

**LATIN AMERICAN RESEARCH NETWORK
OF OMBUDSPERSONS' OFFICES (LARNO)
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
WORKING IN COOPERATION WITH UNESCO**

WORKSHOP ON THE RIGHT TO EDUCATION

Quito, Ecuador, 16-18 June 2004

REPORT

WORKSHOP OF THE NETWORK ON THE RIGHT TO EDUCATION

The research network has started with research on the implementation of the right to education. This right, which is clearly within the mandate of UNESCO, is an important issue in the Latin American region, especially with regard to vulnerable groups.

The right to education embodies the principles of indivisibility and interdependence of all human rights, because education covers civil, cultural, economic, social and political aspects. In fact, the right to education can be considered a key right, as it allows the complete exercise and enjoyment of all human rights. It has been included in several international and regional human rights instruments.

To determine a common methodology for the research, a workshop was held for the research network in Quito from 16 to 19 June 2004. During the workshop, the right to education was analyzed from an international, regional and national perspective. Attention was paid to the legal aspects of this right, as well as to the public policies in the field of education. Different tools to measure the implementation of the right to education, including indicators, were explored. In this regard, a central point of the workshop was the analysis of the project of the Office of the Colombian Ombudsperson on the implementation of the right to education in Colombia, including a well-developed system of indicators. This model proved to be a useful starting point for a common approach for the researchers to measure the implementation of this right in their respective countries (*see programme annex n°1*).

<p style="text-align: center;">DAY 1 WEDNESDAY 16 JUNE INTERNATIONAL LEGAL AND POLITICAL FRAMEWORK OF THE RIGHT TO EDUCATION</p>

OPENING

Mr Eduardo Cifuentes Muñoz, Director of the Division of Human Rights of UNESCO, opened the workshop. He explained the background and purpose of the Latin American research network and underlined its importance for UNESCO in implementing its research agenda. UNESCO places special emphasis on economic, social and cultural rights, which are still often neglected and not well implemented. The research of UNESCO should be policy oriented, which means that the Organization is actively looking for partners in the policy making process who can help to distribute and implement the results of the research. In this regard, he greatly valued the partnerships with the Ombudspersons' Offices in Central American and Andean countries and underlined the specific role of Ombudspersons in promoting human rights in general and economic, social and cultural rights in particular.

In his opening statement, the Minister of Education and Culture of Ecuador, Mr. Roberto Passaillague, recalled the long history of UNESCO in the field of human rights, especially the promotion and protection of the right to education (*see speech annex n°2*). This commitment is underlined by the adoption of the

UNESCO Strategy on Human Rights in October 2003. Mr Passaillague stressed that education involves all aspects of life. However, many groups cannot fully enjoy this right, including the poor, indigenous peoples, immigrants, persons with HIV/AIDS or other diseases etc. Governments have the main responsibility to implement the right to education. Their obligations have been well established by the Committee on Economic, Social and Cultural Rights as well as by the Special Rapporteur on the Right to Education. However, families and communities also have an important role to play. According to the Constitution of Ecuador, everyone has the right to education, but it is a shared responsibility of the State, family and others to ensure this right. Important obstacles in the region are strikes of personnel, which lower the number of schooldays, but also cut-downs in electricity. Mr. Passaillague praised the initiative of the workshop and the research network to improve the implementation of the right to education.

The Ombudsperson of Ecuador, Mr. Claudio Mueckay Arcos, also emphasized that the right to education is a key human right (*see speech annex n° 3*). Ombudspersons have a specific role to play in pressing for laws and policies to improve its implementation at the national level. The most important obstacles to the enjoyment of the right to education are poverty and many forms of discrimination. He argued that financial difficulties should not prevent governments from implementing human rights. Mr. Mueckay expressed his strong support for the research network and thanked UNESCO for taking this initiative.

The Director of the UNESCO Office in Quito, Mr. Gustavo López Ospina, maintained that although the knowledge society is growing, the gap between those who have access to good education and those who have not is widening (*see speech annex n°4*). Non-implementation of the right to education has a strong influence on the enjoyment of other human rights. Mr. López Ospina argued that the relation between globalization, development, trade, social cohesion, ethics, cultural identity and human dignity is not clear or problematic. He called for new ethnics to implement the UN Millennium Development Goals and the Education For All Programme.

SESSION 1 – THE RIGHT TO EDUCATION WITHIN THE INTERNATIONAL LEGAL FRAMEWORK OF HUMAN RIGHTS

Professor Fons Coomans – University of Maastricht Center for Human Rights, The Netherlands

Professor Coomans (*see annex n°6*) explained that with the adoption of the two International Covenants (ICESCR and ICCPR), a distinction was made between civil and political rights, which were supposed to imply State abstention, and economic, social and cultural rights, which were supposed to imply State action. The right to education in fact includes elements of both categories and implies positive as well as negative obligations of the State. The right to education is furthermore an empowerment right; it empowers people to develop personally and to contribute to society. It is also a key right, because it unlocks the enjoyment of other human rights, such as the right to work, food, health etc. In short, the right to education embodies the principles of indivisibility and interdependence of all human rights.

Professor Coomans listed several international instruments in which the right to education is enclosed (*see list annex n°5*). These provisions generally include the right to education as a human right, the implementation of this right, freedom of education, including the rule that parents should be allowed to choose the education for their children, and the principle aims of education. Another important aspect is that primary education should be free and compulsory. This implies that no person may be withheld to attend school and that all actors involved must take measures to ensure free and compulsory primary education.

The Committee on Economic, Social and Cultural Rights has developed the normative content of the right to education through the concept of “core content”. Core content is the fundamental part of the right without which the right would lose its essential meaning. Elements of the core content of the right to education are for example the right to have access to education at all levels on a non-discriminatory basis; free and compulsory primary education; special facilities for vulnerable groups; fixed quality education; free choice of education; and the right of minorities and indigenous peoples to be taught in their mother tongue.

With regard to State obligations, Coomans made a distinction between general obligations, such as the prohibition of discrimination and the protection of vulnerable groups, and specific obligations, for example the development of an education strategy, curricula and educational standards. Another system of State obligations is the tripartite typology, which implies that States have obligations to respect, protect and fulfill, whereby the last one may be divided into obligations to facilitate and to provide. Another framework to elaborate State obligations is the so-called violations approach, which tries to identify situations that demonstrate a violation of the right. Such violations may be the result of direct action or a failure to act.

Coomans explained that the monitoring of the right to education depends on the monitoring system under the treaty in question. The monitoring system of the ICESCR consists of a reporting procedure, as laid down in Articles 16 to 23 of the Covenant. These reports should not include measures taken by the State to implement the rights, as well as obstacles and problems it has encountered in doing so. It should not only refer to legal measures taken, but also to policies and other measures. The Committee has adopted guidelines on the reporting in which the various questions are outlined. NGO's can make so-called shadow reports, which they can present before the Committee.

Professor Katarina Tomaševski – University of Lund, Denmark

Professor Tomaševski (*see annex n°7*) underlined that the right to education symbolizes the universality and indivisibility of all human rights. Education is not only an end in itself, but a means to the enjoyment of other human rights. It is furthermore a key in the transmission of values between different generations. Education should be treated as an integrated aspect, not to be separated from other policies, for example in relation to work, health etc. The main obstacles to the implementation of the right to education are poverty and discrimination. Another issue she discussed was the fact that education is increasingly

considered a service to be traded. It is often regulated by commercial interests rather than by human rights. A human rights-based approach should be adopted in designing education laws and policies.

The ratification of the various international and regional human rights treaties is a first step to implement the right to education. However, implementation by national laws, policies and regulations should follow. Tomaševski explained that the obligation to implement the right to education lies mainly with the State. The responsibilities have, however, been decentralized and localized, which implies the involvement of many different ministries, agencies and public institutions. As the Special Rapporteur on the Right to Education, Tomaševski developed the so-called 4 A system of obligations, according to which States have the obligation to make education available, accessible, acceptable and adaptable. This system (see *annex n°7*) is explained in more detail in the paper she prepared for UNESCO, which will be widely distributed.

During the discussion, many different issues were discussed, including the role of religion in education and policymaking, the definition of the core content of the right to education and the overall and inclusive meaning of education, the role of national human rights institutions and their level of independency, the possibilities of recourse, including perhaps reparations, the issue of quality education (is there a right to receive relevant information?); and the role and responsibilities of international financial institutions to help countries in a difficult economic position to implement the right to education. It was also discussed to what extent General Comments of the treaty bodies are binding. It was argued that, although they are formally speaking not binding, States should have to comply with them on the basis of good faith as part of a monitoring system of a treaty to which they are a Party.

SESSION 2: THE RIGHT TO EDUCATION IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

Professor Carlos Ayala - Catholic University of Mexico, Mexico

Professor Ayala (see *annex n°8*) stressed that the legal instruments developed at the international and regional level should be implemented at the national level. He argued that the Ombudspersons have a special role to play in monitoring their implementation.

The Inter-American human rights system is in fact complementary to the national legal system. This means that remedies at the national level should be exhausted before invoking the regional supervisory mechanisms. After the Inter-American bodies have ruled, the case goes back to the national level for implementation of the rulings. National authorities have to comply with the judgment.

The Inter-American Commission on Human Rights is a body of the Organization of American States (OAS) and therefore has jurisdiction over all Member States, even those that have not ratified the American Convention on Human Rights. The tasks of the Commission are to review individual cases, to make country visits, to

prepare country reports on the human rights situation in countries, and to monitor specific situations through rapporteurs.

The Inter-American Court on Human Rights has contentious jurisdiction over cases, only if Member States have accepted such jurisdiction. States and the Commission can bring cases to the Court, and since recently, also individuals have *locus standi* before the Court. Its second task is to give advisory opinions on the application of the human rights treaties, even those not adopted within the OAS.

Professor Ayala listed the different regional instruments that include the right to education (*see annex n°5*). He argued that economic, social and cultural rights were at first not very well developed in the Inter-American system. Since many countries were suffering from violations of several basic human rights, such as the right to life and the right not to be tortured, less attention was paid to the implementation of economic, social and cultural rights. Recently that has changed and nowadays, apart from the right to life, there is much more interest in the right to a living, in other words in economic, social and cultural rights. All country reports now include references to the implementation of these rights. However, the indicators used to measure the implementation of economic, social and cultural rights, including the right to education, vary much from country to country. Important elements in this respect are the costs of education, including extra-school costs such as transport, food, books etc., and the dropout figures. The development indicators of UNDP could be used in this regard.

Professor Christian Courtis - University of Buenos Aires, Argentina

Professor Courtis (*see annex n°9*) emphasized that international instruments are important and useful for Ombudspersons, because they set international standards and benchmarks to be applied in different countries. Implementation at the national level is very important, since the monitoring also takes place first at the national level, because local remedies have to be exhausted before going to the international level. Furthermore, the international supervisory system takes very long and does not end the violation of human rights in the short run. At the same time, national legal systems vary much and judges and lawyers often lack expertise with regard to economic, social and cultural rights.

Professor Courtis subsequently asked the question what lawyers should do with all the international instruments, especially in cases where they differ from the national Constitution. Courtis argued that the most favorable instrument for the individual is the one that should be used; in other words, the one that provides the most extensive protection. International instruments often include rather vague and general norms with a large margin of discretion for the States. It is therefore important to extend the doctrine on economic, social and cultural rights. The numerous international standards should be the starting point for the implementation at the national level. Such implementation should not only take the form of legislation, but should also include policies.

During the discussion, it was stressed that there is still a major gap between the large number of instruments on human rights and the right to education and the

implementation of these instruments at the national level. There is sufficient legislation, but it is not properly put into practice. At the same time, the budget of the supervisory mechanisms, for example the Inter-American system, is cut, which makes the regional monitoring more difficult.

SESSION 3: INTERNATIONAL POLICIES AND STRATEGIES TO IMPLEMENT THE RIGHT TO EDUCATION

Professor Katarina Tomaševski – University of Lund, Denmark

Professor Tomaševski posed the following question: the right to education, for whom? She argued that only primary education is supposed to be free and compulsory. After that, the right to education does not really exist and that States show different levels of commitment with regard to the right to education. For example, this right was not included as such in the Education For All programme as well as the Millennium Development Goals. Furthermore, the strategies of international organizations vary, for example between the World Bank and the OECD. There is also a lack of common definitions and indicators, which makes the collection of data and information more difficult.

Professor Ernesto Schiefelbein – University of Santiago, Chile

Professor Schiefelbein (*see annex n°10*) maintained that the problem is not that education is not available or accessible. He pointed out that the main problem is the lack of quality in education. He showed that the quality of teachers is often rather low, which makes the dropout rate higher. Much more research should be done on this aspect of the right to education

One of the main issues discussed was the relationship between public and private education and the impact of privatization on the education system. Education is increasingly seen as a product or service in relation to free trade instead of as a process. Consequently, many policies in the field of education are privatization-oriented. Governments are outsourcing education, which makes education less available, accessible and affordable. At the same time, public education often lacks funding, which has a serious impact on the quality.

<p style="text-align: center;">THURSDAY 17 JUNE MEASURING TOOLS FOR THE EFFECTIVE IMPLEMENTATION OF THE RIGHT TO EDUCATION</p>

SESSION 4: STATE OF THE ART IN THE DEVELOPMENT OF INDICATORS TO MEASURE THE IMPLEMENTATION OF THE RIGHT TO EDUCATION

Professor Katarina Tomaševski discussed table n° 3 of her document in order to analyze the significance of using the rights vocabulary in education. She explained, for example, the importance of talking about the investment in education instead of only about its expenses, as well as the difficulties and implications of defining a legal and constitutional ground. It is therefore important

to define a system of indicators and to use a short and pure list of them, in order to make real the principle of accessibility.

Concerning the adaptability, it is valuable to check the existence or the lack of a state strategy concerning all the areas that can be involved in the education field: education and labor, education and family background, education and gender etc.

She concluded about the following proposition: we cannot talk about education without generating communitarian consensus, because it provides the opportunity to extract the elements of the right to education.

Professor Ernesto Schiefelbein centered his analysis on raising four proposals in order to understand the implications of discussing education. The first proposal was to not only talk about the content of education, but to pay more attention to its results. These results can show in a better way the level or lack of implementation of the right to education and the developments in this field.

Furthermore, Schiefelbein proposed in relation to the development of indicators to focus more on Tomaševski's table n° 2 on monitoring education by using human rights as a yardstick, than on table n° 3 concerning the 4A system (see *annex n°7*). Schiefelbein argued that the data in table n° 2 on monitoring can be better used to create and develop a system of indicators. Also, Schiefelbein discussed the case of special groups and proposed to pay more emphasis on the definition of the methods for special children. Finally, he agreed with others to develop the subject of sexual education and to integrate a social consensus in such education.

SESSION 5: ELABORATION OF A SYSTEM OF INDICATORS TO MEASURE THE NATIONAL IMPLEMENTATION OF THE RIGHT TO EDUCATION

The debate on the elaboration of a system of indicators started with presentations of the representative of the Colombian Ombudsperson's Office, Mr. Luis Eduardo Perez, and of the representatives of the Ombudspersons' Offices of Costa Rica, Mr Mario Viquez, and El Salvador, Mr Luis Enrique Salazar.

Luis Eduardo Perez presented the experience of Colombia concerning the elaboration of indicators for education. The presentation was exposed in a power point format (see *annex n° 12*).

Mario Viquez explained the system of indicators used by the Ombudsperson's Office in Costa Rica, which focuses more specifically on the child sector (see *annex n° 13*).

In fact, this system of indicators in this office serves to:

1. convert the norm to an indicator;
2. review the responsibilities (institutions, legal framework etc.);
3. supervise respect for and application of the rights.

This system does not focus on specific public policies on education or their implementation. It concerns the evaluation of the childhood starting with a list of all human rights that are involved. From this a new typology of indicators was developed on education, which includes now more than 200 indicators.

Luis Enrique Salazar presented a study on the right to education in El Salvador, which also contains data and information concerning the quality of education (see *annex n°14*).

SESSION 6: ELABORATION OF A COMMON METHODOLOGY

The experts proposed the following issues in order to analyze the factors that have to be considered to elaborate a common system of indicators.

- It should be understood who the actors are that are the subjects of the study.
- A common methodology should be defined to elaborate a list of indicators.
- It is useful to prepare a survey on the figures in relation to education, such as the numbers of boys and girls, what is their age etc., before speaking of the normative content of the right to education.
- Biased indicators should be avoided.
- Progressive obligations should be defined by creating a table of obligations.
- Every obligation should be followed by an indicator to measure its implementation.
- Indicators could hardly measure discrimination and it is difficult to find international mechanisms to provide relevant information.

<p style="text-align: center;">DAY 3 FRIDAY 18 JUNE NATIONAL LEGAL AND POLITICAL FRAMEWORK OF THE RIGHT TO EDUCATION</p>

SESSION 7: NATIONAL PUBLIC POLICIES IN THE FIELD OF EDUCATION

Professor Ernesto Schiefelbein – University of Santiago, Chile

Professor Schiefelbein made his presentation in the way of questions, asking the researchers about their personal approach and experience concerning the education sector in order to understand which are possible obstacles in developing the right to education. He started by asking the researchers which type of education they had received when they were young, how many pages they had to read per week or month at school, and which authors and books were the subject of their studies.

Then he focused on questions concerning their personal choice with regard to the best type of education for their children (private or public) and the reasons why most people prefer private education to public education in Latin America.

Schiefelbein concluded that even if in Latin America the education system seems to be developed in legal terms, the public policies have to be improved to take into account the Latin American culture and educational programs at school. In fact, a “good education” cannot be provided without the revision and the reconsideration of what kind of public policies Latin American countries need.

He concluded by stating that most children in Latin America are not “well educated” in primary or secondary education and that the design of public policies in this regard is one of the most important challenges for the future.

Professor Carlos Arcos – FLACSO, Latin American Faculty of Social Sciences, Ecuador

Professor Arcos analyzed the relation between law, education and public policies following the 4A system and the tables of indicators presented by Professor Tomaševski, using Ecuador as a case study (see *annex n°11*).

He explained that Ecuador is a plural-ethnic country, with 12 million habitants, which has experienced cycle crises as well as politic and institutional instability. Its democracy is not consolidated. Concerning human rights and especially the right to education, the constitution of Ecuador guarantees the right to education for all people, as well as gratuity and quality of education for children and young people. The constitution allocates 30% of the budget to education.

Professor Arcos presented the priorities of the educational policies in the period 1996-2000 concerning the availability, accessibility and quality of education, including an analysis of the percentage of the budget allocated to education, the expenses and the evolution of the GIP and its relation with the educational budget.

In relation to the availability, he outlined the educational system of Ecuador in the 80's. In this period, the educational budget and public investments did not reach important levels and the international commitments were not transformed into national policies. Furthermore there was an unevenness concerning the access to public resources. His main conclusion concerned the structural lack of resources for education, which reinforces the inequity in this field.

In relation to the accessibility, the main question is who does not have a real access to education and why inequity is increasing. The main answer was that certain social groups have been systematically excluded of the educational system, for example indigenous peoples. In this regard, universal policies are not sufficient to guarantee equal access to education. Specific policies and programmes are needed in order to benefit social groups, including direct transfers or grants. In addition, special emphasis has to be put on free education. Arcos presented data from the integrated system of social indicators of Ecuador (SIISE), which showed that the firm distinction between public and private education is disappearing. In fact, costs in public schools can easily reach private rates.

Considering the acceptability, Arcos showed the conditions concerning public basic services (water, electricity) in rural and urban schools in order to prove that, according to the National Education Statistics System (SINEC), a large percentage of rural and urban schools has no basic services (between 3% and 5% for urban schools and between 28% and 37% for rural schools). Another aspect concerns the educational materials and human resources. Texts used at schools sometimes present discriminatory elements and do not include a gender perspective. Teachers are often not trained.

In conclusion, Arcos proposed elements for building a system of indicators: they should be based on existing information, auto-sustained and simple. He found it also important to build alliances with partners that already possess the data and analyze and research these data based on indicators.

During the discussion the issue was raised concerning public policies and the different risk factors in the process of their construction. In fact, in a society as Ecuador, factors such as corporatism, clientelism, and patrimonialism, appear obstacles for the implementation of public policies. These problems can also be found in other Latin American countries.

Professor Christian Courtis – University of Buenos Aires, Argentina

Professor Courtis presented the different competences of the Ombudspersons and analyzed their actions in the field of education. He enumerated the following:

- Mediation
- Resolutions and recommendations
- Legitimacy for initiating processes
- Supervisory
- Legislative initiation
- Presentation of reports concerning human rights
- Investigation/Research

Starting with their competence concerning mediation, he explained that the institutions could easily channel the needs of civil society and act as a bridge to respond to their claims. Mediation is a classic competence. Concerning the presentation of resolutions and recommendations, depending on the kind of institution, (Ombudsperson, “public defender” “national commission” or “procurador”) different competences can be found: in general, Latin American Ombudspersons produce recommendations and give some advice concerning the human rights violations. Some offices can also intervene in the law process and present law projects in order to develop human rights and related public policies.

SESSION 8+9: WORKING GROUPS: NATIONAL LEGAL SYSTEMS WITH REGARD TO THE RIGHT TO EDUCATION

Two sub-regional working groups were established representing the Andean and Central American countries. The experts were divided over the two working groups: Katarina Tomaševski and Christian Courtis participated in the Andean working group and Fons Coomans, Carlos Arcos and Ernesto Schielfelbein participated in the Central American working group. The following topics were discussed:

- the national legal and political framework in relation to the right to education; short presentation by researchers of two sub-regions;
- specific cases on the right to education with regard to individuals or social groups;
- the role of Ombudspersons in the implementation of the right to education;
- the development of indicators on the right to education.

A list of questions was distributed to encourage the discussion. All researchers presented an outline of the situation in their respective countries for each topic and the experts raised questions in order to clarify the various aspects.

The conclusions of the Andean Countries were the following:

- The protection at the national level in almost all the Andean countries is mainly reflected in their legal framework. Some countries such as Ecuador and Venezuela have an extensive system of protection, others, such as Colombia, have a medium system of protection, while for example Peru has a low level of protection.
- Almost all the Andean countries have ratified and adopted instruments for the protection and promotion of the right to education
- Research is an important part of the work of the participants in the Ombudspersons' Offices.

The conclusions of the Central American Countries were the following

- Almost all the Central American countries have ratified all the international covenants and conventions concerning economic, social and cultural rights. However, differences exist between the various national systems because of the hierarchic position of those instruments in the national legal systems. International instruments may have the level of a constitutional law (Costa Rica, El Salvador), or ordinary law (Panama, Guatemala) and in a small majority they are hierarchically superior.
- Some of the countries have already included international standards in their national systems and have periodically revised them in order to bring them in line with international law. In other countries, contradictions remain in the legal system (Guatemala).
- Public policies in Central American countries are elaborated and put into action by different institutions working together, including the Ministry of Finance, Ministry of Education, Parliaments and Councils that are responsible for the budget, decisions, implementation and evaluation of the public policies. Ombudspersons' offices must work in cooperation with those institutions even if the collaboration is sometimes not easy and their competences can overlap.
- Public policies are not sufficiently defined in a human rights perspective.
- Some Ombudspersons' offices do not have legislative initiative.
- Some offices work mainly by following regional standards and not the international standards; the legal national framework does not integrate international standards and when it does, national institutions do not develop a constant revision of the texts in order to avoid any contradiction (Guatemala, Costa Rica).
- Some Central American Ombudspersons' offices do not have the competence to influence public policies. In other cases, where they do have such competence, the human rights framework remains in the legal framework and is not followed by policies (El Salvador).
- The budget is limited, which restricts an effective action in the field.

It could be concluded that most of the countries and Ombudspersons' Offices do not use indicators in their work. The countries that do have a system of indicators

follow their own national standards or a system of indicators concerning a special right. For example, Costa Rica has a system of indicators that has been developed by the Ombudspersons' office only used in the child sector. It was argued that a common system of indicators is necessary in order to advance in the promotion of human rights.

LIST OF ANNEXES

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3. Introduction by the Ombudsperson of Ecuador, Mr. Claudio Mueckay Arcos
4. Introduction by the Director of the UNESCO Office Quito, Mr. Gustavo López Ospina
5. List of international and regional legal instruments containing the right to education
6. Contribution of Professor Fons Coomans
7. Contribution of Professor Katarina Tomaševski
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12. Presentation of Mr. Luis Eduardo Perez (Colombia)
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15. Presentation of the website of the Network