

## INTERNATIONAL INSTRUMENTS

### Right to Education and the Role of Private Actors in Education

#### International Framework

- [International Covenant on Economic, Social and Cultural Rights, 1966](#) (Articles 2 and 23; [General Comment N°13](#))
- [International Covenant on Civil and Political Rights, 1966](#) (Articles 3 and 26; [General Comment N°28](#))
- [Convention on the Rights of the Child, 1989](#) (Articles 2, 28 and 29; General Comments [N°5](#) and [N°16](#))
- [Convention on the Elimination of All forms of Discrimination against Women, 1979](#) (Article 2, [General Comment N°28](#))
- [UNESCO Convention against Discrimination in Education, 1960](#) (Article 2)
- [ILO Convention 169: Indigenous & Tribal Peoples Convention, 1989](#) (Article 27)

#### Regional Framework

- [African Charter on the Rights of the Child, 1990](#) (Article 11)
- [Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador, 1988](#) (Article 13)
- [Charter of Fundamental Freedoms of the European Union, 2000](#) (Article 14)
- [European Convention for the Protection of Human Rights and Fundamental Freedoms, 1948, and its first Protocol, 1952](#) (Article 2)
- [European Social Charter, 1997](#) (Articles 15 and 17)
- [Council of Europe – Framework Convention for the Protection of National Minorities, 1995](#) (Article 13)
- [Council of Europe – Recommendation on Ensuring Quality Education, 2012](#)
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## I. INTERNATIONAL FRAMEWORK

### 1. UNITED NATIONS FRAMEWORK

#### International Covenant on Economic, Social and Cultural Rights, 1966

##### Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

##### Article 13

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

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 \(article 13 of the covenant\)](#)

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.

48. (...) it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the “development of a system of schools at all levels shall be actively pursued” (art. 13.2.e).

54. States parties are obliged to establish “minimum educational standards” to which all educational institutions established in accordance with article 13 (3) and (4) are required to conform. They must also maintain a transparent and effective system to monitor such standards. A State party has no obligation to fund institutions established in accordance with article 13 (3) and (4); however, if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds.

## International Covenant on Civil and Political Rights, 1966

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as ... sex ... or other status.

- [General Comment 28](#) : Equality of rights between men and women (Article 3), 2000

31. The right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in all fields. ... **States parties should review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting discrimination by private actors in areas such as (...) education (...).** States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.

## Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

## Article 28

1. States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity (...)
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

## Article 29

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) The development of respect for the natural environment.
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.

- [General Comment 5: General measures of implementation of the Convention on the Rights of the Child](#)

44. The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention (arts. 2 (1) and 3 (2)). Article 3 (1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3 (3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health, and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.

- **[General Comment 16: On State obligations regarding the impact of the business sector on children's rights](#)**

34. States must adopt specific measures that take account of the involvement of the private sector in service delivery to ensure the rights enumerated in the Convention are not compromised. They have an obligation to set standards in conformity with the Convention and closely monitor them. Inadequate oversight, inspection and monitoring of these bodies can result in serious violations of children's rights such as violence, exploitation and neglect. They must ensure that such provision does not threaten children's access to services on the basis of discriminatory criteria, especially under the principle of protection from discrimination, and that, for all service sectors, children have access to an independent monitoring body, complaints mechanisms and, where relevant, to judicial recourse that can provide them with effective remedies in case of violations. The Committee recommends that there should be a permanent monitoring mechanism or process aimed at ensuring that all non-State service providers have in place and apply policies, programmes and procedures which are in compliance with the Convention.

- **Committee on the Rights of the Child, [The Private Sector as Service Provider and its Role in Implementing Child Rights](#)**

11. The Committee recommends that **State parties, when considering contracting out services to a non-state provider – either for-profit or non-profit, or international or local – undertake a comprehensive and transparent assessment of the political, financial and economic implications and the possible limitation on the rights of beneficiaries in general, and children in particular.** In particular, such assessments should determine the manner in which the availability, accessibility, acceptability and quality of the services will be affected. **Similar assessments should also be carried out for services provided by non-state service providers that may not have been specifically contracted by State parties.**

## Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

- **[General Recommendation 28](#): The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women**

3. The Convention is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender.

13. Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. **Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor's acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education (...) and other areas in which private actors provide services or facilities, such as banking and housing.**

## 2. UNESCO FRAMEWORK

### UNESCO Convention against Discrimination in Education, 1960

#### Article 2

'When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

- a) (...)
- b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
- c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.'

## 2. ILO FRAMEWORK

### ILO Convention 169: Indigenous & Tribal Peoples Convention, 1989

#### Article 27

3. In addition, governments shall recognise the right of [Indigenous & Tribal Peoples Convention] 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.

## II. REGIONAL FRAMEWORK

### 1. AFRICAN FRAMEWORK

#### 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 I 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.

### 2. AMERICAN FRAMEWORK

#### 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.

### 3. EUROPEAN FRAMEWORK

#### 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.



**Article 15 - The right of persons with disabilities to independence, social integration and participation in the life of the community**

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. To take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, **where this is not possible, through specialised bodies, public or private.**

**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;
2. To provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

**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.

**Public responsibility for ensuring quality education**

11. Public authorities have the responsibility for ensuring the quality of all education offered as a part of the national education system, regardless of whether it is public or private. They decide which institutions and programmes, whether public or private, belong to the national system for which the public authorities are competent. Decisions should be made public and be based on transparent

requirements, criteria and procedures taking into consideration the quality of the institutions and programmes.

## **General provisions aiming to ensure quality education**

### ***Compulsory education***

12. Without exception, all school-age children should have the right and the obligation to take part in quality education, through public or private provision. Public compulsory education should be free of charge and all parents or legal guardians should have the right and the duty to enrol their children in the system. Where parents or legal guardians fail to enrol their children in school, public authorities should have the responsibility and the means to ensure the children's right to quality education.

### **Private education provision**

20. Both public and private provision may be a part of national education systems. In all cases, public authorities are responsible for the national education system, for setting the general framework within which education is provided and for ensuring its quality.

21. For all stages of education, whether compulsory or non-compulsory, parents and legal guardians should have the right to enrol their children in private educational institutions and programmes which meet the standards and requirements stipulated by public authorities. The same rights should be enjoyed by pupils and students who are legally or otherwise competent to make their own decisions.

22. In the event that public authorities choose to provide financial or other assistance to private educational institutions that fulfil the requirements stipulated for compulsory education, this assistance should be given on a fair basis and be subject to the recipient implementing fair-access policies.

See the full text of the [Recommendation](#).