

Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on freedom of religion or belief

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 26/17, 25/2 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **two Projects of Law (PL), PL 867/2015 and PL 193/2016, called the federal "School Without Party Programme" bills, which contain provisions that unduly restrict the right to freedom of expression of students and teachers in Brazil. PL 867/2015 is currently awaiting approval by the Special Commission in the Chamber of Deputies, and PL 193/2016 is awaiting the designation of the Rapporteur of the Federal Senate's Committee on Education, Culture and Sport.**

According to the information received:

The "School Without Party" movement ("Escola Sem Partido") was initiated in 2004 by the Prosecutor of Justice of São Paulo. The movement endeavours to ensure neutrality in primary and secondary schools across Brazil by discouraging instructors from "ideological indoctrination"—in other words, teaching topics in the classroom that may implicate the political, religious, or moral ideas of students and their parents. It gained traction in 2014 when its goals were introduced in a state bill presented to the State Legislative Assembly of Rio de Janeiro, PL 2974/2014. Since then, the movement has been introduced through municipal, state, and federal bills. Some states, including Alagoas (Law No. 7.800/16), have adopted such bills and established the program as law.

On March 23, 2015, the Brazilian Social Democracy Party in the Chamber of Deputies introduced ordinary federal bill PL 867/2015, entitled the "School Without Party" bill (the "Chamber of Deputies" bill). PL 867/2015 has been drafted with the aim of obliging schools to respect the convictions of students, parents, and guardians, especially in regard to moral, religious, and sexual education. This bill has been through the initial stages of consideration by the Chamber of Deputies for approval, but has not yet been approved. It passed the initial "mesa" leadership of the Chamber and was reviewed by the Education Commission (CE) and the Social Security and Family Commission (CSSF). At that point, it was appended to another ordinary federal bill, PL 7180/2014. The President of the National Congress approved the formation of a Special Commission to analyze the potential impact of PL 7180/2014, and by extension

the Chamber of Deputies bill. The approval of the Special Commission is still pending, awaiting a debate on the bill with students, teachers, and regional leaders in the Porto Alegre municipality. Should the Chamber of Deputies bill be eventually approved in this manner by the Special Commission, it will then progress to the Senate for review.

On May 3, 2016, a little over a year after the Chamber of Deputies bill was introduced, Brazil's Federal Senate introduced PL 193/2016 (the "Federal Senate" bill). Barring a few small exceptions, it contains the same language as the Chamber of Deputies bill, and was also written to codify the School Without Party movement. It was evaluated by the Senate's Committee on Education, Culture and Sport shortly thereafter and is currently awaiting the designation of the Committee's Rapporteur. While the Federal Senate bill is pending approval, the Senate has invited the public to participate in an ongoing poll on whether the bill should be approved. As of 16 February 2017, over 390,000 Brazilians have participated in the poll, with a majority opposing the bill.

These bills have spurred vigorous debates among Brazilian individuals and organizations. Some official debates have been hosted by the Chamber of Deputies and Federal Senate; other opinions have been voiced through public statements and widespread protests on school campuses.

Lawmakers in favour of these bills state that their objective is "to prevent the practice of ideological and political indoctrination in schools, and the usurpation of parents' right to have their children receive moral education that is in accordance with their own beliefs."

However, non-governmental organizations, experts, educators, and students have denounced these bills, arguing that they suppress teachers' ability to provide to students a well-rounded education, reflective of a complex and diverse society and students' ability to learn and discuss societal issues in the classroom, limiting their contact with other beliefs and values. Specifically, Brazil's Federal Public Ministry (MPF), the Attorney General's Office (AGU), the Advocacy-General of the Union (AGU), and the Ministry of Education (MEC) have denounced the Chamber of Deputies bill and other bills advancing the School Without Party platform as unconstitutional. International human rights organizations such as the National Campaign for the Right to Education and the Inter-American Commission on Human Rights of the Organization of American States have denounced these bills. On 22 July 2017, the Federal Public Prosecutor's Office for Citizen's Rights (PFDC) of the Federal Public Prosecutor's Office sent the National Congress a technical note in which it pointed out the unconstitutionality of Bill 867/2015. For the PFDC, under the pretext of defending principles such as "the political, ideological and religious neutrality of the State", as well as the "pluralism of ideas in the academic environment", the School without Party programme places the teacher under constant surveillance, mainly to avoid expressions that confront the moral conviction of parents. According to the PFDC,

the School without a Party programme is “starting with the misuse of an expression that is absurd in itself: ideological neutrality”.

On 14 March 2017, the Executive of Secretary of the Ministry of Education confirmed in a meeting with religious groups that “gender ideologies” would not be included in school curriculum. Prior to this, the coordinator of the School without a Party movement had accused teachers for encouraging their students to have contact of homosexual nature. On 6 April 2017, the term “sexual orientation” was taken out in the text of the school curriculum that was delivered to the National Council of Education.

On 7 April 2017, the Municipal Secretary of Education of the City of São Paulo asked for resignation following reports of a visit by a councilman of the Municipal Chamber to municipal public schools in order to “verify” the existence of “ideological indoctrination” on the part of teachers.

Before identifying the concerns raised by the bills, we want to note that article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Brazil on 24 January 1992, protects everyone’s right to maintain an opinion without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. Under article 19(3) of the ICCPR, restrictions on the right to freedom of expression must be “provided by law,” and necessary for “the rights or reputations of others,” or “for the protection of national security or of public order (ordre public), or of public health and morals.”

Under the article 19(3) requirement of legality, it is not enough that restrictions on freedom of expression are formally enacted as domestic laws or regulations. Instead, restrictions must also be sufficiently clear, accessible and predictable (CCPR/C/GC/34). While restrictions on freedom of expression may be established to protect a legitimate objective under the provision, they must be “necessary” to protect such objectives, and not simply useful, desirable or reasonable. The requirement of necessity “also implies an assessment of proportionality” of those restrictions. A proportionality assessment ensures that restrictions “target a specific objective and do not unduly intrude upon other rights of targeted person”. The ensuing “interference with third parties’ rights must also be limited and justified in the light of the interest supported by the intrusion” (A/HRC/29/32). Finally, the restrictions must be “the least intrusive instrument among those which might achieve the desired result” (CCPR/C/GC/34).

The full texts of the human rights instruments and standards outlined above are available at www.ohchr.org and can be provided upon request.

In light of the above standards of international human rights law, we would like to bring to the attention of your Excellency’s Government aspects of the bills that raise concerns in connection with the bills’ interference with the right to freedom of expression of teachers and educators:

I. Chamber of Deputies Bill, Article 2° on Enforcing Political, Ideological, and Religious Neutrality

Article 2° of the Chamber of Deputies bill provides that Brazil's national educational system must comply with the following principles:

- Political, ideological, and religious neutrality of the State;
- Pluralism of ideas in the classroom environment;
- The freedoms of learning, conscience, and belief;
- The recognition of students' vulnerability as the weakest party in "learning relationships";
- The education of students about the rights that follow from their freedoms of conscience and belief; and
- Parents' right to have their children receive moral education that is in accordance with their own convictions.

The Bill does not provide any further definition on these general principles. Article 2° of the Federal Senate bill shares the same language, and after listing these principles, includes additional language mandating that educators cannot interfere with or direct a student's natural maturation or personality as it pertains to his or her gender or sexual identity. As with the language provided throughout Article 2°, the terminology in this statement is not further defined. The language in the provision may prevent the discussion of gender and sexual diversity, which is fundamental to prevent gender stereotypes and homophobic attitudes among students.

II. Chamber of Deputies Bill, Article 3° on Prohibiting Classroom Practices That Conflict with Religious or Moral Convictions of the Parents or Guardians of the Students

Article 3° of the Chamber of Deputies bill prohibits "political and ideological indoctrination" and the provision of content or activities in the classroom that conflict with the religious or moral convictions of the parents or guardians of students. This provision is another general statement with undefined terms that allows for broad interpretation and application. Article 3°, Section 1° requires confessional schools and private individuals, "whose educational practices are guided by moral, religious, or ideological conceptions, principles, and values," to obtain from parents of students express authorization for transmitting those educational practices. Section 2° requires schools to present and deliver to parents the materials used by teachers to instruct students, and to allow parents to understand through those materials what the instructors are teaching students.

By not defining "political and ideological indoctrination" and providing parameters for determining whether a teacher's instruction constitutes "political and ideological indoctrination," the Chamber of Deputies bill allows for virtually any of a teacher's educational practices to be construed as indoctrination and it will make the school an extension of the domestic environment rather than an educational institution that provides new insights. Furthermore, by not defining which educational practices can

be deemed to be “guided by moral, religious, or ideological conceptions, principles, and values,” virtually any educational practices can be condemned. Indeed, education by nature—especially subjects like history, literature, and science—can be traced to various forms of moral, religious, or ideological conceptions. This furthermore prevents the development of a critical thought among students, and the ability to reflect, agree or disagree with what is exposed in lectures.

The language in Article 4° of the Federal Senate bill matches the language in Sections 1° and 2° of Article 3° of the Chamber of Deputies bill.

III. Chamber of Deputies Bill, Article 4° on the Teacher’s Responsibilities and Limitations

Article 4° of the Chamber of Deputies bill mandates that in the scope of his or her occupation, teachers must do the following: (I) refrain from taking advantage of students’ vulnerability to push them into a certain ideology, (II) refrain from favouring or prejudicing students based on their beliefs, (III) refrain from making “political-partisan propaganda” in the classroom or “incit[ing] its students to participate in demonstrations,” (IV) present ideas to students “in a fair manner” by including competing opinions and perspectives on those ideas, (V) respect parents’ rights to have their children “receive moral education” in line with their own convictions, and (VI) prohibit third parties from violating any of the aforementioned rights.

The language in this Article is vague and undefined, leaving important terms such as “political-partisan propaganda,” “fair manner,” and “moral education” to broad interpretation, leading to broad restrictions on the right to freedom of expression of teachers in the performance of their profession. For instance, one could find a teacher in violation of the bill for any sort of educational practice so long as authorities or parents subjectively consider that practice “political-partisan propaganda.” This may prevent the discussion of topics that can be considered as controversial or sensitive, such as discussions about diversity and minority rights.

The language in this Article is the same as the language in Article 5° of the Federal Senate bill.

IV. Chamber of Deputies Bill, Article 7° on Punishing Those Who Do Not Follow The Bill’s Provisions

According to Article 7° of the Chamber of Deputies bill, education secretaries will be authorized to receive complaints about people who do not conform to this bill. Complaints will also be sent to the Brazilian body of independent public prosecutors operating at both the state and federal levels, the Public Prosecutor’s Office (MP). The bill does not specify the penalties that can be imposed for violating this bill. Furthermore, because the terms within this Article are undefined and vague, almost any action by a teacher could subjectively be considered non-compliant and thus subject to criminal charges. Article 8° of the Federal Senate bill contains the same language as this Article.

We express concern that the above provisions of the bills fail to satisfy the Article 19(3) criteria for restricting the right to freedom of expression.

The protection of school children from indoctrination is a legitimate objective under international human rights law, including under article 19(3) of the ICCPR. The question that arises relates to the way in which the bills seek to achieve this objective, and whether the proposed approach of the bills complies with Brazil's obligations under article 19 of the ICCPR. The policy options suggested by the bills to achieve this aim would limit the scope of information school children are exposed to and may thereby in effect restrict their rights to freedom of expression. More importantly, the bills contain explicit provisions that limit the rights to freedom of expression of school teachers and educators in ways that are not compatible with permissible restrictions to this right under article 19(3).

The language in Articles 2°, 3°, 4°, and 7° of the Chamber of Deputies bill (and the corresponding provisions of the Federal Senate bill) is overly broad. This broadness opens up for arbitrariness in the enforcement of the bills. Thus, based on the bills' current language, educators can be punished for teaching subjects that might broach controversial issues—including politics, science, history, world religion, and sex education. If these bills were to legitimize and establish the School Without Party programme, educators would be deterred from providing students a well-rounded education, and thus would hinder students from being able to hold opinions without interference in accordance with Article 19(1) of the ICCPR. With this in mind, and since any sort of restriction on the right to hold opinions is prohibited under the ICCPR, the aforementioned provisions in the Chamber of Deputies bill and Federal Senate bill violate Article 19(1) of the ICCPR.

Additionally, the excessive broadness of the language in these bills violates Article 19(2) of the ICCPR. A hallmark of education in a free society is to provide a diverse confluence of facts and perspectives about a multitude of subjects, regardless of whether that knowledge conflicts with the beliefs with which the child was raised. By providing overly broad language and thus allowing enforcers of these bills so much discretion to punish teachers for what they teach students, these bills would limit educators' right to uphold this standard by limiting the information and ideas that educators can impart to students about cultures, government, politics, religion, social norms, evolution, and sex education. In turn, these bills would restrict students' right to seek and receive unfiltered information and ideas from their teachers.

Without providing precise definitions of their many terms, these bills would likely infringe on the ability of educators to teach the standard curricula. The objective of the teaching profession is to instruct students fully to learn about the world in many different ways: some of which they, their parents might disagree with. If adopted in its current form, this overly broad legislation might frustrate that objective by causing in significant censorship of and self-censorship by teachers.

Moreover, the vagueness and broadness of these bills render them insufficient to meet the "provided by law" standard, because it is not written precisely enough to protect the public from "unfettered discretion" to restrict freedom of expression by the people

enforcing the law. The bills also fail to fulfill the “necessary”-requirement under Article 19(3). There does not seem to be any empirical evidence or findings indicating a need for these bills or the School Without Party movement to occur nationwide in Brazil’s education system. There appears to be no reason to believe that other educational practices—including the full, unfettered dissemination of information by teachers to students—would not be a better substitute for these federal School Without Party bills. Lastly, these bills fail to fulfill the proportionality requirement under Article 19(3). The language of these bills is overly broad, and thus the bills allow teachers to be criminally punished for teaching any sort of subject in the course of their professions. Moreover, they allow parents and other authority figures to unduly restrict students’ right to be educated without limits.

With respect to the exclusion of “sexual orientation” from the school curriculum, we would like to highlight the concluding observations by the Committee on the Rights of the Child of 30 October 2015 on the combined second to fourth periodic reports of Brazil. The Committee, with reference to Brazil’s obligations under articles 2, 3, 6, 12 of the Convention on the Rights of the Child, ratified by the country on 25 September 1990, recommended Brazil to “*strengthen its efforts to combat discrimination against and stigmatization and social exclusion of children living in poverty in marginalized urban areas, such as favelas, as well as children in street situations, and Afro-Brazilian and indigenous children and girls; (b) Enact legislation to prohibit discrimination or the incitement of violence on the basis of sexual orientation and gender identity and continue the Schools without Homophobia project; (c) Prioritize the elimination of patriarchal attitudes and gender stereotypes, including through educational and awareness-raising programmes.*”

In view of all of the aforementioned comments, we would like to call on your Excellency’s Government to take all steps necessary to conduct a comprehensive review of the Chamber of Deputies bill (PL 867/2015) and Federal Senate bill (PL 193/2016) and ensure its compliance with international human rights standards, primarily by exploring methods by which the language of these bills can be made more precise.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Whether there is any empirical evidence or statistically significant findings to suggest a need for the School Without Party movement to be implemented in Brazilian public schools; and
2. Whether other measures can be taken to ensure the compliance of these bills with Brazil’s obligations under international human rights law and standards, particularly with regard to the right to freedom of opinion and expression.

We would appreciate receiving a response within 60 days.

Finally, we would like to inform you that this communication will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression:

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>).

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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