

## **United Nations First Forum on Minority Issues - Minorities and Right to Education**

**Palais des Nations – Geneva 15 December 2008**

### **Robert F. Kennedy Center for Justice and Human Rights Report**

**Marselha Gonçalves Margerin – Advocacy Director**

On behalf of the Robert F. Kennedy Center for Justice and Human Rights (RFK Center) I would like to thank the UN Independent Expert on Minority Issues, Gay MacDougall and her colleagues of the Office of the High Commissioner of Human Rights for the initiative in realizing this first U.N. Forum on Minority Issues with focus on minorities and Right to Education.

I appreciate indeed the opportunity to make a brief presentation introducing the RFK Center Report on the state of Right to Education of Afro-descendant and Indigenous Peoples in the Americas and make some comments based on the Forum Draft Recommendations.

Formerly known as RFK Memorial, the RFK Center for Justice and Human Rights has been advocating for social justice as per former US Senator Robert F. Kennedy ideals. Every year a human rights defender is awarded with the RFK Human Rights Award and the Center starts a partnership with that defenders. RFK Center has 38 human rights laureates from 22 countries.

RFK Center has partnered with its laureates from Guatemala, Colombia and Dominican Republic to present a comprehensive, multi-national report on the state of the right to education in the Americas that was originally prepared for a thematic hearing before the Inter-American Commission on Human Rights. ([www.rfkcenter.org](http://www.rfkcenter.org))

To craft such report, the RFK Center also worked together with other grassroots advocates as well as researchers from international human rights law clinics at Cornell Law School and the University of Virginia School of Law.

The information presented at the report was based on interviews with affected populations, community representatives and government officials in Guatemala, Colombia and Dominican Republic which were conducted over the past year and a half. Providing these country overviews represent only three examples of a larger regional problem pervasive throughout the Americas, it was not meant to reflect any bias against any particular country or countries.

The report examines countries national, regional and international obligations through a methodology that intersects the analyses of structural, process and outcome indicators and the Four-As Framework.

The findings in our report point that structural discrimination against migrant workers and their families, ethnic minorities and IDP population in which most cases are Afro-descendants, and against indigenous

communities are not being effectively addressed by States and are depriving them of the most basic access that the right to education binds states to provide.

- E.g:
- 1- IDPs children in Colombia cannot attend school without a government issued IDP card.
  - 2- Dominican Children of Haitian descent cannot enroll or pursue schooling because they are denied identity cards. Dominican government is currently pursuing a concerning policy segregation policy- the issuance of a pink birth declaration instead of a white one to children of undocumented mothers.

This brief summary of the report leads me to believe that the implementations of effective affirmative action policies to address structure discrimination that impacts access to quality education is an Essential Requirement for an Effective Education Strategy. Also, Report findings are related to denial of identity documents that prevents children from attending and completing school I would suggest adding to the recommendations that the lack of identity documents should not prevent school enrollment and accomplishment.

### Comments on Draft Recommendations

#### **I. Education**

*“Education plays a formative role in socialization for democratic citizenship and represents an essential support for community identity. It is also a primary means by which individuals and communities can sustainably lift themselves out of poverty.”*

1. Need to articulate the well-established division between **immediate** and **progressive** obligations of States to realize the right to education. And to place the necessary emphasis on immediate duties, especially with regard to non-discrimination and equality.
2. *“Recommendations were done in broad terms”* Should be done in more specific terms – by means of implementations mechanisms suggestions as in some cases already in the document.
3. *“Lift themselves out of poverty”* - Need to articulate the issue of school retention and tertiary education, which are fundamental for minorities to lift themselves out of poverty.

#### **II. Core principles**

*“The right to education for all is grounded in universal and regional human rights instruments including instruments on minority rights and the rights of indigenous peoples. The core principles of international human rights are fully applicable to the right to education and should be faithfully implemented by States. These include the principles of equality and non-discrimination.”*

1. The document needs to reassure that these recommendations are based on UN documents agreed by governments and indicators and methodologies already used at the UN system [ as the Structural, process and outcome indicators and the Four-As framework as recommended by the Rapporteurs on Right to Health and the Right to Education. It is important to cite the documents at least in endnote. For instance General Comment 13 is very important guideline to obligations related to right to obligation and needs to be mentioned.
2. *“The case of special measures or affirmative action should not...”* . I suggest using positive language. Special measure or affirmative action should be used for instance as means for governments to recognize the existence of structural discrimination, and combat it. I would also like to advice against the use of the term “positive discrimination” [sometimes used in both French and Portuguese.] The use of the term is not productive and brings the wrong connotation to the discussion.

### III. Essential requirements for an effective education strategy

1. The Draft Recommendations are an important opportunity to strengthen the framework and indicators being used within the UN human rights system. Such methodologies are not only important, they are really necessary to measure state responsiveness and compliance with treaty obligations. The FOUR-A FRAMEWORK developed by former UN Special Rapporteur on the Right to Education, Katarina Tomasevski provides a methodology to articulate a states’ obligations in regards to the right to education. It is used in some examples, but should be articulated as the framework to be used.

### IV. Equal Access to Quality Education for Minorities

*“Authorities should remove direct institutional barriers to educational access for minorities, and address cultural and linguistic barriers that may have equivalent access-denying effects.”*

1. At this section it is important to articulate how it can be done, through some concrete examples. Thus, I would suggest the need to add language referring to migrants and displaced persons in need of additional protections or proactive measures due to their especially vulnerable and marginalized positions

*“Difficulties in school enrolment for displaced persons, [ **Add:** migrant workers and their children ] or members of nomadic or semi-nomadic groups should be addressed in an active and constructive manner.” [It is very important to add that: Lack of documentation should not prevent school enrolment and accomplishment/conclusion.*