

The Right to Education

**International standards and
their application**

ECONOMIC, SOCIAL AND CULTURAL RIGHTS –
MAKING STATES ACCOUNTABLE

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The right to education: importance and contingency

- An 'empowerment' right
- Used to promote human rights
- Equality, universality and the 'redistributive effect' of social and economic rights
- The conditionality of education rights eg resource-dependency
- Procedural and substantive rights

Principal international instruments

- **UN Declaration on Human Rights** (1948), Article 26.
- **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR) (1950), Article 2 of Protocol 1 – also Arts 8, 9, 10 and 14
- **UNESCO Convention against Discrimination in Education** (1960)
- **European Social Charter** (1961, revised 1996), Arts 15, 17 and 30
- **International Covenant on Economic, Social and Cultural Rights** (ICECSR) (1966), Articles 13 and 14
- **UN Convention on the Rights of the Child** (UNCRC) (1989), Articles 28 and 29
- **Charter of Fundamental Rights of the European Union** (CFREU) (2000), Article 14(1)

Key aspects of the right to education

- Right of the individual - child or other person
- Universality – for all
- Equality – free (plus no discrimination)
- Access to different stages – primary/elementary, secondary, further/higher
- Parental choice
- Right to establish school
- Content and aims (see next slide)

Content: international law norms

- Education to promote respect for human rights
- Education to promote tolerance and understanding between people of different backgrounds
- Education to respect cultural identity
- Education to prepare individual for life as responsible citizen of free society
- Education to help individual realise potential
- Some choice to be given over kind of education provided to child
- Acceptability and adaptability of education: General Comment Art 13

BUT

- Content largely a matter for national state
- Limited right to mother tongue teaching outside national language(s)

Enforcing the right to education

- Additional Protocol to the European Social Charter (1995)
- ECHR
- ICESCR

EUROPEAN CONVENTION ON HUMAN RIGHTS (1950), Article 2 of Protocol 1

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.

Relevance of Arts 8, 9 and 14.

Belgian Linguistics

“The Contracting Parties do not recognise such a right to education as would require them to establish at their own expense, or to subsidise, education of any particular type or at any particular level”.

A2P1 and Arts 8, 9, 10

- Art 8: Right to respect for privacy and family life
- Art 9: Right to freedom of thought, conscience and religion
- Art 10: Right to freedom of expression

Two leading UK cases

- ***Begum*** (*R (Begum) v Headteacher and Governors of Denbigh High School* [2006] 2 WLR 719, [2006] ELR 273, [2006] UKHL 15)
- ***Ali*** (*Ali v Headteacher and Governors of Lord Grey School* [2006] UKHL 14)

ICECSR Art. 13.1

- The States Parties to the present Covenant recognize 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.

ICECSR Art 13.2.

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved

General Comment Art 13 ICECSR

(a) ***Availability***

The need for 'functioning educational institutions and programmes.... available in sufficient quantity within the jurisdiction of the State party' and sufficient trained teachers and library, computing and other facilities.

(b) ***Accessibility***

The accessibility of institutions and programmes to everyone, without discrimination. Physical/geographical and economic accessibility.

(c) ***Acceptability***

Re: the form and substance of education, including curricula and teaching methods, which must be 'acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to [required educational objectives] and such minimum educational standards as may be approved by the State';

(d) ***Adaptability***

Education 'to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.'

Enforcement of ICESCR: the Optional Protocol

- Communications procedure
- Inquiry procedure
- Inter-state complaints

The Right to Education

Conclusion

How much protection?

**Relevance of the
jurisprudence**

Living instrument

Scope for judicial activism

Balanced approach