

---

# The Right to Education: A Multi-Faceted Strategy for Litigating before the Inter-American Commission on Human Rights

by *Marselha Gonçalves Margerin*\*

---

## INTRODUCTION

Education is a fundamental human right, which “functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated.”<sup>1</sup> Although international law mandates that states provide free access to education for all,<sup>2</sup> this obligation is rarely fulfilled. While state constitutions and membership in the Organization of American States (OAS) require that states guarantee the right to education,<sup>3</sup> the majority of Afro-descendants and indigenous peoples in the Americas have little or no access to adequate primary, secondary, or tertiary education. Further, facing centuries of entrenched structural discrimination, very few of these peoples enjoy access to higher education.<sup>4</sup>

This article seeks to answer the following questions: (1) How does one file a petition based on a violation of his or her right to education in the Inter-American system? (2) Why would one file such a petition? (3) In filing a right-to-education petition, what strategies does one employ? (4) Which claim or set of claims will be admissible and do the most to advance grassroots leaders’ causes? Many practitioners and advocates believe that in order to be successful, international human rights litigation must be guided by grassroots’ partners to advance the fulfillment of the right to education in their communities.<sup>5</sup> Scholars Cavallaro and Schaffer concur that “successful promotion of economic, social, and cultural rights in the Inter-American system should be incremental, firmly grounded in established precedent, and always linked to vigorous social movements and effective advocacy strategies.”<sup>6</sup>

This article will offer a case study as one basis for examples, analysis, and recommendations expressed herein. Then, it will outline advocacy and litigation strategies for improving the fulfillment of the right to education in the Americas from the author’s perspective as an advocate and practitioner working for the past ten years directly or indirectly with the Inter-American human rights system and for the past four years as head of international human rights strategic litigation for the Right to Education Program at the Robert F. Kennedy Center for Justice and Human Rights (RFK Center).<sup>7</sup> In particular, it will outline the efforts to prepare for a thematic hearing on the right to education in three OAS Member States, Guatemala, Colombia,

and the Dominican Republic, and steps to employ the individual petition mechanism of the Inter-American Commission on Human Rights (IACHR).

The RFK Center works in partnership with the human rights defenders who have received its annual Robert F. Kennedy Award Laureates, these defenders are grassroots leaders and experts on the ground, who are each in the midst of their own social justice struggle and guide the Center’s human rights advocacy work.<sup>8</sup> By 2007, laureates from Guatemala, Colombia, and the Dominican Republic identified similar problems within their respective educational systems that impede equal access to education for all, without discrimination. Human rights defenders Amilcar Mendez Urizar<sup>9</sup> from Guatemala, Berenice Celeyta<sup>10</sup> from Colombia, and Sonia Pierre<sup>11</sup> from the Dominican Republic, have repeatedly stressed the challenges that minorities face in exercising their right to education. According to these three laureates, denial of the right to education functions as an underlying cause of other human rights violations suffered by these communities and prevents their development. In order to facilitate cooperation among them and address their concerns, the RFK Center launched its Right to Education Program.<sup>12</sup> The Program began with an RFK Center report on the challenges that Afro-descendants and indigenous peoples face in realizing their right to education in Colombia, Guatemala, and the Dominican Republic.<sup>13</sup>

The report, written with the assistance of Cornell University and University of Virginia (UVA) Law Schools’ human rights clinics, documented and analyzed testimony gathered by RFK Center laureates and partners in the Dominican Republic, Colombia, and Guatemala as case studies to assess the state of right to education in the Americas.<sup>14</sup> It highlighted how structural discrimination often deprives children of Afro-descendants, indigenous and ethnic minorities, and especially migrant workers and internally displaced people, of even the most basic education.<sup>15</sup> The report found these countries were not only ignoring the fundamental rights of these children but also violating international human rights to non-discrimination and equality.<sup>16</sup>

The report was prepared for a thematic hearing before the IACHR in March 2008, and subsequently submitted to the Durban Review Preparatory Conference, the OAS Special Session of the Working Group to Prepare a Draft Inter-American Convention against Racism and All forms of Discrimination and Intolerance, and the UN Forum on Minorities and the Right to Education. The report also served as an educational and advocacy tool and as preparation to evaluate the possibility of filing an individual petition before the Inter-American Commission on Human Rights.

---

\* *Marselha Gonçalves Margerin is an advocacy director at the Robert F. Kennedy Center for Justice and Human Rights. She holds an M.A. in Peace and Conflict Resolution from American University School of International Service and an LL.B from Universidade Federal de Uberlândia, Brazil. The author would like to acknowledge the invaluable collaboration of Fernanda Katz Ellenberg and Jocelyn Getgen in writing this article.*

---

# Access to quality, pertinent, and culturally sensitive education is a right integral to societal development. Minority populations face particular obstacles in attaining quality education due to structural discrimination inherited from the legacies of colonization, slavery, and inequality; language and cultural barriers; and geographic isolation.

---

As a result of this research, listening to grassroots partners' needs<sup>17</sup> and harnessing their willingness to use litigation as a tool in advocacy efforts for the right to education, the author devised a multi-faceted, long-term strategy,<sup>18</sup> divided generally into three phases. During phase one, the team conducted research and on-the-ground fact-gathering missions to define the problems faced in Guatemala, Colombia, and the Dominican Republic. Phase two included education, outreach, and advocacy efforts, during which advocates educated future parties to litigation and other national and international actors on the right-to-education problems partner communities face. In the third and final phase, advocates identified and assessed the feasibility of a claim on the right to education and determined how to present it in an appropriate manner to the IACHR. Bearing in mind that the author considers these three phases to be an integral part of human rights strategic litigation before the Commission, this article will discuss only the steps leading up to the presentation of an individual petition.<sup>19</sup>

Currently, the RFK Center and its aforementioned laureates and partners are assessing the feasibility of filing a claim before the Inter-American Commission on Human Rights.<sup>20</sup> Of the three countries and several potential claims considered, the author chose one, Colombia, and two groups, internally displaced Afro-Colombians and indigenous peoples in the Cauca region of Colombia, as didactic examples of potential claims.

## THE RIGHT TO EDUCATION IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

As an initial matter, it is crucial to understand the nature of the right to education and debates over its justiciability. Access to quality, pertinent, and culturally sensitive education is a right integral to societal development. Minority populations face particular obstacles in attaining quality education due to structural discrimination inherited from the legacies of colonization, slavery, and inequality; language and cultural barriers; and geographic isolation.<sup>21</sup>

## JUSTICIABILITY OF THE RIGHT TO EDUCATION

The OAS has a significant body of treaties calling on Member States to promote, protect, and fulfill the right to education for all without discrimination. In addition to the obligations stemming from the American Declaration on the Rights and Duties of Man (American Declaration),<sup>22</sup> Article 26 of the American Convention on Human Rights (American Convention) requires that States Parties take steps to progressively achieve the full realization of the right to education.<sup>23</sup> In connection, Article 1 of the American Convention establishes state obligations to respect rights enshrined in the Convention without discrimination.<sup>24</sup> Furthermore, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) explicitly recognizes a universal right to education (Article 13),<sup>25</sup> and the right of every child to free and compulsory primary education (Article 16),<sup>26</sup> free from discrimination (Article 3).<sup>27</sup> Article 13 of the Inter-American Democratic Charter resolves that “[t]he promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the hemisphere.”<sup>28</sup>

All human rights are interrelated, interdependent, and indivisible. Although this principal has been enshrined since the Universal Declaration of Human Rights,<sup>29</sup> the applicability and justiciability of economic, social, and cultural (ESC) rights have only recently begun to develop. Because of historically differential treatment of civil and political rights and economic, social, and cultural rights, Cavallaro and Schaffer believe that a “successful way of advancing social justice agendas” before the Inter-American system is to “focus on ESC elements in civil and political rights, progressive interpretations consistent with [A]rticle 29 of the American Convention, the non-discrimination principle and the economic and social rights for which access to the Commission and the Court is recognized in the San Salvador Protocol.”<sup>30</sup>

Article 26 of the American Convention obligates OAS Member States to fulfill the right to education both immediately and progressively.<sup>31</sup> States' immediate obligations are to provide

free compulsory primary education without discrimination on any basis<sup>32</sup> and to ensure that all persons within their jurisdictions receive equal protection under the law.<sup>33</sup> The IACHR has specifically addressed the immediate obligation to take steps to ensure the progressive realization of the rights protected by Article 26 of the American Convention.<sup>34</sup> Article 13 of the Protocol of San Salvador protects the right to education and, in particular, Article 13(3)(a) calls on State Parties to ensure that primary education is “compulsory and accessible to all without cost.”<sup>35</sup> Article 19(6) of the Protocol of San Salvador specifically grants the Commission and the Court subject matter jurisdiction for petitions alleging violations of two provisions of the Protocol, including Article 13 (Right to Education).<sup>36</sup>

#### PROGRESSIVE REALIZATION AND MEASURING COMPLIANCE

Without entering into a lengthy discussion, it is worth noting that because ESC rights are intended to be progressively realized, scholars, advocates, and practitioners disagree on the effectiveness of directly using Article 26 of the American Convention in litigating petitions involving violations of these rights. In discussing the justiciability of ESC rights, Cavallaro and Schaffer affirm that Article 26 “has proven ineffectual as a basis for individual claims,” as it “fails to establish any specific rights or concrete duties.” Cavallaro and Schaffer go on to say that the limitation of this “principle has been affirmed by the Inter-American Court” in the case of *Five Pensioners v. Peru*.<sup>37</sup> On the other hand, in Tara Melish’s interpretation of the same *Five Pensioners* case, the Court recognized that the individual dimension of ESC rights are of a “justiciable nature,” but their collective dimension covered under Article 26 is not.<sup>38</sup> Melish goes on to stress that the Court has recognized the individual dimension of Article 26 in four other cases.<sup>39</sup> Advocates are divided between the two interpretations provided here. The author believes that such uncertainty might serve as a deterrent to potential petitions involving ESC rights before the Inter-American system.

Scholars and advocates argue that one of the main obstacles to justiciability of ESC rights is the difficulty of measuring compliance with the Article 26 concept of progressive realization. This concept permits States Parties to fulfill the right incrementally over time, without deliberately halting progress or regressing.<sup>40</sup> However, it should be emphasized that States Parties have an obligation to immediately realize other aspects of the right to education, including free primary education for all and the rights to non-discrimination and equality in education.<sup>41</sup>

One natural solution to the justiciability problem may be the increasing use of human rights indicators for ESC rights. Human rights indicators, as defined by the United Nations,<sup>42</sup> provide “specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights.”<sup>43</sup> Kalanry, Getgen, and Koh explain that “a human rights indicator is essentially a proxy for determining the level of fulfillment of human rights’ obligations” and that the utilization of human rights indicators is a promising solution to the problem of determining the required level of fulfillment of human rights’ obligations.<sup>44</sup> The author

foresees that with advocates’, practitioners’, and governments’ increased use of ESC rights indicators, measuring the progressive realization of ESC rights and litigating claims for their violation might become simpler and more frequent.

#### CASE STUDY: COLOMBIA

As Colombia has ratified the Protocol of San Salvador<sup>45</sup> and its civil society is well organized and well positioned to claim their rights in international fora, the author has chosen Colombia and some of its civil society groups as a case study. Colombia’s Inter-American obligations with regard to the fulfillment of the right to education of Afro-Colombians and indigenous peoples include: its obligation to provide free primary education for all under Articles 13 and 16 of the Protocol of San Salvador;<sup>46</sup> and its obligation to provide education without discrimination and equal protection under Articles 1, 19, and 24 of the American Convention, Article 3 of the Protocol of San Salvador, and Articles 4 and 6 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará).<sup>47</sup> Furthermore, Colombia is obligated to progressively realize secondary and higher education rights under Articles 19 and 26 of the American Convention, Article 13 of the Protocol of San Salvador, and Article 8 of the Convention of Belém do Pará.<sup>48</sup>



By Lindsay Strauss.

Attendees of the Conference on the Right to Education of Minorities in Cali, Colombia, September 2009.

#### INTERNALLY DISPLACED AFRO-COLOMBIANS

The violent internal conflict in Colombia has had a devastating impact on the education of minorities. The Office of the United Nations High Commissioner on Refugees also states that Afro-Colombians and indigenous peoples are disproportionately affected by displacement.<sup>49</sup> The Colombia-based NGO Consultancy for Human Rights and Displacement (CODHES) estimates that as many as 4.9 million persons have been displaced since 1985, while the Colombian government’s official figures register a total of 3.3 million internally displaced persons (IDPs) since 1995.<sup>50</sup> CODHES estimates that 83 percent of mass displacements during the year 2009 involved Afro-Colombian communities and indigenous peoples.<sup>51</sup>

Afro-Colombians and indigenous peoples have been massacred, killed, and displaced from their collective and ancestral

lands by paramilitary activities or violence linked to large-scale development projects and other violations of human rights and humanitarian law. Over sixty percent of Afro-Colombians who possess legal titles to their lands are now internally displaced, and many live in extreme poverty as a result of conflict.<sup>52</sup> Displacement naturally disrupts education and, in Colombia, members of minority groups are among the poorest citizens and those with the least access to education.<sup>53</sup> The U.S. State Department 2009 Human Rights Report on Colombia noted, “Despite several government initiatives to enhance IDP access to services and knowledge of their rights and notable improvements in meeting their social and economic needs, many IDPs continued to live in unhygienic conditions with limited access to health care, education, or employment.”<sup>54</sup>

The Black Community Law, known as Law 70,<sup>55</sup> was intended to give Afro-Colombian communities increased autonomy and control over fifteen million acres of land, an estimated five percent of Colombia’s territory.<sup>56</sup> Afro-Colombian land is often of strategic interest to Colombia’s paramilitary groups and multinationals due to its wealth in natural resources. Paradoxically, a law that was enacted to protect Afro-Colombians, and that was not fully implemented for lack of consultation,<sup>57</sup> might be one of the reasons behind their displacement.<sup>58</sup>

As statistics and interviews with Afro-Colombians demonstrate,<sup>59</sup> violence in their communities forces them to focus their efforts on ending brutal attacks on community leaders and forced displacement from their lands. As a result, the Afro-Colombian grassroots leaders interviewed would be better served if petitions were filed on their behalf focusing on the right to life. In this case, a right to education claim brought in isolation without addressing primarily right to life violations will be unlikely to fulfill the needs of the community or be successful within the system.

#### INDIGENOUS PEOPLES IN THE CAUCA REGION OF COLOMBIA

Indigenous peoples in Colombia are amongst the most vulnerable to displacement and are victims of brutal massacres<sup>60</sup> and even extinction.<sup>61</sup> However, they are a fairly organized and a united social movement, which gives them and their advocates an edge in assessing their priorities and advocating on their own behalf.<sup>62</sup>

The Colombian General Educational Law defines and clarifies state duties to adapt educational services by providing for ethno-education.<sup>63</sup> Ethno-education is defined as education for ethnic groups or communities that have their own indigenous cultures, languages, and traditions.<sup>64</sup> The basic principles and objectives of ethno-education are to link education to the respect and protection of the environment, linguistic diversity, and community practices and beliefs.<sup>65</sup> The Colombian Constitutional Court’s case law recognizes the value of education that aims to preserve culture and requires that the state respect ethnic and cultural identity and development through its educational system.<sup>66</sup>

A central challenge for Colombia’s public school system is the government’s failure to implement this mandate and fulfill indigenous peoples’ right to manage their own education. As constitutional protections have expanded to include a more diverse population, the public education system has yet to empower ethnic groups to educate their children based on their own cultures. Indigenous leaders offer many reasons why the



By Jocelyn Getgen.

Marselha Gonçalves Margerin at a thematic hearing on the right to education in Guatemala, Colombia, and the Dominican Republic.

Colombian government has failed to provide ethno-education to minority communities. Some note a lack of diversity among teachers themselves, so that students are not learning from teachers who understand diverse backgrounds.<sup>67</sup> According to leaders of the Regional Indigenous Committee of Cauca (CRIC), there is no autonomous education in Colombia and the issue of ethno-education is “much more complex than just managing texts.” For CRIC, the problem is the existence of a “standardized” system that does not “meet the needs” of indigenous peoples.

Until 2007, CRIC advocated for a publicly funded indigenous university that would be managed with political, pedagogic, and administrative components designed for indigenous students.<sup>68</sup> However, the Ministry of Education expressed that “an indigenous university would need to meet basic Colombian curricular requirements in order to receive public funding” and could not be based on indigenous peoples concerns or be restricted to education solely in indigenous languages.<sup>69</sup> In 2009, the spokesperson for the Association of Indigenous Reservations of North of Cauca (ACIN) articulated that the true expression of indigenous peoples’ right to ethno-education as guaranteed by national legislation would be allowing them to administer their own system, completely separate from the mainstream, Eurocentric Colombian educational system.<sup>70</sup>

Amongst several probable cases the author and research partners encountered during the fieldwork, the author chose the above cases as didactic examples of potential petitions that could be part of a feasibility study to select one to be brought before the IACHR.

#### PRACTICE POINTERS: BUILDING A CASE

The phases described below are based on the above case study and attempt to detail each step of preparing for strategic international litigation, aiming to file a petition to the IACHR.

##### PHASE 1 — RESEARCH AND FACT GATHERING: DEFINING THE PROBLEM

After enlisting partners to assist in developing the project — in this case, a *Report on Right to Education of Afro-descendant and Indigenous Peoples in the Americas* to be presented at a

thematic hearing<sup>71</sup> before the IACHR — the team<sup>72</sup> needed to determine on which particular issue to focus. RFK Center staff, Cornell and UVA Human Rights Clinic professors and students, and RFK Center Laureates and their designated witnesses<sup>73</sup> were part of this team. All grassroots leaders involved had an overarching common problem, the non-fulfillment of the right to education, and a common characteristic, membership in minority groups subject to structural discrimination.<sup>74</sup>

Working closely with grassroots partners, the team conducted visits to Afro-descendent and indigenous peoples' communities and schools in Colombia, Guatemala, and the Dominican Republic, speaking with affected populations, community representatives, government officials, staff members of inter-governmental organizations, and others. In total, meetings were conducted with over 200 people, including Afro-descendent and indigenous leaders, school teachers, education reform activists, and government representatives, including a vice-minister for education, a senator, and a magistrate.<sup>75</sup>

The findings were compiled in the above mentioned report, analyzing the case studies in each country through the lens of the structural, process, and outcome indicators suggested by the IACHR.<sup>76</sup> Structural indicators illustrate whether the domestic law incorporates the rights in question and if policies and public agencies are in place to implement it, whereas process indicators measure the extent to which domestic laws and policies are designed to effectively implement the realization of the right. Finally, outcome indicators attempt to measure "the reality on the ground," or to what extent the Member State is, in fact, implementing the right in question.<sup>77</sup>

The report's primary innovation is that it tabulates the categories suggested by the Inter-American Commission in an amalgamated "5-A Right to Education Framework."<sup>78</sup> To accomplish this, the report merged the right to education "4-A" framework proposed by the former U.N. Special Rapporteur on the Right to Education, Katarina Tomasevski, which suggests that education must be available, accessible, acceptable, and adaptable,<sup>79</sup> with a fifth "A," the element of accountability.<sup>80</sup> These intersecting frameworks assist policymakers and advocates in evaluating whether and how a state is fulfilling the right to education in each of its defining characteristics.

## PHASE 2 — EDUCATION, OUTREACH, AND ADVOCACY

The second phase is an important but all-too-often neglected part of international strategic litigation. Education, outreach, and advocacy must be seen as a mandatory and integral part of a comprehensive international human rights litigation strategy. As practitioners need to ensure that the widest possible audience reads and understands their findings, reaching out to likely allies is critical to disseminating research information and new data. Such outreach galvanizes additional support and creates a common language for individuals to demand accountability from states, reinforcing legal advocates' litigation efforts. To this end, grassroots advocates and practitioners must first determine the appropriate audience, vehicle, and venue to efficiently and effectively reach the targets of an education campaign.

The first international target of this litigation effort was the IACHR.<sup>81</sup> The main feature of the Commission is that it offers

a petition mechanism, which allows individuals to file petitions for an alleged violation of the human rights codified in the regional treaties took place.<sup>82</sup> However, the Rules of Procedure of the Commission also allow for the presentation of human rights issues at general interest hearings.<sup>83</sup> Advocates should seize this invaluable opportunity to inform and educate the Commission on human rights violations that might not already be on its radar.

Practitioners and NGOs benefit from collaboration with similar organizations and associations,<sup>84</sup> as well as with international organizations' experts, such as United Nations special rapporteurs and independent experts on relevant issues.<sup>85</sup> Through these associations, advocates and practitioners can expand their participation and that of their grassroots partners in international fora.<sup>86</sup> By attending and bringing the issue of the right to education to other audiences, one informs professional peers and gains further exposure, and support for the particular cause at hand.

Finally, it is imperative that advocates bring the results back to the communities where the findings were collected.<sup>87</sup> Accountability to social movements and grassroots leaders is an essential part of a solid partnership, principally if the end goal is to improve education in their communities in the long-term.<sup>88</sup> In the same vein, advocates need to open dialogue with national governments and inform them of findings, as they are important partners in the implementation of any decisions or judgments demanding changes in state policies and practices.

## PHASE 3 — STEPS TO FILE A PETITION ON THE RIGHT TO EDUCATION BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: FEASIBILITY ASSESSMENT

In this phase, advocates identify and assess the feasibility of a claim, exhaust local remedies where possible, and present their petition before the Inter-American Commission. The first step in a feasibility study is to select an individual claim or claims, requiring advocates to interview potential plaintiffs, research particular claims and cases, determine whether local remedies have been exhausted, and identify what rights have been violated.

Legal analysis of relevant precedent is an important aspect of the process of filing any petition. Once a claim and the individual litigants are selected, advocates must review previous successful and unsuccessful claims brought in the Inter-American system. The research must look at the applicable conventions, relevant case law, and decisions of the Inter-American Commission and Court, as well as at persuasive authority, such as Inter-American Commission reports and decisions of other regional and international human rights bodies. Finally, advocates need to identify the procedural and substantive claims to file, building off of what has previously been argued and the direction the Commission seems poised to take. The Commission is not necessarily a very progressive institution and recommendations vary based on the leanings of the individual Commissioners, who serve as political appointees.<sup>89</sup>

To this end, advocates must find an appropriate balance between the current state of Inter-American case law, the political and practical climate, and individuals' and communities' needs and aspirations. It is undeniable that advocates aspire

to file claims with the potential to create solid precedent and language that could be used in various contexts to improve the right to education in all countries in the region. However, this goal must be reconciled with the needs to advance social justice, to improve education for grassroots communities, and move the system forward.

### CONCLUSION AND RECOMMENDATIONS

These conclusions and recommendations are based on lessons learned over the past ten years observing and advocating before the Inter-American Commission on Human Rights.<sup>90</sup> In addition, these reflections are also based on several trips to the Dominican Republic, Colombia, and Guatemala, and interviews with hundreds of grassroots leaders and dozens of national and international officials.<sup>91</sup>

Advocates' return trips to the communities during the education, outreach, and advocacy phase are an appropriate time to interview potential plaintiffs and identify probable claims. This process can be frustrating for both advocates and grassroots leaders, even if expectations are managed from the outset, for the simple fact that, on the ground needs, advocates' demands and the political climate of the system in which the petitions to be filed will never squarely coincide. Thus, advocates need to be very clear with potential plaintiffs about what they can do and what the system can realistically offer.

Often, advocates and their long-time grassroots partners will not necessarily be the plaintiffs filing a claim, so trust between advocates and grassroots leaders who will be potential plaintiffs needs to be strengthened and developed to allow for reliable and efficient information flow. If trust and open channels of communication between parties are not in place, a claim before an international body is doomed to failure.

In addition, consideration of where the international system stands politically is essential. For instance, the conviction of indigenous peoples concerning their right to enjoy ethno-education is legitimate and protected by national law. However, before the IACHR today, the author predicts that a claim focused on lack of access to education for individual indigenous students that does not present the important element of ethno-education as central will have a higher probability of admissibility than a claim solely focused on the lack of implementation of ethno-education.

Through several political and jurisprudential analyses, the author and her partners have come to the conclusion that a right to education petition that favors issues of access and availability over adaptability and acceptability, combined with the principle of non-discrimination and equality, would likely have a higher probability of admissibility and success in the becoming of a case before the Commission.

Ultimately, human rights advocates and practitioners — whatever their respective roles in the process of strategic litigation and advocacy — are all moving toward the same end goal: to secure the rights of individuals and to improve the accountability of states to respect, protect, and fulfill those rights. Improving the enjoyment of the right to education of Afro-descendants and indigenous peoples in the Americas is one such shared goal. The process of defining the problem, providing education and outreach to bring attention to the problem, and finding ways to bring those rights to bear before an international human rights mechanism can be replicated to bring successful human rights litigation strategies in other contexts and with other rights. Although challenging, these steps will provide guidance toward true enjoyment of human rights without discrimination for all. HRB

---

## ENDNOTES: The Right to Education: A Multi-Faceted Strategy for Litigating before the Inter-American Commission on Human Rights

<sup>1</sup> KATARINA TOMASEVSKI, HUMAN RIGHTS OBLIGATIONS IN EDUCATION: THE 4-A SCHEME (2006).

<sup>2</sup> Organization of American States, American Convention on Human Rights art. 26, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention]; Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") art. 13, *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69 (*entered into force* Nov. 16, 1999) [hereinafter Protocol of San Salvador]; International Covenant on Economic, Social and Cultural Rights [ICESCR] arts. 2(2), 13, 14, Jan. 3, 1976, 993 U.N.T.S.

<sup>3</sup> American Convention, *supra* note 2, art. 26.

<sup>4</sup> Robert J. Cottrol, *Coming Into their Own? The Afro-Latin Struggle for Equality and Recognition*, 28 GRASSROOTS DEV.: J. INTER-AM. FOUND. 2 (2007).

<sup>5</sup> The RFK Center's human rights work is guided by the human rights laureates who receive the Robert F. Kennedy Human Rights Award. More information is available at <http://www.rfkcenter.org>.

<sup>6</sup> James L. Cavallaro & Emily J. Schaffer, *Less as More: Rethinking Supranational Litigation of Economic and Social Rights in the*

*Americas*, 56 HASTINGS L.J. 217, 219 (2004) [hereinafter *Less as More*].

<sup>7</sup> The author would like to recognize that without the hard work and support of the students and Professors of the international human rights clinics at Cornell Law School (2007 to date) and University of Virginia Law School (2007 to 2009), this project would not be possible.

<sup>8</sup> *Supra* note 5.

<sup>9</sup> The RFK Center partners with the human rights defenders who receive its annual human rights award to advocate their issues in the United States and abroad. RFK Center laureates are grassroots activists and leaders of social movements in their communities. One of the advocacy tools used by the RFK Center is strategic litigation. The 1990 RFK Human Rights Laureate Amilcar Mendez Urizar from Guatemala has worked for over twenty years promoting and advocating for indigenous rights in Guatemala.

<sup>10</sup> The 1998 RFK Human Rights Laureate Berenice Celeyta, a human rights defender from Colombia, advocates for the rights to of Afro-Colombians and indigenous peoples in her country.