

Joint Submission

Gender Equality and Freedom of Expression in Brazilian Education

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INSTITUTE FOR DEVELOPMENT AND HUMAN RIGHTS (IDDH)

The Institute for Development and Human Rights – IDDH is a non-profit NGO, funded in 2004, in Joinville/SC, Brazil. Its mission is to promote human rights education in Brazil and Latin America. IDDH aims to contribute towards the implementation of the National Human Rights Education Plan and also the World Programme on Human Rights Education of the United Nations. IDDH has UN’s consultative status and is a member of the NGO Working Group on Human Rights Education of the United Nations.

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LATIN AMERICAN AND CARIBBEAN COMMITTEE FOR THE DEFENSE OF WOMEN’S RIGHTS (CLADEM BRAZIL)

CLADEM - Latin American and Caribbean Committee for Women's Rights Defense was born in 1987 and is a feminist network that works to contribute to the full exercise of women's rights in Latin America and the Caribbean, using the law as a tool change. It has consultative status in the United Nations (Category II) since 1995 and is able to participate in activities of the OAS since 2002.

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“MARIA AUGUSTA THOMAZ” HUMAN RIGHTS CLINIC (PUC-SP)

Academic extension project – aligns learning, research and extension - It's linked to PUC –SP's Law School, counting with three main areas of expertise, them being: Gender and LGTB issues, Combat against State Violence and Refugees and Migrants. Formed by 33 volunteer students, from different areas and backgrounds, mainly from Law and International Relations, and coordinated by Ana Clara Toscano, Anna Normanton, Felipe Daier, Pamela Stempliuk, André Mendes and André Lopes.

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SPECIALIZED CENTER FOR THE PROMOTION AND DEFENSE OF WOMEN’S RIGHTS (NUDEM)

The Specialized Center for the Promotion and Defense of Women’s Rights (NUDEM), of the Public Defense of the State of São Paulo, created by deliberation of the Board no. 79, from May 16, 2008, has the mission of acting in defense of women’s rights.

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ECOS – COMMUNICATION AND SEXUALITY

ECOS - Communication in Sexuality is a non-governmental organization with 20 years of consolidated activities in defense of human rights, with emphasis on sexual and reproductive rights, especially of young people, with the prospect of eradicating discrimination related to gender, sexual orientation, age, race/ethnicity, deficiency, class.

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GELEDÉS – BLACK WOMEN'S INSTITUTE

Geledés - Black Women's Institute was created on April 30, 1988. It is a civil society organization that stands in defense of women and black people because it understands that these two social groups suffer from disadvantages and discrimination in access to social opportunities due to the racism and sexism prevailing in Brazilian society. Its priority areas of activity of political and social action are racial issues, gender issues, the implications of these issues to human rights, education, health, communication, labor market, research and public policy.

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EDUCATIONAL ACTION, ADVISORY, RESEARCH AND INFORMATION

The Educational Action, Advisory, Research and Information é a non-governmental association founded in 1994. Its mission is to promote educational, cultural and youth rights, according to social justice, participatory democracy and sustainable development. Therefore, conducts training activities and support for educators groups, youth and cultural agents. Join campaigns and collective actions aimed at achieving these rights in local, national and international level. Conducts research, disseminates information and analysis focusing on public policy from the perspective of human rights and ethnic-racial and gender equality.

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FEMINIST NETWORK OF JURISTS (deFEMde)

The Feminist Network of Jurists (DeFEMde) it's composed by female lawyers, public defenders, judges, prosecutors, professors and researchers. The strategy of the work is to share experiences among women's jurists and think of juridical-feminists thesis against inequality and gender violence.

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1. In this joint submission we present the situation of gender equality and freedom of expression in Brazilian education, which are both threatened by the conservative wave that have been growing in Brazil in the recent years. Recommendations on both subjects will be presented at the end of the report.

GENDER (IN)EQUALITIES

2. When Brazil is questioned about education and gender, data about access of girls and women in education are presented. Cannot be denied the advance expressed in national indicators of education related to the access of women to schooling. However, this achievement is insufficient to affirm that the country has reached the equity between men's and women's in education and accomplished the international goals of a non-sexist and non-discriminative education. The moment which the country is located in that challenge demand a more complex and shaded look that allows capturing the inequalities and gender discriminations that endure in Brazilian education, and reconfigure a more accurate agenda of action in public policies.

3. The year of 2014 marked, in Brazil, a retrocession in the agenda related to discrimination and gender in education, when the National Education Plan was approved by Federal Senate, which is the document that plans the educational policy for the next 10 years. Was released a campaign against the gender equality under the justification that this claim would be an "ideology" contrary to cherish values to the families, instead of being a right. The question also directly falls on school curriculum¹.

4. In 2014, the text of National Education Plan replaces the expression "educational inequalities", **with emphasis on the promotion of racial, regional, gender and sexual orientation equality** for "**overcoming the educational inequalities, with emphasis on the promotion of citizenship and eradication of all forms of discrimination**". The modification doesn't prohibit the gender discussion in school, but limit the equality perspective in education and start to represent other threats incompatible with national legal order.

5. Although don't mention the human rights treaties that Brazil is signatory, the national norms support the right to education for the gender, race, sexual orientation and gender identity equality in Brazilian Constitution (1988), in National Education Guidelines and Basis Act (LDB/1996), in National Guidelines, produced by National Education Council, and in Act n. 11.340 of 2006, known as Maria da Penha Act.

6. Besides the international treaties, the inclusion of gender in the curriculum also is one of the recommendations of Inter-American Commission of Human Rights to Brazil, in the case known as Maria da Penha², the same name of the Act about domestic and interfamily violence, in force since 2006.

¹ See Dossier Risks of Limitations to the Right to Education, produced by the project Gender and Education in: <http://generoeducacao.org.br/dossie-riscos-de-limitacoes-ao-direito-a-educacao/>

² See the full version of Inter-American Commission Report n. 54/01, April 4, 2001 in: <http://www.cidh.org/annualrep/2000port/12051.htm>

7. In this context, the Specialized Center for the Promotion and Defense of Women's Rights of the Public Defense of the State of São Paulo, in August 3, 2016, sent complaint to the Rapporteur on Women's Rights of the Inter-American Commission on Human Rights, Mrs. Margarette May Macaulay, in order to ask the Brazilian State to investigate and properly deal with the attempts of prohibiting discussions on gender and sexual diversity.

8. In the aftermath, the tension became clear in the public debate with the voting of the education plan in States and Municipalities, in the next year. The same argument was repeated in order to delimit the role of the school and family and with the misinformation about the meaning of the proposal of gender equality, with a Strong influence of religious groups associated to the conservative legislative bench. After those legislative modifications, others with the same content are endangered to assert itself in the sense of reject the expression gender and replacing for sex (Project of Act 477/15)³, what strike directly the vision of equality for rights and non-discrimination.

9. While in Brazil the presence of women in education can be mentioned as an expression of equality, the inequalities of gender in education remain apart from the access to school. The research *Brazil Gender and Education (2011, 2013)*⁴ points that the problematics of gender in Brazilian education are related predominantly to five great challenges, deeply interconnected, that deserve attention:

- **the persistent inequalities among Brazilian women:** the advance on indicators of access and performance is marked by inequalities among women according to income, race, ethnicity and place of living (rural or urban), with highlight to the situation of black, indigenous and countryside women; (Rec. 36, CEDAW/C/BRA/CO/6)
- **the situation of worse performance and largest obstacles to the permanence in school on the part of Brazilian boys,** especially the black boys, impacted by racism (A/HCR/2011, par. 119.159);
- **the maintenance of a sexist and discriminatory education** in school environment **and of the concentration of women in courses and careers known as “feminine”**, with lower professional valorization and limited social recognition;
- **the low valorization of basic education professionals**, that represents almost 90% of the education professionals, which – in your high majority – receive unworthy wages and exercise the profession in precarious work conditions;
- **the unequal access to quality child education**, to the detriment of poor, black and countryside families.

10. Those challenges converge with the actual debate in UN CEDAW Committee about a general recommendation on girls and women education. The debate evince the complexity of the question and the importance of observe the inequalities of gender, race, ethnicity,

³ See <http://www2.camara.leg.br/camaranoticias/noticias/DIREITOS-HUMANOS/512761-PROJETO-SUBSTITUI-TERMO-%E2%80%9CGENERO%E2%80%9D-POR-%E2%80%9CSEXO%E2%80%9D-NA-LEI-MARIA-DA-PENHA.html>

⁴ See document in: http://www.acaoeducativa.org.br/images/stories/pdfs/gen_educ.pdf

sexual orientation and other social markers⁵, configuring a challenge to the States when we speak in right to education.

11. Annually, millions of children, teenagers, young people and adults are excluded from public schools or had their educational trajectories compromised as a result of inequalities, discriminations and violence present in society and in school environment. THAT SCHOOL EXCLUSION interact with gender questions, especially to the problematic of sexism, base of violence against women, that in 2013 killed around five thousand women and made 500 thousand were rapped or suffered rape attempts (IPEA 2015); the persistent wage inequality in the country between women and men's, even in a reality characterized by the major education of women; in the limited participation of men's on the division of domestic work and in the care of the children, generating the double and triple work journey for the most part of women.

12. The Map of Violence 2015 also shows that the number of violent deaths of black women increased 54% in ten years, passing of 1.864, in 2003, to 2.875, in 2013. In the same period, the annual amount of white women homicides reduced 9,8%, falling from 1.747, in 2003, to 1.576, in 2013⁶;

13. That school exclusion is also related to the racism, that is present in the base of black youth genocide, most part of it due to police violence against young black people. (MAP OF VIOLENCE, 2016); on devaluation of African and African-Brazilian cultures and histories in a curriculum that still favors the white European history; on the non- recognition of black women rights, that daily suffer diverse violence, among them, the imposition of a beauty model that favor the esthetic of certain white women; on the attacks suffered by the adepts of African-Brazilian religiousness by religious fundamentalists.

14. That school exclusion is related also with the homo/lesbo/trans/biphobia which makes Brazil the world champion of travesties and transgender people murders; the humiliation, the fear and the physical and psychological suffered by teenagers, young and adults LGBTs in school and universities environments and the discrimination suffered by homo-affective families⁷.

15. Recently, cases of harassment and rape committed in Brazilian public universities gained wide public attention, due to complaints made by students who suffered this kind of violence, to the Human Rights Commission of the Legislative Assembly of São Paulo (ALESP). Also, the cases of sexual, sexist and homophobic violence at the universities were discussed at public hearings. Accusations of rape and human rights violations committed during the famous "freshman pranks" in the Faculty of Medicine, at the University of São Paulo (FMUSP), promoted the opening of a parliamentary inquiry in the Legislative Assembly of São Paulo (ALESC) in 2014. The Commission considered ten formal complaints

⁵ See more in: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Womensrighttoeducation.aspx>

⁶ See Map of Violence 2015. Murder of womens in Brazil: http://www.onumulheres.org.br/wp-content/uploads/2016/04/MapaViolencia_2015_mulheres.pdf

⁷ See the National Research about LGBT Students and the School Environment in 2015 in: <http://www.abgl.org.br/docs/IAE-Brasil.pdf>

of violence in São Paulo universities, six of them only at FMUSP. The publicity of the case has encouraged the denouncement of other cases of violence that were still unknown by the government. Despite the fact that the report requires and effective action of the educational institutions in favor of individual responsibility, little is said of curriculum guidelines on gender. It is worth mentioning that the victim blaming is still a prevailing view in the treatment of these complaints.

16. Discriminatory practices identified in the school were came to be restrained by Law No. 13,185, of November 6, 2015, called Bullying Combat Program. The law aims to prevent the practice of bullying at schools, emphasizing the role of educational institutes in encouraging healthy living through practical orientation of students and parents, psychological support, facilitating access to information and promotion of citizenship. The prescription about the need to promote the resolution of cases of bullying through alternative accountability mechanisms is very important, avoiding the traditional punishment of those responsible in order to emphasize the pedagogical nature of the legal measure. However, despite the progress made by this law, it does not solve the issue of gender violence and discrimination at the school at the curriculum level. On the contrary, it holds again to the inter-individual conflict.

MOVEMENT OF CONSTRAINTS TO TEACHERS AND CONTRARY TO GENDER EQUITY IN EDUCATION

At schools

17. Although the exclusion of the word gender in the education plans doesn't mean your prohibition, became to be divulged in the country a model of extrajudicial notification with threats to education professionals and to school and education managers of losing their public positions, of moral damages judicial actions, and prison up to six months. Diverse websites have divulged the model of those notifications and encouraged the families to participate of that mobilization, including the active participation of public servants of Justice System.

18. In addition to configure an abusive constraint to the professional exercise of the thousands teachers affected by those threats, these notifications aim to disseminate in the country the infringement of the binding basic education curricular guidelines, produced by the National Education Council, specifically the National Curricular Guidelines to the Education of Ethnical-Racial Relations and to the African and African-Brazilian History and Culture (2004); National Guidelines to Education in Human Rights (2012) and National Curricular Guidelines to the Initial and Continuing Formation of Professionals of Teaching in Basic Education (2015).

19. The National Education Plan (2014-2024) itself, in your article 2, prescribe the implementation of programs and educational policies intended to battle “all forms of discrimination” existent in schools, between them, those that refer to gender, race, sexual orientation and gender identity inequalities. In the same article, the NEP prescribe the promotion of human rights and diversity in Brazilian education. For being a fundamental right assured in Constitution and in the international human rights treaties, the education to gender, race, sexual orientation and gender identity can’t be limited by normal and complementary acts approved in the municipalities and states, least of all by public bodies orientations. All attempt to limit that right is, therefore, unconstitutional because violate the constitutional principles of equity conditions to access and continuity in school, of non-discrimination, of quality of education and the liberty of learning and teaching with respect to cultural, ethnic-racial, sexual and gender diversity of Brazilian population.

At the federal, state and municipal legislative: School Without Party Program

20. Article 220 guarantees all persons the freedom of thought and expression, stating that no law can prevent this liberty so essential to democracy. Despite these premises, in recent years a conservative wave has been growing and, consequently, impacting on education. It has recently emerged a movement called "School without party", stating that it is necessary to control the practice of teaching, preventing teachers to “indoctrinate” and “instrument” the education for ideological purposes.⁸

21. This movement is responsible for presenting, all over the country, law projects at the municipal and state levels, aiming to approve the “School without party” Program, also known by its opponents as “Gag Law”. At the website www.escolasempartido.org there is a draft of the law project to be reproduced and presented at the City Councils (municipal level) and Legislative Assemblies (state level).

22. We have identified the presentation of the law project that establishes the “School without party” Program in 15 cities around Brazil. Among them, there are 6 capitals (including Rio de Janeiro and São Paulo), and 10 states and the Federal District.

23. In the justification of the law projects, it is stated that teachers are using their functions as educators to brainwash students and make them adhere to certain political and ideological views, to adopt patters of judgment and moral/sexual conducts incompatible with the teachings of their parents. It is also stated that there is abuse of freedom to teach today in Brazil and, because of that, teachers are indoctrinating their students.

24. It is clear, however, that the concern of the idealizers of the “School without party” Program it is not to ensure rights, but scout the freedom of teaching in schools. It means, they defend that moral, religious and political education must be an exclusive responsibility of the parents.

⁸ The Institute for Development and Human Rights (IDDH) sent a complaint about the “School Without Party program to the UN Special Rapporteurs on Freedom of Expression and Education. <http://iddh.org.br/noticias/iddh-denuncia-programa-escola-sem-partido-a-onu/>

25. Moreover, it is important to note that the “School without party” Program annuls individuality and emancipatory power of the students themselves, ignoring their condition of subjects of rights and questioning their ability to form their own opinions.

26. Brazil faced a dictatorial regime for 21 years and the democratization process began only in 1988. Education also suffered impacts of this regime, becoming highly technical seeking to meet the interests of Brazil’s increasing industrialization process in that period.

27. The principles that ruled the teaching relations were the main idea of transferring technical content by professors, with clear instructions about the prohibition of presenting critical view on the topics or even questioning the dictatorial regime.

28. The Federal Constitution of 1988 indicates the beginning of the democratic regime in Brazil and establishes human’s rights as premises of democracy, including education and freedom of expression. The right to education, beyond being established by article 6 as an essential social right, is also provided by article 205 as being a right of everyone and duty of the State and family, aiming the full development of the person, his/her preparation for the exercise of citizenship and his/her qualification for work.

29. Article 206, in turn, points out principles that rule the Brazilian education and, among them, the freedom to learn, teach, research and express thought, art, knowledge and pluralism of ideas and pedagogical concepts.

30. The “School Without Party” Program attacks basic human rights as the right to freedom of expression and thought and the right to education, both provided by the Brazilian Constitution and several international human rights treaties, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights and the Protocol of San Salvador.

31. By curtailing the freedom of teaching and learning the “School without Party” Program fails to ensure school as a plural space of knowledge. Schools need to ensure all children the opportunity to learn the sciences, contradictions, antitheses and refutations that occur in the world of knowledge and, therefore, subjects such as ethics, politics, religions and ideologies are essential. The initiative ultimately curbs the questioning, the development of critical thinking and the deconstruction of common sense, preventing citizen and political emancipation of the students.

32. Neutrality is a myth, because no person - even a teacher - is free of ideologies. Ideologies are built from their own experiences, knowledge, studies and world view, and it is these factors that make us unique as individuals sharing plural spaces with other also unique individuals.

33. To claim, therefore, that all teaching process should be neutral and free of ideology is, ironically, a non-plural ideology, since what it is neutral cannot be plural. It is not neutrality that is needed, but diversity and plurality of views in teaching.

34. The dimension that the movement is taking in different parts of the country is quite worrying, especially in a political landscape full of setbacks in human rights issues. Within the logic of the “School without party” Program, human rights issues such as gender discussions will be left out of the discussions and, therefore, out of teaching because it “hurts beliefs and family options” (sic). What would that be if not an ideologically positioned movement - not neutral - which stands for an extremely conservative and limiting worldview of thoughts and expressions? Are we back to 1964, when the dictatorship used to rule?

35. The Federal Prosecutor of Rights of Citizens, from Federal Public Ministry, issued the technical note 01/2016, about the Legislative Proposition 867/2015, that includes, in the guidelines and bases of national education, the “School Without Party” Program. The Technical Note points the unconstitutionality of the Act Project, that affront directly the articles 205 and 206 of Federal Constitution, for different reasons, among them to confound the scholar education with the familiar, in other words, the public space with the private one, hinder the pluralism of ideas and the pedagogical conceptions, deny the freedom of chair from teachers and the learning of student, counter the State secularity. Moreover, the project of Act violates the fundamental objectives of Brazilian State, especially the construction of a society free, fair and joint, and the promotion of common good, without prejudices of origin, race, sex, color, age and other forms of discrimination.

36. The Nacional Education Forum, composed of 50 entities, considered that the Law Project would bring serious consequences to the entire Brazilian society. The alleged neutrality is harmful to the achievement of education goals, included, among them, the possibility of strengthening a citizen education, committed to overcoming social injustice and inequality.⁹ In the public consultation at the website of the Senate, the Law Project has received 197,299 votes AGAINST and 183,363 in favor.¹⁰

37. The Minister of Education also asked for the Attorney General to take the appropriate and necessary legal measures on the Law Project called “Free School”, which presents the same goals of the “School Without Party” Program, in order to avoid possible injury to the Federal Constitution and the educational guidelines.¹¹

RECOMENDATIONS

- a) The Brazilian legislation must not allow the advance of laws or limiting practices of pluralism of ideas and the secularity of the State, like those linked to the “School Without Party” Program, in progress in legislative bodies at the three levels (municipal, state and federal). Thus, the projects must be filed and considered

⁹ See document in: <http://m.congressoemfoco.uol.com.br/noticias/em-nota-forum-nacional-da-educacao-critica-proposta-de-escola-sem-partido/>

¹⁰ See the consultation in: <https://www12.senado.leg.br/ecidadania/visualizacaomateria?pid=125666>

¹¹ See document in: http://portal.mec.gov.br/index.php?option=com_docman&view=download&alias=40441-aviso111-2016-projeto-de-lei-que-institui-o-programa-escola-livre-pdf&Itemid=30192

against the Constitution and the human rights treaties. Brazilian authorities must take legal action on any movement among public schools and municipal/state administrations, aimed to curtailing the right to education based on equality of gender, race, sexual orientation and gender identity in public education, in explicit violation of the constitutional principle of secularity of the State.

b) That the Brazilian authorities take the legal measures with any movement of misinformation in the public school and municipal and state managements of the country that aim to curtail the right to education of gender, race, sexual orientation and gender identity in public education institutions, in explicit disrespect to the constitutional principle of State secularity.

c) That be assured the right to education for gender, race, sexual orientation and gender identity equality in public education institutions.

d) That be guaranteed the exercise of teacher profession far from threats and constraints, just as well be denounced the abuses disseminated against schools and educational managements.

e) The strengthening of gender equality in the scholar curriculum from the National Curricular Guidelines about Education, Gender and Sexuality for Basic Education and Superior Grade by National Education Council. Among other contents, this document would address also strategies of confrontation of the different performance of boys and girls in mathematics, sciences and languages; of the inequalities of gender related to race and ethnicity in education and gender violence by schools and kindergartens.

f) Guarantee the contents referred to social relations of gender and sexuality in the initial and continuing formation of education professionals. The contents that refer to social relations of gender, race, sexual diversity, regionality, countryside/city are underrepresented or shows in a fragmented way or restricted to optional disciplines – in the curriculum of initial formations in public and private universities.

g) Invest in the effective implementation of 10.639/2003 Act, that sets the requirement of teaching African and African-Brazilian history and culture, not only as an action of repair to the black population, but as a fundamental strategy to confront racism, questioning the school benchmarks, expansion of educational quality for all and review of we comprehend as “Brazilian nation”.