



## **Working Paper 27**

### **To what extent can parental rights be limited by “minimum educational standards as may be laid down or approved by the State”?**

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The Universal Declaration of Human Rights (1948) recognizes parental rights through a simple formula: “*Parents have a prior right to choose the kind of education that shall be given to their children.*” In subsequent binding treaties, the recognition of parental rights is more detailed and complex. One significant addition is that this liberty must “*conform to such minimum educational standards as may be laid down or approved by the State*” (Art. 13.3 and 13.4 of the International Covenant on Economic, Social and Cultural Rights (1966) – hereafter ICESCR; Art. 5.1(b) of the UNESCO Convention against Discrimination in Education (1960) – hereafter CADE; and Art. 29.2 of the Convention on the Rights of the Child – hereafter CRCh).

In international debates, the State’s prerogative to regulate and limit parental rights is increasingly emphasized as an essential component of the right to education. This raises questions about the scope and interpretation of these “*minimum educational standards as may be laid down or approved by the State.*”

The aim of this paper is to assess this expression by examining its treatment within the main human rights mechanisms.

#### **1. Introduction and origin of the controversy:**

In 1946, the Universal Declaration of Human Rights (hereafter UDHR) was adopted by the United Nations General Assembly. It remains one of the most significant landmarks in the history of human rights. Among the rights recognized in this document, the right to education is enshrined in Article 26. The first paragraph of this article concerns universal

access, the second addresses the aims of education, and the third covers the right of parents to choose the education for their children.

The third paragraph contains the following formulation: “*Parents have a prior right to choose the kind of education that shall be given to their children.*” Interestingly, this provision was not included in the first draft presented by Professor René Cassin during the negotiations of the UDHR. It was added following the initiative of Lebanese professor Charles Malik and Dutch diplomat Cornelis van Beaufort. The inclusion of this paragraph sparked a vivid discussion. Some influential countries, such as the USSR and the USA, opposed its inclusion (Stainfield, 2021). Despite this, the article on the right to education was ultimately adopted with the recognition of parental rights.

Initially, the plan based on the UDHR was to produce a single binding human rights treaty. However, Cold War dynamics led the international community to adopt two separate treaties: one for liberty rights—the International Covenant on Civil and Political Rights (hereafter ICCPR, 1976)—and another for social rights—the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR, 1976) (Glendon, 2001). Subsequently, several more specialized human rights treaties were adopted, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (hereafter CRCh, 1990). This explains why different UN human rights treaties recognize the right to education.

All the international treaties referring to the right to education include a clause on parental rights, recognizing them as an essential part of the right to education. Nevertheless, these formulations differ significantly from the one in the UDHR. Most of these treaties recognize both parental rights and the rights of individuals to establish and direct educational institutions. These two rights are closely interconnected—one cannot exist without the other. As the first director of UNESCO, Julian Huxley, remarked, recognizing parental rights in a system with a government monopoly on education is akin to having democracy in a one-party system (Huxley, 1951). Thus, the recognition of both parental rights and the freedom to establish and direct educational institutions are essential dimensions of the liberty aspect of the right to education.

Additionally, there is an important addendum in human rights treaties not present in the UDHR. This addendum is the focus of this paper. In many of the most relevant human rights treaties, references to parental rights are accompanied by a significant limitation: “*which conform to such minimum educational standards as may be laid down or approved by the State.*” This limitation applies both to parents choosing schools and to individuals seeking to establish educational institutions. Its impact on parental rights is

considerable. This addendum can be found in Article 13 of the ICESCR, Article 5 of the CADE, and Article 29.2 of the CRCh.

These minimum standards sometimes limit the freedom of parents and, at other times, the freedom of individuals. For instance, in the ICESCR and CADE, this clause restricts the liberty of parents to choose schools “*other than those established by public authorities*” (Art. 13.3 ICESCR and Art. 5.1(b) CADE). In both the ICESCR and the CRCh, it also limits the “*liberty of individuals and bodies to establish and direct educational institutions*” (Art. 13.4 ICESCR). The CADE expresses a similar limitation but in different terms, restricting the right of parents to choose the religious and moral education of their children “*in a manner consistent with the procedures followed in the State for the application of its legislation.*”

It is worth noting that no other human rights contain a similar limitation, although all rights naturally have certain scopes and limits. Various explanations have been proposed for this. Beiter (2006) suggests that this clause was a concession to the Soviet Union and Eastern Bloc countries, which were reluctant to recognize parental rights. It is also plausible that these amendments accommodated some of the resistance to parental rights already observed during the drafting of the UDHR (Stainfield, 2021).

The most compelling explanation, however, concerns the nature of the right to education. The right to education primarily concerns the child. As Beaufort pointed out during the UDHR negotiations, the right to education is fundamentally a child’s right. However, given children’s lack of capacity to exercise this right, it is natural that the responsibility falls to the family (Stainfield, 2021, pp. 10–12). Because of this responsibility, parents have corresponding rights and obligations. It is generally assumed that parents act in the best interest of the child when exercising these rights. Therefore, the parent-child relationship in education is not one of ownership but of trusteeship (Altman, 2021; Beck, Glavis, Glover, & Jenkins, 1978; Shulman, 2010).

The clause “*minimum educational standards as may be laid down or approved by the State*” aims to establish a legal framework ensuring that parental rights are exercised in the best interest of the child and preventing abuse or excess. Despite these good intentions, it is important to note that this clause is sometimes used in human rights debates to justify limits on freedom of education. In certain cases, these limits risk suffocating the exercise of this right.

This paper, therefore, aims to address the following questions: What is the scope of this clause? To what extent can (or cannot) these “*minimum educational standards approved by the State*” limit parental rights?

## **2. What are the “*minimum educational standards as may be laid down or approved by the State*” according to the main international human rights instruments?**

Our first challenge in answering this question is that the minimum standard clause appears in different covenants, and various human rights instruments refer to it in different contexts. In this regard, we will analyze these covenants to identify recurring themes and reconstruct the scope of this clause.

As pointed out by one of the leading experts on the right to education, Fons Coomans, parental liberties within the domestic legal order require minimum educational standards. However, such standards must not frustrate this freedom (Coomans, 2004, p. 70). Therefore, these minimum educational standards must ensure that the liberty dimension and the provision dimension of the right to education are aligned. Moreover, there must be a limit to what constitutes “*minimum educational standards*.” If these requirements become too restrictive, they could erode the freedom dimension of the right to education (Beiter, 2006, p. 41).

The first UN human rights document to establish “*minimum educational standards*” was the ICESCR. The Treaty Body responsible for monitoring the ICESCR, the CESCR, elaborated on the limits of these standards. The Committee specified: “*These minimum standards may relate to issues such as admission, curricula, and the recognition of certificates. In turn, these standards must be consistent with the educational objectives set out in article 13 (1). 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*” (CESCR, 1999, paras. 29-30).

We can distinguish two types of limits within these minimum standards: limits related to form and limits related to content. In terms of form, the standards are limited to admission, curricula, and the recognition of certificates (UNESCO, 2006, p. 20). In terms of content, these standards must be consistent with the aims of education and ensure that the exercise of liberty does not lead to disparities.

Consider the third limit—preventing disparities. This limit might seem arbitrary and could potentially be used to ban legitimate non-governmental initiatives. Imagine a scenario where parents choose non-governmental schools due to the poor performance of public schools. This could create disparities between public and non-governmental schools.

Under the pretext of preventing these disparities, the government might restrict or ban the establishment of non-governmental schools. Although the disparity originates from the poor performance of public schools, non-governmental schools could be unfairly targeted as the cause.

In such cases, when the burden of responsibility rests with the schools rather than with public authorities, it can lead to unjust outcomes. Therefore, this limit should be applied cautiously. The burden of ensuring equal educational opportunities should primarily lie with public authorities. While there may be rare instances where non-governmental schools create disparities through unfair practices, in most cases, the onus should remain on public institutions to address these inequalities.

With this context in mind, what are the aims of education that help define minimum educational standards in terms of content? The CESCR states that education must go beyond employability: *“a well-educated, enlightened, and active mind, able to wander freely and widely, is one of the joys and rewards of human existence”* (CESCR, 1999, para. 1). The ICESCR provides some guidance on these aims in Article 13.1:

The full development of the human personality and the sense of its dignity, including strengthening respect for human rights and fundamental freedoms.

Enabling all persons to participate effectively in a free society.

Promoting understanding, tolerance, and friendship among all nations, racial or religious groups, and furthering the activities of the United Nations for the maintenance of peace.

The CESCR applies these aims at the primary education level by referring to the basic learning needs defined in Article 1 of the World Declaration on Education for All (1990), which include essential learning tools (such as literacy, oral expression, numeracy, and problem-solving) and basic learning content (such as knowledge, skills, values, and attitudes) required for individuals to survive, develop their full capacities, and participate fully in society (CESCR, 1999, para. 9).

Other human rights treaties define the aims of education in similar terms, but the ICESCR introduces two notable additions: the inclusion of human dignity in connection with the full development of the human personality and the need for education to enable all persons to participate effectively in a free society. The CESCR draws a direct consequence of this inclusion of dignity by recommending the prohibition of corporal punishment and public humiliation of children (CESCR, 1999, para. 41). Later, the Committee on the Rights of the Child confirmed that corporal punishment must be outlawed as a minimum standard (Committee on the Rights of the Child, 2001, para. 8).

The Convention on the Rights of the Child (CRCh) enriches these aims by introducing the concepts of “*talents and mental and physical abilities*” and “*respect for the child’s parents, cultural identity, language, and values.*” These additions are significant for three reasons. First, they expand the scope of the “*full development of personality.*” Second, they link these aims directly to the realization of the child’s dignity and rights. Third, they emphasize that respect for the child’s identity and family is more likely to be achieved through the recognition of parental rights (Committee on the Rights of the Child, 2001).

From a human rights perspective, the minimum educational standards for non-governmental schools must ensure compliance with these objectives. In terms of form, these standards should primarily address admission policies, curricula, and the recognition of certificates issued by non-state actors. In terms of content, education must ensure:

1. The full development of the human personality, including talents and mental and physical abilities to their fullest potential, as well as a sense of dignity and respect for human rights and fundamental freedoms.
2. Effective participation in a free society, with respect for the child’s parents, cultural identity, language, and values.
3. The promotion of understanding, tolerance, and friendship among all nations, racial or religious groups, and support for the activities of the United Nations in maintaining peace.

At this point, we have coherently grouped the criteria from various treaties and treaty bodies into a single, consolidated framework. But are these criteria compatible with the four pillars of the right to education established by UNESCO?

In 1996, UNESCO published the report “*Learning: The Treasure Within,*” which reflects on the state of education and offers a paradigm for improving education for a better future (Power, 1997). The four pillars of education outlined in this report are: learning to know, learning to do, learning to live together, and learning to be (Delors, 1996). Although these pillars are not legally binding, they have inspired national legislation on the right to education.

When comparing the minimum standards defined in human rights instruments with UNESCO’s four pillars, we find significant alignment.

- Learning to know and learning to do align with the first aim of education.
- Learning to live together corresponds to the second and third aims.
- Learning to be aligns with the first and second aims.

Thus, from a human rights perspective, any non-governmental school aligned with these aims should be allowed to operate. Conversely, schools whose functioning is incompatible with these objectives would be inconsistent with a human rights approach. Any closure or prohibition of a school not based on these reasons would be ideological and, therefore, incompatible with human rights standards.

### **3. The 4 As: Available, accessible, acceptable, adaptable:**

At the end of the 20th century, two critical documents were released by United Nations human rights bodies to deepen the scope of the right to education. The first document was General Comment No. 13: The Right to Education (Art. 13), which we have referred to previously. The second was the first full report by the Special Rapporteur on the Right to Education, Katarina Tomasevski (Tomasevski, 2000). These two documents are often mentioned together because they both propose the "*Four As*" framework: Availability, Accessibility, Acceptability, and Adaptability. These four essential characteristics are critical for the realization of the right to education. As recognized by the Committee on Economic, Social, and Cultural Rights (CESCR), this framework is inspired by the Committee's previous work on the realization of other rights. It has had a significant impact on how the right to education is conceived in many key documents. Notable examples include the reports of the UN Special Rapporteur on the Right to Education (Boly Barry, 2022) and the Global Education Monitoring Reports by UNESCO (GEM Report Team, 2020; 2021).

Due to the relevance and influence of the Four As in subsequent work by international organizations, this framework deserves separate treatment. In our analysis, the Four As are particularly relevant as they shed light on the extent to which "*minimum educational standards*" might apply.

As mentioned, the Four As of the right to education are: Availability, Accessibility, Acceptability, and Adaptability. Below, we explain the content of each aspect in detail and identify specific minimum standards related to them.

- **Availability:** This refers to ensuring a sufficient quantity of educational institutions and programs to guarantee education for all. The CESCR provides guidance on minimum standards concerning the essential material elements needed for these institutions to function. These include buildings, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, and teaching materials, which may include

libraries, computer facilities, and information technology (CESCR, 1999, para. 6.a). The Special Rapporteur expands this list to include desks, chairs, books, blackboards, pens, and paper (Tomasevski, 2000, para. 42). Both governmental and non-state schools must have these essential elements to ensure their proper functioning.

- **Accessibility:** Both the CESCR and the Convention against Discrimination in Education (CADE) emphasize that education must be accessible to all without discrimination. Minimum standards for both state and non-state schools include non-discrimination and physical accessibility to key facilities (CESCR, 1999, para. 6.b). While the CESCR and the Special Rapporteur address the issue of cost as a barrier to accessibility, they note that ensuring financial access to education is primarily a State obligation. Public funding is crucial to guarantee accessibility for all students and families (Tomasevski, 2000, para. 45).
  
- **Acceptability:** According to the CESCR, "*the form and substance of education, including curricula and teaching methods, must be acceptable (e.g., relevant, culturally appropriate, and of good quality) to students and, in appropriate cases, parents*" (CESCR, 1999, para. 6.c). This definition provides insight into how minimum standards should be understood in terms of content. The Special Rapporteur adds that pregnancy should not be a reason for discrimination in access to education (Tomasevski, 2000, paras. 56 and following). Non-state actors must offer relevant and quality education. For instance, it would be acceptable to close a non-governmental school functioning solely as a diploma mill. Furthermore, the Special Rapporteur emphasizes that all schools, including non-governmental ones, must provide safe and healthy environments for children (Tomasevski, 2001).
  
- **Adaptability:** The CESCR highlights that education "*must be flexible to adapt to the needs of changing societies and communities and respond to the needs of students*" (CESCR, 1999, para. 6.d). The Special Rapporteur does not elaborate on this point (Tomasevski, 2000, para. 61 and following). Nonetheless, schools must be adaptable to new challenges. For example, a school that refuses to implement online teaching during a pandemic would not meet this standard.



In relation to minimum standards, the Four As are consistent with our earlier analysis. As noted, "*minimum standards*" may refer to both the form and content of education. The Four As provide critical insights into the form of these standards by listing the essential material elements required for the realization of the right to education, such as buildings, sanitation facilities, safe drinking water, trained teachers, and teaching materials (e.g., libraries, computers, desks, chairs, books, and blackboards). Additionally, education must be provided in safe and healthy environments, meaning that both state and non-state schools must fulfill their obligation to prevent harmful practices such as bullying.

In terms of content, the Four As reaffirm that education must be relevant and of good quality and must be inclusive for all. Discrimination is not acceptable. The framework also highlights that curricula and teaching methods must be acceptable not only to students but also to parents. This nuance is critical as it bridges the gap between parental rights and "*minimum educational standards*" established by the State.

#### **4. The compatibility with religious freedom:**

Having reached this point, the question arises to what extent these "*minimum educational standards*" are compatible with parental rights, especially in relation to religious freedom. This question is relevant given the many discussions at the domestic level. Good examples of these tensions can be found in Sweden (CNE News, 2022), Eritrea (Vatican News English Africa Service, 2021), and Nicaragua (López, 2023).

To provide some context to these discussions, it is worth revisiting certain theoretical debates. One theoretical framework that opposes the right to education to freedom of religion is introduced by comprehensive liberal authors. Scholars such as Amy Gutmann and Eamonn Callan argue that the full development of human personality must be understood as a way to ensure the autonomy of citizens (Gutmann, 1980; Gutmann, *Democratic Education*, 1988; Callan, 1997). Understanding the full development of human personality as autonomy implies that children must be exposed to different worldviews so that, once they reach adulthood, they can freely decide who they want to be.

This approach presents parental rights and freedom of religion as conflicting with the main aim of the right to education. On these grounds, comprehensive and extended "*minimum educational standards*" approved by the state could be justified. Although Gutmann and Callan's approach is primarily relevant to Western discussions, it also appears to influence international debates. For instance, suspicion regarding references

to families often arises during informal negotiations on human rights resolutions at the Human Rights Council. Another example of the polarization caused by this approach was evident during the Annual Discussion on the Rights of the Child at the UN Human Rights Council (res. 7/29, 19/37, and 49/20), where a panelist stated that what children complain about most are their parents (UN Media TV, 2023).

As previously noted, Article 13.3 of the ICESCR and Article 5.1(b) of CADE, which concern parental rights, demonstrate a strong connection with the morals and convictions of parents. The question then arises: to what extent can this right be limited through the establishment of “*minimum educational standards*”?

Article 18 of the ICCPR offers a valuable perspective on this connection from a human rights viewpoint. It recognizes that “*Everyone shall have the right to freedom of thought, conscience, and religion.*” An important by-product of these three liberties, particularly freedom of religion, is the recognition of parental rights, as stated in paragraph 4 of the same article: “*The States Parties to the present Covenant undertake to respect the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*” The Human Rights Committee (HRC) confirms this interrelation between parental rights and freedom of religion. In a General Comment, the Committee states:

*“The liberty of parents [...] to ensure that their children receive a religious and moral education in conformity with their own convictions,” set forth in Article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in Article 18(1)” (par. 6).*

*This is reaffirmed later when the Committee emphasizes that “the liberty of parents and guardians to ensure religious and moral education cannot be restricted” (par. 8) (Human Rights Committee, 1993).*

It is noteworthy that Article 14 of the CRC establishes this same interrelation between the rights of parents “*to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child*” and the duty of the state to respect “*the right of the child to freedom of thought, conscience, and religion.*”

Before moving on to other instruments, it is important to highlight that the HRC also stresses that:

*“The fact that a religion is recognized as a state religion, or that it is established as official or traditional, or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including*

*Articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers” (par. 9) (Human Rights Committee, 1993).*

As some scholars have pointed out, denominational schools are not prohibited under international law (Beiter, 2006). On the contrary, the establishment of faith-based non-governmental schools is essential for the realization of parental rights and freedom of religion. Article 2 of CADE affirms this by acknowledging that the establishment of religious and/or private institutions cannot be considered discriminatory if conducted in accordance with the object of education.

Rather than opposing the “*respect*” for parental rights to the “*minimum educational standards*,” these should be interpreted and understood as coherent and intertwined concepts. A couple of points are relevant in this regard.

First, the right to education is a whole. In a recent interview, CESCR expert Mikel Mancisidor confirmed that the right to education cannot be interpreted partially. Therefore, its aims, provision dimension, minimum standards, and the liberty of parents must be understood as a coherent and positive whole (Mancisidor, 2021). This confirms that the CESCR’s vision aligns with that of the drafters of the Universal Declaration of Human Rights (Stainfield, 2021).

Second, the European Court of Human Rights has stated that “*respect*” for parental rights should be interpreted positively. In other words, when introducing new topics into the school curriculum, the state must ensure that they are compatible with the religious and moral convictions of parents (Coomans, 2004). The same applies to standards that could limit the establishment of non-governmental schools. As Coomans notes:

*“It is evident that such standards may not frustrate this freedom. In fact, Article 13.4 of the ICESCR obliges the state to take a similar course of conduct as in the implementation of the obligation ‘to respect’ outlined in paragraph 3” (Coomans, 2004).*

Therefore, these “*minimum educational standards*” established by authorities must take into consideration the exercise of freedom of religion and, by extension, freedom of education. Rather than opposing freedom of religion to the provision of the right to education, it is crucial to make them compatible.

### **Conclusions:**

So, from a human rights perspective, what realistic and reasonable minimum standards should be imposed on non-state schools? Freedom of education, including parental

rights and the right of individuals to establish schools, is an essential part of the right to education. Therefore, rather than a comprehensive legal framework based on mistrust toward parents and non-state actors, what is required is a clear and coherent legal framework that allows different social initiatives to flourish, thereby enabling parents to choose freely.

As outlined by human rights treaty bodies, this framework should primarily focus on three areas: admission, curriculum, and recognition of certificates. These areas must take into consideration both form and substance.

### **Content or Substance of Education**

Based on the main human rights instruments, we can affirm that the education provided by non-state actors must be compatible with the core aims of the right to education. This includes providing quality education that ensures:

1. **The full development of the human personality**, including talents, mental and physical abilities, and a sense of dignity, while strengthening respect for human rights and fundamental freedoms.
2. **The ability of all persons to participate effectively in a free society**, fostering respect for human rights and fundamental freedoms, as well as for the child's parents, cultural identity, language, values, and national heritage.
3. **The promotion of understanding, tolerance, and friendship among all nations and racial or religious groups**, while supporting the United Nations' activities for the maintenance of peace.

### **Form and Material Conditions of Education**

The form or physical conditions of education are also an essential part of the "*minimum educational standards*" that non-state schools must meet. According to the main human rights instruments, these standards should include essential material elements such as:

- Adequate buildings
- Proper sanitation and safe drinking water
- Trained teachers
- Good teaching materials
- Fair teacher salaries
- Desks, chairs, books, libraries, and computer facilities
- Blackboards, pens, and paper

These standards should not be higher than those imposed on or provided in state-run schools. All children attending these schools must have access to these essential material resources without discrimination. Moreover, treaty bodies have emphasized that education—whether in state-run or non-state schools—must respect the dignity of the child. This includes banning corporal punishment and public humiliation.

### **Emerging Challenges: Comprehensive Sexuality Education**

Recently, certain UN independent experts have argued that States should ensure the provision of comprehensive, inclusive sexuality education for all individuals (MOFOKENG, et al., 2023). This may present a challenge in defining "minimum standards" that respect parental rights, freedom of religion, and freedom of conscience. In the coming years, it will be essential to observe how countries reconcile these rights at the national level, ensuring that the provision of the right to education remains compatible with these fundamental freedoms.

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