

“School Without Party Programme” – *Programa Escola Sem Partido*: denouncements at multiple levels of analysis

Vannessa Alves Carneiro

Abstract: This article discusses the “School Without Party Programme” – *Programa Escola Sem Partido* (ESP), and to investigate how it has been critiqued at multiple scales (global, regional and local). My main interests are: 1. To delineate normative perspectives on Human Rights, its vernacularization, and international mobilization and litigation processes; 2. To characterize the ESP Movement/Programme and its context, and to analyze the denouncements against its claims; 3. To discuss the Special Report of the United Nations and the Brazil’s reply; and 4. To raise some of the Brazilian contradictions under the education scenario, focused on the “National Common Curricular Base” (BNCC), and to portray some considerations. As Human Rights law is a complex and contradictory force, mobilizing HR requires translators and receptivity at a national/local level. However, Brazilian Executive branch is full of internal contradictions, such as the exclusion of essential terms connected to vulnerable groups from the BNCC.

Keywords: human rights education; international mobilization and litigation; School Without Party Programme; vernacularization process.

Introduction

Inspired by MacDowell’s open seminar “Human rights against human rights” (Santos, 2018), as a researcher of human rights education (HRE), I felt instigated to understand better the “School Without Party Programme” – *Programa Escola Sem Partido* (ESP), created in 2004 by the Brazilian reactionary ESP Movement (ESP, 2019).

Bearing this in mind, I investigated the mobilization and litigation processes of denouncements against its diverse claims of teachers “ideological indoctrination”, “abuse of the freedom to teach”, students’ vulnerability and “parent’s rights”, which uses the Human Rights (HR) discourse and language to promote censorship in education. Still, undermining HR guarantees, violations proliferate not only through reactionary

movements and in the Brazilian Legislative field, but also in the Executive branch, using the claims of “neutrality” and struggle against “gender ideology” and sexuality.

This article has a qualitative and a quantitative approach, based on secondary documentation sources (bibliographic research). My argument is divided into five parts: 1. Introduction; 2. Normative perspectives on HR (vernacularization, mobilization and litigation); 3. The ESP Program; 4. The Special Report of the United Nations and Brazil’s reply; and 5. The Brazilian contradictions in context and final considerations.

Normative perspectives on Human Rights, its vernacularization, and international mobilization and litigation processes

Mobilizing HR and measuring the impact on the ground that its international treaties had on the countries that ratified them is a challenging task. Some authors, searching for “obvious effects”, adopt naïve and simplistic positions, arguing that “no state had a real interest in enforcing human rights within the jurisdiction of other states” (Simmons, 2012, p. 733). Others argue that not only is international HR being forced to spread, but also to Constitutionalize itself “with a capital C”, in a sense that “there is a convergence, both in the popular-culture sense, as well as in the institutional texts and constitutions, and the practice of constitutional courts” (Rajagopal, 2009, p. 60).

In this scenario, if HR treaties’ ratification and implementation depend on each country’s political regime – and, of course, the mobilization of local stakeholders –, the general viewpoint is that “mobilization and, hence, political demands are unlikely to be operative in either stable democracies (where there is no motive) or stable autocracies (where there is no means to influence the regime by political or social mobilization)” (Simmons, 2012, p. 734). However, what is a “stable democracy”, and why are some countries, which have particular political regimes, more able to deal with an HR agenda than others? This later statement does not address the complexity of the international scenario and creates hierarchies and invisibilities as if democracies are incapable of having HR deviations. Does stability in democracies mean there are no HR violations

because of its greater level of mobilization and “audience cost”¹? And more, does the proliferation of legal initiatives and regimes directly alleviate HR violations?

Rajagopal (2009, p. 56) advocates that we should recognize international HR as a language of power and a “terrain of contestation”. For this reason, “the over-legalizing of human rights”, many times, can ignore its “moral and political dimensions” (Rajagopal, 2009, p. 61). Kapur (2006, p. 104) similarly argues that power and knowledge are dispersed and deployed through HR law, which represents one of the many discourses (particularly authoritative and not homogenous) *in* and *through* which subjects are constituted. This makes HR an “ambivalent” issue, where “law cannot be posited simply as an instrument of social engineering nor of liberation, but it must be understood as a complex and contradictory force” (Kapur, 2006, p. 102).

Efforts to legalize HR are mostly made through a “cascade effect” – when states “implement the norm in similar ways in a relatively short time span” (Friedman, 2009, p. 363) – and/or “regional influence” (Simmons, 2012, p. 736), which helps make the majority of countries ratify HR conventions. However, “there is no automatic institutionalization” of the formal rights and the actual status of disadvantage groups at the national level. Usually, “national contexts mediate norm translation in ways that subvert, as well as uphold, regional understandings” (Friedman, 2009, p. 351).

To impact on the ground, legal initiatives have to pass through a vernacularization process. Merry (2013, p. 38) says that “community leaders, nongovernmental organization participants, and social movements... play a critical role in translating ideas from the global arena down and from local arenas up”. Hence, this top-down process, in which HR language is extracted from the universal and adapted to local levels, has “the people in the middle” as “a key dimension” to “translate the discourses and practices from the arena of international law and legal institutions to specific situations of suffering and violation” (Merry, 2013, p. 39) – making it also a bottom-up process.

Nevertheless, this adaptation and translation process makes translators vulnerable to manipulation and subversion, mainly by states, and is not always successful, considering they negotiate fields of power and opportunity (Merry, 2013, p. 40-42). Especially in Non-Governmental Organizations (NGOs), the HR discourse can “spread”

¹ The audience cost is “a mechanism for holding governments accountable for their promises” (Simmons, 2012, p. 737).

through replication, set on an unchanged and a superficial adaptation, or hybridized, a process that merges global with local discourse. Conversely, the same compatibility, or “resonance”, to local cultural contexts and systems, can allow both a greater legitimacy or restrain the production of a “long-term change” (Merry, 2013, p. 44).

Besides NGOs, other essential translators are social movements. As Tsutsui et al. (2012, p. 367) point out, NGOs “have played critical roles both in elevating the standards of human rights in international law and in leveraging these standards into better local practices.” Moreover, they can “push for more international efforts to advance human rights principles” by pressure and lobbying (Tsutsui et al., 2012, p. 368).

From my view, HR normative perspectives, based on law and legal strategies, are not an “exclusive language” of struggle, being easily decontextualized and deradicalized. However, vernacularizing rights can be a source of resistance if perform a “connection between individual and collective rights by reconstructing the memories of grievances and demanding collective reparations” (Castillo, 2016, p. 163) and struggles to “break silence” of the subjects who are considered “victims” (Castillo, 2016, p. 165). With this, litigation can be “a space of dispute in which cultural references power relations among all actors that take part in this legal “performance” are revealed” (Castillo, 2016, p. 173).

Next, I will characterize ESP Movement/Programme and analyze the denouncements against its claims through scales (a multiscalar analysis) – that is, around the diverse fields of the international arena (as the global, regional and local level).

“School Without Party Programme” – *Programa Escola Sem Partido (ESP)*

A brief context

Launched in 2004, ESP was inspired by the “No Indoctrination” movement in the USA, with the motto “a little sunlight is the best disinfectant” (ESP, 2019). Its initial proposal was to place a poster in classrooms and make teachers obey the following²:

Teacher duties [rules]: 1. will not take advantage of the **students' captive audience** to promote their interests, opinions, conceptions or preferences, ideological, religious, moral, political and partisan; 2. will not favor or prejudice or constrain students because of their political, ideological,

² In 2019, the ESP “updated its proposal” to a “2.0 version”. As one of its additions, it defends the ‘right’ to record classes for parental monitoring and evaluation, and prohibits student councils from “promoting partisan political activity” (ESP, 2019).

moral or religious convictions, or the lack of them; 3. will not make political-party propaganda in classroom nor incite its students to participate in manifestations, public acts, and marches; 4. when dealing with political, socio-cultural and economic issues, will present to students, **in a fair manner**, the main versions, theories, opinions and competing perspectives about the subject; 5. will respect the parent's rights to have their children receive moral and religious education that is in accordance with their convictions (ESP, 2019, my translation, my highlight).

Supposedly designed to "inform and raise students' awareness about their rights", and against the "abuse of the freedom to teach", the ESP tries to support its arguments based on the Brazil Federal Constitution (1988), and the American Convention on HR (1969). The project claims, among others, that education has to be based on "dignity of the human person", "freedom", "neutrality" (fairness), "pluralism of ideas and pedagogical conceptions", "integral protection of children and adolescents", students' vulnerability (captive audience) and "parent's rights" (ESP, 2019).

The movement proclaims itself as "100% without party" (ESP, 2019). The platform, however, is based on a masked political (partisan) position, against the Brazilian Workers Party (PT) and Teachers' Unions, who ESP advocates accuse of being "the main beneficiaries of a political profit generated by the current teaching practice". The ESP highlights that "teachers do not enjoy the freedom of speech in the classroom", while using its website to stimulate forwarding denunciations against teachers³.

As Kapur (2006, p. 111) underlines, law can be easily appropriated and decontextualize by "powerful groups" and "reactionary movements". Following Santos's (2018) categories, disputing HR language/narrative, the ESP Movement can be both: a "camouflaged reactionary policy" (that uses the liberal discourse against HR) and/or a "fascist policy" (that uses the discourse against HR and/or pro HR, depending on political opportunity). To mobilize the Brazilian Legislative around HR messy interpretations and claims, the ESP uploaded to its website templates of bills/Projects of Law (PLs) related to its proposals at municipal, state and federal levels (ESP, 2019).

Opposing this, Brazilian teachers created *Professores Contra a Escola Sem Partido* (PCESP) – "Teachers Against School Without Party", a movement looking to inform and

³ In Brazil, there are currently more than 107 municipal and state bills (PLs) related to the ESP Movement, with 23 already approved. At the federal level, there is one bill in the National Congress and 14 bills in the Chamber of Deputies – including PL 7,180/ 14, joined by PL 867/15, in process at the time of writing (PESQUISANDO O ESP, 2019).

produce critical analysis and reflections of ESP⁴. It functions as a Transnational Advocacy Network (TAN) to publicize events, share information about local projects, and to open a channel among all those who have already suffered some persecution, censorship or retaliation (PCESP, 2019). Underpinned by international HR treaties and Brazilian laws, the PCESP defended the guarantee of teaching gender at school and racial diversity issues⁵. PCESP also contests the legislative process, presenting documents about the unconstitutionality of ESP bills, as well as “repudiation notes” (PCESP, 2019).

The next subtopic addresses how denouncements of ESP to mobilize varying scales (global, regional and local) through diverse claims.

The international denouncements (global, regional and local level)

On July 15th, 2016, the Brazilian NGO *Instituto de Desenvolvimento e Direitos Humanos* (IDDH), submitted a report to the United Nations (UN) entitled “Violation of rights to education and freedom of expression in Brazil due to “School Without Party Programme in Brazil” (IDDH, 2016). This was an attempt to mobilize at a global level against the ESP, which applied the “pincer pressure” and invoked the “boomerang effect” (Friedman, 2009, pp. 352-353) against their home state of Brazil.

The report contextualized the Brazilian Dictatorship Regime and how it promoted a technical approach to education “with clear instructions about the prohibition of presenting critical view”. It further emphasized that freedom (to learn, teach, research, and of thought and expression), the pluralism of ideas, and other concepts were only re-established during redemocratization (IDDH, 2016, pp. 1-2).

However, the report argues that recently “a conservative wave has been growing and, consequently, impact on education. . . [the ESP] stating that it is necessary to control the practice of teaching, preventing teachers to “indoctrinate” and “instrumentalize” the education for ideological purposes” (IDDH, 2016, p. 2). As a result, it indicates the possibility of “gender discussions will be left out”, and challenges the program’s myth of neutrality, as no one “is free of ideologies” (IDDH, 2016, p. 3).

⁴ The PCESP is organized through websites such as: <https://profscontraoesp.org/>; <https://pesquisandoesp.wordpress.com/>; and <https://www.facebook.com/contraoescolasempartido/>.

⁵ Based on the following: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; Convention of Belém do Pará, 1994; Convention of Beijing, 1995; Incheon Declaration, 2015; and Brazilian Laws 10,639/03 and 11,645/08 (PCESP, 2019).

At the same time, since 2016, another mobilization has focused on the regional level, struggling against the ESP in the Organization of American States (OAS). On May 22nd to 27th 2017, HR activists and organizations, including TANS, grassroots and social movements and specialized NGOs – mostly made up by women and LGBTI people –, coordinated themselves to seek an advisory opinion from the Inter-American Court (LGBTI, A. N. et al. 2017), with the objective of “encounter allies” and “solidarity networks” to achieve reparation for their communities (Castillo, 2016, pp. 170-188).

Petitioners tried to incite the Inter-American Commission on Human Rights (IACHR)’s Thematic Rapporteurships – “a newer mechanism under the judicial arm of the OAS [which] has its own resources for targeting rights violations, and is also open to civil society representatives” (Friedman, 2009, p. 358). The logic was to demand a final Brazil position about the ESP Programme. They thus wrote a document collectively, sent their complaints and were heard by the IACHR (LGBTI, A. N. et al., 2017).

The organizations demonstrated their concern with many educational issues, especially with the “new” “National Common Curricular Base” – *Base Nacional Comum Curricular* (BNCC)⁶, the mandatory reference for the elaboration of Brazilian curricula and pedagogical proposals. In addition, they raised awareness about HR violations, including the imminent violation of education, freedom to learn and seek knowledge, the right to education of the LGBTI population and gender discrimination, and “the out-of-court notifications sent to professors” (LGBTI A. N. et al., 2017, pp. 25-53).

Apart from the OAS denouncement, in the local level a Public Hearing of the Special Committee, in the Brazilian Chamber of Deputies, was held on October 25th, 2017, to give its opinion on an ESP bill (PL 7,180/14) and “the persecution that teachers have been suffering by members of the ESP” (Brazil, 2017a, pp. 1-2). The Chamber invited five professors, from different states, to heard their narratives and denounces.

Against this backdrop, I now discuss the Special Report of the UN and the Brazilian Government’s reply.

⁶ The BNCC documents were under discussion since 2014., The Primary Education version was published in December 2017 and the Secondary School version in December 2018.

The Special Report of the United Nations and Brazil's reply

Induced by the IDDH report, on April 13th, 2017, the UN forwarded a special report to the Brazilian Government concerned with the possible restriction of the right to freedom of expression in Brazil (UN, 2017, pp. 1-3). It reads:

On 14th March 2017, the Executive of Secretary of the Ministry of Education confirmed in a meeting with religious groups that “gender ideologies”⁷ would not be included in school curriculum. . . On 6th April 2017, the term “sexual orientation” was taken out in the text of the school curriculum.

Supported by the International Covenant on Civil and Political Rights (ICCPR), 1992, the report emphasized “the right to maintain an opinion without interference” and “the right of freedom of expression of teachers and educators” provided by law, respecting “proportionality”. It also critiqued the conceptual definitions and “vague and broad language” of the PL 867/15, arguing that it “does not provide any further definition of these general principles” (UN, 2017, pp. 3-4).

The organization recalled problematic points: “the broad interpretation and application” of the bills, as the conception of “political and ideological indoctrination”; the reproduction of the domestic environment in the school, “rather than an educational institution that provides new insights”; the possibility that “any educational practices can be condemned”; the precluding of “critical thought” and “the discussion of topics that can be considered as controversial and sensitive” causing censorship; and “the exclusion of sexual orientation from the school curriculum” (UN, 2017, pp. 4-7).

Additionally, the bill’s broadness “opens up for arbitrariness” its enforcement and that the provisions above violate Article 19 (1 and 3) of the ICCPR. Finally, in contrast to ESP’s assertion of the “parent’s rights to have their children receive moral education that is in accordance with their convictions”, the report clearly argued that “the teaching profession is to instruct fully to learn about the world in many different ways: some of which they, their parents might disagree with” (UN, 2017, pp. 6-7).

The UN gave the Brazilian Government 60 days to respond to the report, asking “to take all steps necessary to conduct a comprehensive review” of the bills and provide

⁷The “gender ideology” is a conservative and political expression, generally used by Christian religious groups, in order to safeguard “Christian values”, and against reforms that benefit women and LGBTI people. Vindicating, still, the “traditional model of family”, and the misrepresenting of the man and woman traditional concepts and rules (Luna, 2015).

“empirical evidence or statistically” show that the ESP is necessary. It suggested that “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” (UN, 2017, p. 8).

In this “ping-pong” relationship between international and national levels (Friedman, 2009, p. 352), on June 12th, 2017, the Brazilian Government responded, through a report, without providing the required data, that “the Ministry of Education [by that time] has issued an official note against the [ESP] Programme, in . . . the National Congress” affirming that these bills are “incompatible with the spirit and the object of the Law of Directives and Bases of National Education” (Brazil, 2017b, pp. 3-4). It also pointed out that the Judiciary considered the ESP bills proposals unconstitutional and filed an injunction, in March of 2017, suspending the effects of approved ESP municipal laws. In addition, defended the BNCC with a general (rather than intersectional or critical HR) approach, arguing that its contents were “fully addressed” by themes of “diversity, plurality and gender” as abilities/skills (Brazil, 2017b, pp. 4-5). The problem is that they are not compulsory contents like thematic units and objectives of knowledge.

That means, in the negotiation field of power and political interests, the Brazilian Executive branch used the same oppressive argumentation, denounced through scales, based on “neutrality” around BNCC. Adding suppression of speech – due to the exclusion of essential terms connected to vulnerable groups (such as gender, sexual diversity, and sexuality – completely removed from the BNCC), being against UN recommendations and using Human Rights language against Human Rights itself.

To conclude, I will highlight some of the contradictions of the current complex Brazilian education context to portray my final considerations.

The Brazilian contradictions in context and final considerations

In this article, I argued that although democracies are grounded in “the due process of law” and attached to the HR discourse, this does not mean there are no HR violations. As Simmons (2012, pp. 747-748) argues, the adoption of a norm does not necessarily increase the probability of its enforcement, and as Kapur (2006, p. 106) reflects, the proliferation of legal initiatives may attest only to the expansion of the legal regime.

Even though Brazil is considered a “stable democracy” since redemocratization, it is currently full of internal contradictions, such as excluded essential terms from the BNCC. It is thus not better able to implement a HR agenda than other countries with different political regimes (independently of its mobilization, audience cost or HR legal initiatives).

Although most countries are considered “sincere ratifiers” (Simmons, 2012, pp. 741-742), it is not enough to ratify HR international norms. It is essential to consider the national decision makers, because “regimes are far from static. A change of executive can open doors and shift understandings” (Friedman, 2009, p. 371). In the Brazilian case, particularly regarding legislative change, “the importance of national contexts and their interaction with regional [HR] organizations is evident” (Friedman, 2009, p. 366). It is essential for movements, mobilizing for HR processes, to find “receptivity in the Executive branch” at a national and local level (Friedman, 2009, p. 367).

HR violations proliferate not only through reactionary movements (as the ESP), conservative positions in civil society, and in Brazilian Legislatures (in the 107 projects connected to ESP bills), but similarly in the Executive branch with the exclusion of gender and sexuality issues from the BNCC, and reinforcing religious content.

The claims of “neutrality” and struggle against “gender ideology” and sexuality undermine human rights guarantees of reducing violence, prejudice and stigma against women and LGBT people, and against the flourishing of a democratic environment in schools. The “School Without Party” Programme is in fact a “School of a Single Party” Programme, set on a conservative (not-neutral), religious agenda.

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