

INTERNATIONAL INSTRUMENTS

Educational Freedom

- **International Covenant on Economic, Social and Cultural Rights, 1966** (Article 13; CESCR General Comment 13 paras 28-30)
- **Convention on the Rights of the Child, 1989** (Article 29)
- **Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador, 1998** (Article 13)
- **African Charter on the Rights and Welfare of the Child, 1990** (Article 11)
- **Charter of Fundamental Freedoms of the European Union, 2000** (Article 14)
- **European Convention for the Protection of Human Right and Fundamental Freedoms, 1948, Optional Protocol 1, 1952** (Article 2)
- **European Social Charter (revised), 1996** (Article 17)
- **Framework Convention for the Protection of National Minorities, 1995** (Article 13)
- **ILO Convention 169: Indigenous & Tribal Peoples Convention, 1989** (Article 27)

International Covenant on Economic, Social and Cultural Rights, 1966

Article 13

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

[General Comment 13: the Right to Education, 1999](#)

Article 13 (3) and (4): The right to educational freedom

28. Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions. The Committee is of the view that this

element of article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

29. The second element of article 13 (3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to "such minimum educational standards as may be laid down or approved by the State". This has to be read with the complementary provision, article 13 (4), which affirms "the liberty of individuals and bodies to establish and direct educational institutions", provided the institutions conform to the educational objectives set out in article 13 (1) and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1).

30. Under article 13 (4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to "bodies", i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.

Convention on the Rights of the Child, 1989

Article 29

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador, 1988

Article 13: Right to Education

5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

African Charter on the Rights and Welfare of the Child, 1990

Article 11: Education

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph 1 of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

Charter of Fundamental Freedoms of the European Union, 2000

Article 14: The Right to Education

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

European Convention for the Protection of Human Rights and Fundamental Freedoms, 1948 and its first protocol, 1952

Article 2: Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

European Social Charter (revised), 1996

Article 17: The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1.a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

Framework Convention for the Protection of National Minorities, 1995

Article 13

1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
2. The exercise of this right shall not entail any financial obligation for the Parties.

ILO Convention 169: Indigenous & Tribal Peoples Convention, 1989

Article 27

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.