.

**Article 13: Special topics of broad application Non-discrimination and equal treatment**

31. The prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The Committee interprets articles 2 (2) and 3 in the light of the UNESCO Convention against Discrimination in Education, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the ILO Indigenous and Tribal Peoples Convention, 1989 (Convention No. 169), and wishes to draw particular attention to the following issues.
32. The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.
33. In some circumstances, separate educational systems or institutions for groups defined by the categories in article 2 (2) shall be deemed not to constitute a breach of the Covenant. In this regard, the Committee affirms article 2 of the UNESCO Convention against Discrimination in Education (1960).<sup>15</sup>

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<sup>15</sup> According to article 2:

“When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;

(a) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil’s parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;

(b) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for

34. The Committee takes note of article 2 of the Convention on the Rights of the Child and article 3 (e) of the UNESCO Convention against Discrimination in Education and confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.
35. Sharp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant.
36. The Committee affirms paragraph 35 of its general comment No. 5, which addresses the issue of persons with disabilities in the context of the right to education, and paragraphs 36-42 of its general comment No. 6, which address the issue of older persons in relation to articles 13-15 of the Covenant.
37. States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination.

#### **Academic freedom and institutional autonomy<sup>16</sup>**

38. In the light of its examination of numerous States parties' reports, the Committee has formed the view that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students. Accordingly, even though the issue is not explicitly mentioned in article 13, it is appropriate and necessary for the Committee to make some observations about academic freedom. The following remarks give particular attention to institutions of higher education because, in the Committee's experience, staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom. The Committee wishes to emphasize, however, that staff and students throughout the education sector are entitled to academic freedom and many of the following observations have general application.
39. 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

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education of the same level.”

<sup>16</sup> See UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997).

includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil 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. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds.

40. The enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, 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.

#### **Discipline in schools<sup>17</sup>**

41. In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual.<sup>18</sup> Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food. A State party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some States parties which actively encourage schools to introduce "positive", non-violent approaches to school discipline.

#### **Limitations on article 13**

42. The Committee wishes to emphasize that the Covenant's limitations clause, article 4, is primarily intended to be protective of the rights of individuals rather than

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<sup>17</sup> In formulating this paragraph, the Committee has taken note of the practice evolving elsewhere in the international human rights system, such as the interpretation given by the Committee on the Rights of the Child to article 28 (2) of the Convention on the Rights of the Child, as well as the Human Rights Committee's interpretation of article 7 of ICCPR

<sup>18</sup> The Committee notes that, although it is absent from article 26 (2) of the Declaration, the drafters of ICESCR expressly included the dignity of the human personality as one of the mandatory objectives to which all education is to be directed (art. 13 (1)).

permissive of the imposition of limitations by the State. Consequently, a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4.

## **2. States parties' obligations and violations General legal obligations**

43. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect.<sup>19</sup> States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” (art. 2 (2)) and the obligation “to take steps” (art. 2 (1)) towards the full realization of article 13.<sup>20</sup> Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education.
44. The realization of the right to education over time, that is “progressively”, should not be interpreted as depriving States parties’ obligations of all meaningful content. Progressive realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 13.<sup>21</sup>
45. There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party’s maximum available resources.<sup>22</sup>
46. The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.
47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires

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<sup>19</sup> See the Committee’s general comment No. 3, paragraph 1.

<sup>20</sup> See the Committee’s general comment No. 3, paragraph 2.

<sup>21</sup> See the Committee’s general comment No. 3, paragraph 9.

<sup>22</sup> See the Committee’s general comment No. 3, paragraph 9.

States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.

48. In this respect, two features of article 13 require emphasis. First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the “development of a system of schools at all levels shall be actively pursued” (art. 13 (2) (e)). Secondly, given the differential wording of article 13 (2) in relation to primary, secondary, higher and fundamental education, the parameters of a State party’s obligation to fulfil (provide) are not the same for all levels of education. Accordingly, in light of the text of the Covenant, States parties have an enhanced obligation to fulfil (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education. The Committee observes that this interpretation of the obligation to fulfil (provide) in relation to article 13 coincides with the law and practice of numerous States parties.

### **Specific legal obligations**

49. States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1).<sup>23</sup> They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13 (1).
50. In relation to article 13 (2), States have obligations to respect, protect and fulfil each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of

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<sup>23</sup> There are numerous resources to assist States parties in this regard, such as UNESCO’s Guidelines for Curriculum and Textbook Development in International Education (ED/ECS/HCI). One of the objectives of article 13 (1) is to “strengthen the respect of human rights and fundamental freedoms”; in this particular context, States parties should examine the initiatives developed within the framework of the United Nations Decade for Human Rights Education - especially instructive is the Plan of Action for the Decade, adopted by the General Assembly in 1996, and the Guidelines for National Plans of Action for Human Rights Education, developed by the Office of the High Commissioner for Human Rights to assist States in responding to the United Nations Decade for Human Rights Education.

education by not closing private schools; protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school; fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world; and fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries.

51. As already observed, the obligations of States parties in relation to primary, secondary, higher and fundamental education are not identical. Given the wording of article 13 (2), States parties are obliged to prioritize the introduction of compulsory, free primary education.<sup>24</sup> This interpretation of article 13 (2) is reinforced by the priority accorded to primary education in article 14. The obligation to provide primary education for all is an immediate duty of all States parties.
52. In relation to article 13 (2) (b)-(d), a State party has an immediate obligation “to take steps” (art. 2 (1)) towards the realization of secondary, higher and fundamental education for all those within its jurisdiction. At a minimum, the State party is required to adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education in accordance with the Covenant. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored.
53. Under article 13 (2) (e), States parties are obliged to ensure that an educational fellowship system is in place to assist disadvantaged groups.<sup>25</sup> The obligation to pursue actively the “development of a system of schools at all levels” reinforces the principal responsibility of States parties to ensure the direct provision of the right to education in most circumstances.<sup>26</sup>
54. States parties are obliged to establish “minimum educational standards” to which all educational institutions established in accordance with article 13 (3) and (4) are required to conform. They must also maintain a transparent and effective system to

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<sup>24</sup> On the meaning of “compulsory” and “free”, see paragraphs 6 and 7 of general comment No. 11 on article 14.

<sup>25</sup> In appropriate cases, such a fellowship system would be an especially appropriate target for the international assistance and cooperation anticipated by article 2 (1).

<sup>26</sup> In the context of basic education, UNICEF has observed: “Only the State ... can pull together all the components into a coherent but flexible education system”. UNICEF, *The State of the World's Children, 1999*, “The education revolution”, page 77.

monitor such standards. A State party has no obligation to fund institutions established in accordance with article 13 (3) and (4); however, if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds.

55. States parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7 (2) of the Worst Forms of Child Labour Convention, 1999 (Convention No. 182).<sup>27</sup> Additionally, given article 2 (2), States parties are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.
56. In its general comment No. 3, the Committee drew attention to the obligation of all States parties to take steps, “individually and through international assistance and cooperation, especially economic and technical”, towards the full realization of the rights recognized in the Covenant, such as the right to education.<sup>28</sup> Articles 2 (1) and 23 of the Covenant, Article 56 of the Charter of the United Nations, article 10 of the World Declaration on Education for All, and Part I, paragraph 34 of the Vienna Declaration and Programme of Action all reinforce the obligation of States parties in relation to the provision of international assistance and cooperation for the full realization of the right to education. In relation to the negotiation and ratification of international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to education. Similarly, States parties have an obligation to ensure that their actions as members of international organizations, including international financial institutions, take due account of the right to education.
57. In its general comment No. 3, the Committee confirmed that States parties have “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels” of each of the rights enunciated in the Covenant, including “the most basic forms of education”. In the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision

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<sup>27</sup> According to article 7 (2), “(e)ach Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour” (ILO Convention 182, Worst Forms of Child Labour, 1999).

<sup>28</sup> See the Committee’s general comment No. 3, paragraphs 13-14.

for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with “minimum educational standards” (art. 13 (3) and (4)).

### **Violations**

58. When the normative content of article 13 (Part I) is applied to the general and specific obligations of States parties (Part II), a dynamic process is set in motion which facilitates identification of violations of the right to education. Violations of article 13 may occur through the direct action of States parties (acts of commission) or through their failure to take steps required by the Covenant (acts of omission)
59. By way of illustration, violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13 (1); the failure to maintain a transparent and effective system to monitor conformity with article 13 (1); the failure to introduce, as a matter of priority, primary education which is compulsory and available free to all; the failure to take “deliberate, concrete and targeted” measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d); the prohibition of private educational institutions; the failure to ensure private educational institutions conform to the “minimum educational standards” required by article 13 (3) and (4); the denial of academic freedom of staff and students; the closure of educational institutions in times of political tension in non-conformity with article 4.

### **3. Obligations of actors other than States parties**

60. Given article 22 of the Covenant, the role of the United Nations agencies, including at the country level through the United Nations Development Assistance Framework (UNDAF), is of special importance in relation to the realization of article 13. Coordinated efforts for the realization of the right to education should be maintained to improve coherence and interaction among all the actors concerned, including the various components of civil society. UNESCO, the United Nations Development Programme, UNICEF, ILO, the World Bank, the regional development banks, the International Monetary Fund and other relevant bodies within the United Nations system should enhance their cooperation for the implementation of the right to education at the national level, with due respect to their specific mandates, and building on their respective expertise. In particular, the international financial institutions, notably the World Bank and IMF, should pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt

crisis.<sup>29</sup>When examining the reports of States parties, the Committee will consider the effects of the assistance provided by all actors other than States parties on the ability of States to meet their obligations under article 13. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies will greatly facilitate implementation of the right to education.

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<sup>29</sup> See the Committee's general comment No. 2, paragraph 9.

## APPENDIX B

**Report of the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, David Kaye, focused on the freedom of opinion and expression aspects of academic freedom, submitted in accordance with Human Rights Council Resolution 34/18 to the United Nations General Assembly. Seventy-fifth session. September, 2020.**



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### Seventy-fifth session

Item 72 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

**Promotion and protection of the right to freedom of opinion and expression  
Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, submitted in accordance with Human Rights Council resolution 34/18.

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\* [A/75/150](#).

20-10168 (E) 180820

**Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye**

*Summary*

In the present report, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, focuses on the freedom of opinion and expression aspects of academic freedom, highlighting the special role played by academics and academic institutions in democratic society and noting that, without academic freedom, societies lose one of the essential elements of democratic self-governance: the capacity for self-reflection, for knowledge generation and for a constant search for improvements of people's lives and social conditions.

The Special Rapporteur finds that threats to and restrictions on academic freedom limit the sharing of information and knowledge, an integral component of the right to freedom of expression. He reveals that academics and their institutions face social harassment and State repression for their research, the questions that they pursue, the points that they raise and the methodologies that they bring to bear on public policy – or simply for the stature that their academic work has given them in society.

While he focuses on the ways in which the freedom of opinion and expression protects and promotes academic freedom, the Special Rapporteur also recognizes that there is no single, exclusive international human rights framework for the subject. He emphasizes one set of protections for academic freedom, while recognizing and reaffirming others. He concludes with a set of recommendations to States, academic institutions, international organizations and civil society.

## **I. Introduction**

1. Some time ago, a teacher was accused of heresy, of being a menace to society and a corrupt influence on the minds of the young. That person educated leading thinkers of the day – some of whom became philosophers, poets or politicians. Yet people from across society saw him as a sceptic whose questioning of received wisdom destabilized social values. Before the jury reached its verdict, the teacher, in his defence, is said to have spoken the following:

They complain that there is a pestilential busybody called Socrates who fills young people's heads with wrong ideas. If you ask them what he does, and what he teaches that has this effect, they have no answer, not knowing what to say; but as they do not want to admit their confusion, they fall back on the stock charges against any philosopher: that he teaches his pupils about things in the heavens and below the earth, and to disbelieve in gods, and to make the weaker argument defeat the stronger.<sup>1</sup>

History remembers Socrates and his most famous students, while most of his accusers and critics are long-forgotten foils, none making a mark on history, philosophy, politics and education as he did. However, those foils prevailed in the moment, and the jury sentenced Socrates to death.

2. Millenniums have passed, and yet teachers, scholars, students and others who work in such pursuits – academics and their institutions – continue to face social harassment and State repression. They face harassment and repression for their research, the questions that they pursue, the points that they raise in or out of the classroom or journals, the forums that they provide for peaceful assembly and protest and the evidence and ideas and methodologies that they bring to bear on public policy – or simply for the stature that their academic work has given them in society. Such interference can constitute a violation of the rights to education, science, culture, association, conscience, belief, due process and, as the Special Rapporteur will principally explore in the present report, freedom of opinion and expression. Attacks on academic freedom corrode the pillars of democratic life, of scientific progress and of human development. In the report, the Special Rapporteur will explore how attacks on academic freedom also constitute attacks on freedom of opinion and expression.

3. The special procedure mandate holders of the Human Rights Council have often observed, and drawn attention to, threats to academics and their institutions.

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<sup>1</sup> Hugh Tredennick and Harold Tarrant, trans., *Plato: The Last Days of Socrates* (London, Penguin Books, 1954), apology 22E–24A.

Among many such cases that mandate holders have considered, Hungary targeted one of the leading academic institutions in Europe, the Central European University,<sup>1</sup> forcing it to close its doors and relocate to Austria. Turkey forced the investigation and dismissal of hundreds of academics who had signed a scholars' petition calling for peace with the Kurdish community.<sup>2</sup> Turkey also removed a scholar from his position after he had met with the Special Rapporteur in November 2016 during his visit to the country;<sup>3</sup> the Government alleged terrorist affiliations.<sup>4</sup> China has imprisoned an economist, Iham Tohti, arbitrarily on grounds relating to his criticism of the Government's policies against the Uighur community.<sup>5</sup> Uganda imprisoned for over 16 months a prominent feminist academic, ostensibly for her anti-government posts on social media.<sup>7</sup> Thailand arrested dozens of individuals who protested against military rule at a university campus in Bangkok.<sup>8</sup> The Islamic Republic of Iran has detained and often sentenced to death numerous scholars, such as Ahmad Reza Jalali, Mohammad Hossein Rafiee Fanood, Xiyue Wang and Hooma Hoodfar.<sup>9</sup>

The United Arab Emirates prosecuted a scholar from that country, Nasser bin Ghaith, for writings that "harm the reputation and stature of the State" and detained a scholar from the United Kingdom of Great Britain and Northern Ireland, Matthew Hedges, on opaque grounds of national security, despite the reliance of his research on open-source materials.<sup>10</sup>

4. In the present report, the Special Rapporteur focuses on the freedom of opinion and expression aspects of academic freedom. He emphasizes one set of protections for academic freedom, while recognizing and reaffirming others. He highlights the special role played by academics and academic institutions in democratic society and, by so doing, encourages individuals and organizations to articulate their claims – including when addressing them to special procedure

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<sup>1</sup> References are made throughout the document to urgent appeals and allegation letters sent by the Special Rapporteur. All such communications are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. For this case, see communication No. HUN 1/2017, 11 April 2017.

<sup>2</sup> Communication No. TUR 3/2016, 31 March 2016.

<sup>3</sup> Communication No. TUR 1/2017, 23 January 2017.

<sup>4</sup> Government's reply to communication No. TUR 1/2017, 11 April 2017.

<sup>5</sup> Working Group on Arbitrary Detention, opinion No. 3/2014 (China), 6 February 2014.

<sup>7</sup> Communication No. UGA 3/2017, 22 December 2017.

<sup>8</sup> Communication No. THA 4/2018, 25 June 2018.

<sup>9</sup> Communications Nos. IRN 12/2019, 8 August 2019; IRN 2/2016, 1 February 2016; and IRN 19/2016, 24 June 2016; and "UN experts urge Iran to release imprisoned American scholar Xiyue Wang", press release, 7 May 2019.

<sup>10</sup> Communication No. ARE 3/2017, 3 May 2017; Matthew Hedges (Hedges) submission. In 2000, the Special Rapporteur on freedom of expression noted the same kinds of threats to academic freedom: see [E/CN.4/2000/63](https://www.ohchr.org/en/docd/E/CN.4/2000/63), para. 37.

mandate holders and other United Nations human rights mechanisms and treaty bodies – as violations of academic freedom.<sup>11</sup> The report benefited from submissions made by civil society (available on the website of the Office of the United Nations High Commissioner for Human Rights) and a three-day online consultation that, with the support of the non-governmental organization Scholars at Risk, was held in May 2020. The Special Rapporteur begins with an overview of the legal framework applicable to academic freedom, focusing on freedom of opinion and expression. He then addresses several key challenges, before concluding with recommendations for States and other actors.

## **II. Legal framework**

5. Although there are many ways in which the freedom of opinion and expression protects and promotes academic freedom, there is no single, exclusive international human rights framework for the subject. Within the corpus of civil and political rights, protected under the Universal Declaration of Human Rights and codified in the International Covenant on Civil and Political Rights, the rights to peaceful assembly and association, privacy, and thought, conscience and religious belief can promote and protect academic freedom. Articles 13 (right to education) and 15 (right to scientific advancements) of the International Covenant on Economic, Social and Cultural Rights expressly promote rights at the centre of academic freedom.

### **A. Definitional breadth**

6. It is not the intention of the Special Rapporteur to impose a definition of “academic freedom” that would limit its application to one sort of “academic” person or institution.<sup>12</sup> In part this is because of the extraordinary variety of academic pursuits, forms, methodologies and institutions worldwide, which counsels for a functional approach. However, academic freedom does not have to be abstract. The Committee on Economic, Social and Cultural Rights made the following observations:

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.

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<sup>11</sup> Scholars at Risk submission, para. 6.

<sup>12</sup> Of course, a conclusion that an activity or institution is not “academic” does not strip that activity or institution, or any person engaging in activity within a particular institution, of human rights. One might conclude, for instance, that a person is not engaging in “academic” activity, yet he or she still enjoys the panoply of human rights guarantees.

Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil 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.<sup>13</sup>

7. While the Committee notes that “staff and students in higher education are especially vulnerable to political and other pressures which undermine academic freedom”,<sup>14</sup> it does not limit that threat to higher education communities. In its 1997 Recommendation concerning the Status of Higher-Education Teaching Personnel, the United Nations Educational, Scientific and Cultural Organization (UNESCO) underlined the point, condemning “institutional censorship”.<sup>15</sup>

8. In short, academic freedom should be understood to include the freedom of individuals, as members of academic communities (e.g., faculty, students, staff, scholars, administrators and community participants) or in their own pursuits, to conduct activities involving the discovery and transmission of information and ideas, and to do so with the full protection of human rights law.

## **B. Institutional protection and autonomy**

9. Academic freedom is not only about individual human rights protection by traditional State actors. It also involves institutional protections – autonomy and self-governance, themselves rooted in human rights standards – to guarantee the freedom for those pursuits.<sup>16</sup> States are under a positive obligation to create a general enabling environment for seeking, receiving and imparting information and ideas.<sup>17</sup> Institutional protection and autonomy are a part of that enabling environment.

10. Institutions of higher education, as described cogently in one of the submissions for the present report, play extraordinary roles in human society as

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<sup>13</sup> [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.

<sup>14</sup> [E/C.12/1999/10](#), para. 38.

<sup>15</sup> Recommendation concerning the Status of Higher-Education Teaching Personnel, 11 November 1997, para. 27.

<sup>16</sup> See Kristen Roberts Lyer and Aron Suba, *Closing Academic Space: Repressive State Practices in Legislative, Regulatory and Other Restrictions on Higher Education Institutions* (Washington, D.C., International Centre for Not-for-Profit Law, 2019), pp. 30–31.

<sup>17</sup> See OHCHR and others, Joint Declaration on Media Independence and Diversity in the Digital Age, May 2018.

“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.”<sup>18</sup>

11. Despite the importance of higher education to fundamental social values, Governments often interfere with the autonomy of academic institutions. They may threaten those that have foreign funding, notwithstanding the fact that higher education, as noted above, is itself an international endeavour supported by the freedom of expression “regardless of frontiers”. They may threaten to withhold otherwise available funds on illicit grounds.<sup>19</sup> They may require that institutions preclude the teaching of some subjects or require the teaching of others on non-academic grounds. They may impose standards on hiring and tenure, or they may directly engage in the hiring of institutional leadership, that may be inconsistent with academic criteria and reflect political control rather than the advancement of learning. All of those tools, and others, undermine the ability of the institution to protect the academic freedom of its community members and to serve its broader functions in society.

12. Autonomy and self-governance should also include mechanisms of accountability, ethical codes of conduct and assurances that the institutions themselves – whether as State actors (public colleges and universities) or private ones – protect and promote the human rights of members of their communities (broadly defined). Academic institutions should retain autonomy in their administrative, financial, pedagogical and disciplinary functions,<sup>20</sup> but they should also adopt and enforce policies that ensure the protection of the free expression rights of the members of their communities, resisting official or social pressure and promising human rights compliance institutionally.<sup>21</sup> Their policies should be transparent, they should be active and accessible defenders of their academic missions (and of their sibling institutions) and they should be accountable for their acceptance and use of funding.

13. In paragraph 22 (k) of its 1997 recommendation, UNESCO stated that institutional autonomy was “a necessary precondition to guarantee the proper

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<sup>18</sup> Scholars at Risk submission, para. 2.

<sup>19</sup> David A. Graham, “What a direct attack on free speech looks like”, *The Atlantic*, 10 July 2020.

<sup>20</sup> See Kwadwo Appiagyei-Atua, Klaus D. Beiter and Terence Karran, “A review of academic freedom in African universities through the prism of the 1997 ILO/UNESCO recommendation”, *Journal of Academic Freedom*, vol. 7 (2016).

<sup>21</sup> Foundation for Individual Rights in Education submission, p. 12.

fulfilment of the functions entrusted to higher-education teaching personnel and institutions”. It noted that accountability involved ensuring the adoption and enforcement of policies that involved transparency, non-discrimination, gender equality and “the creation, through the collegial process and/or through negotiation with organizations representing higher- education teaching personnel, consistent with the principles of academic freedom and freedom of speech, of statements or codes of ethics to guide higher education personnel in their teaching, scholarship, research and extension work”.

14. Institutional self-governance involves transparent but self-regulatory standards, by which the institutions themselves, based on non-discriminatory and academic criteria, determine curricular, scholarly and research needs and requirements. Standards concerning publication and hiring should be adopted and implemented by those with professional and academic expertise, rather than external regulation by administrators or politicians. Teaching personnel must be guaranteed a say in the management and decision-making of their institutions for the fulfilment of academic freedom.<sup>22</sup>

### **C. Freedom of opinion and expression**

#### **Right to hold opinions without interference**

15. Article 19 (1) of the International Covenant on Civil and Political Rights, reinforcing the protection of article 19 of the Universal Declaration of Human Rights, protects the right of everyone to hold opinions without interference. The Human Rights Committee, emphasizing the absolute quality of that right, noted in paragraph 9 of its general comment No. 34 (2011) on the freedoms of opinion and expression that “all forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature”. Interference with opinion often involves “harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment”. As noted in a previous report to the Human Rights Council, during the negotiations on the drafting of the Covenant, “the freedom to form an opinion and to develop this by way of reasoning was held to be absolute and, in contrast to freedom of expression, not allowed to be restricted by law or other power”.<sup>23</sup>

16. Although they are the subjects of both article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, “opinion” is conceptually distinct from “expression”. The internal aspect of opinion is closely connected to privacy, thought, belief and conscience, as compared

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<sup>22</sup> See UNESCO, “Protecting academic freedom is as relevant as ever”, 18 October 2017.

<sup>23</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (1993), p. 441.

with the external aspects of expression, public assembly and religious manifestation.<sup>24</sup> In an academic context, certain aspects of research and pedagogy are closer to opinion than expression. For instance, a scholar conducting research may collect data and carry out analytical work with respect to those data, evaluate the data and then articulate an interpretation (in the form of a paper) for distribution, sharing with colleagues and, ultimately, publication. That analytic work depends upon the right to seek and receive information as a component of expression, and that process must be protected, with its limitation subject to narrow restrictions. However, even before the stage of imparting information, the scholar's work product should be protected from interference as an opinion, subject to no restriction of any kind. By contrast, imparting information involves means of expression such as "books, newspapers, pamphlets, posters, banners, dress and legal submissions" as well as "electronic and Internet-based modes".<sup>25</sup>

17. Practically speaking, that means that a scholarly work product, as an opinion, should itself be protected from exposure, with demands for its transfer (for instance to law enforcement authorities) subject to strict rule of law and due process standards consistent with international human rights law. It also means that scholars should not be subject to interference, such as intimidation and harassment, in accordance with article 19 (1) of the Covenant. It further requires that scholars should have access to the kinds of tools that protect their work product. In the digital realm, such tools include encryption or guarantees of anonymity.<sup>26</sup>

### **Freedom to seek, receive and impart information and ideas of all kinds**

18. Article 19 (2) of the Covenant protects the right of everyone 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".

Extensive human rights jurisprudence and secondary literature underscore that the freedom of expression is considered a foundational aspect of international human

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<sup>24</sup> See, for example, [A/HRC/31/18](#).

<sup>25</sup> Human Rights Committee, general comment No. 34, para. 12. To be clear, this does not mean that all academic research may be beyond the reach of State regulation. Physical scientific research, for instance, may involve the use of controlled or dangerous substances, whereas social science research may have implications for the privacy rights of individuals and communities. Regulation of those subjects must not, however, be used as a tool to limit the researcher's freedom and should be drawn extremely carefully to avoid such interference.

<sup>26</sup> See, generally, [A/HRC/29/32](#).

rights law, such that, as the Human Rights Committee found, a general reservation to the paragraph would be incompatible with the object and purpose of the Covenant.<sup>27</sup> The breadth of the definition in article 19 (2) of the Covenant must be highlighted, just as the Committee noted that expression involves “every form of idea and opinion capable of transmission to others”, including teaching.<sup>28</sup> The right “embraces even expression that may be regarded as deeply offensive”,<sup>29</sup> such as blasphemy.<sup>30</sup>

### **Freedom of expression, regardless of frontiers**

19. Academic communities also transcend borders, resulting in global scholarly conferences, meetings, publications and other interactions in which individuals share their work. The global aspect of scholarly sharing is embodied in article 15 of the International Covenant on Economic, Social and Cultural Rights, which guarantees everyone’s right to enjoy the benefits of science and embraces “the encouragement and development of international contacts and co-operation in the scientific and cultural fields”. Article 19 (2) of the International Covenant on Civil and Political Rights recognizes that freedom of expression extends “regardless of frontiers”, which complements and reinforces the rights covered by the International Covenant on Economic, Social and Cultural Rights. On the one hand, it means that those in academic fields enjoy the right to seek and receive the work of others, whatever their field, and to impart their own work (or share that of others) beyond national borders. Further promotion of academic freedom at the global level can be found in article 12 of the International Covenant on Civil and Political Rights, which guarantees freedom of movement and the right of everyone to leave their country.<sup>31</sup> Bans on both leaving and entering a country may amount to a violation not only of article 12, but also of the panoply of rights under the rubric of academic freedom.

### **Extramural academic activity**

20. Individuals enjoy academic freedom not only within their institutions, in the internal aspects of research, scholarship, teaching, convenings and other on-campus activities, but also “extramurally”, in their role as educators and commentators outside the institution.<sup>32</sup> For instance, an academic bringing her or his expertise to bear in a hearing before a legislature, a lecture to a community, a

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<sup>27</sup> See, for example, general comment No. 34, para. 5.

<sup>28</sup> *Ibid.*, para. 11.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, para. 48.

<sup>31</sup> International Centre for Non-profit Law submission, p. 7.

<sup>32</sup> Scholars at Risk submission, para. 19.

conversation on broadcast media or a post on social media should be understood as, inter alia, an exercise of academic freedom. In other words, that framework is not limited to the institutional environment. When an academic engages in expression outside of her or his academic topic – that is, not only outside the substantive area but also methodologically – she or he retains the right to freedom of expression guaranteed by human rights law, even if that engagement is not considered a part of her or his academic freedom. It should also be emphasized that academics should not be punished by their institutions for exercising their rights to freedom of expression, association and assembly and religious belief, among others.

#### **D. Regional mechanisms reinforcing academic freedom**

21. It is worth emphasizing that academic freedom enjoys fundamental protection not only in international human rights instruments but also at the regional level. The same rights that are applicable in African, inter-American, European and other regional systems provide added support for the protections noted above. The European Court of Human Rights has the largest body of case law relating to academic freedom. In *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”.<sup>33</sup> In *Mustafa Erdoğan and Others v. Turkey*, the Court stated that 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”.<sup>34</sup> Also, in another case involving Turkey, the Court found that article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms protected the forms in which ideas were conveyed. The case pertained to an academic who was reprimanded for participating in a television programme. 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

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<sup>33</sup> European Court of Human Rights, *Sorguç v. Turkey*, application No. 17089/03, Judgment, 23 June 2009, para. 35.

<sup>34</sup> European Court of Human Rights, *Mustafa Erdoğan and Others v. Turkey*, application Nos. 346/04 and 39779/04, Judgment, 27 May 2014, para. 40.

‘conduct research and distribute knowledge and truth without restriction’<sup>35</sup>.

22. Civil society organizations have often highlighted those points. For instance, the 1990 Kampala Declaration on Intellectual Freedom and Social Responsibility promotes the protection of the right of all African intellectuals to “pursue intellectual activity”, “enjoy the freedom of movement” and “express [their] opinions freely in the media”.<sup>36</sup> Academic freedom was further promoted in the 2007 Juba Declaration on Academic Freedom and University Autonomy. The Declaration states that “all academicians have the right to fulfil their teaching, research and dissemination of information without fear, interference or repression from government or any other public authority”.<sup>37</sup> The Declaration addresses the guarantee of institutional autonomy in demanding that Governments avoid interfering with “the autonomy of Higher Education Institutions”.<sup>38</sup>

23. Article 13 of the Charter of Fundamental Rights of the European Union explicitly provides that “academic freedom shall be respected” and emphasizes that “research shall be free of constraint”. The Parliamentary Assembly of the Council of Europe Recommendation 1762 (2006) on academic freedom and university autonomy affirms the need for academic freedom in a just and democratic society. Furthermore, the Committee of Ministers of the Council of Europe Recommendation Cm/Rec(2012)7 discusses the importance of Governments’ using their power to ensure the protection of academic freedom, particularly by guaranteeing that institutions promote the autonomy of academics. It also clarifies that States have a duty to ensure that external powers cannot interfere with academic freedom.<sup>39</sup>

In November 2018, the European Parliament adopted a recommendation that called for the recognition that “claims to academic freedom fall under existing human rights law, derived from the right to education and the rights to freedom of expression and of opinion”.<sup>40</sup>

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<sup>35</sup> European Court of Human Rights, *Kula v. Turkey*, application No. 20233/06, Judgment, 19 June 2019, para. 38

<sup>36</sup> See Kampala Declaration on Intellectual Freedom and Social Responsibility, 1990, arts. 4, 6 and 9.

<sup>37</sup> Juba Declaration on Academic Freedom and University Autonomy, 2007, para. 1.

<sup>38</sup> *Ibid.*, para. 5.

<sup>39</sup> See Dirk Voorhoof and others, *Freedom of Expression, the Media and Journalists: Case-Law of the European Court of Human Rights*, IRIS Themes, vol. III, 5th ed. (Strasbourg, France, European Audiovisual Observatory, 2020).

<sup>40</sup> 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), para. 1 (b).

## **E. Restrictions on academic freedom**

24. Since the freedom of expression is fundamental to the enjoyment of all human rights, restrictions must be exceptional and subject to narrow conditions and strict oversight. The Human Rights Committee has underlined that restrictions, even when warranted, “may not put in jeopardy the right itself”.<sup>41</sup> States may restrict expression only where provided by law and necessary to respect the rights or reputations of others or protect national security or public order, or public health or morals.<sup>42</sup> As emphasized in numerous reports to the Human Rights Council and the General Assembly, the limitations on expression must be read narrowly and consistent with the cumulative three-part test under article 19 (3) of the International Covenant on Civil and Political Rights, in particular:

(a) *Legality*. Restrictions must be “provided by law”. In particular, they must be adopted by regular legal processes, drafted with sufficient precision to enable an individual to regulate her or his conduct accordingly, and made accessible to the public. A restriction may not be unduly vague or overbroad such that it could confer unfettered discretion on officials. Secretly adopted restrictions fail this fundamental requirement.<sup>43</sup> The assurance of legality should generally involve the oversight of independent judicial authorities;<sup>44</sup>

(b) *Legitimacy*. To be lawful, a restriction must protect only those interests enumerated in article 19 (3) of the Covenant, that is, the rights or reputations of others, national security or public order, or public health or morals. The Human Rights Committee cautions that restrictions to protect “public morals” should not derive “exclusively from a single tradition”, seeking to ensure that the restriction reflects principles of non-discrimination and the universality of rights;<sup>45</sup>

(c) *Necessity and proportionality*. States bear the burden of proving a direct and immediate connection between the expression and the threat. They must demonstrate that the restriction actually protects, or is likely to protect, the legitimate State interest at issue. States must also prove that the restriction that they seek to impose is the least intrusive instrument among those that might

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<sup>41</sup> Human Rights Committee, general comment No. 34, para. 21. The Committee clarified that “restrictions must not impair the essence of the right”, adding that “the laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”: see Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 13.

<sup>42</sup> See, in particular, [A/67/357](#), para. 41; and [A/HRC/29/32](#), paras. 32–35.

<sup>43</sup> Human Rights Committee, general comment No. 34, para. 25; and [A/HRC/29/32](#).

<sup>44</sup> Human Rights Committee, general comment No. 34, para. 25.

<sup>45</sup> *Ibid.*, para. 32.

achieve the same protective function.<sup>46</sup> Where the harm to freedom of expression outweighs the benefits, a restriction on the right cannot be justified.

25. It is not uncommon for States to invoke national security and public order as bases for restricting expression. The Human Rights Committee emphasizes that the “extreme care” required of States regarding laws relating to national security parallels the care that States must extend to laws that limit academic freedom and the protection that States must provide to academics. “It is not compatible with paragraph 3 [of article 19], for instance, to invoke [treason] laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.”<sup>47</sup> The same is true for academic research pertaining, allegedly, to national security or public order.

26. It may be that academic teaching or research could have implications for the rights of others, such as privacy or public health or morals. As a matter of academic ethics and self-governance, institutions and disciplines typically require privacy protections and the consent of individuals with respect to participation in studies or documentation. Restrictions on grounds relating to “morals” should be treated with scepticism and extreme caution. As the Human Rights Committee has noted, “‘limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition’. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.”<sup>48</sup> Restrictions on research or other activities relating to public health must be demonstrated to be necessary for the purposes of safeguarding public health and non-discriminatory. Restrictions on research relating to reproductive health, for instance, should be strongly disfavoured and strictly scrutinized to ensure that they are not related to gender-based discrimination or political positions not derived from academic criteria.

27. Article 20 of the International Covenant on Civil and Political Rights requires that States parties prohibit by law “propaganda for war” and “advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence”. Such restrictions on expression must nonetheless comply with the three - part test provided for in article 19 (3).<sup>49</sup> It is crucial to note that it is not consistent with article 19 to restrict expression on grounds of “blasphemy” or wounding of religious feelings. Article 20 does not provide grounds for such

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<sup>46</sup> Ibid., paras. 34–35.

<sup>47</sup> Ibid., para. 30.

<sup>48</sup> Ibid., para. 32; also Human Rights Committee, general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 8.

<sup>49</sup> Human Rights Committee, general comment No. 34, para. 50.

restrictions, and blasphemy laws can never, on their own, satisfy the requirements of article 19 (3).

28. Also related to the context of discrimination, it has been found in the past that denial of the facts of the Holocaust may constitute “hate speech” subject to restriction.<sup>50</sup> In paragraph 49 of general comment No. 34, the Human Rights Committee seemed to clarify its position, making the following statement:

Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Since the freedom of expression is fundamental to the enjoyment of all human rights, restrictions must be exceptional and subject to narrow.

29. It is understandable that States may wish to restrict expression such as genocide denial, given that “antisemitic expressions of Holocaust denial seek to repudiate or minimize the harrowing historical facts of that systematic murder of 6 million Jews”.<sup>51</sup> As a matter of academic freedom and freedom of expression, such work – even if appropriately characterized as pseudoscientific, polemical, advocacy-driven or antisemitic or racist – should be left to the self-governance structures of the academy, while allegations of an individual’s incitement to discrimination or hatred or violence under article 20 should be addressed separately and according to the limitations of article 19 (3).

30. In addition, government restrictions relating to historical interpretations are themselves deeply problematic. In 2018, Poland criminalized “whoever publicly and contrary to the facts attributes to the Polish Nation or the Polish State responsibility or co-responsibility for Nazi crimes committed by the German Third Reich ... or for other offences constituting crimes against peace, humanity or war crimes, or otherwise grossly diminishes the responsibility of the actual perpetrators of these crimes”.<sup>52</sup> While the offence was later decriminalized, such interference with freedom of expression constitutes direct interference with academic freedom.

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<sup>50</sup> Human Rights Committee, *Faurisson v. France* (CCPR/C/58/D/550/1993).

<sup>51</sup> A/74/358, para. 14.

<sup>52</sup> Communication No. POL 2/2018, 13 February 2018; also A/74/358, para. 21.

### **III. Threats to academic freedom**

31. Threats to academic freedom are often based on, among other things, political, financial, ideological, and/or social and cultural pressure.<sup>53</sup> Recent years have shown, among other trends, restrictions on university autonomy and reductions of higher education funding, the use of violence to suppress student protest, and “sexual violence on campuses that put women’s safety at risk in academic scenarios”.<sup>54</sup> In such environments, self-censorship increases, with unseen but definite negative impacts on academic freedom.<sup>55</sup> While some harms, such as harassment of women academics, may be universal, in other cases, a State’s particular context may characterize the types of threats that interfere with academic freedom. In the following section, the Special Rapporteur categorizes some of the most serious threats to academic freedom worldwide, organizing them according to the requirements for legitimate limitations in article 19 (3) of the International Covenant on Civil and Political Rights. The examples should be taken as illustrative, not exhaustive, and not as final statements on the specific cases or the kind of restriction involved.

#### **A. Legality: restrictions provided by law**

32. Legislative frameworks often enable government intervention in academia.<sup>56</sup> Such laws may fail to pursue a legitimate aim or to provide for a necessary and proportionate balance between the right to academic freedom and the legitimate aim pursued, as described below. Otherwise, they may fail to meet legality standards through their vagueness and consequent allowance of excessive discretion in enforcement by authorities.

33. Turkey has proved to be especially hostile to academic freedom. Article 130 of the Constitution of Turkey provides that, while scientific research and publication is guaranteed, “this shall not include the liberty to engage in activities directed against the existence and independence of the State, and against the integrity and indivisibility of the nation and the country”.<sup>57</sup> Such terms are excessively vague, with the offensive actions left undefined.<sup>58</sup> Indeed, more than 800 accusations against academics have been documented with the judiciary since 2016.<sup>59</sup> Beyond those concerns, Turkey

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<sup>53</sup> İnan Özdemir Taştan and Aydın Ördek, *A Report on Academic Freedoms in Turkey in the Period of the State of Emergency* (Ankara, İnsan Hakları Okulu, 2020) (Taştan/Ördek submission), p. 1.

<sup>54</sup> University of Ottawa, Human Rights Research and Education Centre submission, p. 11.

<sup>55</sup> Taştan/Ördek submission, pp. 29–35.

<sup>56</sup> Hedges submission, p. 1

<sup>57</sup> See [www.refworld.org/docid/3ae6b5be0.html](http://www.refworld.org/docid/3ae6b5be0.html).

<sup>58</sup> Maat for Peace, Development and Human Rights (Maat) submission, p. 6.

<sup>59</sup> *Ibid.*, p. 8.

adopted Emergency Decree No. 675, which gives the Government excessive discretion to restrict a range of human rights and to interfere with universities and other parts of the education sector. During the Special Rapporteur's official visit to Turkey in 2016, academics explained the lack of any notice or information as to the cause of their removal. Indeed, thousands of members of the university community and other educators were dismissed from positions, including many teachers of Kurdish origin or with leftist political views. The Government abolished university self-governance, replacing elections with direct appointments of administrators and reportedly requiring class content to be approved by officials. Those steps led to massive institutional and academic disruption while harming individual lives and rights.<sup>60</sup> A survey documented by İnsan Hakları Okulu noted growing anxieties among academics. Of the academics surveyed, 92 per cent stated that they felt anxious that they would be the target of an investigation, while 71 per cent said that they felt anxious that they would be detained or arrested.<sup>61</sup>

34. Those are not isolated incidents. The Special Rapporteur has observed how excessive powers among the executive branch worldwide are used to conduct assaults on academic freedom. In Hungary, the 2017 law that forced the Central European University to relocate to Vienna rested on vague restrictions that left the University in doubt that it would be able to function.<sup>62</sup> Ultimately, in a move widely understood as resulting from government pressure, the University left Budapest. In 2019, the Administration in Brazil published Decree No. 9,794, which allowed for the executive branch to have broadly worded veto power regarding university authority nominations.<sup>63</sup> In 2015, Pakistan re-established its military courts, which were then used to prosecute so-called anti-State individuals, including students and professors.<sup>64</sup> Such changes led to accusations against professors, which in turn led to shortages in specific departments.<sup>65</sup>

35. It is worth noting further that legislative proposals also have the potential to negatively affect academic freedom, particularly where pressure is exerted by lawmakers themselves. As noted by the human rights organization Article 19, even if there is no direct effect on the legal framework, and if bills are not approved or passed, their mere proposal can create a chilling effect.<sup>66</sup>

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<sup>60</sup> See [A/HRC/35/22/Add.3](#).

<sup>61</sup> Ülkü Doğanay and Ozan Değer, *Being a Human Rights Academic during the State of Emergency* (Ankara, İnsan Hakları Okulu, 2020) (IHO, Doğanay/Değer submission), p. 64.

<sup>62</sup> See Roberts Lyer and Suba, *Closing Academic Space*, p. 45.

<sup>63</sup> University of Ottawa, Human Rights Research and Education Centre submission, p. 5.

<sup>64</sup> Media Matters for Democracy submission, p. 12

<sup>65</sup> Maat submission, p. 20

<sup>66</sup> Article 19 Brazil submission, executive summary, p. 3.

## **B. Legitimacy of restrictions**

36. Other than the adoption of laws granting excessive competence to restrict academic freedom, restrictions are often implemented for unlawful purposes or with unlawful ulterior motives. This is exemplified in a case of the Human Rights Committee, *Aduayom et al. v. Togo*, which concerned two teachers at the University of Benin who were arrested on the grounds of lèse-majesté. Even though both were later released and the charges dropped, they were unsuccessful in their requests for reinstatement in their prior posts. The men alleged that the refusal to reinstate them was motivated by the dropped charges “for having carried, read or disseminated documents that contained no more than an assessment of Togolese politics, either at the domestic or foreign policy level”. The Committee was of the view that the denial of reinstatement was motivated by the charges and, in finding a violation of article 19 of the Covenant, held that the justification for those charges did not meet any of the legitimate aims exhaustively listed in article 19 (3).<sup>67</sup>

### **Institutional autonomy**

37. The politicization of school programmes and curricula erodes institutional autonomy and academic freedom. Such regulation of what is presented in the classroom is a trend seen in many countries. In the Bolivarian Republic of Venezuela, both public and private universities face government restrictions regarding the creation of new academic programmes.<sup>68</sup> Typically, those interventions include the requirement to promote ideological views as part of the academic programmes, as seen, for instance, in Belarus, China and Cuba.<sup>69</sup> Such bans on disfavoured subjects are used to impose specific political agendas<sup>70</sup> and are often implemented through textbook indoctrination. In India, a teacher was dismissed for showing anti-national films in class.<sup>71</sup> Some countries, such as the Bolivarian Republic of Venezuela, have seen ideological indoctrination go as far as the creation of universities as entities for the purpose of social control. The Bolivarian University of Venezuela is such an entity, with a government ministry controlling all appointments and curricula content.<sup>72</sup> The common thread in all such approaches is that they serve to restrict academic freedom,

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<sup>67</sup> See Human Rights Committee, *Aduayom et al. v. Togo* (CCPR/C/57/D/422/1990, CCPR/C/57/D/423/1990 and CCPR/C/57/D/424/1990).

<sup>68</sup> International Centre for Non-profit Law submission, p. 7.

<sup>69</sup> Ibid.

<sup>70</sup> Taştan/Ördek submission, p. 111.

<sup>71</sup> Nandini Sundar, Delhi University, “Academic freedom in India: a status report”, 2020 (Sundar submission), p. 12.

<sup>72</sup> University of Ottawa, Human Rights Research and Education Centre submission, pp. 5 –6.

and freedom of expression, without pursuing a lawful purpose as stipulated in article 19 (3) of the Covenant.

38. Restrictions on the content of speech, whether through criminalization or the labelling of certain topics as immoral, close such topics for academic discussion and render them taboo by the State.<sup>73</sup> In Pakistan, blasphemy charges have been used against both progressive students and university professors, who as a consequence, face the death penalty.<sup>74</sup> Another trend is the adoption of measures to enforce such restrictions, including mandatory training for university faculty regarding the advancement of ideological frameworks. That functions as a general promotion of nationalist and anti-cultural norms. Such advancement is displayed in different ways. In Pakistan, there is condemnation of any discussion that is deemed “anti-Pakistan” or “anti-cultural”,<sup>75</sup> whereas in the Bolivarian Republic of Venezuela, the State controls policies to ensure programmes that support “state-sanctioned socialist ideological frameworks”.<sup>76</sup>

39. External interference in the selection, appointment and dismissal of leadership and professors in academic institutions ultimately constitutes a restriction on academic freedom often based on grounds that are neither academic nor rooted in article 19 (3). Hungary has implemented a State system for appointing senior academics. The Prime Minister-appointed chancellor of a university controls staffing and appointments. Those appointments are validated by the relevant ministry and confirmed by the President.<sup>77</sup> Similarly, in Turkey, institutional autonomy was removed when the election of school administrators was delegated to the Higher Education Council. The Council has the power to both terminate and employ faculty members.<sup>78</sup> The new hiring criteria erode the “academic traditions” of Turkey by employing faculty who “follow a certain ideolog[y]” without necessarily “having any academic qualifications”.<sup>79</sup> In Azerbaijan, Egypt, Iran (Islamic Republic of) and Pakistan, dismissals have allegedly been based on religious and political affiliations.<sup>80</sup>

40. Management of admissions, scholarship distribution and curricula is a third means by which State interference and restrictions on institutional autonomy often are

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<sup>73</sup> Doğanay/Değer submission, p. 30.

<sup>74</sup> Minority Rights Group International and Sustainable Development Policy Institute, *Searching for Security: The Rising Marginalization of Religious Communities in Pakistan* (London, 2014); and Media Matters for Democracy submission, p. 5.

<sup>75</sup> Media Matters for Democracy submission, p. 7.

<sup>76</sup> Roberts Lyer and Suba, *Closing Academic Space*, p. 84.

<sup>77</sup> International Centre for Non-profit Law submission, p. 8.

<sup>78</sup> Taştan/Ördek submission, p. 9.

<sup>79</sup> *Ibid.*, p. 125.

<sup>80</sup> International Centre for Non-profit Law submission, p. 8; and Media Matters for Democracy submission, p. 8.

implemented without lawful aims. Notably, these trends seem to overlap with the targeting of religious groups and gender. In Bahrain, scholarship distribution has been linked to religious affiliation.<sup>81</sup> Religious association and its importance in school applications are also seen elsewhere. Pakistan requires a declaration of religious affiliation on school application forms for both public and private institutions. Muslim students have to declare their belief in the Prophet Muhammad, and non-Muslim students must receive verification of their religious affiliation from the local community.<sup>82</sup> Political interference in admissions has been seen across the board in other countries, such as Uzbekistan<sup>83</sup> and Nigeria.<sup>84</sup> Such control over the size and composition of student bodies “affects the range of views expressed at universities”.<sup>85</sup>

41. The willingness of universities to submit to public pressure can erode academic freedom and freedom of expression.<sup>86</sup> In the United States of America, pressure from the public or from students has led to disciplinary reviews of academics, and in some instances, has even resulted in them being barred from campus.<sup>87</sup> Broadly speaking, such a dynamic may lead to a culture of repression and self-censorship, where restrictive measures against academic staff are guided by outside pressure rather than academic achievements and activities. In other States, there is evidence that students themselves are recruited to become a source of threat to academics owing to their ability and, in some cases, willingness to report academics who discuss ideas that are deemed unacceptable.<sup>88</sup>

### **Discriminatory treatment**

42. The right to freedom of opinion and expression must be respected “without distinction of any kind” (see art. 2 (1) of the International Covenant on Civil and Political Rights). Members of some groups, however, often face particular discrimination when it comes to the implementation of restrictions on expression. In Turkey, many university administrations, on the instructions of the Higher Educational Council, took disciplinary actions against the thousands of academics who signed a “peace petition” condemning the State security operations in cities in south-east Turkey,<sup>89</sup> including dismissing signatories from their positions.<sup>90</sup>

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<sup>81</sup> International Centre for Non-profit Law submission, p. 8.

<sup>82</sup> Media Matters for Democracy submission, p. 8.

<sup>83</sup> World Bank, *Uzbekistan: Modernizing Tertiary Education* (2014), p. 60; and International Centre for Non-profit Law submission, pp. 8–9.

<sup>84</sup> Bakwaph Peter Kanyib, “Admission crisis in Nigerian universities: the challenges youth and parents face in seeking admission”, PhD dissertation, Seton Hall University, 2013, pp. 101 and 107–110; and International Centre for Non-profit Law submission, p. 8.

<sup>85</sup> International Centre for Non-profit Law submission, p. 8.

<sup>86</sup> Foundation for Individual Rights in Education submission, p. 3.

<sup>87</sup> *Ibid.*, p. 4.

<sup>88</sup> Doğanay/Değer submission, p. 57.

<sup>89</sup> Communication No. TUR 3/2016, 31 March 2016; and Government’s reply, 17 May 2016.

<sup>90</sup> See [A/HRC/35/22/Add.3](#).

Other signatories were prosecuted, arrested and banned from public employment and from foreign travel.<sup>91</sup> In the Bolivarian Republic of Venezuela, individuals expressing political opinions critical of the Government have been excluded from scholarships,<sup>92</sup> expelled or subjected to disciplinary procedures.<sup>93</sup> Likewise, students in India have been expelled or excluded from scholarships in retaliation for dissent.<sup>94</sup> Restrictions on expression also reach student organizations and activities.<sup>95</sup> In Brazil, an elected State representative invited students via social media to film their classes to catch “political-partisan or ideological” behaviour of teachers, and to establish an anonymous telephone line for students and members of the public to denounce “ideological professors and indoctrinators” at universities.<sup>96</sup>

43. Intervention inside the classroom often targets minority groups, particularly religious minorities, and women. Specific targeting of those belonging to certain religious populations is a trend noted in societies that limit academic freedom. For example, members of the Hazara Shia Muslim population in Balochistan Province, Pakistan, have experienced difficulty in gaining access to education. There is also “a chilling effect on the ability of girls and women to access education”; girls who are part of Shia families have often had to leave school.<sup>97</sup> In Pakistan, women are supposedly obligated to comply with a strict dress code in the name of promotion of culture and ethics, as well as with other practices that perpetuate gender inequality.<sup>98</sup>

#### **Penalties and disciplinary action for activities**

44. The criminalization of or retaliatory disciplinary procedures against academics for their activities “can have a serious chilling effect on the autonomy of higher education institutions”<sup>99</sup> and the “applicable meaning of academic pursuit”.<sup>100</sup> Those who continue to work in universities under threat of loss of autonomy lose belief in their work. Dismissal of academics who continue their work leads to a “shrinking of research areas”<sup>101</sup> For example, in Turkey, discussion of Kurdish conflicts and s tate of emergency laws led to individuals being blacklisted. Thus, most academic work in that

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<sup>91</sup> International Centre for Non-profit Law submission, p. 6; and Maat submission, pp. 7–8.

<sup>92</sup> Roberts Lyer and Suba, *Closing Academic Space*, p. 93; and Aula Abierta submission, pp. 1–3.

<sup>93</sup> Aula Abierta submission, pp. 81–83.

<sup>94</sup> Sundar submission, p. 11

<sup>95</sup> Taştan/Ördek submission, p. 130.

<sup>96</sup> Rachael Pells, “Brazilian academics vow to resist threats to freedom”, *Times Higher Education*, 26 November 2018; HRREC submission, p. 10; and Article 19 Brazil submission, p. 2.

<sup>97</sup> Media Matters for Democracy submission, p. 5.

<sup>98</sup> Human Rights Watch, “‘Shall I feed my daughter, or educate her?’ Barrier to girl’s education in Pakistan”, 18 November 2018; and Media Matters for Democracy submission, p. 11

<sup>99</sup> International Centre for Non-profit Law submission, p. 6.

<sup>100</sup> Doğanay/Değer submission, p. 52, quoting an interview respondent.

<sup>101</sup> Taştan/Ördek submission, executive summary, p. 2.

area was halted.<sup>102</sup> Blacklisting, in turn, bars academics in Turkey from publishing research, attending conferences and undertaking foreign travel.<sup>103</sup>

### **Targeted violence against students and academics**

45. Students and academics alike are also often targets of direct attacks by the State without any lawful justification. Such attacks include threats, violence and arbitrary deprivation of liberty. Matthew Hedges, a citizen of the United Kingdom and a doctoral student, was detained by the authorities of the United Arab Emirates for seven months owing to his fieldwork research.<sup>104</sup> He was coerced into making an admission to espionage under torture and solitary confinement.<sup>105</sup> In June 2020, police officers reportedly beat and arrested dozens of students in Balochistan Province, Pakistan, during a non-violent protest demanding the Internet access necessary for online classes.<sup>106</sup> In the Bolivarian Republic of Venezuela, unidentified individuals released tear gas during a class at the Central University of Venezuela Law School in an apparent effort to prevent students from discussing the impact of a judicial decision on university autonomy.<sup>107</sup>

### **C. Necessity and proportionality**

46. As shown above, many restrictions involve more than one ground of non-compliance with the requirements of article 19 (3) of the International Covenant on Civil and Political Rights. Where that is the case, the restrictive measure is often assessed under the tests of necessity and proportionality. Restrictions are often unsuitable and improper for achieving the legitimate aim, fail to use less restrictive means available to the Government or simply constitute excessive interference in the right to academic freedom.

#### **Prior censorship**

47. In Bangladesh, government approval is required for certain historical publications.<sup>108</sup> In Viet Nam, professors “must refrain from criticising government policies and adhere to party views when teaching or writing on political topics”<sup>109</sup> In

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<sup>102</sup> Ibid., p. 72.

<sup>103</sup> Ibid., pp. 67–69.

<sup>104</sup> Hedges submission, p. 1.

<sup>105</sup> Ibid.

<sup>106</sup> Scholars at Risk, Academic Freedom Monitoring Project Index database, date of incident 24 June 2020. Available at [www.scholarsatrisk.org/report/2020-06-24-various-institutions/](http://www.scholarsatrisk.org/report/2020-06-24-various-institutions/).

<sup>107</sup> Scholars at Risk, Academic Freedom Monitoring Project Index database, date of incident 12 February 2020. Available at [www.scholarsatrisk.org/report/2020-02-12-central-university-of-venezuela/](http://www.scholarsatrisk.org/report/2020-02-12-central-university-of-venezuela/).

<sup>108</sup> Roberts Lyer and Suba, *Closing Academic Space*, p. 6.

<sup>109</sup> Freedom House, report on Viet Nam, 2017.

Jordan, the university administration must obtain approval for all “research papers, forums, reading materials, movies, [and] seminars”.<sup>110</sup>

### **Surveillance**

48. State assertions that national security or public order justifies interference with personal security and privacy are common in cases of surveillance of personal communications, encryption and anonymity.<sup>111</sup> Surveillance and monitoring of speech and movement lead to restrictions on academic freedom and a culture of self-censorship. Random monitoring of reading materials and research causes academics not to pursue their necessary work.<sup>112</sup> There is often additional monitoring of those belonging to specific religious groups, as well as gendered surveillance. Broadly speaking, the ideology that the State strives to maintain results in surveillance and monitoring of opinions about the Government. In Ethiopia, a pattern of surveillance and arbitrary arrest of Oromo university students was reported. In Togo, Uganda and Zimbabwe, some lectures have allegedly been surveilled by security officials.<sup>113</sup> Surveillance and monitoring of women have also been a trend in restricting academic freedom and freedom of expression. Such monitoring, in particular through the use of closed-circuit television, may extend to blackmail of students, with videos showing women sitting in class or talking to a man. Organizations have reported cases “where girls had claimed that teachers and members of the administration had asked for sexual favours or money in return for not sharing videos with their families”.<sup>114</sup>

### **Undermining the right of access to information**

49. Restrictions on certain research topics may entail “limited access to libraries, restrictions on the publication of and research about certain topics, intellectual property restrictions and limitations on the ability of academics to collaborate internationally”.<sup>115</sup> In 2018, the Government of Hungary distributed a directive to all universities indicating that it would no longer certify or provide funding for any programmes or courses in gender studies.<sup>116</sup> The Ministry of Culture, Sports and Tourism of the Republic of Korea has requested the Korean National University of Arts to concentrate solely on “practical education”.<sup>117</sup> In Brazil, some municipalities have enacted laws, while in hundreds of others, bills are under consideration, specifically prohibiting schools from addressing gender and sexuality issues.<sup>118</sup> In

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<sup>110</sup> Media Matters for Democracy submission, p. 10; and Roberts Lyer and Suba, *Closing Academic Space*, pp. 6–7.

<sup>111</sup> See [A/HRC/29/32](#) and [A/71/373](#).

<sup>112</sup> Taştan/Ördek submission, p. 117.

<sup>113</sup> Roberts Lyer and Suba, *Closing Academic Space*, pp. 102–103.

<sup>114</sup> Media Matters for Democracy submission, p. 11.

<sup>115</sup> International Centre for Non-profit Law submission, p. 6.

<sup>116</sup> Communication No. HUN 6/2018, 12 September 2018.

<sup>117</sup> See [E/C.12/KOR/CO/3](#).

<sup>118</sup> Article 19 Brazil submission, p. 3; and communication No. BRA 4/2017, 13 April 2017

Japan, the authorities have influenced the preparation of school textbooks relating to historical events, in particular with regard to the participation of Japan in the Second World War and the issue of “comfort women”. Influence ranges from the inclusion of a disclaimer indicating the contrary view of the Government that there was no forcible taking of women to editing out references to “comfort women”.<sup>119</sup> In Pakistan, some textbooks are published under government supervision and paint a picture of history that is intended to reinforce a certain ideology and political orientation.<sup>120</sup>

50. Some university professors have seen their academic freedom restricted by the denial of access to information requests necessary for their academic research. For example, Immigration and Customs Enforcement and Cowlitz County, Washington, in the United States refused to provide to a professor and researcher of the University of Washington information regarding juvenile detention centres holding children without supervision. Cowlitz County provided incomplete information and filed a motion for declaratory judgment against the University and the professor personally. Immigration and Customs Enforcement requested that the case be heard by a federal court, and responded that the information requested was confidential under federal law, despite state regulations to the contrary.<sup>121</sup>

### **Internet access**

51. Governments have also disrupted Internet and telecommunications services in the name of national security and public order. Such disruptions include the shutdown of entire networks, the blocking of websites and platforms, and the suspension of telecommunications and mobile services. Since August 2019, the Government of India has imposed a near-total communications blackout in Jammu and Kashmir, with Internet access, mobile phone networks, cable and television channels cut off.<sup>122</sup> That situation has affected the education system and research by scholars. Following a Supreme Court ruling in January 2020 in which the Government was ordered to restore the Internet, it brought back only a second-generation network.<sup>123</sup> The situation in Kashmir has been aggravated by the effects of the coronavirus disease

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<sup>119</sup> See [A/HRC/35/22/Add.1](#).

<sup>120</sup> Media Matters for Democracy submission, p. 2; and Afnan Khan, “The threat of Pakistan’s revisionist texts”, *Guardian*, 18 May 2009.

<sup>121</sup> Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Annual Report of the Inter-American Commission on Human Rights 2019, vol. II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II. Doc. 5 (2020), para. 672.

<sup>122</sup> OHCHR, “UN rights experts urge India to end communications shutdown in Kashmir”, 22 August 2019.

<sup>123</sup> Sundar submission, p. 18.

(COVID-19) pandemic on education systems. The pandemic has had a massive impact on the education of children and young people worldwide and has widened existing gaps.<sup>124</sup> The Special Rapporteur on the right to education has warned States that exclusion prior to and during the pandemic exists “against a backdrop of entrenched, recognized structural inequality”.<sup>125</sup> She highlighted that the excessive reliance on online distance-learning tools to address the continuity of education had exacerbated those inequalities. According to UNESCO, “half of the total number of learners – some 826 million students – kept out of the classroom by the COVID-19 pandemic, do not have access to a household computer and 43 per cent (706 million) have no Internet at home”.<sup>126</sup> In addition, many Governments do not have the policies, resources or infrastructure to roll out a fully inclusive transition to online learning, particularly when it is accompanied by a technology-heavy response.<sup>127</sup>

### **Restrictions on the right to protest**

52. One form of restriction on academic freedom is the restriction or suppression of peaceful protests. Students who participate in protests are subject to exclusion from scholarships, criminalization, the physical presence and interventions of security forces on university campuses, arrest, detention, ill-treatment, extrajudicial killing and trial in military courts.<sup>128</sup> Governments often use public protest and civil unrest as a justification to pass and enforce laws that control and monitor students and interfere with institutional autonomy, which limits academic freedom.<sup>129</sup> In Egypt, thousands of students were imprisoned following a protest in reaction to the 2013 coup.<sup>130</sup> The physical presence and interventions of security forces on university campuses and during protests organized or led by students or in which a large number of students participate have been documented in many countries. Students from Chile, Colombia, Honduras and Venezuela (Bolivarian Republic of) who organized or participated in protests faced violent and disproportionate responses from law enforcement.<sup>131</sup> Police and military forces in the Bolivarian Republic of Venezuela

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<sup>124</sup> Elin Martínez, “COVID-19 reveals global need to improve education systems”, Human Rights Watch, 13 July 2020.

<sup>125</sup> A/HRC/44/39, para. 80.

<sup>126</sup> UNESCO, “Startling digital divides in distance learning emerge”, 21 April 2020.

<sup>127</sup> Martínez, “COVID-19 reveals global need to improve education systems”.

<sup>128</sup> International Centre for Non-profit Law submission, summary, p. 8

<sup>129</sup> Taştan/Ördek submission, p. 10; and Elizka Relief Foundation submission, p. 3.

<sup>130</sup> Roberts Lyer and Suba, *Closing Academic Space*, p. 8.

<sup>131</sup> Inter-American Commission on Human Rights, *Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report*, OEA/Ser.L/V/II. Doc. 209/17 (2017); Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Protest and Human Rights: Standards on the Rights Involved in Social Protest and the Obligations to Guide the Response of the State*, OEA/Ser L/V/II CIDH/RELE/INF.22/19 (2019); Inter-American Commission on Human Rights, “IACHR issues preliminary observations and

“have repressed student protests with excessive force” and “the situation has been worsening since 2013, but more dramatically in 2014 and 2017”.<sup>132</sup>

### **Travel restrictions**

53. Travel restrictions form a constraint on freedom of expression, freedom of movement and freedom to share knowledge and collaborate with others. Examples include Egyptian faculty members requiring security clearance and approval from the Ministry of Foreign Affairs and the Ministry of Higher Education to travel abroad.<sup>133</sup> Likewise, in India, it is difficult to obtain research visas: faculty members must “apply for ‘permission to leave the country’, at least six weeks in advance” if they want to attend conferences abroad, even if the conferences are taking place during their vacation time.<sup>134</sup> The African Commission on Human and Peoples’ Rights acknowledged the importance of freedom of expression for the fulfilment of academic freedom in *Good v. Republic of Botswana*.<sup>135</sup> The Commission held that Botswana had violated the academic’s rights by deporting him after he had published a paper unfavourable to the Government.

## **IV. Conclusions and recommendations**

54. Restrictions on academic freedom are both ancient tools to limit the sharing of information and knowledge and the questioning of received wisdom, and contemporary tools to repress information and ideas that Governments often find threatening. Yet, without academic freedom, all societies lose one of the essential elements of democratic self-governance: the capacity for self-reflection, for knowledge generation and for a constant search for improvements of people’s lives and social conditions. As the Special Rapporteur has sought to show, academic freedom depends upon a range of civil, political, economic, social and cultural rights. The Special Rapporteur focused especially on the freedom of expression aspects of academic freedom, a freedom that is best understood as one that crosses boundaries of rights and borders. In particular, threats to academic freedom – threats to questioning – must be confronted, whether the threat derives from State behaviour or social pressure. The current global pandemic highlights for all the importance of the development and sharing of all sorts of ideas and information, regardless of frontiers.

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recommendations following on-site visit to Chile”, 31 January 2020; and University of Ottawa, Human Rights Research and Education Centre submission, p. 6.

<sup>132</sup> Mayda Gabriela Hocevar, David Augusto Gómez and Nelson Jose Rivas, “Threats to academic freedom in Venezuela: legislative impositions and patterns of discrimination towards university teachers and students”, *Interdisciplinary Political Studies*, vol. 3, No. 1 (2017).

<sup>133</sup> International Centre for Non-profit Law submission, p. 7.

<sup>134</sup> Sundar submission, p. 16.

<sup>135</sup> Communication No. 313/05, 26 May 2010.

**55. The Special Rapporteur makes the recommendations below.**

**A. Recommendations for States**

56. State approaches to academic freedom should be rooted in the critical importance of academic pursuits, academic communities and academic participants to democratic society, individual freedom, human progress and problem-solving. States should ensure that they recognize that vital importance by refraining from attacks on academic institutions and those who constitute academic communities, and by protecting them from attacks – insulating them from assault – by third parties. That means, at a minimum:

- (a) Reviewing and, where necessary, revising national laws and policies to ensure the protection of academic freedom. Any laws relating to academic institutions should recognize that restrictions often result in limitations to fundamental rights, including the freedom of opinion and expression. As a result, any such rules must meet the strict conditions laid down for restrictions on expression;
- (b) Avoiding the use of tools of coercion, such as funding cuts, prosecution or denial of tax benefits, in order to pressure academic institutions to carry out or to avoid certain kinds of research. At the same time, public support for academic institutions, including through government funding and grant opportunities, signals valuable support to third party actors;
- (c) Refraining from penalizing academic institutions and members of academic communities for their extramural activities. All too often, academics are targeted for their public perception as sceptics and objective knowledge- seekers, especially when they engage in public debate. Governments must refrain from such targeting not only because it interferes with freedom of expression, but also because such targeting has a chilling effect on academic communities;
- (d) Recognizing that an academic work product involves not only expression but also, often, freedom of opinion that cannot be subject to any interference;
- (e) Ensuring the institutional autonomy of universities, research institutes and other bodies that constitute the academic community. The recognition of such autonomy includes recognition of the special autonomous space of academic campuses and the importance of allowing that space to be a vibrant space for the exercise of the rights to expression, protest and other fundamental freedoms.

## **B. Recommendations for international organizations**

57. The monitoring bodies of the United Nations and global treaties may seem to be marginal to the pursuit of academic freedom. They are not. The human rights mechanisms, such as the Human Rights Council, should ensure that the universal periodic review and other reviews of State compliance with human rights law include consideration of academic freedom. Treaty bodies should seek out cases of academic freedom and, when reviewing them, be sure to characterize interferences not only as a specific type of violation (e.g., of freedom of expression) but as a violation of academic freedom itself.

## **C. Recommendations for academic institutions**

58. Academic institutions, when assured of institutional autonomy and self-governance, take on special roles within societies, which see them as places to educate the coming generations of thinkers, leaders and bureaucratic and business elites among others. Self-governance means ensuring that, within the space for academic freedom, institutions also act in ways that reflect those roles. In particular, academic institutions must:

- (a) Respect the rights of all members of their communities, including faculty, students, researchers, staff, administrators and outsiders who participate in academic pursuits. That respect must include the right of all members to freedom of opinion and expression, including peaceful protest on academic premises;
- (b) Ensure that members of academic communities have protection against coercion by third parties, whether the State or groups in society. This requires, in particular, institutions to stand up for members of their communities who face attack or restriction owing to the exercise of their academic freedom.

## **D. Recommendation for civil society**

59. Members of civil society, especially members of academic communities and their advocates, are encouraged to articulate claims of violation of academic freedom, taking into account the findings in the present report. In particular, those who believe that their rights to academic freedom have been subjected to unwarranted interference are encouraged to bring their claims to the attention of the special procedure mandate holders of the Human Rights Council, UNESCO, relevant human rights treaty bodies and other regional and international bodies.

## APPENDIX C

### **UNESCO. Recommendation concerning the Status of Higher-Education Teaching Personnel.**

11 November 1997

#### **Preamble**

**The General Conference** of the United Nations Educational, Scientific and Cultural Organization (UNESCO), meeting in Paris from 21 October to 12 November 1997, at its 29th session, Conscious of the responsibility of states for the provision of education for all in fulfilment of Article 26 of the Universal Declaration of Human Rights (1948),

**Recalling** in particular the responsibility of the states for the provision of higher education in fulfilment of Article 13, paragraph 1(c), of the International Covenant on Economic, Social and Cultural Rights (1966),

**Conscious** that higher education and research are instrumental in the pursuit, advancement and transfer of knowledge and constitute an exceptionally rich cultural and scientific asset,

**Also conscious** that governments and important social groups, such as students, industry and labour, are vitally interested in and benefit from the services and outputs of the higher education systems,

**Recognizing** the decisive role of higher education teaching personnel in the advancement of higher education, and the importance of their contribution to the development of humanity and modern society,

**Convinced** that higher-education teaching personnel, like all other citizens, are expected to endeavour to enhance the observance in society of the cultural, economic, social, civil and political rights of all peoples,

**Aware** of the need to reshape higher education to meet social and economic changes and for higher education teaching personnel to participate in this process,

**Expressing concern** regarding the vulnerability of the academic community to untoward political pressures which could undermine academic freedom,

**Considering** that the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom and autonomy for institutions of higher education and that the open communication of findings, hypotheses and opinions lies at the very heart of higher education and provides the strongest guarantee of the accuracy and objectivity of scholarship and research,

**Concerned** to ensure that higher-education teaching personnel enjoy the status commensurate with this role, Recognizing the diversity of cultures in the world,

**Taking into account** the great diversity of the laws, regulations, practices and traditions which, in different countries, determine the patterns and organization of higher education,

**Mindful** of the diversity of arrangements which apply to higher-education teaching personnel in different countries, in particular according to whether the regulations concerning the public service apply to them,

**Convinced** nevertheless that similar questions arise in all countries with regard to the status of higher education teaching personnel and that these questions call for the adoption of common approaches and so far as practicable the application of common standards which it is the purpose of this Recommendation to set out,

**Bearing in mind** such instruments as the UNESCO Convention against Discrimination in Education (1960), which recognizes that UNESCO has a duty not only to proscribe any form of discrimination in education, but also to promote equality of opportunity and treatment for all in education at all levels, including the conditions under which it is given, as well as the Recommendation concerning the Status of Teachers (1966) and the UNESCO Recommendation on the Status of Scientific Researchers (1974), as well as the instruments of the International Labour Organization on freedom of association and the right to organize and to collective bargaining and on equality of opportunity and treatment,

**Desiring** to complement existing conventions, covenants and recommendations contained in international standards set out in the appendix with provisions relating to problems of particular concern to higher education institutions and their teaching and research personnel,

**Adopts** the present Recommendation on 11 November 1997

## **I. Definitions**

1. For the purpose of this Recommendation:

(a) 'higher education 'means programmes of study, training or training for research at the post-secondary level provided by universities or other educational establishments that are approved as institutions of higher education by the competent state authorities, and/or through recognized accreditation systems;

(b) 'research', within the context of higher education, means original scientific, technological and engineering, medical, cultural, social and human science or educational research which implies careful, critical, disciplined inquiry, varying in technique and method according to the nature and conditions of the problems identified, directed towards the clarification and/or resolution of the problems, and when within an institutional framework, supported by an appropriate infrastructure;

(c) 'scholarship 'means the processes by which higher-education teaching personnel keep up to date with their subject, engage in scholarly editing, disseminate their work and improve their pedagogical skills as teachers in their discipline and upgrade their academic credentials;

(d) 'extension work 'means a service by which the resources of an educational institution are extended beyond its confines to serve a widely diversified community within the state or region regarded as the constituent area of the institution, so long as this work does not contradict the mission of the institution. In teaching it may include a wide range of activities such as extramural, lifelong and distance education delivered through evening classes, short courses, seminars and institutes. In research it may lead to the provision of expertise to the public, private and non-profit sectors, various types of consultation, and participation in applied research and in implementing research results;

(e) 'institutions of higher education 'means universities, other educational establishments, centres and structures of higher education, and centres of research and culture associated with any of the above, public or private, that are approved as such either through recognized accreditation systems or by the competent state authorities;

(f) 'higher-education teaching personnel 'means all those persons in institutions or programmes of higher education who are engaged to teach and/or to undertake scholarship and/or to undertake research and/or to provide educational services to students or to the community at large.

## **II. Scope**

2. This Recommendation applies to all higher education teaching personnel.

### **III. Guiding principles**

3. The global objectives of international peace, understanding, co-operation and sustainable development pursued by each Member State and by the United Nations require, inter alia, education for peace and in the culture of peace, as defined by UNESCO, as well as qualified and cultivated graduates of higher education institutions, capable of serving the community as responsible citizens and undertaking effective scholarship and advanced research and, as a consequence, a corps of talented and highly qualified higher-education teaching personnel.

4. Institutions of higher education, and more particularly universities, are communities of scholars preserving, disseminating and expressing freely their opinions on traditional knowledge and culture, and pursuing new knowledge without constriction by prescribed doctrines. The pursuit of new knowledge and its application lie at the heart of the mandate of such institutions of higher education. In higher education institutions where original research is not required, higher-education teaching personnel should maintain and develop knowledge of their subject through scholarship and improved pedagogical skills.

5. Advances in higher education, scholarship and research depend largely on infrastructure and resources, both human and material, and on the qualifications and expertise of higher-education teaching personnel as well as on their human, pedagogical and technical qualities, underpinned by academic freedom, professional responsibility, collegiality and institutional autonomy.

6. Teaching in higher education is a profession: it is a form of public service that requires of higher education personnel expert knowledge and specialized skills acquired and maintained through rigorous and lifelong study and research; it also calls for a sense of personal and institutional responsibility for the education and welfare of students and of the community at large and for a commitment to high professional standards in scholarship and research.

7. Working conditions for higher-education teaching personnel should be such as will best promote effective teaching, scholarship, research and extension work and enable higher-education teaching personnel to carry out their professional tasks.

8. Organizations which represent higher-education teaching personnel should be considered and recognized as a force which can contribute greatly to educational advancement and which should, therefore, be involved, together with other stakeholders and interested parties, in the determination of higher education policy.

9. Respect should be shown for the diversity of higher education institution systems in

each Member State in accordance with its national laws and practices as well as with international standards.

#### **IV. Educational objectives and policies**

10. At all appropriate stages of their national planning in general, and of their planning for higher education in particular, Member States should take all necessary measures to ensure that:

(a) higher education is directed to human development and to the progress of society;

(b) higher education contributes to the achievement of the goals of lifelong learning and to the development of other forms and levels of education;

(c) where public funds are appropriated for higher education institutions, such funds are treated as a public investment, subject to effective public accountability;

(d) the funding of higher education is treated as a form of public investment the returns on which are, for the most part, necessarily long term, subject to government and public priorities;

(e) the justification for public funding is held constantly before public opinion.

11. Higher-education teaching personnel should have access to libraries which have up-to-date collections reflecting diverse sides of an issue, and whose holdings are not subject to censorship or other forms of intellectual interference. They should also have access, without censorship, to international computer systems, satellite programmes and databases required for their teaching, scholarship or research.

12. The publication and dissemination of the research results obtained by higher-education teaching personnel should be encouraged and facilitated with a view to assisting them to acquire the reputation which they merit, as well as with a view to promoting the advancement of science, technology, education and culture generally. To this end, higher-education teaching personnel should be free to publish the results of research and scholarship in books, journals and databases of their own choice and under their own names, provided they are the authors or co-authors of the above scholarly works. The intellectual property of higher-education teaching personnel should benefit from appropriate legal protection, and in particular the protection afforded by national and international copyright law.

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.

14. Programmes providing for the broadest exchange of higher-education teaching personnel between institutions, both nationally and internationally, including the organization of symposia, seminars and collaborative projects, and the exchange of educational and scholarly information should be developed and encouraged. The extension of communications and direct contacts between universities, research institutions and associations as well as among scientists and research workers should be facilitated, as should access by higher education teaching personnel from other states to open information material in public archives, libraries, research institutes and similar bodies.

15. Member States and higher education institutions should, nevertheless, be conscious of the exodus of higher-education teaching personnel from the developing countries and, in particular, the least developed ones. They should, therefore, encourage aid programmes to the developing countries to help sustain an academic environment which offers satisfactory conditions of work for higher-education teaching personnel in those countries, so that this exodus may be contained and ultimately reversed.

16. Fair, just and reasonable national policies and practices for the recognition of degrees and of credentials for the practice of the higher education profession from other states should be established that are consistent with the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education of 1993.

## **V. Institutional rights, duties and responsibilities**

### **A. Institutional autonomy**

17. The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is 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. However, the nature of institutional autonomy may differ according to the type of establishment involved.

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.

20. Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this Recommendation or in other international standards set out in the appendix.

21. Self-governance, collegiality and appropriate academic leadership are essential components of meaningful autonomy for institutions of higher education.

## **B. Institutional accountability**

22. In view of the substantial financial investments made, Member States and higher education institutions should ensure a proper balance between the level of autonomy enjoyed by higher education institutions and their systems of accountability. Higher education institutions should endeavour to open their governance in order to be accountable. They should be accountable for:

(a) effective communication to the public concerning the nature of their educational mission;

(b) a commitment to quality and excellence in their teaching, scholarship and research functions, and an obligation to protect and ensure the integrity of their teaching, scholarship and research against intrusions inconsistent with their academic missions;

(c) effective support of academic freedom and fundamental human rights;

(d) ensuring high quality education for as many academically qualified individuals as possible subject to the constraints of the resources available to them;

(e) a commitment to the provision of opportunities for lifelong learning, consistent with the mission of the institution and the resources provided;

(f) ensuring that students are treated fairly and justly, and without discrimination;

(g) adopting policies and procedures to ensure the equitable treatment of women and minorities and to eliminate sexual and racial harassment;

(h) ensuring that higher education personnel are not impeded in their work in the classroom or in their research capacity by violence, intimidation or harassment;

(i) honest and open accounting;

(j) efficient use of resources;

(k) the creation, through the collegial process and/or through negotiation with organizations representing higher-education teaching personnel, consistent with the principles of academic freedom and freedom of speech, of statements or codes of ethics to guide higher education personnel in their teaching, scholarship, research and extension work;

(l) assistance in the fulfilment of economic, social, cultural and political rights while striving to prevent the use of knowledge, science and technology to the detriment of those rights, or for purposes which run counter to generally accepted academic ethics, human rights and peace;

(m) ensuring that they address themselves to the contemporary problems facing society; to this end, their curricula, as well as their activities, should respond, where appropriate, to the current and future needs of the local community and of society at large, and they should play an important role in enhancing the labour market opportunities of their graduates;

(n) encouraging, where possible and appropriate, international academic co-operation which transcends national, regional, political, ethnic and other barriers, striving to prevent the scientific and technological exploitation of one state by another, and promoting equal partnership of all the academic communities of the world in the pursuit and use of knowledge and the preservation of cultural heritages;

(o) ensuring up-to-date libraries and access, without censorship, to modern teaching, research and information resources providing information required by higher-education teaching personnel or by students for teaching, scholarship or research;

(p) ensuring the facilities and equipment necessary for the mission of the institution and their proper upkeep;

(q) ensuring that when engaged in classified research it will not contradict the educational mission and objectives of the institutions and will not run counter to the general objectives of peace, human rights, sustainable development and environment.

23. Systems of institutional accountability should be based on a scientific methodology and be clear, realistic, cost-effective and simple. In their operation they should be fair, just and equitable. Both the methodology and the results should be open.

24. Higher education institutions, individually or collectively, should design and implement appropriate systems of accountability, including quality assurance

mechanisms to achieve the above goals, without harming institutional autonomy or academic freedom. The organizations representing higher-education teaching personnel should participate, where possible, in the planning of such systems. Where statemandated structures of accountability are established, their procedures should be negotiated, where applicable, with the institutions of higher education concerned and with the organizations representing higher-education teaching personnel.

## **VI. Rights and freedoms of higher-education teaching personnel**

### **A. Individual rights and freedoms: civil rights, academic freedom, publication rights, and the international exchange of information**

25. 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.

26. Higher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens. Therefore, all higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They should not suffer any penalties simply because of the exercise of such rights. Higher-education teaching personnel should not be subject to arbitrary arrest or detention, nor to torture, nor to cruel, inhuman or degrading treatment. In cases of gross violation of their rights, higher-education teaching personnel should have the right to appeal to the relevant national, regional or international bodies such as the agencies of the United Nations, and organizations representing higher-education teaching personnel should extend full support in such cases.

27. The maintaining of the above international standards should be upheld in the interest of higher education internationally and within the country. To do so, the principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies. All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source. Higher-education

teaching personnel can effectively do justice to this principle if the environment in which they operate is conducive, which requires a democratic atmosphere; hence the challenge for all of developing a democratic society.

28. Higher-education teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching. Higher-education teaching personnel should not be forced to instruct against their own best knowledge and conscience or be forced to use curricula and methods contrary to national and international human rights standards. Higher education teaching personnel should play a significant role in determining the curriculum.

29. 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 rigour, 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, as stated in paragraph 12 of this Recommendation.

30. Higher-education teaching personnel have a right to undertake professional activities outside of their employment, particularly those that enhance their professional skills or allow for the application of knowledge to the problems of the community, provided such activities do not interfere with their primary commitments to their home institutions in accordance with institutional policies and regulations or national laws and practice where they exist.

## **B. Self-governance and collegiality**

31. Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution.

32. The principles of collegiality include academic freedom, shared responsibility, the policy of participation of all concerned in internal decision making structures and practices, and the development of consultative mechanisms. Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities, in order to improve academic excellence and quality for the benefit of society at large.

## **VII. Duties and responsibilities of higher education teaching personnel**

33. 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.

34. In particular, the individual duties of higher education teaching personnel inherent in their academic freedom are:

(a) to teach students effectively within the means provided by the institution and the state, to be fair and equitable to male and female students and treat those of all races and religions, as well as those with disabilities, equally, to encourage the free exchange of ideas between themselves and their students, and to be available to them for guidance in their studies. Higher-education teaching personnel should ensure, where necessary, that the minimum content defined in the syllabus for each subject is covered;

(b) to conduct scholarly research and to disseminate the results of such research or, where original research is not required, to maintain and develop their knowledge of their subject through study and research, and through the development of teaching methodology to improve their pedagogical skills;

(c) to base their research and scholarship on an honest search for knowledge with due respect for evidence, impartial reasoning and honesty in reporting;

(d) to observe the ethics of research involving humans, animals, the heritage or the environment;

(e) to respect and to acknowledge the scholarly work of academic colleagues and students and, in particular, to ensure that authorship of published works includes all who have materially contributed to, and share responsibility for, the contents of a publication;

(f) to refrain from using new information, concepts or data that were originally obtained as a result of access to confidential manuscripts or applications for funds for research

or training that may have been seen as the result of processes such as peer review, unless the author has given permission;

(g) to ensure that 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;

(h) to avoid conflicts of interest and to resolve them through appropriate disclosure and full consultation with the higher education institution employing them, so that they have the approval of the aforesaid institution;

(i) to handle honestly all funds entrusted to their care for higher education institutions for research or for other professional or scientific bodies;

(j) to be fair and impartial when presenting a professional appraisal of academic colleagues and students;

(k) to be conscious of a responsibility, when speaking or writing outside scholarly channels on matters which are not related to their professional expertise, to avoid misleading the public on the nature of their professional expertise;

(l) to undertake such appropriate duties as are required for the collegial governance of institutions of higher education and of professional bodies.

35. Higher-education teaching personnel should seek to achieve the highest possible standards in their professional work, since their status largely depends on themselves and the quality of their achievements.

36. Higher-education teaching personnel should contribute to the public accountability of higher education institutions without, however, forfeiting the degree of institutional autonomy necessary for their work, for their professional freedom and for the advancement of knowledge.

### **VIII. Preparation for the profession**

37. Policies governing access to preparation for a career in higher education rest on the need to provide society with an adequate supply of higher-education teaching personnel who possess the necessary ethical, intellectual and teaching qualities and who have the required professional knowledge and skills.

38. All aspects of the preparation of higher-education teaching personnel should be free from any form of discrimination.

39. Amongst candidates seeking to prepare for a career in higher education, women and members of minorities with equal academic qualifications and experience should be given equal opportunities and treatment.

## **IX. Terms and conditions of employment**

### **A. Entry into the academic profession**

40. The employers of higher-education teaching personnel should establish such terms and conditions of employment as will be most conducive for effective teaching and/or research and/or scholarship and/or extension work and will be fair and free from discrimination of any kind.

41. Temporary measures aimed at accelerating de facto equality for disadvantaged members of the academic community should not be considered discriminatory, provided that these measures are discontinued when the objectives of equality of opportunity and treatment have been achieved and systems are in place to ensure the continuance of equality of opportunity and treatment.

42. A probationary period on initial entry to teaching and research in higher education is recognized as the opportunity for the encouragement and helpful initiation of the entrant and for the establishment and maintenance of proper professional standards, as well as for the individual's own development of his/her teaching and research proficiency. The normal duration of probation should be known in advance and the conditions for its satisfactory completion should be strictly related to professional competence. If such candidates fail to complete their probation satisfactorily, they should have the right to know the reasons and to receive this information sufficiently in advance of the end of the probationary period to give them a reasonable opportunity to improve their performance. They should also have the right to appeal.

43. Higher-education teaching personnel should enjoy:

(a) a just and open system of career development including fair procedures for appointment, tenure where applicable, promotion, dismissal, and other related matters;

(b) an effective, fair and just system of labour relations within the institution, consistent with the international standards set out in the appendix.

44. There should be provisions to allow for solidarity with other institutions of higher

education and with their higher-education teaching personnel when they are subject to persecution. Such solidarity may be material as well as moral and should, where possible, include refuge and employment or education for victims of persecution.

## **B. Security of employment**

45. Tenure or its functional equivalent, where applicable, constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions. It also encourages individual responsibility and the retention of talented higher-education teaching personnel.

46. Security of employment in the profession, including tenure or its functional equivalent, where applicable, should be safeguarded as it is essential to the interests of higher education as well as those of higher-education teaching personnel. It ensures that higher-education teaching personnel who secure continuing employment following rigorous evaluation can only be dismissed on professional grounds and in accordance with due process. They may also be released for bona fide financial reasons, provided that all the financial accounts are open to public inspection, that the institution has taken all reasonable alternative steps to prevent termination of employment, and that there are legal safeguards against bias in any termination of employment procedure. Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education.

## **C. Appraisal**

47. Higher education institutions should ensure that:

(a) evaluation and assessment of the work of higher-education teaching personnel are an integral part of the teaching, learning and research process, and that their major function is the development of individuals in accordance with their interests and capacities;

(b) evaluation is based only on academic criteria of competence in research, teaching and other academic or professional duties as interpreted by academic peers;

(c) evaluation procedures take due account of the difficulty inherent in measuring personal capacity, which seldom manifests itself in a constant and unfluctuating manner;

(d) where evaluation involves any kind of direct assessment of the work of higher-education teaching personnel, by students and/or fellow colleagues and/or administrators, such assessment is objective and the criteria and the results are made known to the individual(s) concerned;

(e) the results of appraisal of higher-education teaching personnel are also taken into account when establishing the staffing of the institution and considering the renewal of employment;

(f) higher-education teaching personnel have the right to appeal to an impartial body against assessments which they deem to be unjustified.

#### **D. Discipline and dismissal**

48. No member of the academic community should be subject to discipline, including dismissal, except for just and sufficient cause demonstrable before an independent third-party hearing of peers, and/or before an impartial body such as arbitrators or the courts.

49. All members of higher-education teaching personnel should enjoy equitable safeguards at each stage of any disciplinary procedure, including dismissal, in accordance with the international standards set out in the appendix.

50. Dismissal as a disciplinary measure should only be for just and sufficient cause related to professional conduct, for example: persistent neglect of duties, gross incompetence, fabrication or falsification of research results, serious financial irregularities, sexual or other misconduct with students, colleagues, or other members of the academic community or serious threats thereof, or corruption of the educational process such as by falsifying grades, diplomas or degrees in return for money, sexual or other favours or by demanding sexual, financial or other material favours from subordinate employees or colleagues in return for continuing employment.

51. Individuals should have the right to appeal against the decision to dismiss them before independent, external bodies such as arbitrators or the courts, with final and binding powers.

#### **E. Negotiation of terms and conditions of employment**

52. Higher-education teaching personnel should enjoy the right to freedom of association, and this right should be effectively promoted. Collective bargaining or an equivalent procedure should be promoted in accordance with the standards of the International Labour Organization (ILO) set out in the appendix.

53. Salaries, working conditions and all matters related to the terms and conditions of employment of higher-education teaching personnel should be determined through a voluntary process of negotiation between organizations representing higher-education teaching personnel and the employers of higher education teaching personnel, except where other equivalent procedures are provided that are consistent with international standards.

54. Appropriate machinery, consistent with national laws and international standards, should be established by statute or by agreement whereby the right of higher-education teaching personnel to negotiate through their organizations with their employers, whether public or private, is assured. Such legal and statutory rights should be enforceable through an impartial process without undue delay.

55. If the process established for these purposes is exhausted or if there is a breakdown in negotiations between the parties, organizations of higher-education teaching personnel should have the right to take such other steps as are normally open to other organizations in the defence of their legitimate interests.

56. Higher-education teaching personnel should have access to a fair grievance and arbitration procedure, or the equivalent, for the settlement of disputes with their employers arising out of terms and conditions of employment.

#### **F. Salaries, workload, social security benefits, health and safety**

57. All financially feasible measures should be taken to provide higher-education teaching personnel with remuneration such that they can devote themselves satisfactorily to their duties and allocate the necessary amount of time for the continuing training and periodic renewal of knowledge and skills that are essential at this level of teaching.

58. The salaries of higher-education teaching personnel should:

(a) reflect the importance to society of higher education and hence the importance of higher-education teaching personnel as well as the different responsibilities which fall to them from the time of their entry into the profession;

(b) be at least comparable to salaries paid in other occupations requiring similar or equivalent qualifications;

(c) provide higher-education teaching personnel with the means to ensure a reasonable standard of living for themselves and their families, as well as to invest in further

education or in the pursuit of cultural or scientific activities, thus enhancing their professional qualifications;

(d) take account of the fact that certain posts require higher qualifications and experience and carry greater responsibilities;

(e) be paid regularly and on time;

(f) be reviewed periodically to take into account such factors as a rise in the cost of living, increased productivity leading to higher standards of living, or a general upward movement in wage or salary levels.

59. Salary differentials should be based on objective criteria.

60. Higher-education teaching personnel should be paid on the basis of salary scales established in agreement with organizations representing higher-education teaching personnel, except where other equivalent procedures consistent with international standards are provided. During a probationary period or if employed on a temporary basis qualified higher-education teaching personnel should not be paid on a lower scale than that laid down for established higher education teaching personnel at the same level.

61. A fair and impartial merit-rating system could be a means of enhancing quality assurance and quality control. Where introduced and applied for purposes of salary determination it should involve prior consultation with organizations representing higher-education teaching personnel.

62. The workload of higher-education teaching personnel should be fair and equitable, should permit such personnel to carry out effectively their duties and responsibilities to their students as well as their obligations in regard to scholarship, research and/or academic administration, should provide due consideration in terms of salary for those who are required to teach beyond their regular workload, and should be negotiated with the organizations representing higher-education teaching personnel, except where other equivalent procedures consistent with international standards are provided.

63. Higher-education teaching personnel should be provided with a work environment that does not have a negative impact on or affect their health and safety and they should be protected by social security measures, including those concerning sickness and disability and pension entitlements, and measures for the protection of health and safety in respect of all contingencies included in the conventions and recommendations of ILO. The standards should be at least as favourable as those set out in the relevant

conventions and recommendations of ILO. Social security benefits for higher-education teaching personnel should be granted as a matter of right.

64. The pension rights earned by higher-education teaching personnel should be transferable nationally and internationally, subject to national, bilateral and multilateral taxation laws and agreements, should the individual transfer to employment with another institution of higher education. Organizations representing higher education teaching personnel should have the right to choose representatives to take part in the governance and administration of pension plans designed for higher-education teaching personnel where applicable, particularly those which are private and contributory.

### **G. Study and research leave and annual holidays**

65. Higher-education teaching personnel should be granted study and research leave, such as sabbatical leave, on full or partial pay, where applicable, at regular intervals.

66. The period of study or research leave should be counted as service for seniority and pension purposes, subject to the provisions of the pension plan.

67. Higher-education teaching personnel should be granted occasional leave with full or partial pay to enable them to participate in professional activities.

68. Leave granted to higher-education teaching personnel within the framework of bilateral and multilateral cultural and scientific exchanges or technical assistance programmes abroad should be considered as service, and their seniority and eligibility for promotion and pension rights in their home institutions should be safeguarded. In addition, special arrangements should be made to cover their extra expenses.

69. Higher-education teaching personnel should enjoy the right to adequate annual vacation with full pay.

### **H. Terms and conditions of employment of women higher-education teaching personnel**

70. All necessary measures should be taken to promote equality of opportunity and treatment of women higher-education teaching personnel in order to ensure, on the basis of equality between men and women, the rights recognized by the international standards set out in the appendix.

### **I. Terms and conditions of employment of disabled higher-education teaching personnel**

71. All necessary measures should be taken to ensure that the standards set with regard

to the conditions of work of higher-education teaching personnel who are disabled are, as a minimum, consistent with the relevant provisions of the international standards set out in the appendix.

#### **J. Terms and conditions of employment of part-time higher-education teaching personnel**

72. The value of the service provided by qualified part-time higher-education teaching personnel should be recognized. Higher-education teaching personnel employed regularly on a part-time basis should:

(a) receive proportionately the same remuneration as higher-education teaching personnel employed on a full-time basis and enjoy equivalent basic conditions of employment;

(b) benefit from conditions equivalent to those of higher-education teaching personnel employed on a full-time basis as regards holidays with pay, sick leave and maternity leave; the relevant pecuniary entitlements should be determined in proportion to hours of work or earnings;

(c) be entitled to adequate and appropriate social security protection, including, where applicable, coverage under employers' pension schemes.

#### **X. Utilization and implementation**

73. Member States and higher education institutions should take all feasible steps to extend and complement their own action in respect of the status of higher-education teaching personnel by encouraging co-operation with and among all national and international governmental and nongovernmental organizations whose activities fall within the scope and objectives of this Recommendation.

74. Member States and higher education institutions should take all feasible steps to apply the provisions spelled out above to give effect, within their respective territories, to the principles set forth in this Recommendation.

75. The Director-General will prepare a comprehensive report on the world situation with regard to academic freedom and to respect for the human rights of higher-education teaching personnel on the basis of the information supplied by Member States and of any other information supported by reliable evidence which he/she may have gathered by such methods as he/she may deem appropriate.

76. In the case of a higher education institution in the territory of a state not under the

direct or indirect authority of that state but under separate and independent authorities, the relevant authorities should transmit the text of this Recommendation to institutions, so that such institutions can put its provisions into practice.

## **XI. Final provision**

77. Where higher-education teaching personnel enjoy a status which is, in certain respects, more favourable than that provided for in this Recommendation, the terms of this Recommendation should not be invoked to diminish the status already recognized.

## **APPENDIX D**

### **UNESCO. General Conference Twenty-seventh Session, Paris 1993 Study on The Desirability Of Preparing An International Instrument On Academic Freedoms**

#### **Summary:**

The International Conference on Academic Freedom and University Autonomy, held in Sinaia (Romania) from 5 to 7 May 1992, adopted the 'Sinaia Statement', in which participants urged UNESCO 'to give the matter of academic freedom and university autonomy its utmost attention and to prepare an international instrument for the protection and promotion of these values'. In order to give effect to that recommendation, the Director-General has included the above-mentioned item 8.11 relating to the matter on the provisional agenda of the General Conference, and submits the present study. It contains an outline of the background to UNESCO's activities in this field, and a review of the options envisaged for protecting and promoting academic freedom and university autonomy.

#### **INTRODUCTION**

1. UNESCO organized, in collaboration with the Council of Europe, with the Standing Conference of Rectors, Presidents and Vice-Chancellors of the European Universities (CRE), with the Romanian National Commission for UNESCO and with the Conference of Rectors of Romanian Universities, an International Conference on Academic Freedom and University Autonomy in Sinaia (Romania) from 5 to 7 May 1992. That Conference, which brought together some 180 rectors, academics, ministers and high-ranking officials in charge of education, as well as representatives of various intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) concerned with higher education, adopted the 'Sinaia Statement' in which the participants urged UNESCO 'to give the matter of academic freedom and university autonomy its utmost attention and to prepare an international instrument for the protection and promotion of these values' (CEPEWJUNESCO. Academic Freedom and University Autonomy: Proceedings of the International Conference. Bucharest, 1992, p. 5).

2. Participants in the Conference stressed the importance of ‘the concepts of academic freedom and university autonomy as essential elements for the fulfilment of the mission of universities ’(idem, p. 5), and expressed the opinion that ‘violations of academic freedom and institutional autonomy have high costs in intellectual regression, social alienation and economic stagnation ’(idem, p. 4).

## **HISTORICAL BACKGROUND**

3. The question of academic freedom has to date been the focus of relatively sustained attention on the part of the international academic community, generally, it should be said, with the assistance or the active participation of UNESCO. The Organization itself has done pioneering work in this field, since it refers to the issue in at least two standard-setting instruments, one of which concerns pre-university teachers and the other scientific researchers.

4. Indeed, as long ago as 1966 a special intergovernmental conference convened by UNESCO adopted the ‘Recommendation concerning the Status of Teachers’, prepared by the Organization in close collaboration with ILO. That Recommendation, which applies only to teachers up to the completion of the secondary stage of education, provides that ‘the teaching profession should enjoy academic freedom in the discharge of professional duties ’(Article 61). However, the Recommendation provides no more than vague indications as to what such academic freedom might be.

5. In 1974, the General Conference of UNESCO, at its eighteenth session, adopted the ‘Recommendation on the Status of Scientific Researchers’, which contains various provisions relating to freedom of research and freedom to disseminate research findings (cf. para. 4(b) of the Preamble, and Articles 8, 14, 34, 35 and 37). It thereby reaffirmed the provision contained in paragraph 3 of Article 15 of the International Covenant on Economic, Social and Cultural Rights which was adopted by the United Nations General Assembly in 1966 and entered into force in 1976, and which stipulates that the States ‘undertake to respect the freedom indispensable for scientific research and creative activity’.

6. For their part, various non-governmental academic organizations, both national and international, representing all regions of the world, have concerned themselves with these questions, as part of the action to define the standards that should govern the status of teachers in higher education and the principles that should regulate the university system and the operation of its institutions.

7. Declarations relating to academic freedom and university autonomy adopted by non-governmental organizations include: the ‘Declaration on Rights and Duties Inherent in Academic Freedom’, adopted by the International Association of University Professors

and Lecturers (IAUPL) in Sienna, in 1982; the ‘Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education’, adopted by the World University Service (WUS) in 1988; the ‘Magna Carta of European Universities’, adopted by the Standing Conference of Rectors, Presidents and Vice-Chancellors of the European Universities (CRE) in Bologna in 1988; the ‘Dar es Salam Declaration on Academic Freedom and Social Responsibility of Academics’, adopted by staff associations of higher education establishments in Tanzania in 1990; the ‘Kampala Declaration on Intellectual Freedom and Social Responsibility’, adopted at a symposium held for that purpose by members of the African intellectual community in 1990.

8. Taken as a whole, these declarations reflect the concern of the academic community to develop principles, norms and practices designed to regulate higher education at the institutional, national and international levels, as well as the status of teachers and researchers at the higher level. This concern has increased considerably in recent years, and the need to deal with the matter at international level appears to be shared by the entire academic community throughout the world. This is borne out by the large number of declarations mentioned above. It reflects, on the one hand, a convergence of interests and opinions and, on the other, a dispersal of efforts. Hence the need to ensure co-ordination and follow-up in this field, both of which are of particular importance if the quality and relevance of higher education, the vitality of its institutions and the well-being of its members (teachers, researchers and students) are to be assured.

9. Acting in accordance with the ethical mission assigned to UNESCO by its Constitution, the Secretariat responded to the request formulated by non-governmental academic organizations to support their action by organizing the Sinaia Conference. In order to prepare for that Conference, the UNESCO Secretariat had, inter alia, organized jointly with the World University Service a seminar on the theme ‘Factors and conditions conducive to academic freedom’, which was held in Paris in May 1989. The Secretariat also took part in the Seminar on academic freedom organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, held in Lund in March 1992, and sponsored by UNESCO, the Standing Conference of Rectors, President and Vice-Chancellors of the European Universities, and the World University Service.

10. The Sinaia Statement was brought to the attention of participants in the UNESCO-NGO third Collective Consultation on higher education, held in Paris from 9 to 11 December 1992. The Consultation, which brought together 25 of the NGOs most representative of the academic world, took note with satisfaction of the actions taken or envisaged by UNESCO in this field. Participants engaged in a free-ranging discussion of the complex problems, with their multifarious implications, posed by academic freedom and university autonomy.

11. On the one hand, academic freedom is closely linked with human rights. This means that the possibility of developing an appropriate international instrument can be considered within that framework. On the other, the participants stressed that the autonomy of higher education institutions was vital to the unrestricted exercise of their academic freedom. Hence the need to explore these concepts in order to arrive at a clearer definition of their scope, the nature and interrelatedness of the rights that they imply, and the responsibilities resulting therefrom.

12. The numerous activities conducted by UNESCO in the higher education field represent important stages in the ongoing debate on these complex and difficult problems. This debate cannot lead on to concrete proposals without there being a broad consultation of representative organizations of the international academic community. Any initiative in this field must therefore be taken in close consultation and co-operation with the NGOs concerned with higher education, and must benefit from the active participation of the academic community as a whole.

13. Accordingly, as a follow-up to the Sinaia Conference, UNESCO took part in the seminar organized by the Poznan Human Rights Centre, which was held in that city in January 1993. The seminar brought together a small group of experts who took stock of the various standpoints and positions adopted on the subject, examined various options relating to the promotion and protection of academic 'freedom and university autonomy, and opted for a preliminary draft declaration to that effect.

14. The preliminary draft declaration adopted at the Poznan seminar was submitted for discussion to the International Congress on Education for Human Rights and Democracy organized by UNESCO and the United Nations Centre for Human Rights, in collaboration with the Canadian Commission for UNESCO, in Montreal, from 8 to 11 March 1993. The text was examined in the working commissions of the Congress, which stressed the need to improve it substantially, and made many proposals and suggestions to that end. The participants in the Congress confirmed the importance of adopting an international instrument on academic freedoms, took note of the discussions on the subject held in the working commissions, and decided to bring them to the attention of the Director-General of UNESCO as 'contributions to the preparation of a declaration on academic freedoms'. The document was also placed before the United Nations World Conference on Human Rights that took place in Vienna from 14 to 25 June 1993.

15. The above-mentioned activities, and the lengthy preparatory work undertaken on the issue, open up for UNESCO two potential - and, it should be stressed, complementary - courses of action regarding the promotion of academic freedom and university autonomy:

a) one approach focusing on the close relationship between academic freedom and human rights. It entails, on the one hand, co-ordinating UNESCO's action with that of the other agencies of the United Nations system (International Labour Organisation, Economic and Social Council, United Nations Centre for Human Rights, etc.) and, on the other, ensuring that it ties in with measures currently aimed at preparing an international standard-setting instrument on the status of teachers in higher education; b) another approach, focusing on the interdependence of academic freedom and university autonomy, with the aim of preparing an appropriate document dealing with these two topics, as envisaged in the Sinaia Statement. This approach would require the Organization to take action jointly with the non-governmental organizations concerned with higher education and with the international academic community to produce a document that reflects their own discussions and concerns and that possesses the authority and status conferred on it by the importance of the protagonists involved.

16. The second part of this study reviews the two approaches, and submits to the General Conference for its approval proposals for action or actions to be undertaken by the Secretariat. Action in regard to academic freedom 17. The UNESCO Secretariat undertook a number of the measures mentioned above with an eye to the possibility that academic freedom might, by means of an appropriate United Nations instrument, be officially included among the human rights guaranteed by the Universal Declaration of Human Rights, having regard to the links between academic freedom and such fundamental rights, in particular that of freedom of expression. 18. Concomitantly, the Secretariat was called upon to examine the feasibility of protecting and promoting academic freedom through an instrument specific to UNESCO within the framework of the decisions taken by the Organization in regard to the status of higher education teachers.

19. In order to give effect to various resolutions adopted by the General Conference during the past ten years, the UNESCO Secretariat has carried out studies on the status of higher education teaching personnel (see document 27 C/41 submitted to the General Conference at its present session). The studies and reports produced by UNESCO or under its aegis all echo the statements made by the international organizations and authorities concerned to the effect that one of the key components of the status of higher education teaching personnel is precisely academic freedom, and that it is essential, particularly in this context, to define, promote and protect it more effectively.

20. In this regard, it should be noted that academic freedom has its roots in fundamental freedoms and rights, particularly freedom of expression. As such, it may therefore legitimately take its place among the fundamental freedoms that can be guaranteed either by a country's constitution or by its constitutional case law.

21. The fact nevertheless remains that this freedom derives its distinctive nature from the ultimate goals of higher education and from the specific calling of its institutions,

namely, on the one hand, provision of higher training and the formation of critical acumen that such training implies and, on the other, the quest for truth through the deepening, broadening, advancement and dissemination of knowledge: in other words, the two inseparable functions of universities. Hence the need to regulate its protection through positive law provisions governing either education in general or higher education and universities in particular.

22. The NGOs concerned with the teaching profession consider it desirable that protection of the academic freedoms of this category of personnel should be assured through an international standard-setting instrument relating to the status of higher education teachers. The results of the in-depth study carried out by the Secretariat in that connection were presented under item 5.2.7 of the agenda of the 141st session of the Executive Board (May 1993), and are set forth in the document relating to item 8.4 of the provisional agenda (27 C/41) of the twenty-seventh session of the General Conference.

23. The decisions of the General Conference regarding a possible normative instrument concerning the status of higher education teaching personnel will determine the course that this work will take, following upon the measures already taken with a view to defining and protecting academic freedoms by means of such a regulatory instrument. Action to guarantee the autonomy of higher education institutions, in support of the efforts of the international academic community

24. The preparation of a document determining the questions raised by academic freedom jointly with those relating to university autonomy is far more complex. The Secretariat considers that action in this field is the responsibility, first and foremost, of the international academic community, UNESCO's role being actively to support its efforts and to co-ordinate them with a view to drawing up a document that reflects as fully as possible the common denominators shared by all regions of the world.

25. Such an approach, complementing the action relating to the status of higher education teachers, must take account of the fact that the autonomy of higher education institutions has not, in certain regions of the world received as much attention as the matter of academic freedom. Recent political changes, particularly in Eastern Europe, and the drive towards greater democracy in several parts of the world, have nevertheless propelled this question to the forefront of the concerns of the academic community worldwide.

26. Although the reports submitted and the workshops organized in the context of the above-mentioned Conference on Academic Freedom and University Autonomy, held in Sinaia, have managed to dispel a number of misunderstandings regarding this concept, further, more detailed, study is called for.

27. There are indeed many pitfalls in this area, and meticulous work will be required in order to prevent, or at least to discourage, both undue dependence by higher education establishments on the State and on public authorities, and their transformation into institutions in which 'corporatist attitudes and abuses of privilege prevail '(Federico Mayor, Director- General of UNESCO: opening address to the Sinaia Conference).

28. To that end, in-depth studies should be undertaken in regard to: (a) spheres in which institutional autonomy can be exercised (that is, physical infrastructure, territorial immunity, training and research programmes, organization and management of human resources, financial and administrative affairs, etc.); (b) institutional authorities concerned with each of these spheres, and the composition of such bodies; (c) the extent of self-management that is necessary or desirable for each of these bodies; and (d) the relations between the institutional bodies and the public authorities.

29. In this context, in any projected position on the matter of university autonomy, close attention must be paid to identifying the machinery that can ensure both the institutions 'autonomy and their viability. In addition, there must be a spirit of give-and-take and partnership between the higher education institutions and the societies in which they operate, through the intermediary of the competent authorities and bodies. That being the case, careful attention must also be given to the legitimacy of establishing mechanisms to orient and monitor the relevance of curricula and efficacy in matters of management, as well as any other mechanism required to guarantee the accountability of such institutions.

30. Bearing in mind the many ramifications of the question of university autonomy, and its implications for academic freedom, it is clear that it is more difficult, and seemingly premature, to envisage adopting at present an international standard-setting instrument that might be acceptable to a majority of Member States. Adopting a position on this matter would entail working out nothing short of a political philosophy of higher education, its mission and its mode of organization in a free, democratic and dynamic society.

31. It is preferable for the Organization - should the General Conference choose this latter approach to future action in this regard - to focus its efforts and its intellectual and material resources on lending support to non-governmental organizations concerned with higher education and to the international academic community in order to prepare a document resulting from their own discussions, possibly in the form of a Declaration, which might set out, in as explicit and comprehensive a manner as possible, the concepts, principles and practices that are conducive to the protection and promotion of academic freedom and university autonomy.

32. Such a document could be adopted by an international meeting of representatives of the international academic community organized with the support of UNESCO. In this regard, it should be pointed out that, in the past, several declarations have been produced by meetings of a similar nature, as for example the Vancouver Declaration on Survival in the 21st century (1989), the Yamoussoukro Declaration on Peace in the Minds of Men (1989) or the Seville Statement on Violence (1986): declarations which, although not of a standard-setting nature, marked a step forward, and have played, and indeed continue to play, an active part in the affirmation of principles of action in UNESCO's priority fields of competence.

33. The activities provided for in UNESCO's Draft Programme and Budget for the 1994- 1995 biennium (27 C/5, para. 05207) could encompass the start-up of the process entailed by this approach. CONCLUSION 34. The General Conference might, if it deemed it desirable, adopt a resolution worded as follows: The General Conference, Having examined the study submitted by the Director-General on the desirability of preparing an international instrument on academic freedoms, Invites the Director-General to collaborate with NGOs concerned with higher education and with the international academic community and to support their efforts to undertake the studies required in order to draw up a document relating to academic freedoms, and the autonomy of higher education institutions within the framework of consultations or congresses organized for that purpose, and to prepare a report on the situation to be submitted to the General Conference at one of its forthcoming sessions.

## **APPENDIX E**

### **Utrecht Declaration on Academic Freedom**

Meeting at Utrecht University for our annual conference, we, the Association of Human Rights Institutes (AHRI), deplore the actions and threats of actions of an increasing number of States to restrain and even foreclose academic freedom, in the name of security, public order, counter-terrorism, counter-crime or counter-extremism, through a variety of measures, including disciplinary actions, dismissals, criminal prosecutions, physical violence, travel restrictions and widespread intimidation of numerous scholars, teachers, students and academic institutions. As a global network of academic human rights institutes, AHRI strongly believes that academic freedom, as defined in the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, adopted by World University Service in 1988, constitutes a fundamental element of vibrant democracies and is essential to advance economic and social development and to generate sustainable peace and prosperity. This is essential with regard to both the content and method of academic research. The intimidation and repression of scholars, teachers and students violates their individual freedoms of expression and opinion as well as their right and freedom of education, guaranteed under both universal and regional human rights instruments, including the two United Nations Covenants, the fiftieth anniversary of which is celebrated at this AHRI conference. Moreover, such practices generate a climate of fear in which any form of creative and critical thinking is being suffocated, at great cost for current and future generations and for society as a whole. In that sense, they also go against the Sustainable Development Agenda 2030 which the international community has adopted a year ago at the United Nations, and in which quality education at all levels and scientific research and innovation occupy a central place. We unanimously condemn these practices and express our full solidarity with our colleagues in their struggles for knowledge, truth, peace, human rights, freedom and tolerance in their countries. We invite the international community and authorities at all levels to take a clear stand against these practices, to assist scholars, teachers and students at risk, and we urge governments to respect scrupulously their international and constitutional obligations.

Utrecht, 3 September 2016

## **APPENDIX F**

### **The Declaration on Academic Freedom and Autonomy of Institutions of Higher Education**

(Lima, 10 September 1988)

#### **Preamble**

The Sixty-Eighth General Assembly of WORLD UNIVERSITY SERVICE, meeting in Lima from 6 to 10 September 1988, the year of the 40th anniversary of the Universal Declaration of Human Rights.

Bearing in mind the extensive set of international standards in the field of human rights which the United Nations and other universal and regional organizations have established, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the UNESCO Convention against Discrimination in Education, Convinced that universities and academic communities have an obligation to pursue the fulfillment of economic, social, cultural, civil, and political rights of the people, Emphasizing the importance of the right to education for the enjoyment of all other human rights and the development of human persons and peoples, Considering that the right to education can only be fully enjoyed in an atmosphere of academic freedom and autonomy of institutions of higher education, Recognizing the essential vulnerability of the academic community to political and economic pressures, Affirming the following principles pertaining to education:

- a) Every human being has the right to education.
- b) Education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights, fundamental freedoms, and peace. Education shall enable all persons to participate effectively in the construction of a free and egalitarian society, and promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups. Education shall promote mutual understanding, respect, and equality between men and women. Education shall be a means to understand and contribute to the achievement of the major goals of contemporary society such as social equality, peace, equal development of all nations, and the protection of the environment.
- c) Every State should guarantee the right to education without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition, birth, or other status. Every State should make

available an adequate proportion of its national income to ensure in practice the full realization of the right to education.

d) Education shall be an instrument of positive social change. As such, it should be relevant to the social, economic, political, and cultural situation of any given country, contribute to the transformation of the status quo towards the full attainment of all rights and freedoms, and be subject to permanent evaluation.

**Proclaims this Declaration.**

**Definitions**

1. For the purposes of this Declaration

a) "Academic freedom" means 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.

b) "Academic community" covers all those persons teaching, studying, doing research, and working at an institution of higher education.

c) "Autonomy" means the independence of institutions of higher education from the State and all other forces of society to make decisions regarding its internal government, finance, administration, and to establish its policies of education, research, extension work, and other related activities.

d) "Institutions of higher education" comprise universities, other centres of post-secondary education, and centres of research and culture associated with them.

2. The above mentioned definitions do not imply that the exercise of academic freedom and autonomy is not subject to limitations as established in the Present Declaration.

**Academic Freedom**

3. Academic freedom is an essential precondition for those education, research, administrative, and service functions with which universities and other institutions of higher education are entrusted. All members of the academic community have the right to fulfill their functions without discrimination of any kind and without fear of interference or repression from the State or any other source.

4. States are under an obligation to respect and to ensure to all members of the academic community those civil, political, economic, social, and cultural rights recognized in the

United Nations Covenants on Human Rights. Every member of the academic community shall enjoy, in particular, freedom of thought, conscience, religion, expression, assembly, and association as well as the right to liberty and security of person and liberty of movement.

5. Access to the academic community shall be equal for all members of society without any hindrance. On the basis of ability, every person has the right, without discrimination of any kind, to become part of the academic community, as a student, teacher, researcher, worker, or administrator. Temporary measures aimed at accelerating de facto equality for disadvantaged members of the academic community shall not be considered as discriminatory, provided that these measures are discontinued when the objectives of equality of opportunity and treatment have been achieved. All States and institutions of higher education shall guarantee a system of stable and secure employment for teachers and researchers. No member of the academic community shall be dismissed without a fair hearing before a democratically elected body of the academic community.

6. All members of the academic community with research functions have the right to carry out research without any interference, subject to the universal principles and methods of scientific enquiry. They also have the right to communicate the conclusions of their research freely to others and to publish them without censorship.

7. All members of the academic community with teaching functions have the right to teach without any interference, subject to the accepted principles, standards, and methods of teaching.

8. All members of the academic community shall enjoy the freedom to maintain contact with their counterparts in any part of the world as well as the freedom to pursue the development of their educational capacities.

9. All students of higher education shall enjoy freedom of study, including the right to choose the field of study from available courses and the right to receive official recognition of the knowledge and experience acquired. Institutions of higher education should aim to satisfy the professional needs and aspirations of their students. States should provide adequate resources for students in need to pursue their studies.

10. All institutions of higher education shall guarantee the participation of students in their governing bodies, individually or collectively, to express opinions on any national and international question.

11. States should take all appropriate measures to plan, organize, and implement a higher education system without fees for all secondary education graduates and other people who might prove their ability to study effectively at that level.

12. All members of the academic community have the right to freedom of association with others, including the right to form and join trade unions for the protection of their interests. The unions of all sectors of the academic communities should participate in the formulation of their respective professional standards.

13. The exercise of the rights provided above carries with it special duties and responsibilities and may be subject to certain restrictions necessary for the protection of the rights of others. Teaching and research shall be conducted in full accordance with professional standards and shall respond to contemporary problems facing society. Autonomy of institutions of higher education

14. All institutions of higher education shall pursue the fulfillment of economic, social, cultural, civil, and political rights of the people and shall strive to prevent the misuse of science and technology to the detriment of those rights.

15. All institutions of higher education shall address themselves to the contemporary problems facing society. To this end, the curricula of these institutions, as well as their activities, shall respond to the needs of society at large. Institutions of higher education should be critical of conditions of political repression and of violations of human rights within their own society.

16. All institutions of higher education shall provide solidarity to other such institutions and individual members of their academic communities when they are subject to persecution. Such solidarity may be moral or material and should include refuge and employment or education for victims of persecution.

17. All institutions of higher education should strive to prevent scientific and technological dependence and to promote equal partnership of all academic communities of the world in the pursuit and use of knowledge. They should encourage international academic cooperation which transcends regional political and other barriers.

18. The proper enjoyment of academic freedom and the compliance with the responsibilities mentioned in the foregoing articles demand a high degree of autonomy of institutions of higher education. States are under an obligation not to interfere with the autonomy of institutions of higher education as well as to prevent interference by other forces of society.

19. The autonomy of institutions of higher education shall be exercised by democratic means of selfgovernment, which includes the active participation of all members of the respective academic communities. All members of the academic community shall have the right and opportunity, without discrimination of any kind, to take part in the conduct

of academic and administrative affairs. All governing bodies of institutions of higher education shall be freely elected and shall comprise members of the different sectors of the academic community. The autonomy should encompass decisions regarding administration and determination of policies of education, research, extension work, allocation of resources, and other related activities.