

Introduction¹

The Guiding Principles on the human rights obligations of states to provide public education and to regulate private involvement in education (popularly known as the Abidjan Principles on the right to education, or simply: the Abidjan Principles) were adopted on 13 February 2019 in Ivory Coast. Twenty human rights and education experts participated in the adoption conference, with civil society attending as observers.

Background

The Abidjan Principles were developed in the context of the increasing role and impact of private actors in education. Private actors are diverse and have different impacts on the right to education. However, international, regional, and national jurisprudence has consistently highlighted the risks where private interests and profitmaking are sought over and above realising human rights, including education. Concurrently, the norms relevant to the right to education appear in many treaties, judicial and quasi-judicial decisions, and other legal sources.

The Abidjan Principles are, therefore, a tool to assist States and other actors in navigating the evolving education context in accordance with human rights law. They provide an authoritative consolidation of the developing legal framework, compiling and clarifying in a single text the applicable legal standards. They reaffirm the existing obligations of States to establish free, quality, public education systems for all, and to regulate private actors to guarantee that all participants involved in education are aligned towards the common aim of realising the right to education.

However, this is not always a simple endeavour. In seeking to effectively implement the right to education, potential tensions between different dimensions of the right emerge. One potential tension is between State obligations to ensure the provision of free quality education to all without discrimination, and the liberty to choose and establish a private school. The Abidjan Principles provide States with a way of addressing these tensions and offer clear reference points to resolve them. They seek to promote quality education systems that guarantee equality, human dignity, and social justice, and should not be read in any way as endorsing the involvement of private actors in education, nor suppressing genuine liberty in education.

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The Participatory Process of Drafting the Abidjan Principles

The Abidjan Principles were developed over a period of three years (2016 – 2018) through an open, transparent, and broadly consultative process that included a variety of perspectives and reflected multiple contextual realities. The process was led by a Drafting Committee of nine experts on the right to education, chaired by Professor Ann Skelton. The Drafting Committee received inputs from stakeholders from various backgrounds — human rights lawyers, education specialists and practitioners, and various communities across different geographic regions. Six regional consultations with policymakers, private sector, and civil society were held in Bangkok, Kathmandu, Nairobi, Paris, Johannesburg and Dakar. Community consultations were also held in India, Kenya, Nepal, and The Philippines; there were several thematic consultations, and one online global consultation which received approximately 200 responses.

The drafting process was also informed by 10 thematic background papers prepared by experts in law, human rights, and education. The background papers were published in an open-access book titled *Realizing the Abidjan Principles on the Right to Education: Human Rights, Public Education, and the Role of Private Actors in Education*.²

The Drafting Committee was supported by a Secretariat of five organisations: Amnesty International, the Equal Education Law Centre, the Global Initiative for Economic, Social, and Cultural Rights, the Initiative for Social and Economic Rights, and the Right to Education Initiative.

The Commentary

This Commentary provides an expert analysis of the Abidjan Principles. It details the legal foundation and elaborates on the reasoning and interpretation presented therein. The Commentary will be published in phases over the course of 2023.

Members of the Drafting Committee

The following were members of the drafting committee:

² Frank Adamson, Delphine Dorsi, and Magdalena Sepulveda Carmona ‘Strengthening the implementation of the Abidjan principles’ in Frank Adamson, Sylvain Aubry, Mireille de Koning and Delphine Dorsi (eds) *Realizing the Abidjan Principles on the right to education: Human rights, public education and the role of private actors in education* (Edward Elgar 2021).

PROFESSOR ANN SKELTON (South Africa) UNESCO Chair for Education Law in Africa; Director, Centre for Child Law at the University of Pretoria; Member, UN Committee on the Rights of the Child.

PROFESSOR AOIFE NOLAN (Ireland), Professor of International Human Rights Law, University of Nottingham; Member, Council of Europe European Committee of Social Rights.

DR JACQUELINE MOWBRAY (Australia), Associate Professor, University of Sydney Law School; external legal adviser, Australian Parliament's Joint Committee on Human Rights.

JAYNA KOTHARI (India), Independent; Co-founder and Executive Director, Centre for Law and Policy Research; Counsel, Karnataka High Court & Supreme Court of India).

DR MAGDALENA SEPÚLVEDA CARMONA (Chile), Independent; former UN Special Rapporteur on Extreme Poverty; Member of the Independent Commission for the Reform of International Corporate Taxation.

DR MARIA SMIRNOVA (Russia), Independent; Honorary Research Fellow, Manchester International Law Centre, University of Manchester.

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