

# **REPORT** 2008/2009

## **ON FREEDOM OF EDUCATION IN THE WORLD**

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**IN COLLABORATION WITH**

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**VOLUME 1**

**PRESENTATION OF WORK AND SYNTHESIS OF RESULTS**



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**Volume I**



## Introduction

Both a social dimension and a freedom dimension have been distinguished with relevance to the right to education (F. Coomans, 1995). This second dimension is mainly concerned with two freedoms: to be able to choose a school and to be free to create educational centres. In the last few years, *reports on the condition of education in the world* have been published with the aim to reinforce the protection of rights. It has been the purpose of K. Tomasevski's research in particular.<sup>1</sup> However, the dimension of freedom has often been neglected. Aware of the importance of educational freedom in human development, OIDEL, since its inception, has primarily dedicated itself to the promotion of freedom in education.

The organisation has thus opened an avenue that has since been largely explored by the UNDP in its 2004 **Human Development Report** dedicated to cultural freedom. « *Expanding cultural freedoms is an important goal in human development - specifies the Report - one that needs urgent attention in the 21st century. All people want to be free to be who they are. All people want to be free to express their identity as members of a group with shared commitments and values - whether it is nationality, ethnicity, language, or religion, whether it is family, profession or avocation.* » (UNDP, 2004, p. 12)

During the past fifteen years, more and more attention has been drawn to the right to education. The scandal of illiteracy has led the international community to encourage the different countries of the world to refuse any form of resignation with regard to this issue. Since then, a number of studies are going deeper into the very meaning of the right to education. The right to free primary schooling has been emphasized. One refuses, also in this domain, gender based discrimination. One reminds people that this right shouldn't be used for religious ends. One realizes also that education is first and foremost a parents' mission, whereas one used to consider it as a state's task only.

Henceforth, theoretical and practical links are elaborated between the right to education and cultural rights. As the education issue is also considered in *good governance* terms, the necessity to enhance the role of civil society in this matter becomes more obvious. Eventually, education policies in the world are quickly developing and for most of them, are moving in the same direction: decentralization, more diversity is wanted, more autonomy for the teachers, and more responsibilities for the parents.

At the very beginning of the analysis we had to choose between two ways of investigation. The first one would have led us to select from some representative

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<sup>1</sup> See the studies that have been done on *right-to-education.org*

countries, chosen with regard to the quality of the available information. The second possibility – and we chose this one – would allow us to get a broader picture of the school systems, seen from a freedom point of view, even though we would have to content ourselves with incomplete information sometimes, or subjective interpretations.

There are reasons for this methodological choice:

a. Studies of good quality on a selection of representative countries exist. We have listed them in the brief bibliography at the end of this report.<sup>2</sup> These studies are generally well documented and present a precise and detailed *school profile* for each country. Therefore we could not take the risk to go deeper in the detail of the analysis. Still – and it's a fair tribute – we must point out that we took from these studies very useful information.

b. Countries where there is large documentation on the reality of freedom of education are, generally speaking, the ones where freedom of education has prevailed for a long time. We were also interested in bringing to light the policies of countries where the education system is quickly changing, not to forget regions where the freedom of education is not even an issue.

c. Following our previous studies, we wanted to set up a *freedom of education index*. The advantages of this approach are obvious and increase with the scope of the available sample. With that said, we are fully aware of both the fragility of such a practice and the difficulty of comparing with the same set of criteria very different education systems. However it seemed to us that the exercise was relevant. Why wouldn't the analysis of what we consider as being "good practices" be useful for countries with a less favorable index? Wouldn't be there any advantage to bring some innovative policies to light on the one hand, and to show, on the other hand, that some well-known education systems, with no apparent problems, might violate fundamental freedoms? However, it is important to point out that: **our research focuses on freedom of education and not on its quality**. It doesn't mean that countries shown as not very favorable to freedom of education don't necessarily have effective education systems. If some correlation between freedom and quality might appear intuitively to the well-informed reader, we do not claim to have demonstrated it.

d. Eventually, if we refer to international law, we have to recognize that education freedom cannot be considered as "fundamental" for developed countries only and in a way "optional" for others, a little bit like if it was only about ensuring the good functioning of public education.

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<sup>2</sup> We are thinking here of Ch. Glenn and J. de Groof's important work, to which we owe a lot, but also of F.-R. Jach's deep analysis of European countries. The Atlas done by the European forum for Freedom in Education (E.F.F.E.) is also full of information, especially on east European countries. The exact references will be given in the volume II of the present report, which is about countries presentation.

It is now worth specifying our intention and placing it in its particular context:

1. Our research is based on the provisions contained in international law, in particular the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (CESCR)**, both texts having been ratified by nearly every country in the world, and thus being, at least theoretically, object of consensus. As one shall see, the emphasis is laid on article 13 of the CESCR, rather than on article 18 of the ICCPR. The reason for this is simple: it is considered that economic, social and cultural rights imply State intervention, a concrete action that citizens are liable to demand. In turn, civil and political rights rather translate, roughly said, the "withdrawal duties" of the State, or again they oblige the latter to respect a certain amount of liberties.<sup>3</sup> Inasmuch as our objective is to understand and, in a way, to assess states action with regard to education, we will rely on article 13 of the CESCR, while keeping in mind article 18 of the ICCPR – and some other normative texts<sup>4</sup> – as tools of interpretation.

2. One of OIDEL's tasks consists of analyzing education policies from the education freedom point of view, while referring to definitions in international texts. Thus, in 2002, OIDEL published a **Report on freedom of education in the world**<sup>5</sup>, following a prior similar work in 1995. The 2002 Report worked out and calculated an *index of freedom of education*, which took into account legal provisions while examining the right to create non-governmental schools (NGS)<sup>6</sup>. It also looked into the existence of rules regulating even partial financing of such schools. This study did not yet consider the effective pedagogical autonomy available to non-governmental schools, although it is an essential component of freedom of education. In this study, we work hard to establish this kind of criteria of analysis.

## **The right to education and freedoms : conceptual framework**

The school policies that we will study are almost all based on a constitutional text or on provisions formulated in terms of right to education or freedom of education. A national legislation that would not make any mention of this right or freedom would

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<sup>3</sup> See the analysis hereafter.

<sup>4</sup> Texts of international law as regards freedom of education are recorded in A. FERNANDEZ / S. JENKER (1995) *Déclarations et Conventions internationales sur le droit à l'éducation et la liberté d'enseignement*, Info 3 Verlag, Frankfurt.

<sup>5</sup> A. FERNANDEZ / J.-D. NORDMANN (2002), *Rapport sur la liberté d'enseignement dans le monde*, OIDEL, Genève. There is also a spanish version: *El estado de las libertas educativas en el mundo*, Santillana, Madrid.

<sup>6</sup> We have chosen the expression "non governmental school" (NGS) in order to use neutral terminology inspired on the expression "non governmental organization" (NGO). In reality, schools named "private" are for the major part, schools having been created by civil society. On this subject, see the interesting typology established by I. KITAEV (1999) *Private education in sub-Saharan Africa : A re-examination of theories and concepts related to its development and finance*, UNESCO/IIEP, Paris.

seem suspect, rightly so, in the light of human rights in general. Nonetheless, the right to education, especially as regards its freedom dimension, has been neglected for a long time, just as cultural freedoms have been in a more general way.

Culture is not simply the consumption of cultural goods. If both culture and education are subject of a right and if some liberties are legally attached to them the issue at stake is much deeper. We saw that the UNDP notes that cultural liberties are affecting the very identity of the human being. So it is not only about a “technique” – the right to education and liberties relating to it would be “effective” tools – but also about a value bound to the very identity of a man, about what he needs to be a man<sup>7</sup>.

*Good governance*, not only understood as perfect governance on the technical level, but also on the democratic level and concerned with fundamental rights’ promotion, requires strong action in favor of freedom to choose a culturally appropriate education.

When it intervenes in reinforcing others’ capacities (civil society, private sector), the State respect and develop others’ capacities (S. GANDOLFI/ P. MEYER-BISH/ V. TOPANU, 2006, Para. 9).

However, one cannot deny a certain “instrumentalisation” of educational freedom: education systems, for the most part, established within the context of the nation-state, have often been used as tools, if not as the privileged tool for setting up a political system. Many national constitutions have these preoccupations clearly or implicitly expressed.

In order to denounce them the world human development report makes a rough sketch of the nation-state building strategies. These are integrationist strategies, which seek to instill national identities, focusing on this identity purpose within cultural activities:

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<sup>7</sup> On the right to education and educational liberties, see J.-D. NORDMANN and A. FERNANDEZ (2000), *Le droit de choisir l'école*, l'Age d'Homme, Lausanne ; J.-D. NORDMANN and J. P. CHENAU (2004), *Libérez l'école! Les libertés scolaires : mode d'emploi*, Etudes & Enquêtes, Centre patronal, Lausanne ; A. FERNANDEZ (2003), *Le droit d'être homme*, in A. FERNANDEZ et R. TROCME (2003), *Vers une culture des droits de l'homme*, Diversités Genève, pp. 376-395 ; A FERNANDEZ et J.-D PONCI éd. (2005), *Discrimination et éducation, Réflexions sur la Convention concernant la lutte contre la discrimination dans le domaine de l'enseignement de l'UNESCO* ; A. FERNANDEZ (2007), ¿Que significa educación gratuita y obligatoria ? in COFAPA, *Libertad, gratuidad y financiación de la educación*, COFAPA/ABACO/Santillana, Madrid ; Y. DAUDET et K. SINGH (2001), *Politiques et stratégies d'éducation 2, Le droit à l'éducation : analyse des instruments normatifs de l'Unesco*, Paris : Unesco ; S. GANDOLFI (2006), *Il diritto all'educazione*, La Scuola, Brescia ; M. MEHEDI (1999), *Le contenu du droit à l'éducation*, Nations Unies, Conseil Economique et Social. Doc E/CN.4/Sub.2/ 1999/10 ; J. DE GROOF (1994), *The Overall Shape of Education Law: Statuts of Comparative and SupraNational Education Law*. An outline in J. DE GROOF (ed.) (1994). *Subsidiarity and Education. Aspects of comparative educational law*, ACCO, Leuven/Amerstfoord ; J. L. MARTINEZ LOPEZ-MUNIZ (1999), *Le droit à l'éducation dans les instruments internationaux* in *Revue de droit africain*, numéro 10, Bruxelles ; P. MEYER-BISCH (1998), *Logiques du droit à l'éducation au sein des droits culturels*, Nations Unies, Conseil Economique et Social, Doc E/C.12/1998/17 et UNESCO (2006), *Right to Education. Comparative analysis. UNESCO Convention against Discrimination in Education and Articles 13 and 14 (Right to education) of the International Covenant on Economic, Social and Cultural Rights*, UNESCO, Paris.

- *“Adoption of official-language laws, which define the dominant group’s language as the only official national language to be used in the bureaucracy, courts, public services, the army, higher education and other official institutions.*
- *Construction of a nationalized system of compulsory education promoting standardized curricula and teaching the dominant group’s language, literature and history and defining them as the “national” language, literature and history.*
- *Diffusion of the dominant group’s language and culture through national cultural institutions, including state-run media and public museums.”*  
(UNDP, 2004, p. 62)

The traditional division between rights and freedoms has prevailed for a long time within human rights circles, so as to justify non-intervention by the State and bring down educational liberties to a level of secondary importance. We do know, however, that it is impossible to dissociate freedom from the right to education’s other components. As a social right, the right to education is also – and entirely – cultural. We shall come back later to the point that one can require from the State respect, protection, and active implementation of the right to education – fully understood, with the freedom dimension.

This partly explains why the freedom issue has been absent from international debate on education since 1945, and since the birth of the modern international community.

Too late indeed that education came to be considered as a fundamental right. One can be glad that it has become today the object of numerous works, which outline a real international consensus. Educational policies have, for a long time, been a matter of goodwill on behalf of decision-makers. Today they should be recognized as moral and legal obligations (S. R. OSMANI, 2004, p. 3).

The approach of education based on rights rests on the idea that *“policies and institutions [...] should claim to explicitly adhere to norms and values expressed in the international law of human rights. Whether they are explicit or implicit, norms and values shape policies and institutions [...]. With strong moral values, universally accepted and accompanied with legal provisions, the international law of human rights provides a restrictive normative framework for national and international policies”* (OHCHR, 2002, p.2)<sup>8</sup>.

The Dakar Framework for action reaffirms this view: *“Education is a fundamental human right. It is the key to sustainable development and peace and stability within*

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<sup>8</sup> On this theme, see : A. FERNANDEZ, (2006), *Educación. Un enfoque basado en los derechos humanos* in CLUB DE ROME, Ponències curs 2004-2005 del Grup Català del Capítol Espanyol del Club de Roma, El Consorci] Zona Franca de Barcelona, Barcelona, pp. 9 – 23.



*and among countries, and thus an indispensable means for effective participation in the societies and economies of the twenty-first century, which are affected by rapid globalization. Achieving EFA goals should be postponed no longer. The basic learning needs of all can and must be met as a matter of urgency.* (Dakar Framework for action, Para. 6)

The purpose of lasting development does not only hold for South Countries. It is neither limited by considerations of economic growth nor by ones of essential needs satisfaction. It primarily concerns the human part of the human being, what gives him his dignity.

K. Tomasevski, former Special Rapporteur on the right to education, from the Commission on Human Rights, describes the development of the right to education in four phases:

*a) The first one is about recognizing education as a right. Places where the right to education is acknowledged, non-nationals are often expressly excluded from it. The servants or children in illegal situations might be implicitly excluded, particularly when identity papers are necessary for the school registration;*

*b) Once education is recognized as a human right, we have a second phase of segregation, girls, natives, disabled children or members of minorities get the access to education, but in separate schools, and more often of less quality;*

*c) In the third phase, we are moving on the way of integration, from segregation to assimilation. The categories newly admitted in ordinary schools have to adapt, abandon their mother tongue or their religion, or even their usual home when going to a boarding school. So that girls might be admitted in schools where programs have been designed for boys, and native children and the one from minorities, in schools where the teaching is done in foreign languages for them, and where history course deny their own identity. This process may be supported by integrationist objectives, but the latter tend to be interpreted in different ways. Assimilation implies the imposition of uniformity; integration recognizes diversity, but only as a deviation from the "norm". Consequently, new comers have to adjust to the "norm", that more often only extrapolate distinctive features of entitled persons – entitled by themselves – the oldest giving preference to man over woman, or to national language speakers over vernacular speakers;*

*d) The fourth phase needs an adaptation to the diversity. It is not the pupil anymore that has to adapt to the existing education system, but it is the education system that has to be conform to the superior interest of the child.*

(K. Tomasevski, 2003, para 28, p. 14)

This fourth phase means that the liberty dimension has to be taken into account because it supposes an adaptation to the person, to the person's needs and identity.

As regards the right to education, a quite comprehensive normative framework and hermeneutics do currently exist. The Sub-Commission for the promotion and the protection of human rights has devoted two reports to this right<sup>9</sup>, the Commission on Human Rights – replaced by the Human Rights Council – produced nine reports.<sup>10</sup> The Committee on Economic, Social and Cultural Rights has adopted general comments relating to article 29 of the Convention.

*“The right to education, says the United Nations Committee on Economic, Social and Cultural Rights - recognized in articles 13 and 14 of the Covenant (...) is of vital importance. It has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.”* [CESCR, General comment 11, par 2]

In this respect, the right to education embodies the indivisibility of human rights and clearly institutes that the traditional division between rights and liberties, between rights-liberties and rights-debt (*droits-créance*) is not relevant anymore. Neither is the separation between quantitative and qualitative. This is confirmed by a recent report by UNESCO:

*“There is a common misunderstanding that access to education must always precede attention to quality. This is not, in fact, the case. There is evidence from the field that, in some cases, learners are not taking advantage of school places even when they are available, and in other cases, learners drop out when what they are learning is not relevant to their current or future needs. The following points are now clear, however:*

- *educational access and quality are distinct concepts;*
- *these two concepts are intricately linked, especially when supply and demand are considered; and*
- *while quality is impossible without access, access without quality is often meaningless to those for whom access is made possible.”*

(UNESCO, 2003, par. 4)

In the same ways, the General Comment 11 on article 14 of the Covenant binds the free access and compulsory nature of education to the freedom to choose the type of education. Free access to education should not only concern schools depending on public authorities but also “establishments other than those of the public authorities”, according to the CESCR terminology. Without this extension, we would be in a situation of economic discrimination. Having to express itself repeatedly on the subject, the French Constitutional Council has thus stressed the “compulsory

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<sup>9</sup> E/CN.4/Sub.2/1998/10 and E/CN.4/Sub.2/1999/10

<sup>10</sup> E/CN.4/1999/49, E/CN.4/2000/6, E/CN.4/2001/ 52, E/CN.4/2002/60, E/CN.4/2003/9, E/CN.4/2004/45, E/CN.4/2005/50, E/CN.4/2006/45 and A/HRC/4/29.

character of State help" for private schools. "*According to the Constitutional Council, State funding of private schools is an 'essential condition of the existence of freedom of education' and (...) as such, constitutionally compulsory*" (L. FAVOREAU / L. PHILIP, 2001, p. 349).

As stressed by a recent publication of Eurydice on the financing of compulsory education, subsidies to non-governmental schools should "*lead to a public financing such as everyone will have free access to it, otherwise some will again have an advantage over others.*" (EURYDICE, 2001, p.17)

Risking oversimplification, one could say the following: All people are entitled to basic free education. And it is unacceptable that those who use the fundamental right to choose a different school should be deprived of such free basic education. To accept that only children choosing a state school have the right to free education is depriving the "right to chose a school" of its meaning.

The question of the funding of non-governmental schools is symptomatic of a faulty understanding of the notions of "public" and "private"<sup>11</sup>. The *Resolution on freedom of education in the European Community* had already clearly asserted that "*the right to the freedom of education implies the obligation for the member states to enable the application of this right also financially and to grant (private) schools the subsidies necessary for them to further their mission and fulfill their obligations, in the same conditions that corresponding public establishments would benefit from, without discriminations against organizing persons, parents, pupils or against the staff.*" (para. I. 9).

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<sup>11</sup> It is worth quoting K. Tomasevski's thought: « *(The) respect for parental freedom to have their children educated in conformity with their religious, moral or philosophical convictions has been affirmed in all human rights treaties. Despite this global consensus, the obligation to make primary education all encompassing is frequently, albeit erroneously, associated with state-provided schooling. Governments can ensure freedom of education by funding, but not managing, a diverse range of schools, as well as operating a countrywide network of public schools. (...) The right to education by its very nature requires regulation by the state because the state is responsible for ensuring that all educational institutions comply with prescribed standards. The exercise of parental freedom of choice in educating their children generates a variety of schools, and these standards ought to be observed in them all so as to safeguard education as a public good as well as to protect children against abuse. (...) The obligation to make primary education free of charge is frequently, albeit erroneously, associated with the government provision of primary education through state and/or public schools, although it may be implemented through subsidizing a diverse range of primary schools. Some countries have only public schools, others only private, while most have a mixture. The meaning of "private" varies a great deal. In its broadest sense, it encompasses all non-state schools, some of which may actually be partially or even fully funded by the state. The assumption behind the term "private" is that all such schools are profit making, while in fact many are not. The term is applied to formal and non-formal education, religious and secular schools, minority and indigenous schools, as well as schools for children with special needs. Some private schools supplement state institutions and provide education in a particular minority language or religion, or accommodate children with physical or learning disabilities.* » (K. TOMASEVSKI, 2004, p. 18-26 and 52-56).

The study we present here will show that the classic distinction between the public and the private sector of education is not relevant anymore. The theoretical contribution of Amartya Sen has clearly clarified the link between liberties and State action as facilitator of rights:

*"Development is the fruit of the expansion of the freedom of choice of human beings, be it related to processes allowing freedom of action or to concrete opportunities offering themselves to persons due to their personal situation and their social environment".*

(A. SEN, 1998, p. 17)

Social rights are therefore not opposed to person's liberties. On the contrary, they are identifying with these liberties. Being educated means increasing the liberty to choose the life we want to live:

*"The capability approach requires that the goodness of social arrangements be judged in terms of the flourishing of human freedoms. (...) Underlying the capability approach is a specific conception of what constitutes human well-being. At a very basic level, well-being can be thought of as the quality or the "well-ness" of a person's being or living and living itself can be seen as consisting of a set of interrelated "functionings" – the things that a person can do or be. The level of well-being thus depends on the level of those functionings, i.e. how well a person can do or be the things she has reasons to value – for example, to what extent can she be free from hunger or take part in the life of a community, and so on. The concept of "capability" refers to a person's freedom or opportunities to achieve well-being in this sense."* (OHCHR, 2004, p.6)

This approach allows defining a new political framework in which the different views based on different ideologies have to confront each other. Taking the form of a meta-policy, this framework implies – as we suggested – new rules based on two main elements. On the one hand, we have to think of a new way of considering the role of the authorities. This might appear – wrongly – as diminishing their power, whereas in fact it redefines the exercise of the latter. On the other hand, a new norm can be assigned to public policies, so that they have to be conducted with respect to the rights of the human being, instead of being only led by technical and economical efficiency.

Within this new framework civil society emerges as a fundamental actor in the social system. In its program Education for All (EFA), UNESCO addresses civil society *"as regrouping all non-governmental and non-profit making associations working in the educational field"* and gives as example NGOs, campaign networks, religious communities, and social movements.

What is the role of civil society? According to UNESCO, it takes on three functions in the educational field:

- 1) to supply alternative services;
- 2) to implement innovative steps;
- 3) to exert a critical and mobilizing role<sup>12</sup>.

The work we present here attempts to cover, in about a hundred countries, the role of civil society in education by analyzing freedoms.

### **Main texts on the right to education**

The right to education already appears in the preamble of the Universal Declaration of Human Rights: teaching and education are brought up as means to promote respect for human rights and to secure their effective recognition and observance. *“The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement (...) to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms (...) to secure their universal and effective recognition and observance...”*

(Preamble of the Universal Declaration of Human Rights)

The very same Universal Declaration of Human Rights proclaims the right to education for all, and asserts that the primary purpose of education is the development of human personality; it repeats its desire for this education to, by nature, promote respect for human rights and fundamental freedoms. It also recalls the right of parents. *“Everyone has the right to education. (...) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. (...) Parents have a prior right to choose the kind of education that shall be given to their children.”* (art. 26)

The *International Covenant on Economic, Social and Cultural Rights* takes the same elements again: *“(...) 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. The States (...) undertake to have respect for the liberty of parents (...) to choose for their children schools, other than those established by the public authorities...”* (art. 13)

The *International Covenant on Civil and Political Rights* also refers to this parental freedom, in the broader context of freedom of thought, conscience and religion: *“Everyone shall have the right to freedom of thought, conscience and religion. (...) The States (...) undertake to have respect for the liberty of parents (...) to ensure the*

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<sup>12</sup> See UNESCO, Le rôle de la société civile dans l'éducation, [http://www.unesco.org/education/efa/fr/partnership/civil\\_society.shtml#role](http://www.unesco.org/education/efa/fr/partnership/civil_society.shtml#role)

*religious and moral education of their children in conformity with their own convictions.”(art. 18)*

The *Universal Declaration on Cultural Diversity* proposes a more ambitious formulation of the right to education. Thus, it states in article 5: “*...all persons should be entitled to quality education and training that fully respect their cultural identity.*” The use of the word ‘*all*’ has to be pointed out, just as the ‘*quality*’ requirement, the ‘*cultural identity*’ mention, and the adverb ‘*fully*’. We undoubtedly do have the emergence of a new norm that goes well beyond the scope of the article 26 of the *Universal Declaration of Human Rights*, and the article 13 of the *International Covenant on Economic, Social and Cultural rights*.

In 1999 the Committee on Economic, Social and Cultural Rights proposed a typology<sup>13</sup>. According to this typology, which is used today as a criterion of evaluation of reports presented to the Committee by all the countries having ratified the ICESCR, the States have three legal obligations:

a. The State has to respect the right. In other words, it has the duty to prevent, through its own action, any form of discrimination in the enjoyment of fundamental liberties. We are of course thinking here about the right of the parents to choose a school “*other than established by the public authorities.*” (See above, article 13 of the ICESCR)

b. The State has to protect the use of the right against any form of “horizontal” violation that could be an obstacle to its full realization. It undertakes the responsibility to prevent the freedom of education from being limited, and from going against the child freedom. One of the duties of the State consists of stopping the development of schools that would not respect fundamental rights, particularly the rights of the child. This duty of protection gives the State concrete means to prevent sectarian-type schools from be established, to the extent that these sects are bearing ideologies going against fundamental freedoms.

c. The State has to work in a positive way for the implementation of the right. In other words, it cannot just grant an educational liberty. Besides which, it would be contradictory in terms; a fundamental freedom is never granted but is simply recognized. So the State has to take measures to turn the school choice in a real choice for all. To clarify, a State that only accepts the freedom of education, without securing the means to achieve it, will acquire the reputation of not respecting the freedom of education.

The same Committee also established the characteristics essential to the education system to respect the right to education. There are four of them:

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<sup>13</sup> See the General comment 13 on the right to education, relating to the article 13 of the ICESCR (United Nations, doc E/C.12/1999/10).

- a) *Availability*: the right to education requires that educational programmes have to be available in sufficient quantity within the jurisdiction of the State.
- b) *Accessibility*: the right to education requires from the State to grant physical, economical and non-discriminatory accessibility to these programmes. In other words, the State has to remove any obstacle to the accessibility of education for all school-age children and to prevent any physical or economical discrimination.
- c) *Acceptability*: the education offered has to be “acceptable” for the actors of education, and thus for the parents, as they are primarily responsible for the education of their children.
- d) *Adaptability*: the education offered has to be in such a way that it can adapt to the needs of a changing society.<sup>14</sup>

We want to consider here that there is no true freedom of education when the state simply conducts a policy of “*laissez-faire*” and does not take active measures to promote and protect this freedom. We then would like to note that the true fulfilment of the right implies that the offered education services be “acceptable”, this is to say that they really have to fit peoples’ needs and beliefs. Eventually, and this point is highly educational, schools provisions have to be “adaptable”. Others would say “flexible”. Once again, it is about the constant adaptation of the school to the child’s needs, in order to facilitate the child’s integration in constantly changing world.

The implementation of the right to education is based on the essential criterion of “the superior interest of the child”. Relevance, cultural appropriateness, and good quality are thus part of the acceptability, which implies a trustworthy relation between the public authorities and the citizens, the authorities acting as guarantor of the rule of law under the aegis of international instruments of human rights. There clearly appears an incompatibility of acceptability with uniformity of education systems or with the absence of one or more parties taking part in the educational process.

The criterion of acceptability cannot be set apart from pluralism of education plans and of actors in education – pluralism in which public institutions, civil society and the private sector are taking part.<sup>15</sup>

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<sup>14</sup> The interdisciplinary institute of ethics and human rights of the University of Fribourg has done an important work on the indicators of the right to education based on these characteristics: IIEDH (2005) *La mesure du droit à l’éducation*, Kartala, Paris.

<sup>15</sup> On this theme see the interesting study of R. M. TORRES who says that: « *El creciente valor atribuido a la sociedad civil y a la participación ciudadana en el pensar y el quehacer local, nacional e internacional tiene como trasfondo una redefinición del papel de – y de la relación entre – Estado y sociedad civil, así como entre ambos y las agencias internacionales de cooperación para el desarrollo, en el marco de una redefinición de la relación entre lo público y lo privado, y entre lo local, lo nacional y lo global. En términos del BID, estaríamos avanzando en la construcción de “un nuevo paradigma societario caracterizado simultáneamente por la eficiencia económica y la eficiencia social”* (BID-

In his report to the *Sub-Commission on the Promotion and Protection of Human Rights*, M. Mehedi says: "the emphasis on the human being necessarily implies that education contributes to turn the educated person into a real free human being: education is a free act creating freedoms. Thus far from being an advocacy, the freedom of education is part of the right to education nucleus. It is moreover bound to numbers of other freedoms recognized in international instruments." (M. MEHEDI, 1999, par.62)

In General Comment n. 13 of the Committee on Economic, Social and Cultural Rights, adaptability is understood as education system's flexibility, which implies decentralization and autonomy of the centres. It also means adaptation to the needs of societies and communities. In the latter sense, it is combined with acceptability because considering acceptability of the diverse cultural identities without a constant adaptability of the system is nonsense.

The right to education seems to be first and foremost a cultural right, understood as a right "to be", as a right that aims to protect and value the identity, the latter being considered as the recognition of a singularity determined by the relation between universality and particularity. If culture is "the way a man is", education consist first and foremost of "learning to be" as suggested by the Delors Report (1996).

Education is a fundamental right of the human person, and so it is owed to her, as education is a necessary condition for the full development of the human personality. Education is therefore a right to identity as well as an "*empowerment right*", that is to say a right allowing other rights to be fulfilled.

In his pedagogic theory of the community, G. Dalla Fratre is looking at the articulation between education, person and culture. His approach has the advantage of keeping a cultural perspective on the human person, without resulting in disintegration or deconstruction of the subject through culture. For G. Dalla Fratre "*the human condition (...) shows the requirement of an intersubjective relationship as constitutive of the very existence of the human person (plurality), through individual uniqueness (non repetitiveness / irreducibility) in its relation with others.*" (1991, p. 20)

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Argentina 1998: 9). *La tradicional atribución de lo público y la política pública – entendida como aquella que se ocupa del "bien común", del "interés de todos" – como dominio exclusivo del Estado, está hoy cuestionada. Por un lado, hay una creciente apertura del Estado y de la "cosa pública" hacia la intervención activa de actores noestatales. Por otro lado, hay una creciente apertura de los Estados y las sociedades nacionales, y de la política pública, a la influencia de las agencias internacionales, las cuales han incorporado a la sociedad civil como un nuevo interlocutor, con y sin la mediación del Estado. Como se señalaba en una reunión del BID, estaríamos hoy bailando un "tango entre tres": Estado, sociedad civil, y Banco (organismo donante). En verdad, no obstante, se trata de un "tango entre cuatro", pues en esa tríada está ausente el nuevo gran actor: el mercado. La sociedad civil (su propia caracterización como tal, su nuevo papel, sus límites y posibilidades) se ubica y define hoy en esta compleja trama de relaciones entre Estado, mercado, y agencias internacionales.* » (R. M. TORRRES (2001), *Participación ciudadana y educación*, Instituto Frónesis, p. 2)



Thus “as a subject directed to *self realization*” the individual always develop his personality through relationships with others. “*The community – or the culture – is the vital network of relationships activated by the person. This network is the space needed by the person for its development. According to this view, if the individual can define itself as an organisation of necessities and possibilities, the community remains the primary condition for this development. Without it the very development of the individual is impossible.*” (1991, p.21)

From this anthropological analysis rises a cultural conception of the individual that lays the foundations of a fruitful relation between nature and culture where necessity and possibility interact to create the human being. Rof Carballo<sup>16</sup> developed a metaphor to which it is possible to refer, but that has been used by him in a very different way: the man is made of both its weft and its weaving; on the biological weft (nature) liberty weaves (culture). Hidden behind the weaving, the weft disappears almost entirely to let the fabric of the human existence appear.

This may shed light on the understanding of cultural rights as rights “to be” and not only as rights “to have” cultural goods. If all human rights are rights “of others” this is particularly the case of cultural rights that allows openness through culture. That way, we could define cultural rights as all the rights that guarantee access to the resources necessary to the process of identification.<sup>17</sup>

To study the cultural nature of the right to education, nothing is more relevant than to refer to the afore-mentioned Universal Declaration on Cultural Diversity. Article 5 of this declaration roughly lists cultural rights and states that “*all persons are entitled to quality education and training that fully respect their cultural identity*”.

The terms used are worth considering because it is the first time ever that such an international norm – let’s remember that it is a declaration – explicitly refers to the quality of education. This is also the first time that one emphasises the “full” respect of identity. This is worth repeating because as a result of emphasising the right of access (economic and social right), education is easily reduced to a minimal service that tends to deviate from the respect of a fundamental right on which identity relies. This is to say the very existence of a subject of rule of law. To have a correct grasp of the scope of this fact, it is worth stressing that this norm dating from 2001 is at a precise point of time in the development of international law of human rights.

This development could be summed up in 3 features:

- 1) acknowledgement of the interdependence of human rights (Vienna Declaration, 1993);
- 2) emergence of differential rights: minority groups, indigenous people and right of the child;

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<sup>16</sup> See J. ROF CARBALLO (1997) *Violencia y ternura*, Espasa Calpe, Madrid, p. 93 and next pages.

<sup>17</sup> See IIEDH (2007) *Les droits culturels. Déclaration de Fribourg*, Fribourg, Suisse.

### 3) the positive recognition of diversity

Under the impact of these three evolutions, the right to education has developed and the Declaration on Cultural Diversity maps a conceptual trajectory that goes from economic and social rights to cultural rights through civil and political rights (freedom of choice and to establish schools).

The right to education *de facto* has the 3 afore-mentioned characteristics, but it is precisely the cultural dimension that justifies the others. It is indeed because identity – the very human existence – depends on education that a state service, endowment is needed and this service has to respect the freedom of actors to enable a free construction of identity. As a cultural right, education foremost seems to be the instrument of self-giving meaning, where one learns to be.

## Methodology and criteria of analysis

In order to study education freedom, we chose six criteria of analysis that we shall explain below. It is important to note that in a general way we sanctioned countries that give no information on the various criteria. We regard transparency as being a generally accepted characteristic of good governance as regards public services, and the lack of information therefore harms the good governance of the system.

**First criterion. Freedom to found and administer NGSs<sup>18</sup> according to article 13 of the International covenant on economic, social and cultural rights**

### Article 13 of the ICESCR (al. 3 and 4)

*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*

<sup>18</sup> The 2002 report proposed to gather under the general term of non-governmental schools all the schools that the ICESCR had named “schools, other than those established by the public authorities”. See footnote 7.

*always to the observance of the principles set forth in paragraph 1 of this article<sup>19</sup> 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.*

The first criterion can be sum up as follows: Do clear and legal provisions such as “to ensure the religious and moral education of their children in conformity with their own convictions” exist? Are there in the country, clear, legal and express provisions enabling the establishment of non-governmental schools?

Our first criterion is thus about countries that know and implement similar provisions to article 13 of the ICESCR following the same direction of the aforementioned interpretations.

### First criterion method of analysis

We allotted 16 points to countries whose Constitution provide for such provisions and 13 points when not in the Constitution, these provisions are yet found in the legislation. These points are only entered when the texts clearly state not only the freedom of education **principle** but also its implementation through the ability (at least) to administer NGSs. We also allotted 16 points to countries that name NGSs in their Constitution without referring to conditions for founding schools. In some countries we did not find any legal text that provide for such provisions. Yet, we gave them 4 points insofar as we could clearly show that NGSs could be admitted on an exceptional basis, or even simply tolerated. Some rare countries do not receive any points: those have a strict state monopoly.

We did not take into account – other than referring to them in the comments – “foreign” NGSs allowed on various countries’ territory: think about French Schools almost exclusively intended for children of French immigrants on a given territory. These schools are not at all part of the country’s “education project” and it would not have been appropriate to consider them as a positive expression of a government’s will to give parents freedom of choice. We shall however point out that some of these schools welcome the denizen population and hence are part of the country’s education network.

Let us add that we consider legislations such as those that prevail in France, the United States or the United Kingdom to justify the awarding of 16 points. Strictly speaking, there are no words in the text of the French or American Constitution that

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<sup>19</sup> This first paragraph reminds of the “right of everyone to education”. It also states “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 ».

“allow NGSs establishment”. However there are pieces of legislation that have been delivered by constitutional or supreme Courts.

## ■ **Second Criterion. The State’s obligation to finance NGSs**

Why start with the financing instead of the pedagogy, the programmes and methods? Simply because true education freedom implies that parents choose a school for their children without this choice being limited by economic considerations. We consider that all the texts concerning freedom of education, read together with human rights provisions, allow us to consider that without funding there is no freedom of education. In our theoretical research we showed that there is fundamental bound between State recognition of freedom of education and its commitment to finance the exercise of this freedom.

The analysis of our second criterion is about knowing if a country has a binding legislation under certain conditions to grant a financial aid to NGSs.

### **Second criterion method of analysis**

We allotted 16 points to countries whose legislations can be characterised as very positive for NGSs. There we refer to financing **requirement** as written down in the Constitution or in legal provision and to not too restrictive grant conditions.

The word **requirement** means that a State renounce deciding on a case-by-case basis or implementing a changing policy as regards NGS subsidies. The State financially supports NGSs provided that they meet some not very restrictive requirements. The latter meaning is obviously prone to interpretation. We regard hygienic, moral or facilities minimum quality standards requirements as not being very restrictive. We can also keep this grade when the State intervenes in order to inquire about NGS activities and to ensure respect for the rule of law. We agree with guidelines set out by the Committee on Economic, Social and Cultural Rights: the ideal of freedom is not state indifference; the latter indeed has to protect and promote the exercise of freedom. To sum up, we consider that a State binds itself to financing from the moment on it notes the existence of an NGS. This situation mainly prevails in North European countries.

When, in a given country, the financing is not obligatory but introduced as an option, which is not put under other conditions than the one defined above as “not very restrictive”, we allotted 13 points. When it comes to allot points it is sometimes

difficult to decide whether the first or the second situation prevails (i.e. for Poland), particularly when the only sources we can rely on are legal provisions.

When the grant conditions are becoming **restrictive** we allot 8 points. Should we be surprised that there is – too often in our view – some degree of proportionality between a grant financing and the restrictive nature of the conditions? This kind of restrictions has been found in France, Colombia or Argentina for instance. In those countries restrictions and subsidies are clearly tied together: in France for instance there is a complete adjustment of the NGS to the official curriculum.

To move from 13 to 8 points we bound ourselves to find clear and objective conditions in order to justify that we indeed face a state of restrictions to freedom. Without a clear comprehension of these restrictions we allotted 13 points.

We shall also face situations where a school can ask for a subsidy for itself, this usually leading to negotiations and a decision left at the option of the authorities. We then talk about financing on a case-by-case basis and we allot 4 points. The same grade is given to countries whose NGSs are subject to very different regimes according to their location, their pedagogical project or other criteria. This is typically the situation in Switzerland, generally speaking not in favour of financing NGSs, but with some few noteworthy exceptions, or in Cameroon where state financing can only come at a fifth place on a donor's list. Finally, when NGSs are receiving special financial aid or on a one-off basis – or never receive any – we don't give any points to the concerned country.

### **Third criterion. The amount of the financing granted to NGSs**

Some States help to pay NGSs – or rather some of NGSs – teachers' wages, according to very variable criteria. Others also grant subsidies for operating costs. The most generous, or the most coherent, contribute to investment costs. Other States implement quite fuzzy policies that are therefore difficult to assess. In our 2002 report we used these types of financing in order to set our index of freedom. In the present report we tried to replace this typology by another, more "user "oriented.

Free education – and particularly for primary school – is an integral part of the right to education<sup>20</sup>. Most legislation specifies that primary school – and often secondary school – has to be free, without any further details. Others do recognize the right to free education to public schools students only. This limitation is of course creating a problem because if there is indeed a **right** of everyone to free education and a **right** of everyone to choose the school, it is not clear how one of these rights may nullify the other one.

This is why we consider that a true perception of freedom of education is about conceding that the latter cannot stand in the way of the right to free education. Hence,

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<sup>20</sup> See our study : UNESCO/OIDEL (2006), *Enseignement primaire et gratuité*, UNESCO, Paris.

we use here the criterion that allows us to know if NGSs' financial grants allow students that chose these schools to also enjoy a free or quasi-free education.

### Third criterion method of analysis

When a country gives families the choice between public schools and NGSs without this choice resulting in economic discrimination, we consider the right to free education to be granted to all students and we allot 16 points. This maximum grade concerns countries such as Belgium, Ireland, the Netherlands or Denmark, where the right to choose school is a long-time part of political practices. More recent legislation also deserves to be mentioned: the Czech Republic recognizes NGSs as public school partners and finance their needs up to 97%.

When this right is restricted to recognized NGSs we allot 13 points. We obviously could object that an NGS enjoying a maximum grant is *ipso facto* "recognized". In reality we keep the distinction when a state clearly applies a differential treatment between one group of NGSs and another, the former enjoying a large support than the other one. We included in this category countries in which we could emphasise the parallel existence of recognized NGSs enjoying wide grants and NGSs simply weakly "allowed" or not at all grant-aided.

Sometimes the financing is restricted and bound to strict grant conditions. In this case we allot 8 points.

4 points are allotted to countries that grant financial aid on a case-by-case basis, while zero fit with the absence or quasi absence of financial aid, or else a blurry situation.

### Fourth criterion. Parents' freedom of choice

This criterion directly comes from the analysis that appears in *Key data on Education 2005* (Eurydice), and we try to apply it to every country. As far as European countries are concerned, we usually reproduce Eurydice's categorization and we sometimes depart from it, when our sources allow us to do so.

Generally speaking, we want to know up to which point a State promotes educational freedom in an open-minded way. Anticipating our conclusion, we must emphasize a crucial element. If article 13 of the ICESCR defines freedom of education as the right to choose a school "other than those established by the public authorities", many more countries implement this freedom in a decentralised way and with an educational pluralism perspective. In our 2002 report we already stressed this trend: the distinction between public and private school is gradually becoming less relevant

as to judge educational freedom since school systems are always more oriented towards the valorisation of a diversified offer of educational projects and of schools' true autonomy at the very heart of the public system. From now on educational freedom's assessment is necessarily done by taking into account such kind of criteria, at the very heart of public school.

Parents' freedom to choose a (public) school for their child is thereby a very useful criterion because if this freedom applies to the public system, it a fortiori applies to the NGS network.

Still, this criterion analysis led us to encounter some difficulties. How were we to deal with a country whose school system is completely disorganized? Or else, if there is only one school located within a reasonable distance and the parents are not worried about choosing a school but rather about being able to register in the only existing one? We thus had to bind ourselves to interpret Eurydice's criteria.

Indeed we consider that parents have the right to "choose their children's schools" if and only if this provision clearly appears in the legislation. In the case of lack of information on this topic we considered that parents did not have a true right to choose schools.

In practice, countries that do not have a schooling rate close to 100% usually omit to specify to what extent parents can choose schools. This is not surprising because a low schooling rate often reflects the restriction of parents' freedom due to the lack of schools, education costs or even sometimes due to the poor quality of teaching. Moreover, this empirical observation fits in with the very meaning of freedom of education that should not be considered respected when the fundamental right to education is not. In this case we consider that the parents cannot choose and we allot 0 points.

#### **Fourth criterion method of analysis**

We allotted 16 points to countries in which all or almost all the children enjoy the right to education with complete freedom as regards the choice of the school, the public authorities merely noting parental choice. In most of the situations that justified such a grade, the free parental choice is clearly referred to in the legislation.

13 points are allotted when the same situation prevails but the authorities regulate the number of persons in school: "the public authorities may intervene if its enrolment capacity is overstretched", according to Eurydice's wording.

We give 4 points as soon as the pupil is assigned to a school according to catchment's areas (the assignment to a school depends on the place of residence) and parents have to take specific steps to get change.

Finally, we do not allot any points to countries that do not allow for choice or when the authorities strictly stick to the catchment's area policy and exempt only in very special cases.

### **■ Fifth criterion. Home schooling**

The concept of "home schooling" may be differently understood from country to another. This is a phenomenon that is always more expanding, particularly in the United States. By choice or by necessity, some parents want to take care of their children's education.

Article 13 of the ICESCR provides at least the possibility for parents to choose this way of teaching. Moreover the degree of freedom families are enjoying directly depends on constraints a State may impose as regards supervision of such a way of proceeding. In some countries, Portugal for instance, *home schoolers* have to be linked to a public school that supervises the process. In other countries – some of Canada's provinces in particular – they even grant parents financing.

In our view, a country that recognizes the right of the parents to teach their children, in a way implements freedom of education. Such a country implicitly recognises that the non-governmental school concept can be broad enough to encompass a "school" made up of one or a few students.<sup>21</sup>

Hence we take into account this home schooling criterion insofar as it is part of an educational policy or as it possibly appears in schools as a thoughtful plan. In some countries where schooling is not universally ensured, we can indeed face situations where home schooling is part of the State policy of promoting education for school-less children. We shall refer for instance to our study on Egypt.

### **Fifth criterion method of analysis**

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<sup>21</sup> The home schooling practice comes from the distinction that exists in some countries only, between obligatory school and obligatory education. It is worth stressing that even in areas where it is implemented, this distinction is often expressed in ambiguous terms. We thus shall find countries authorizing home schooling while keeping the terms "obligatory school" rather than "obligatory education". This is particularly the case for France.



16 points are allotted to countries that authorize home schooling or that at least refer to the possibility of it insofar as the conditions imposed on such a practice are “minimum constraints”.

When these criteria are becoming restrictive, particularly pedagogically speaking with a strictly imposed curriculum or norms of assessment very close to public school's criteria, the score falls to 13 points.

Sometimes home schooling is authorized in particular cases, as an exception (often only for handicapped children). We then allot 4 points.

Finally, no points are granted to countries that require the child to attend a private or public recognized school. It is the same evaluation when home schooling (whatever term is used: distance teaching, individual or special teaching, teaching through radio or television...) is never referred to in texts. The lack of information indeed shows that home schooling is not part of the State's educational policy.

### **| Sixth criterion. Non-governmental schools' autonomy**

We will try to highlight the gist of the following concept: “*schools other than those established by the public authorities*” which is at the core of article 13 of the ICESCR. If we go back to history, this reference to “*other*” means that a school can explicitly manifest its religious or denominational nature. This very restrictive perception of otherness is at the origin of the unrelenting confusion between two debates it would be worth distinguishing today: the argumentation “for or against” the freedom to choose schools and the thinking on the relations between Churches – or “religious circles” – and the State.

One might reasonably retort that in many countries, a lot of non-governmental schools distinguish themselves or pretend to do so through a denominational nature. We still believe however that this approach is reductive and partly explains deadlocks the school debate often faces.

Article 13 of the ICESCR, which is our main thread, is obviously not very helpful to make it clearer when it set forth the right “to ensure the religious and moral education” of children whose parents would have chosen a school “other than those established by the public authorities”. The same wording is also found in article 18 of the ICCPR. From this point of view, article 14 of the Charter of fundamental rights of the European Union is clearly more explicit when it states: “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”.

The main contribution of this last text – besides the removing of the wording “to ensure” – is the reference to “pedagogical convictions”. If religious, moral and philosophical convictions obviously must be respected in a system of freedom of education, the recognition of pedagogical choices seems to us to be even more crucial as regards the choice of school. A pedagogical choice often depends of course on a philosophical choice. It is often taken in light of religious choices and implies moral consequences. It remains that the true purpose of school is the pedagogy and it is obviously in this field that the thoughts on educational freedoms and parental choice should take place.

The Committee on ESCR general comment on article 13 of the Covenant set forth in paragraphs 38 to 49 interesting ideas regarding this side of autonomy, although not in a direct manner. These paragraphs explicate the concept of “academic freedom” as understood in higher education. The very same document states that “*the enjoyment of academic freedom requires the autonomy of institutions of higher education*” after having specified that “*the Committee wishes to emphasize, however, that staff and students throughout the education sector are entitled to academic freedom and many of the following observations have general application*”.

Certainly students and teachers’ academic freedom does not exactly cover what we mean by freedom of education, the latter firstly regards parents of students with respect to their possibility to choose and secondly NGS headmasters and the room for manoeuvre they have regarding pedagogical project.

In 1997 Eurydice’s Key data on Education in the European Union assessed the real autonomy of public schools in each country of the EU. The schools’ autonomy criterion was not a characteristic of the relations between the public authorities and private schools anymore; it was becoming a matter of concern for the public sector itself. We thus naturally introduced this interpretation in our analysis in spite of the difficulties coming from school legislation and especially from their various concrete implementations.

### Sixth criterion method of analysis

Let us note that for each criterion of autonomy we provided **two standards**:

- **(a-type, left column)**: applied when NGSs receive a significant amount of financial aid from the public authorities,
- **(b-type, right column)**: when NGSs don’t get any financial aid from the public authorities, or a very low one.

The reason for this choice is simple: we can agree that public financing imposes on NGSs some constraints that would not be regarded as normal in cases where no financing is granted. Thus, freedom factors are more underlined when there is a significant grant. We often found ourselves facing a dilemma when in a given country,

subsidized and non-subsidized NGSs coexisted. We then chose the situation that prevailed for the majority of NGSs. We may note for instance that in Singapore around ten independent schools, certainly enjoying a large autonomy but very much in minority among other NGSs that yielded autonomy in order to get grants.

There are 4 retained criteria of autonomy: pedagogical autonomy, decision to accept students, freedom to hire and manage staff and supervision of quality control.

### **Pedagogical autonomy**

We first have to ascertain that a NGS actually proposes a “school plan”. This first criterion of autonomy has been assessed at 5 points (a-type) and 3 points (b-type) when NGSs (and sometimes public schools) have the possibility to freely adapt an official programme. However we did not require the absence of any official guideline as regards programmes in order to give the highest grade. The fact that a state sets a minimum framework does not seem to us prejudicial to the freedom of education (i.e. the obligation to teach in the official language of the country).

Some countries acknowledge the NGSs pedagogical autonomy, allowing them enough autonomy to set their own curriculum, the state only asking of them to be equivalent to the official one. In this case we allot 3 points (a-type) and 1 point (b-type). These schools can *a fortiori* add distinctive elements to the official curriculum. There is difficulty here to appreciate the notion of equivalence, which varies from country to country.

We also meet situations where some countries have to strictly implement the official programme while having the possibility to add some distinctive elements. We then give 2 points (a-type) and 0 points (b-type).

No point is given to a uniform school system that does not allow for any pedagogical freedom.

### **The decision to accept students**

This criterion also has to be understood on a non-discriminatory basis. If the NGS has public financing, it has to help to ensure the right to education for all and this is not in contradiction with the freedom principle. But the NGS has also the right to require from the parents to adhere to the school project. It would be unrealistic, for instance, to give a real autonomy to a Montessori school without allowing it to refuse the application of a student whose parents would disagree with the Montessori pedagogy knowing that there are sometimes many of consequences for the parents as well. When there is no explicit information and when the free schooling is not granted for the NGSs we assume that the school can freely apply its criteria of acceptance.

When the school can define the criteria of acceptance of the students we give 5 points (a-type) and 3 points (b-type). In countries where NGSs have small and not well defined financing whereas public schools are free, in the absence of more information, we considered that schools could implement their criterion of acceptance because a school that does not rely on any public financing has generally the right to refuse students, and even to expel them.

### **Freedom to hire and manage staff**

We take a look at the freedom a NGS enjoys as regards the hiring of its teachers. The school administration would lose the ability to act with real freedom as soon as it cannot choose its teachers anymore. Nevertheless, when hiring teachers of an NGS, the *freedom of education* can adapt to the requirement of “qualifications judged equivalent to the one required in public schools”, even if the notion of equivalence may lead to restrictive interpretations.

We cannot imagine that a complete lack of norms in this field might promote the freedom of education, which is only meaningful to the extent that it allows for an education of good quality. We then gave 5 points (a-type) and 3 points (b-type) to countries that allow NGSs to freely choose their teachers, notwithstanding the minimum conditions that might be required. These minimum norms can be introduced as equivalent to official guidelines to the extent that these requirements do not prevent NGSs from setting up their own criteria. In other words, the highest grade is given when the headmaster is indeed able to set up a pedagogical team gathered around a specific project that the teachers must adhere to.

A lower grade is allotted to countries where NGSs are able to choose their teachers but with some limitations. In this case we give 3 points (a-type) and 1 point (b-type). The case of Russia illustrates quite clearly the *raison d'être* of this criterion: according to law, the headmaster of a NGS is able to choose the teachers insofar as they have the qualifications. But in the event of a religious NGS, the headmaster cannot use the religious nature of its pedagogical project when setting up its hiring criteria.

When there is no information available we give 0 grade points because we consider that the lack of information hampers the establishment of NGSs.

### **Supervision of quality control**

Finally the last criterion of autonomy refers to the supervisory control and inspection. The way to supervise is of course crucial to freedom. The latter directly depends on the first criterion of autonomy: if the specific nature of the school can be stated in complete freedom, the school inspection will focus on security or hygiene. The more you restrict the scope of the specific nature, the more restrictive the inspection will be. Why then distinguish between this fourth point of view and the first one? Because

we observed through the analysis that some states tend to control too closely the inspection of the NGSs that are otherwise encouraged to develop an original school project. For instance this is the case in Hungary.

The grades take into account the evolution in several countries. We consider it best when the situation prevails that the school quality is directly controlled by the users i.e. the parents or a group of schools. The highest grade: 5 (a-type) and 3 (b-type) is generally given to countries that are decentralising their inspection system and to giving more responsibility to the schools. We do not lower the grade when a state inspection body whose mission is about expert evaluation, advising or setting statistics on the global quality of the system, remains (and this is often the case). This is typically the case of the United Kingdom where an official body, the OFSTED, is closer to an expert group rather than an inspecting body as traditionally understood.

The many reported attempts to decentralize were marked by a handover of the supervisory control to local authorities. As unsatisfactory as it is in a freedom of education perspective, this situation however seems to be such as to allow each part to adapt the programme and the school requirements to the student needs. We then give 3 points (a-type) and 1 point (b-type).

On the other hand we cannot view as something positive to freedom an existing classical national inspection. The field practice has shown that such an inspection, not very familiar with local reality and the real needs of students, tends to turn into a bureaucracy that watches the teachers. Hence we have to grade 0.

The general sources of our research are detailed in volume II. There are mostly references to international organisations such as the International Bureau of Education, the International Conference on Education (UNESCO), the work done by Eurydice (European Union) and those done by the afore-mentioned Glenn and Groof.

A field survey was conducted in Latin America, March 2007, to complete the research (mostly interviews with headmasters of NGSs). We also refer to other sources that are specific to each country, in particular Departments of Education. These sources are referred to in the Vol. II of our study.

As already noted, this report follows the one we published in 2002. The former referred to, for most of the countries, the developments that occurred between 2002 and 2006. In this report we outline the status of educational freedom in 100 countries, which represent about 95 % of the world population in 2007.

The main sources of our research are listed below. There is before each of them the abbreviations used in the by-country analytical grids that constitute the Vol. II.

RT06                      The state of the Right to Education Worldwide Free or Fee:  
2006 Global Report [2006]  
[http://www.katarinatomasevski.com/images/Global\\_Report.pdf](http://www.katarinatomasevski.com/images/Global_Report.pdf)

BIE	UNESCO / INTERNATIONAL BUREAU OF EDUCATION. Country profile. <a href="http://www.ibe.unesco.org/French/home.htm">http://www.ibe.unesco.org/French/home.htm</a>
CIE	Reports presented by countries at the International Conference on Education (UNESCO). We name the country's report together with the date of the conference. <a href="http://www.ibe.unesco.org/French/home.htm">http://www.ibe.unesco.org/French/home.htm</a>
Eury.CC05	EURYDICE (2005), <i>Key Data on Education in Europe</i> , Eurydice, Bruxelles.
Eury.rp	EURYDICE, Country reports <a href="http://www.eurydice.org/portal/page/portal/Eurydice/Overview/OverviewByCountry">http://www.eurydice.org/portal/page/portal/Eurydice/Overview/OverviewByCountry</a>
Eury.priv	EURYDICE (2000), <i>Private Education in the European Union</i> , Eurydice, Socrates, Bruxelles.
FRJ	F. R JACH (1999) <i>Schulvielfalt als Verfassungsgebot</i> , Dunker & Humboldt, Berlin.
GdG	C. L. GLENN / J. DE GROOF (2005) <i>Balancing Freedom, Autonomy and Accountability in Education</i> , 3 volumes, Wolf, Nijmegen.
EF-a	EFFE : Atlas of the Human Right to Education and Freedom of Schooling in Europe. <a href="http://www.effe-eu.org">http://www.effe-eu.org</a>
EPT	Education pour tous. Country reports. <a href="http://www.unesco.org/education/wef/countryreports">http://www.unesco.org/education/wef/countryreports</a>

On the following page there is the analytical grid used for each country. (cf. Vol II)

Country Name		Summary of the research on each country	
Criteria			
<b>1. Freedom to found and administer NGS according to art. 13</b>		0	Assessment criteria and descriptions of crucial factors
16	1A	is explicitly referred to in the Constitution	
13	1B	Referred to in law or decrees	
4	1C	is granted on a case-by-case basis	
0	1D	is not recognized	
<b>2. Financing of the NGS</b>		0	idem
16	2A	Is guaranteed by the Constitution or by the law, with not very restrictive grant conditions for the schools	
13	2B	Is a choice provided in the Constitution or by law, with a broad scope for its implementation	
8	2C	Is a choice provided in the Constitution or by law, with a limited implementation	
4	2D	Is granted on a case-by-case basis	
0	2E	Practically does not exist or is very rare	
<b>3. The amount of the financing granted to NGS</b>		0	idem
16	3A	Allow all NGS to be free of charge or almost free of charge for their students	
13	3B	Allow recognized NGS to be free of charge or almost free of charge for their students	
8	3C	Is restricted by strict grant conditions	
4	3D	Is decided on a case-by-case basis	
0	3E	Is low or not well defined	
<b>4. Parents freedom of choice</b>		0	idem
16	4A	Parents choose a school without the public authorities intervening	
13	4B	Parents choose a school but the public authorities may intervene if the school's enrolment capacity is overstretched	
4	4C	Students are assigned to a school but they can ask to change	
0	4D	Students are assigned to a school (change granted only with formal dispensation)	
<b>5. Home schooling</b>		0	idem
16	5A	Allowed with only minimal constraints as regards supervisory control	
13	5B	Allowed with strict constraints as regards supervisory control	
4	5C	Allowed in special cases	
0	5D	Going to school is compulsory	

## 6. Criteria of NGS autonomy

0 *idem*

### *Freedom to develop a « own nature ». NGS can...*

- 5/3 6.1a Freely adapt the official curriculum
- 3/1 6.1b Implement a curriculum equivalent to the public school one
- 2/0 6.1c Implement an identical curriculum to the public school one and add some other elements
- 0/0 6.1d have not / have a few freedom as regards pedagogical diversity

### *Freedom as regards decision to accept students. The NGS...*

- 5/3 6.2a Can set criteria as regards the acceptance issue
- 0/0 6.2b Is subject to acceptance rules of public schools

*idem*

### *Freedom to hire and manage staff. NGS...*

- 5/3 6.3a Can freely choose its teachers
- 3/1 6.3b Can choose teachers but has some restrictions
- 0/0 6.3c No available information

### *Supervision of the quality control*

- 5/3 6.4a Supervision controlled by NGS and parents
- 3/1 6.4b Supervision controlled by local authorities
- 0/0 6.4c Centralized supervision

<b>Freedom of education simple index</b>	<b>FEI</b> <b>07</b>	<b>Total of criteria 1 to 5 (max : 80 points)</b>	<b>Rank</b> <b>Rank according to FEI</b>
<b>Freedom of education composite index</b>	<b>FECI</b> <b>07</b>	<b>Total of criteria 1 to 6 (max : 100 points)</b>	<b>Rank according to FECI</b>

## Country data

Total population ( million)	<i>Data's figure</i>	<i>Data's year</i>
GNI/capita in PPP\$ ( <i>gross National Income per capita in US\$ Purchasing power parity</i> )	<i>idem</i>	<i>idem</i>
HDI ranking ( <i>Ranking according to the Human Development Index</i> )	<i>idem</i>	<i>idem</i>
Illiteracy rates (%)	<i>idem</i>	<i>idem</i>
Schooling rates in elementary school Gross M/ F (%)	<i>idem</i>	<i>idem</i>
Net M/F (%)	<i>idem</i>	<i>idem</i>
Schooling rates in secondary school Gross M/F (%)	<i>idem</i>	<i>idem</i>
Net M/F (%)	<i>idem</i>	<i>idem</i>



Share of private schools strength in % of total strength : elementary/secondary	<i>idem</i>	<i>idem</i>
Share of public expenses for education in % of total public expenses	<i>idem</i>	<i>idem</i>

Main source: UIS (UNESCO Institute for Statistics)

\* EPT Statistics

\*\* World Bank

## The scope and limits of our study

The choice of the criteria described above has been driven by the concern to reach a compromise between requirements that sometimes were antinomic:

1. Set criteria of freedom based on an undisputable norm, hence our choice of article 13 and its official comments.
2. Take into account the development of educational systems throughout the world; these systems are less inclined towards the distinction between public schools and schools “other than those established by the public authorities” as recognized in article 13 rather than towards the assimilation within the public network of values such as pluralism, freedom, and choice, traditionally related to private sector.
3. Finally, avoid as much as possible developing indexes impossible to assess because of the lack of information.

This last point was a tricky one. Yet, this can be easily understood: it is not so simple to know exactly up to which point the headmaster of an NGS located in developing countries is free. If the legal framework is generally well documented, it is much harder to find information with regard to students' acceptance conditions or home schooling. To do that, it would have been necessary to conduct an important field inquiry, a mission far beyond the resources we could provide.

But the field survey does also have limits. Indeed we often faced situations in which we interviewed nationals whose testimony sometimes confused us, because the gathered information was inconsistent and often irrelevant with respect to the legal information that we had gathered.

Referring to the difficulties in gathering reliable information could lead to questions of the validity of our survey. We think this would be wrong. These difficulties only show that the “freedom of education chart” that is suggested here is not definitive, and is even less so since that school systems are undergoing profound change. The fact that we have done a rough sketch should allow the gathering of much more precise and detailed information from the moment our **Report** will be read by actors in the field of education worldwide and will arouse interest. Precisions or even rectifications that will be provided shall only improve our database.

## Statistic data and graphs

### Results by countries' alphabetical order

COUNTRIES	1. Right to found	2. Obligation to finance	3. Amount of the financing	4. Parents choice	5. Home schooling	6. Autonomy	FEI Simple Index	FECI Composite Index	FEI rank /100	FECI rank /100
Afghanistan	13	0	0	0	0	0	13	13	84	89
South Africa	16	8	0	4	4	8	32	40	47	46
Albania	13	0	0	0	16	6	29	35	51	53
Algeria	13	0	0	0	0	4	13	17	84	83
Germany	16	13	8	4	4	15	45	60	30	27
Angola	16	0	0	0	0	0	16	16	75	85
Saudi Arabia	4	4	8	0	0	3	16	19	75	79
Argentina	16	8	8	13	4	18	49	67	27	22
Australia	13	8	8	0	4	18	33	51	45	32
Austria	16	8	8	4	13	16	49	65	27	24
Bangladesh	13	13	8	0	4	5	38	43	40	39
Belgium	16	16	16	16	13	16	77	93	3	4
Bolivia	16	13	8	0	0	0	37	37	43	49
Brazil	16	13	0	0	0	7	29	36	51	50
Bulgaria	16	0	0	13	0	12	29	41	51	43
Cambodia	4	0	0	0	0	0	4	4	97	99
Cameroon	13	4	0	0	0	5	17	22	73	73
Canada	13	13	8	4	16	16	54	70	20	18
Chile	16	13	8	13	16	16	66	82	11	11
China	0	0	0	0	0	9	0	9	98	96
Colombia	16	8	0	0	4	7	28	35	59	53
Congo	16	0	0	0	0	6	16	22	75	73
Costa Rica	16	4	4	0	0	7	24	31	64	62
Côte d'Ivoire	13	8	4	0	0	8	25	33	62	57
Croatia	16	4	4	0	0	6	24	30	64	64
Cuba	0	0	0	0	0	0	0	0	98	100
Denmark	16	16	16	16	16	18	80	98	1	1
Egypt	13	0	0	0	4	1	17	18	73	82
El Salvador	16	8	0	0	0	6	24	30	64	64
Ecuador	13	8	4	0	16	10	41	51	34	32
Spain	16	13	13	13	4	10	59	69	15	19
Estonia	16	13	8	13	13	15	63	78	12	13
United-States	16	13	11	16	16	16	72	88	7	9
Ethiopia	13	0	0	0	0	0	13	13	84	89
Finland	16	16	16	13	16	20	77	97	3	2
France	16	8	13	4	13	3	54	57	20	29
Ghana	13	0	0	0	0	3	13	16	84	85
Greece	16	4	4	0	0	2	24	26	64	68
Guatemala	16	8	0	0	16	4	40	44	36	38
Honduras	13	8	0	0	0	3	21	24	70	70
Hungary	16	16	13	16	16	13	77	90	3	7
India	16	13	8	0	4	0	41	41	34	43
Indonesia	13	4	0	0	13	6	30	36	50	50
Iraq	16	0	0	0	0	0	16	16	75	85
Iran	4	4	0	0	0	3	8	11	95	95
Iceland	13	4	4	4	4	4	29	33	51	57
Israel	16	13	8	16	4	15	57	72	18	15
Italy	16	8	8	13	13	10	58	68	16	20
Jamaica	13	4	8	0	0	1	25	26	62	68

COUNTRY	1. Right to found	2. Obligation to finance	3. Amount of the financing	4. Parents choice	5. Home schooling	6. Autonomy	FEI Simple Index	FECI Composite Index	FEI rank /100	FECI rank /100
Jordan	16	0	0	0	0	4	16	20	75	75
Kazakhstan	16	0	0	0	0	3	16	19	75	79
Kenya	16	0	0	0	0	0	16	16	75	85
Lebanon	16	0	8	4	0	7	28	35	59	53
Libya	16	0	0	0	13	1	29	30	51	64
Luxembourg	13	8	8	9	0	5	38	43	40	39
Madagascar	16	4	8	0	0	6	28	34	59	56
Malaysia	16	8	8	4	4	0	40	40	36	46
Mali	16	0	0	0	0	4	16	20	75	75
Mauritania	13	0	0	0	0	0	13	13	84	89
Mexico	16	4	0	0	4	7	24	31	64	62
Mongolia	16	8	0	0	16	3	40	43	36	39
Nepal	4	0	0	0	16	0	20	20	71	75
Nicaragua	16	0	0	0	13	7	29	36	51	50
Nigeria	13	0	0	0	0	7	13	20	84	75
Norway	13	16	13	2	13	15	57	72	18	15
New-Zealand	13	13	8	13	13	12	60	72	14	15
Pakistan	4	4	0	4	0	0	12	12	94	94
Panama	16	0	0	0	0	7	16	23	75	72
Paraguay	16	8	8	16	4	15	52	67	24	22
Netherlands	16	16	16	16	4	20	68	88	10	9
Peru	16	8	0	16	13	8	53	61	22	26
Philippines	16	8	0	16	13	15	53	68	22	20
Poland	16	16	13	13	4	18	62	80	13	12
Portugal	16	13	8	0	13	13	50	63	26	25
Rep. of Korea	13	13	8	0	4	13	38	51	40	32
Ireland	16	16	16	16	16	15	80	95	1	3
Dominican Rep.	13	0	0	16	4	0	33	33	45	57
Czech Rep.	16	16	16	13	13	18	74	92	6	5
Romania	16	8	13	4	4	13	45	58	30	28
United- Kingdom	13	16	13	13	16	20	71	91	8	6
Russia	13	8	8	0	13	8	42	50	33	36
Rwanda	13	0	0	0	0	6	13	19	84	79
Senegal	16	8	8	0	0	10	32	42	47	42
Singapore	16	8	8	16	4	3	52	55	24	31
Slovakia	16	16	13	13	0	15	58	73	16	14
Sudan	4	4	0	0	0	0	8	8	95	97
Sri Lanka	13	8	8	0	0	3	29	32	51	60
Sweden	13	16	16	13	13	18	71	89	8	8
Switzerland	13	4	4	4	15	10	40	50	36	36
Syria	13	0	0	0	0	0	13	13	84	89
Tanzania	13	0	0	0	0	0	13	13	84	89
Thailand	16	8	8	0	16	8	48	56	29	30
Tunisia	13	0	0	0	0	4	13	17	84	83
Turkey	16	0	0	0	4	4	20	24	71	70
Ukraine	4	0	0	16	4	5	24	29	64	67
Uruguay	16	8	0	16	4	7	44	51	32	32
Venezuela	16	8	8	0	0	0	32	32	47	60
Viet-Nam	0	0	0	0	0	6	0	6	98	98
Zimbabwe	13	8	0	0	16	4	37	41	43	43

## Countries by “FEI” rank

COUNTRY	1. Right to found	2. Obligation to finance	3. Amount of the financing	4. Parents choice	5. Home schooling	6. Autonomy	FEI Simple Index	FECI Composite Index	FEI rank
Denmark	16	16	16	16	16	18	80	98	1
Ireland	16	16	16	16	16	15	80	95	1
Belgium	16	16	16	16	13	16	77	93	3
Finland	16	16	16	13	16	20	77	97	3
Hungary	16	16	13	16	16	13	77	90	3
Czech Republic	16	16	16	13	13	18	74	92	6
United States	16	13	11	16	16	16	72	88	7
United Kingdom	13	16	13	13	16	20	71	91	8
Sweden	13	16	16	13	13	18	71	89	8
Netherlands	16	16	16	16	4	20	68	88	10
Chile	16	13	8	13	16	16	66	82	11
Estonia	16	13	8	13	13	15	63	78	12
Poland	16	16	13	13	4	18	62	80	13
New Zealand	13	13	8	13	13	12	60	72	14
Spain	16	13	13	13	4	10	59	69	15
Italy	16	8	8	13	13	10	58	68	16
Slovakia	16	16	13	13	0	15	58	73	16
Israel	16	13	8	16	4	15	57	72	18
Norway	13	16	13	2	13	15	57	72	18
Canada	13	13	8	4	16	16	54	70	20
France	16	8	13	4	13	3	54	57	20
Peru	16	8	0	16	13	8	53	61	22
Philippines	16	8	0	16	13	15	53	68	22
Paraguay	16	8	8	16	4	15	52	67	24
Singapore	16	8	8	16	4	3	52	55	24
Portugal	16	13	8	0	13	13	50	63	26
Argentina	16	8	8	13	4	18	49	67	27
Austria	16	8	8	4	13	16	49	65	27
Thailand	16	8	8	0	16	8	48	56	29
Germany	16	13	8	4	4	15	45	60	30
Romania	16	8	13	4	4	13	45	58	30
Uruguay	16	8	0	16	4	7	44	51	32
Russia	13	8	8	0	13	8	42	50	33
Ecuador	13	8	4	0	16	10	41	51	34
India	16	13	8	0	4	0	41	41	34
Guatemala	16	8	0	0	16	4	40	44	36
Malaysia	16	8	8	4	4	0	40	40	36
Mongolia	16	8	0	0	16	3	40	43	36
Switzerland	13	4	4	4	15	10	40	50	36
Bangladesh	13	13	8	0	4	5	38	43	40
Luxembourg	13	8	8	9	0	5	38	43	40
Rep. of Korea	13	13	8	0	4	13	38	51	40
Bolivia	16	13	8	0	0	0	37	37	43
Zimbabwe	13	8	0	0	16	4	37	41	43
Australia	13	8	8	0	4	18	33	51	45
Dominican Rep.	13	0	0	16	4	0	33	33	45

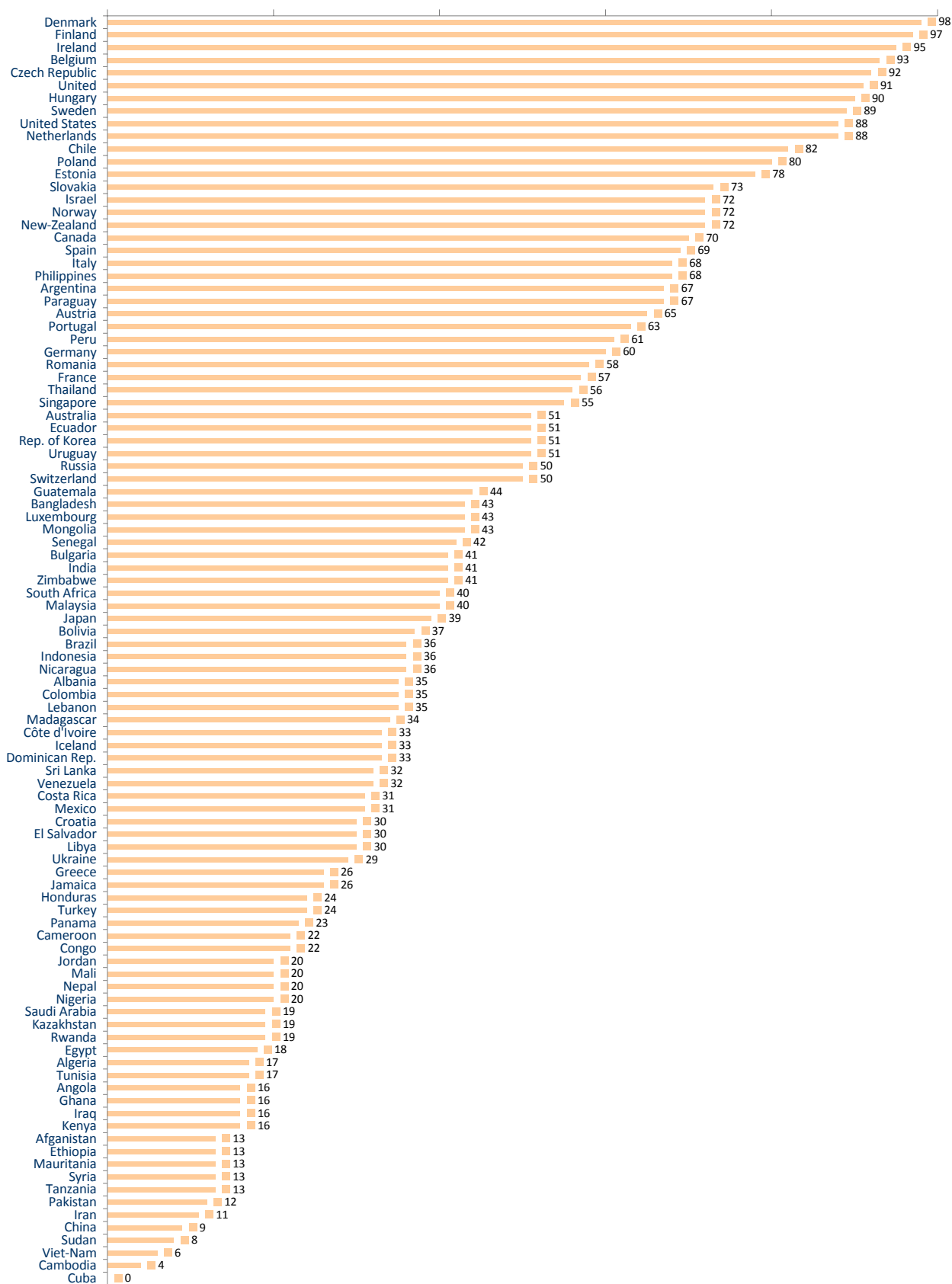
COUNTRY	1. Right to found	2. Obligation to finance	3. Amount of the financing	4. Parents choice	5. Home schooling	6. Autonomy	FEI Simple Index	FECI Composite Index	FEI rank
South Africa	16	8	0	4	4	8	32	40	47
Senegal	16	8	8	0	0	10	32	42	47
Venezuela	16	8	8	0	0	0	32	32	47
Indonesia	13	4	0	0	13	6	30	36	50
Albania	13	0	0	0	16	6	29	35	51
Brazil	16	13	0	0	0	7	29	36	51
Bulgaria	16	0	0	13	0	12	29	41	51
Iceland	13	4	4	4	4	4	29	33	51
Japan	13	8	8	0	0	10	29	39	51
Libya	16	0	0	0	13	1	29	30	51
Nicaragua	16	0	0	0	13	7	29	36	51
Sri Lanka	13	8	8	0	0	3	29	32	51
Colombia	16	8	0	0	4	7	28	35	59
Lebanon	16	0	8	4	0	7	28	35	59
Madagascar	16	4	8	0	0	6	28	34	59
Côte d'Ivoire	13	8	4	0	0	8	25	33	62
Jamaica	13	4	8	0	0	1	25	26	62
Costa Rica	16	4	4	0	0	7	24	31	64
Croatia	16	4	4	0	0	6	24	30	64
El Salvador	16	8	0	0	0	6	24	30	64
Greece	16	4	4	0	0	2	24	26	64
Mexico	16	4	0	0	4	7	24	31	64
Ukraine	4	0	0	16	4	5	24	29	64
Honduras	13	8	0	0	0	3	21	24	70
Nepal	4	0	0	0	16	0	20	20	71
Turkey	16	0	0	0	4	4	20	24	71
Cameroon	13	4	0	0	0	5	17	22	73
Egypt	13	0	0	0	4	1	17	18	73
Angola	16	0	0	0	0	0	16	16	75
Saudi Arabia	4	4	8	0	0	3	16	19	75
Congo	16	0	0	0	0	6	16	22	75
Iraq	16	0	0	0	0	0	16	16	75
Jordan	16	0	0	0	0	4	16	20	75
Kazakhstan	16	0	0	0	0	3	16	19	75
Kenya	16	0	0	0	0	0	16	16	75
Mali	16	0	0	0	0	4	16	20	75
Panama	16	0	0	0	0	7	16	23	75
Afghanistan	13	0	0	0	0	0	13	13	84
Algeria	13	0	0	0	0	4	13	17	84
Ethiopia	13	0	0	0	0	0	13	13	84
Ghana	13	0	0	0	0	3	13	16	84
Mauritania	13	0	0	0	0	0	13	13	84
Nigeria	13	0	0	0	0	7	13	20	84
Rwanda	13	0	0	0	0	6	13	19	84
Syria	13	0	0	0	0	0	13	13	84
Tanzania	13	0	0	0	0	0	13	13	84
Tunisia	13	0	0	0	0	4	13	17	84
Pakistan	4	4	0	4	0	0	12	12	94
Iran	4	4	0	0	0	3	8	11	95
Sudan	4	4	0	0	0	0	8	8	95
Cambodia	4	0	0	0	0	0	4	4	97
China	0	0	0	0	0	9	0	9	98
Cuba	0	0	0	0	0	0	0	0	98
Viet Nam	0	0	0	0	0	6	0	6	98

## Results by “FECI” ranking

COUNTRY	1. Right to found	2. Obligation to finance	3. Amount of the financing	4. Parents Choice	5. Home schooling	6. Autonomy	FEI Simple Index	FEI Composite Index	FEI rank
Denmark	16	16	16	16	16	18	80	98	1
Finland	16	16	16	13	16	20	77	97	2
Ireland	16	16	16	16	16	15	80	95	3
Belgium	16	16	16	16	13	16	77	93	4
Czech Republic	16	16	16	13	13	18	74	92	5
United-Kingdom	13	16	13	13	16	20	71	91	6
Hungary	16	16	13	16	16	13	77	90	7
Sweden	13	16	16	13	13	18	71	89	8
United-States	16	13	11	16	16	16	72	88	9
Netherlands	16	16	16	16	4	20	68	88	9
Chile	16	13	8	13	16	16	66	82	11
Poland	16	16	13	13	4	18	62	80	12
Estonia	16	13	8	13	13	15	63	78	13
Slovakia	16	16	13	13	0	15	58	73	14
Israel	16	13	8	16	4	15	57	72	15
Norway	13	16	13	2	13	15	57	72	15
New Zealand	13	13	8	13	13	12	60	72	15
Canada	13	13	8	4	16	16	54	70	18
Spain	16	13	13	13	4	10	59	69	19
Italy	16	8	8	13	13	10	58	68	20
Philippines	16	8	0	16	13	15	53	68	20
Argentina	16	8	8	13	4	18	49	67	22
Paraguay	16	8	8	16	4	15	52	67	22
Austria	16	8	8	4	13	16	49	65	24
Portugal	16	13	8	0	13	13	50	63	25
Peru	16	8	0	16	13	8	53	61	26
Germany	16	13	8	4	4	15	45	60	27
Romania	16	8	13	4	4	13	45	58	28
France	16	8	13	4	13	3	54	57	29
Thailand	16	8	8	0	16	8	48	56	30
Singapore	16	8	8	16	4	3	52	55	31
Australia	13	8	8	0	4	18	33	51	32
Ecuador	13	8	4	0	16	10	41	51	32
Rep. of Korea	13	13	8	0	4	13	38	51	32
Uruguay	16	8	0	16	4	7	44	51	32
Russia	13	8	8	0	13	8	42	50	36
Switzerland	13	4	4	4	15	10	40	50	36
Guatemala	16	8	0	0	16	4	40	44	38
Bangladesh	13	13	8	0	4	5	38	43	39
Luxembourg	13	8	8	9	0	5	38	43	39
Mongolia	16	8	0	0	16	3	40	43	39
Senegal	16	8	8	0	0	10	32	42	42
Bulgaria	16	0	0	13	0	12	29	41	43
India	16	13	8	0	4	0	41	41	43
Zimbabwe	13	8	0	0	16	4	37	41	43
South Africa	16	8	0	4	4	8	32	40	46
Malaysia	16	8	8	4	4	0	40	40	46
Japan	13	8	8	0	0	10	29	39	48
Bolivia	16	13	8	0	0	0	37	37	49
Brazil	16	13	0	0	0	7	29	36	50
Indonesia	13	4	0	0	13	6	30	36	50

COUNTRY	1. Right to found	2. Obligation to finance	3. Amount of the financing	4. Parents choice	5. Home schooling	6. Autonomy	FEI Simple Index	FEI Composite Index	FEI rank
Nicaragua	16	0	0	0	13	7	29	36	50
Albania	13	0	0	0	16	6	29	35	53
Colombia	16	8	0	0	4	7	28	35	53
Lebanon	16	0	8	4	0	7	28	35	53
Madagascar	16	4	8	0	0	6	28	34	56
Côte d'Ivoire	13	8	4	0	0	8	25	33	57
Iceland	13	4	4	4	4	4	29	33	57
Dominican Rep.	13	0	0	16	4	0	33	33	57
Sri Lanka	13	8	8	0	0	3	29	32	60
Venezuela	16	8	8	0	0	0	32	32	60
Costa Rica	16	4	4	0	0	7	24	31	62
Mexico	16	4	0	0	4	7	24	31	62
Croatia	16	4	4	0	0	6	24	30	64
El Salvador	16	8	0	0	0	6	24	30	64
Libya	16	0	0	0	13	1	29	30	64
Ukraine	4	0	0	16	4	5	24	29	67
Greece	16	4	4	0	0	2	24	26	68
Jamaica	13	4	8	0	0	1	25	26	68
Honduras	13	8	0	0	0	3	21	24	70
Turkey	16	0	0	0	4	4	20	24	70
Panama	16	0	0	0	0	7	16	23	72
Cameroon	13	4	0	0	0	5	17	22	73
Congo	16	0	0	0	0	6	16	22	73
Jordan	16	0	0	0	0	4	16	20	75
Mali	16	0	0	0	0	4	16	20	75
Nepal	4	0	0	0	16	0	20	20	75
Nigeria	13	0	0	0	0	7	13	20	75
Saudi Arabia	4	4	8	0	0	3	16	19	79
Kazakhstan	16	0	0	0	0	3	16	19	79
Rwanda	13	0	0	0	0	6	13	19	79
Egypt	13	0	0	0	4	1	17	18	82
Algeria	13	0	0	0	0	4	13	17	83
Tunisie	13	0	0	0	0	4	13	17	83
Angola	16	0	0	0	0	0	16	16	85
Ghana	13	0	0	0	0	3	13	16	85
Iraq	16	0	0	0	0	0	16	16	85
Kenya	16	0	0	0	0	0	16	16	85
Afghanistan	13	0	0	0	0	0	13	13	89
Ethiopia	13	0	0	0	0	0	13	13	89
Mauritania	13	0	0	0	0	0	13	13	89
Syria	13	0	0	0	0	0	13	13	89
Tanzania	13	0	0	0	0	0	13	13	89
Pakistan	4	4	0	4	0	0	12	12	94
Iran	4	4	0	0	0	3	8	11	95
China	0	0	0	0	0	9	0	9	96
Sudan	4	4	0	0	0	0	8	8	97
Viet-Nam	0	0	0	0	0	6	0	6	98
Cambodia	4	0	0	0	0	0	4	4	99
Cuba	0	0	0	0	0	0	0	0	100

# Graph 1 Countries according to the Freedom of Education Composite Index



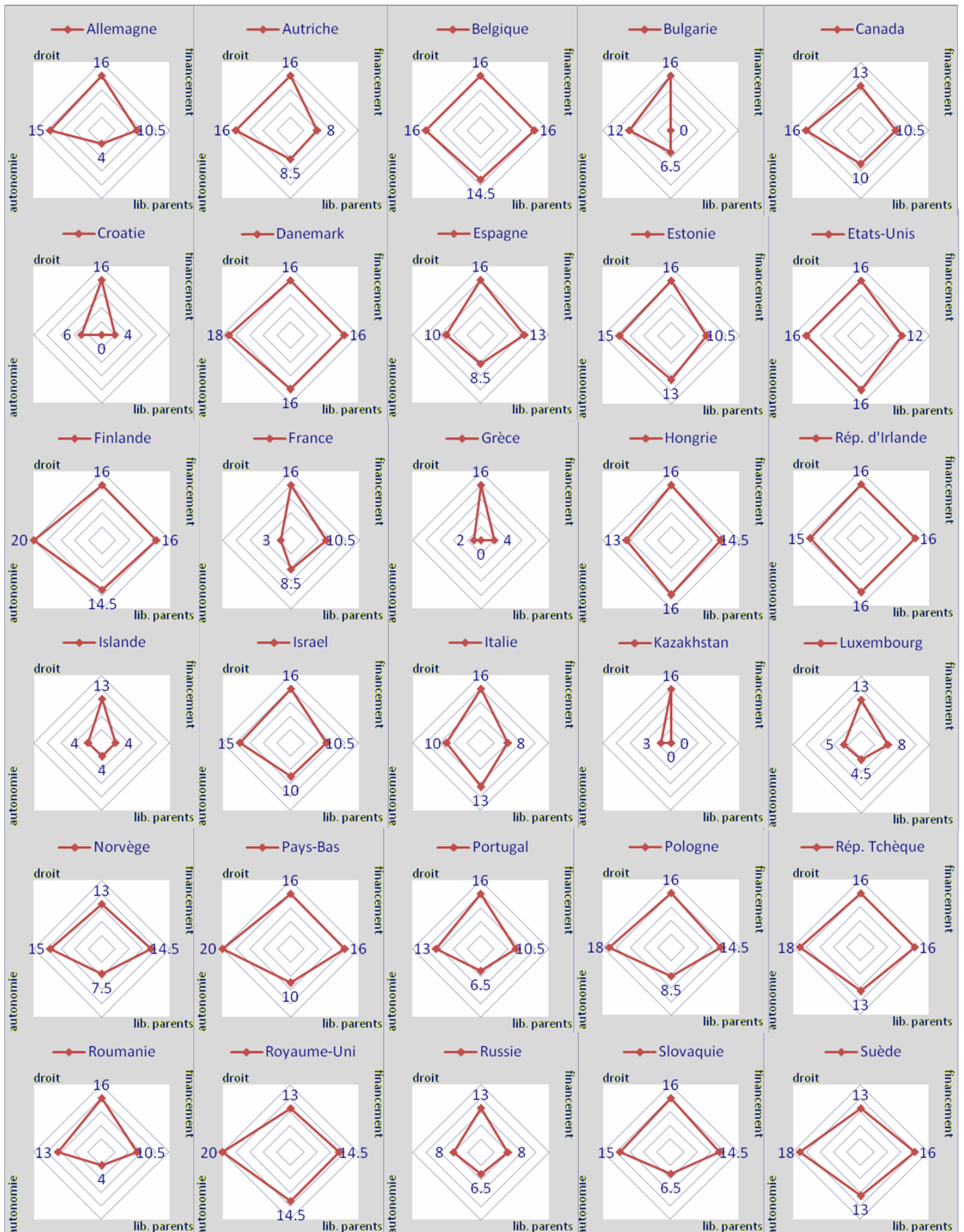


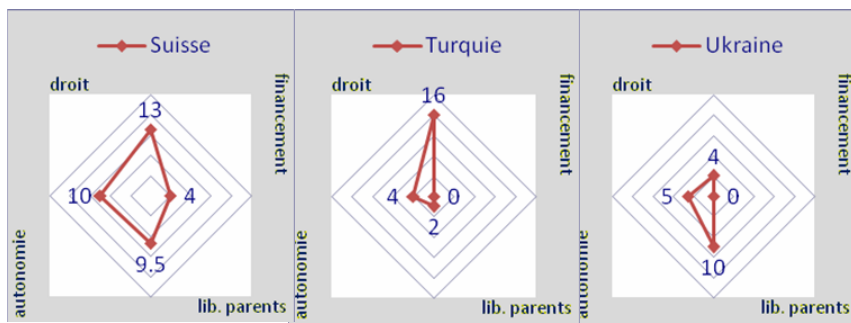




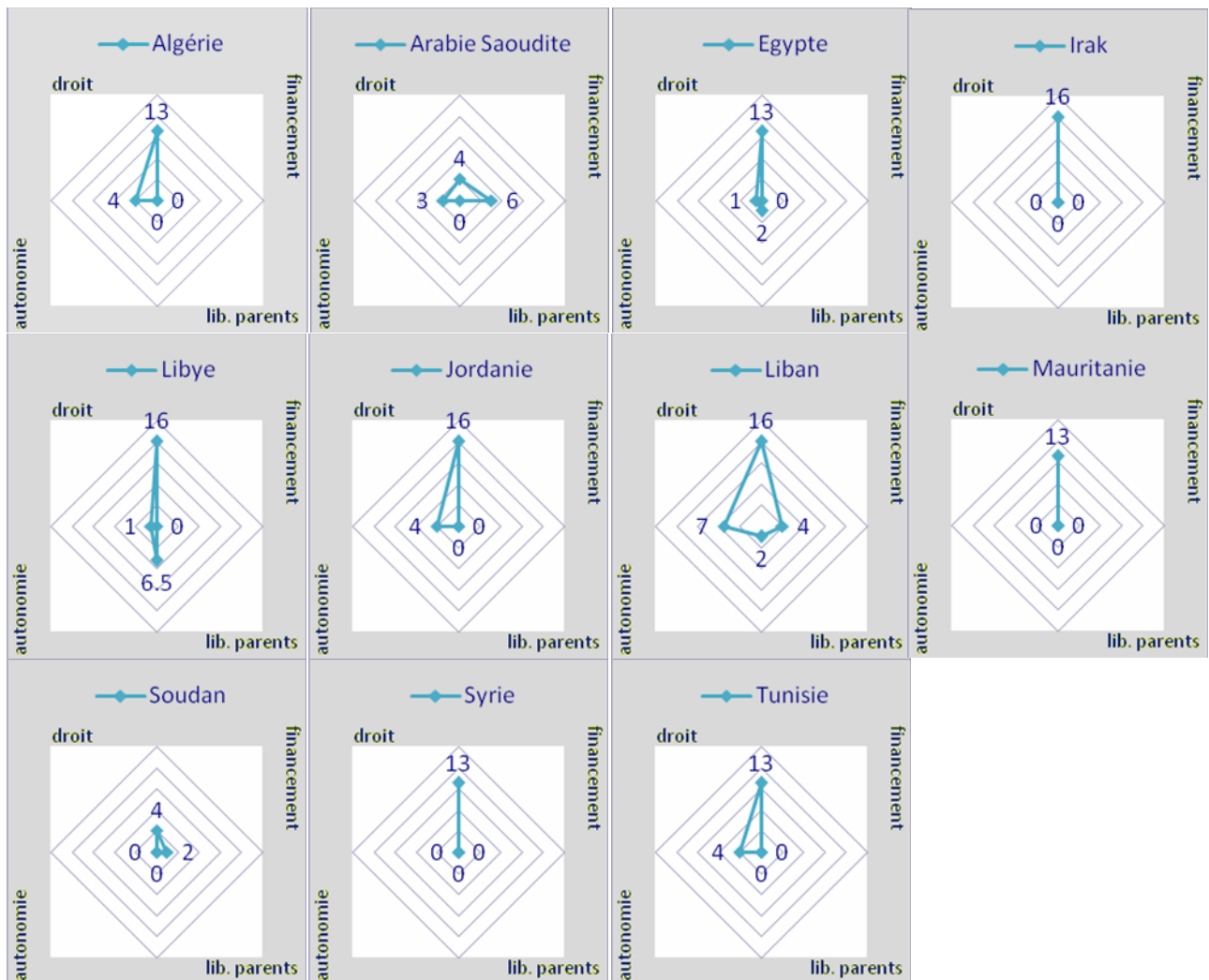
## Graph 3 Results by region

### Europe and North America

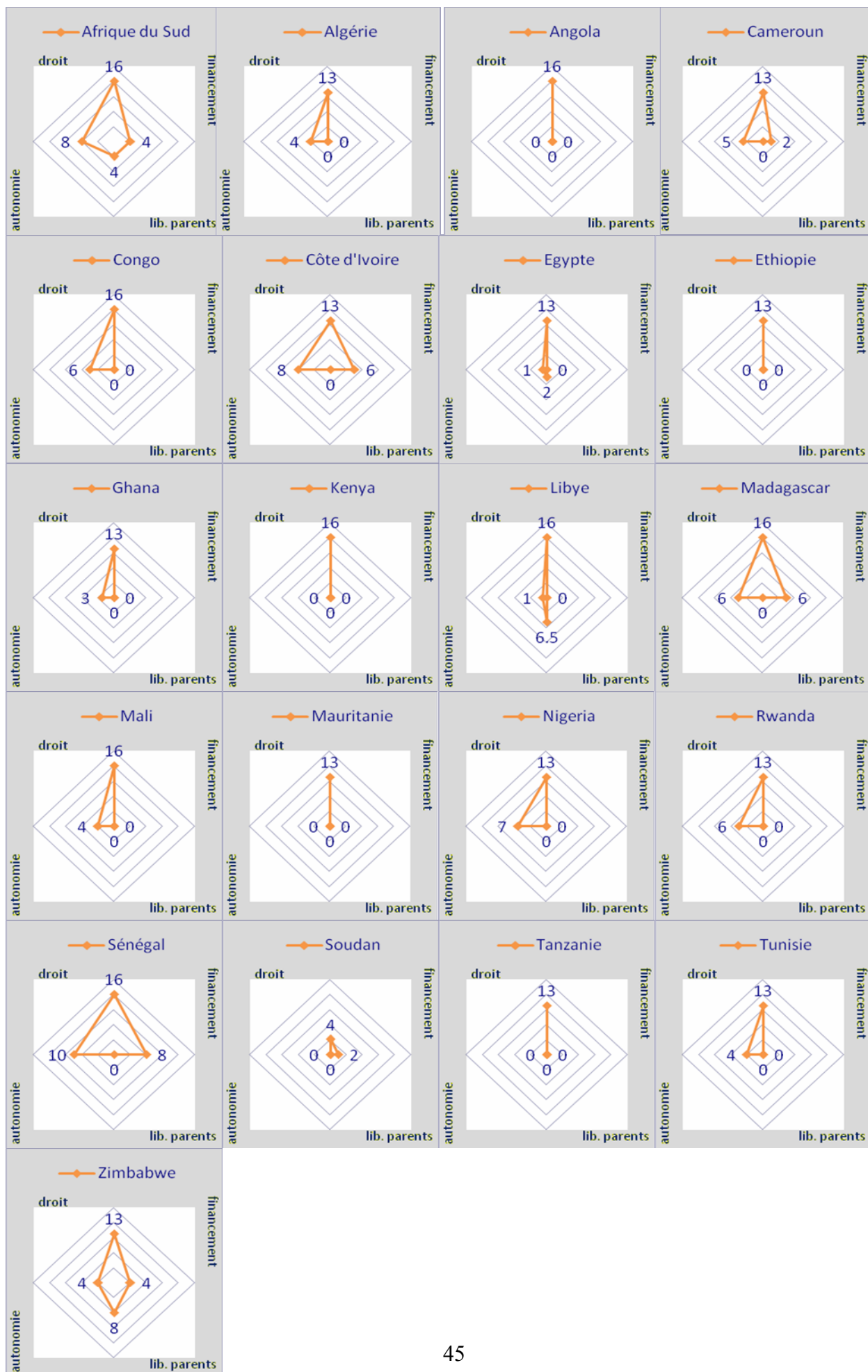




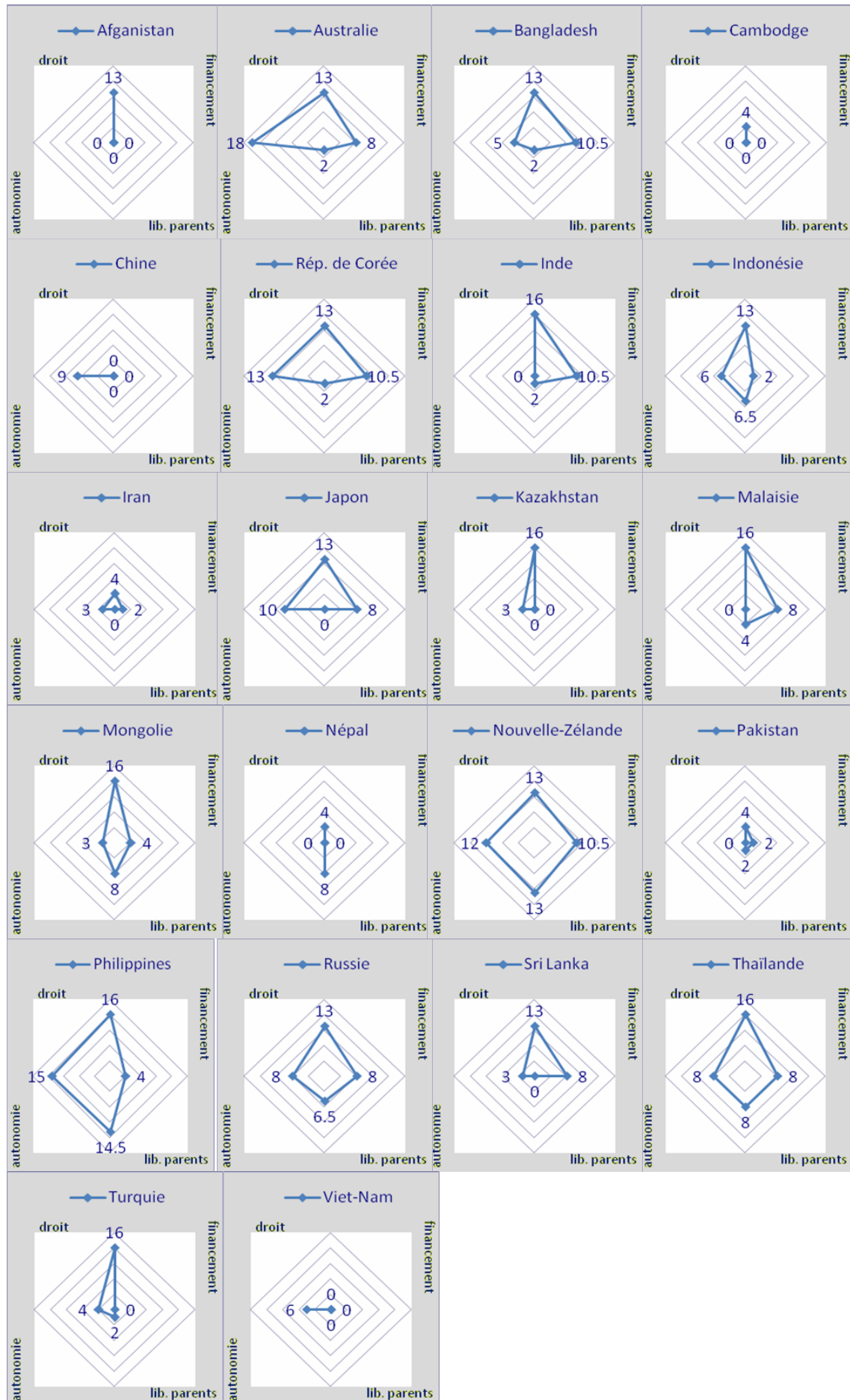
## Arab states



# Africa

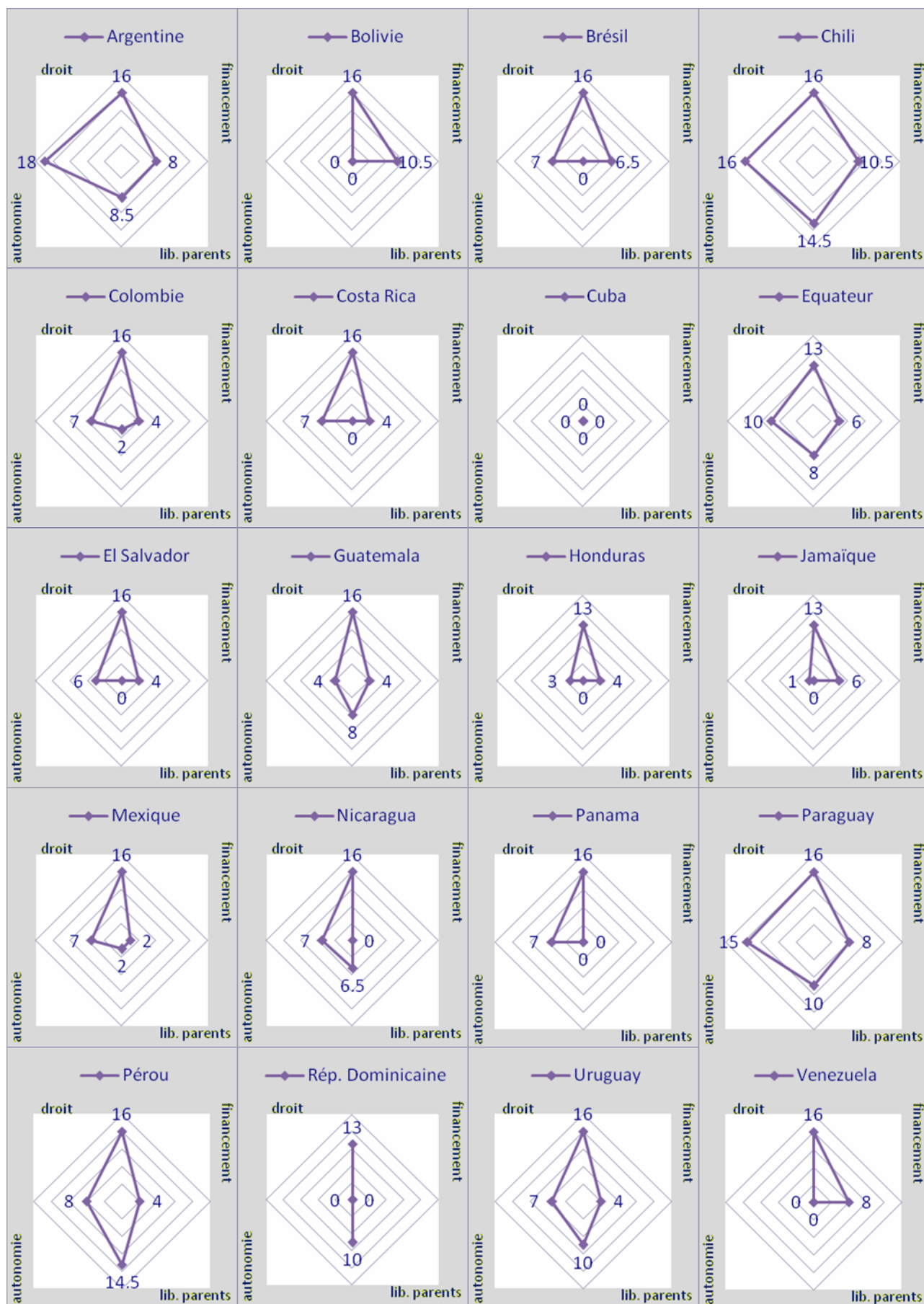


## Asia Pacific

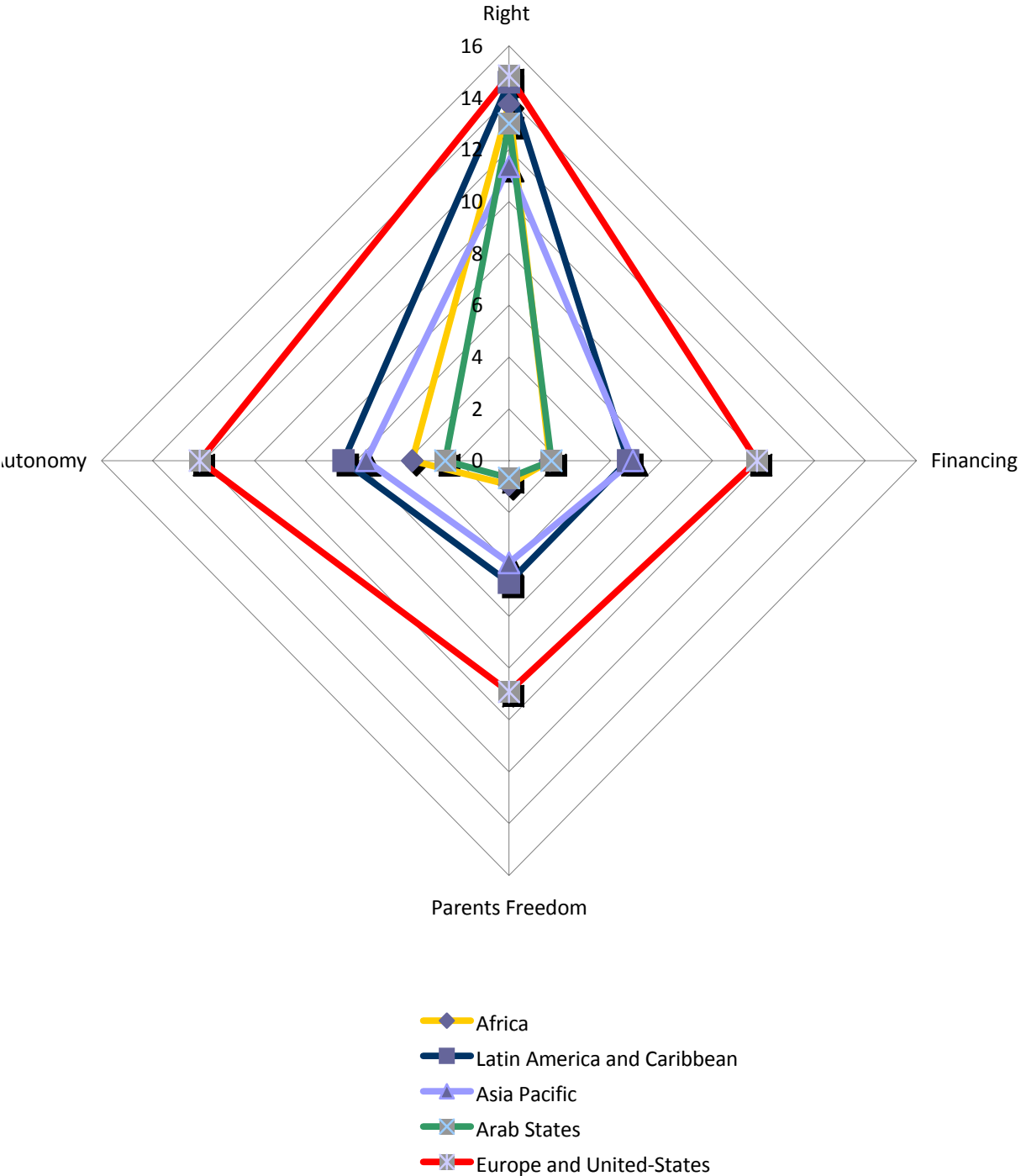




## Latin America and Caribbean

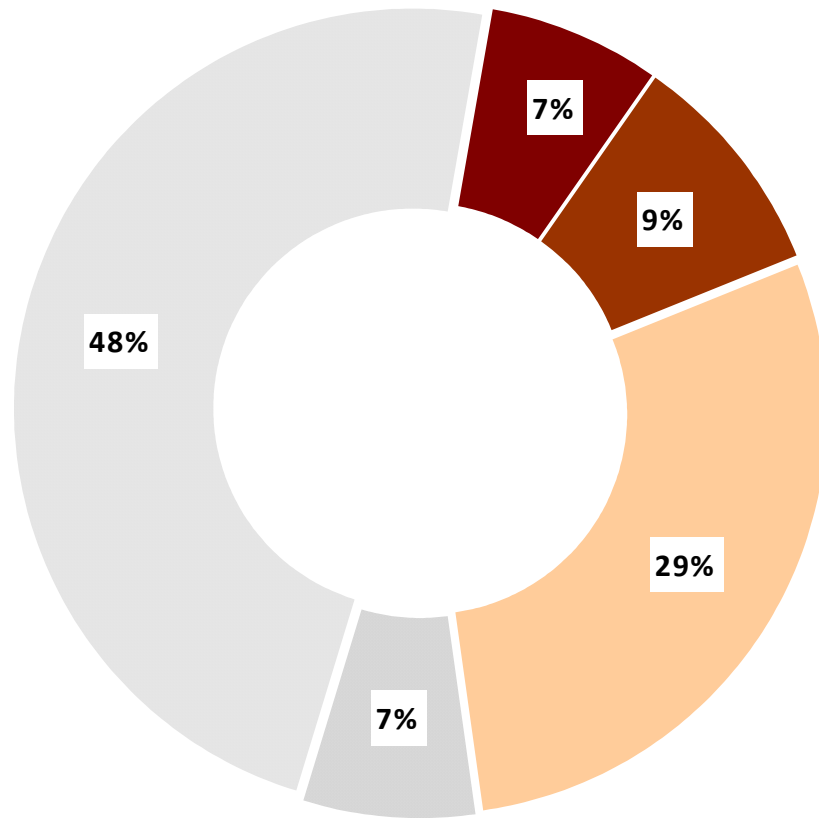


Graph 4 Regional Comparison



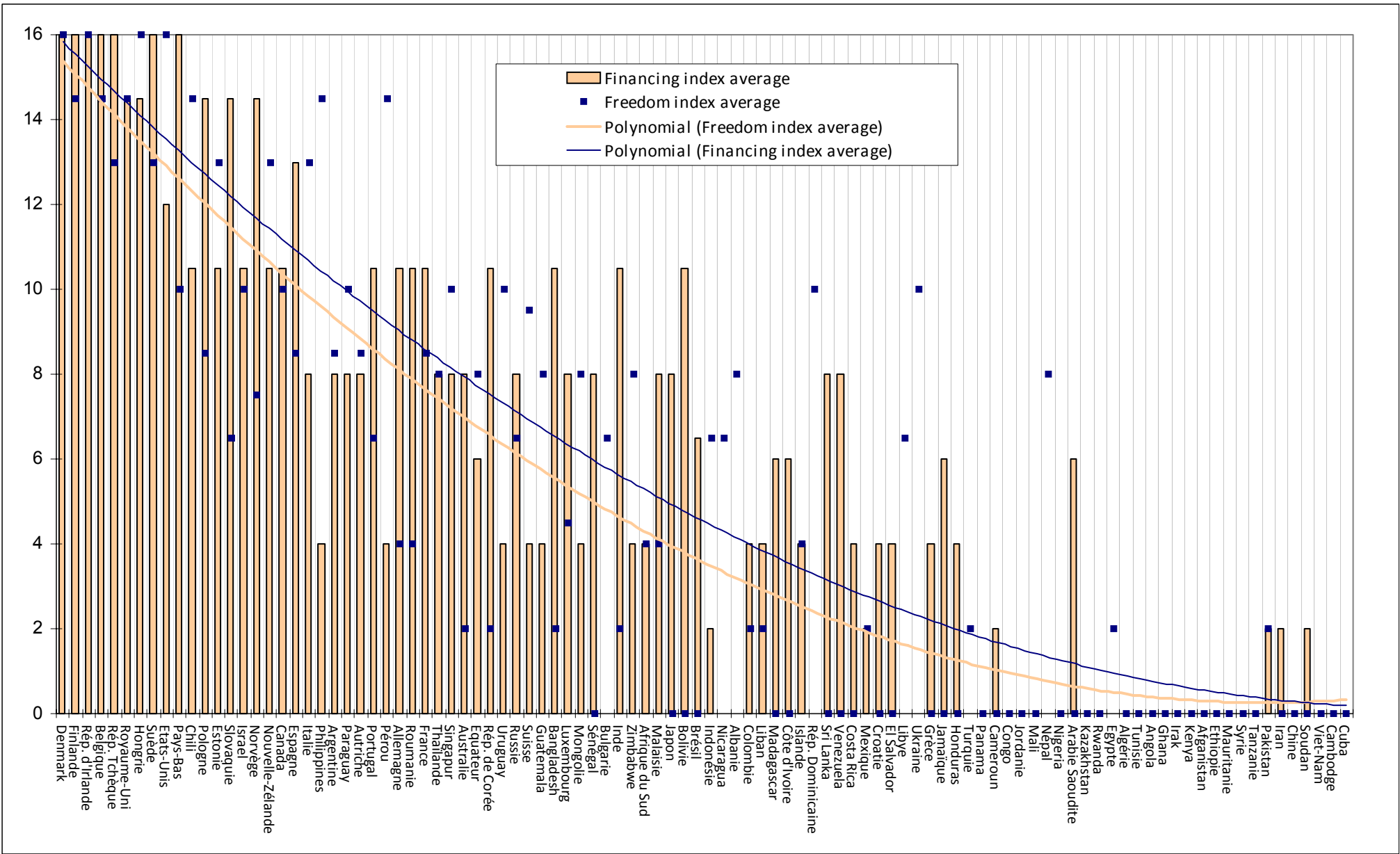


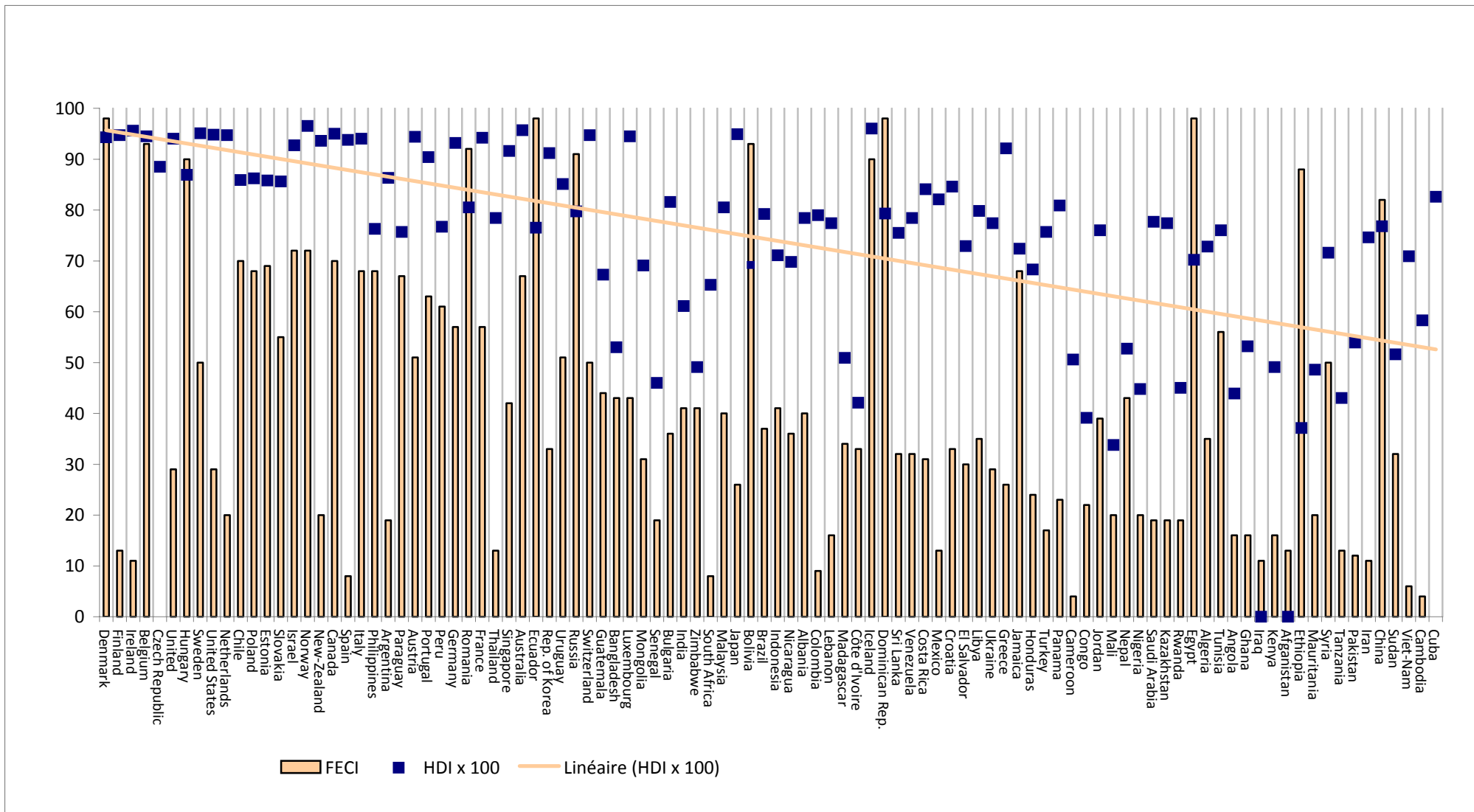
**Graph 5 Amount of the financing granted to NGS in % of the number of countries**



- financing that allows for all NGS to be free of charge
- financing that allows for all the recognized NGS to be free of charge
- strict conditions restricting the granted amount
- amount granted on a case-by-case basis
- weak or no clear financing

Graph 6 Financing and parents freedom





The chart displays the relationship between % public expenses and FECI for 50 countries. The left Y-axis represents % public expenses (0-100), and the right Y-axis represents FECI (0%-30%). The X-axis lists 50 countries. % public expenses are shown as orange bars, FECI as blue squares, and a polynomial trend line for % public expenses as an orange line.

Legend:

- % public expenses (Orange bars)
- FECI (Blue squares)
- Polynomial (% public expenses) (Orange line)

## Graphs explanation and comments

### Graph 1 Countries according to FECl

*Countries are ranked here from the highest FECl (Freedom of education composite index) rank to the lowest. Let us note that this index brings together all six criteria. The chart with the figures appears just before the graph. Comments on each country are to be found in the volume II.*

Comment:

One is not surprised to find among the best-graded countries, Denmark, Finland and Sweden. With respect to freedom of education, one really can speak of a “Nordic model”. The relatively poor position of Norway may be surprising. According to our criteria, this is particularly due to a quite restrictive policy with respect to the choice of school. In the leading group we also note the Czech Republic and Hungary. In this latter country, the parents’ freedom of choice is an essential principle of educational policy. Both in Hungary and Czech Republic the school system wants to clearly stand apart from the state monopoly imposed until recently by the communist regime. This interpretation is confirmed by the good position of Poland, Estonia and Slovakia. The other well-positioned countries (such as Ireland, The United-Kingdom, the United States and the Netherlands) have a traditionally liberal policy with respect to education; the Netherlands is one of the countries that send the most children to entirely state-financed NGS (around 75%).

Belgium’s fourth place is due to legislation very favourable to freedom. In our study, Belgium may be unduly favoured by the fact we took into account the pedagogical diversification possibilities as law provides and not the way this freedom is used.

Switzerland, despite its long tradition of democracy and decentralisation, holds the 36<sup>th</sup> place in our chart. This may be that because of the favourable economic conditions the Helvetian still enjoys, the choice of school is regarded as a “luxury” parents can afford.

The analysis of the poor situation in our view of the about-thirty countries at the end of the chart would require going into detailed explanations (cf. detailed files in volume II). We can distinguish between 2 types of causes: economic constraints on the one hand and on the other hand constraints related to either strong ideologies that seek to maintain a strict state monopoly or “weak” ideologies that have not yet considered education broadly understood as a priority of their politics.

### Graph 2 Freedom of education in the world according to FECl

*This is a world map in which countries are coloured according to the points obtained with the Freedom of Education Composite Index (FECl). The non-surveyed countries are hatched. Each colour stands for a range of 10 points out of the index total scale 100 points. Thus countries that get the least points are dark-blue whereas those that get the*

most are dark-red. We note that a country's overseas territories logically are given the colour of this country: Greenland for Denmark, the Falklands for the United-Kingdom, etc.

### Graph 3 Results by "region"

*"Radar" graphs regroup countries according to IBE criteria. They graphically show the global result of the analysis finally set on 4 criteria:*

- *"Northern": criterion 1 which strictly measures the legal side of freedom of education*
- *"Eastern": financing criteria average (see above, graph 2)*
- *"Southern": parents' freedom criteria average (see above, graph 2)*
- *"Western": Value of the 6<sup>th</sup> criterion (autonomy)*

*In order to properly read the graphs, it is important to take the following difficulty into account: establishing distinctions between countries according to whether or not they finance NGSs, our 6<sup>th</sup> criterion already holds an assessment of financing.*

### Graph 4 Regional comparison

*The last graph of this "radar" graph serial, entitled "regional comparison", sets up a regional average of the 4 above criteria. To set up this average we took into account countries that are part of two regions as it appears in the list of countries set up by the IBE. The IBE considers for instance that Turkey is part of both Europe and Asia Pacific region.*

We shall note, especially with the last "radar" graph, that there exists all around a clear tendency toward implementing legislation according to the spirit of article 13 of the ICESCR, a covenant – let us recall – that has been ratified by the major part of the world.

Radar graphs' overlapping is also meaningful: the "Europe-North America" region clearly offers the largest field to the freedom of education. A second group made of "Latin America/Caribbean" and "Asia-Pacific" regions, the latter having a more restrictive tendency as regards rights. The last group, in which freedom of education is implemented in a more restrictive way, is made of "Africa" and "Arab States" regions, the first one being a little more liberal than the second as regards schools autonomy.

### Graph 5 Amount of the financing granted to NGS

*We only take the third criterion into account: the amount of the financing granted to NGS. We then count up the number of countries that get the best score (16), then the number of those that get 13 etc. The graph shows the proportion of countries with the 5 possible results.*

16% only (7%+9%) of the countries give NGS grant conditions allowing them to be free of charge or almost free of charge for their students.

29% of countries restrict the financing with strict grant conditions. In other countries, we face many different situations.

### Graph 6 Financing and parents freedom

This graph seeks to compare criteria relating to NGS financing and those referring to parent freedom. In order to do so, we set up an arithmetic mean of criteria 2 and 3 to get the first part of the comparison and a likely mean of criteria 4 and 5 for the second part. Countries are ranked in descending order according to FECl. Benchmarks stand for both means and tendencies relating to the two means are drawn through tendency curves.

The general trend here is clear and not surprising: countries the most in favour of freedom of school choice are also the one that grant NGS the best financing. This undoubtedly shows a belief OIDEI has defended for a long time: **one can truly speak of freedom only when the financial conditions of its realization prevail.**

### Graph 7 FECl and HDI

*This graph compares our freedom of education composite index with the human development index set up by the UNDP (data of 2005). Let us recall that the HDI is an index made of criteria relating to health, level of education and longevity. As this index is set up on a 0 to 1 scale, we multiplied it by 100 in order to support reading our graph. The ranking of the countries according to HDI can be found in the volume II of this study.*

A very clear correlation exists between our freedom of education composite index and the human development index set up by the UNDP.

### Graph 8 FECl and share (%) of public expenses for education

*This graph compares our freedom of education composite index with the public expenses devoted to education in each country. The figure used here is the one measured by Education for All (EPT) and measures the share of education expenses out of a country's total expenses.*

The comparison between education expenses and freedom – even though there is no clear tendency – at least allows us to conclude that countries promoting freedom of education, in proportion, do not spend more than those who have a more restrictive policy. This observation fits in with the analysis we carried out in 2002: freedom of education does not imply the rise of education costs.

## Results synthesis and prospects

We note significant differences between the 2002 and 2007 Reports. Those are due to a methodological change and to the fact that we moved from 3 to 6 criteria, the sixth being

divided into four sub-criteria. We also took a new perspective by introducing an assessment of the autonomy of NGSs and by looking more closely both at home schooling and parents' freedom of choice. On the other hand, this new report no longer considers the part of private schools in observed countries.

Countries promoting educational freedom are for the most part located in the region of Europe and North America. Greece and Ukraine are exceptions. Countries part of other regions such as Chile, Israel and, to a lesser extent, Filipinos, Argentina and Paraguay, are implementing policies that promote freedom of education.

Many countries grant NGSs financing. Those that get 16, 13 and 8 points for the third criterion (amount of the financing) can be regarded as applying a policy of financial support to NGSs. There are 45 countries that fall under this characterization. The 55 countries left get either 4 or 0 points. In spite of these results it is worth noting that a clear trend appears: wherever the question of education pluralism is raised and the development of NGSs is at least promoted, financing is devised as a necessary corollary of freedom. However, too many countries still do not finance nor have legal provision for it. Those countries' behaviours contrast with the aforementioned trend: **regarding the financing as necessary for the exercise of freedom of education is a progressive interpretation of international norms<sup>22</sup>.**

## The situation within the European Union

Countries of the European Union are, generally speaking, those that protect freedoms the best. We offer here an explanation of this result.

*Constitutional safeguards* (criterion 1). Almost all the countries of the European Union recognise, at the constitutional level, the freedom to establish a non-governmental school.

*The financing and autonomy of private school* (criteria 2, 3 and 6). The financing and autonomy criteria are here associated because of what we note many times in our study: some countries grant NGS a financing provided that these NGS loose or lessen their own nature. In some extreme cases, we could say that the State agrees to grant money to schools provided that they do exactly what it does in public schools. No need to say that States that develop their legislations according to this view are not very in favour of pedagogical diversity and freedom of education generally speaking. The major part of EU countries give significant financial support to recognized NGS, without that affecting those schools' autonomy.

Countries where the most favourable situation prevails are essentially countries of northern and eastern Europe. State grants significant financial support, without imposing too strong constraints. This financing enables recognized NGS – or even all NGS – to be free of charge or almost free of charge for the students. This financing is not granted at the expense of schools' autonomy. As an example we can mention Denmark, Finland, Ireland, Belgium, Czech Republic, the United Kingdom, the Netherlands,

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<sup>22</sup> See our introduction about this interpretation of the norms.



Hungary, Sweden and Poland. In addition, some countries of Eastern Europe took advantage of the velvet revolution to pass pieces of legislation very in favour of freedom of education. Beside those countries in the world that are the most in favour of freedom of education, other EU countries present all possible scenarios; we list them below:

- Countries that grant a total financing to recognized NGS, however at the expense of their autonomy. This is often the case for France: financing granted to schools under contract mostly covers staff wages and some part of investment costs; NGS thus can almost be free of charge for the students. This being, schools under contract have only a very limited autonomy. Spain is an example alike.
- Countries that grant a partial financing that does not enable NGS to be free of charge, but that respect schools autonomy. Germany, Austria, Portugal and Estonia are such countries.
- Countries that grant a partial financing that does not enable NGS to be free of charge and despite that restrict schools autonomy. In Romania, the State only pays teachers wages but then subsidized schools autonomy is lessened.
- Countries that give almost no financial support however respect schools autonomy. Bulgaria is such a country.
- Countries that give almost no financial support and further do not give NGS any autonomy. This is the case of Greece.

*Parents' freedom of choice* (criterion 4). Generally speaking progressive countries as regards financing are also progressive with respect to parents choice between free of charge schools (whether or not public).

*The possibility to practice home schooling* (criterion 5). The question of home schooling is a good indicator of trust State put in the parents as regards education, the latter being primary responsible for their children's education. We shall only note some exceptions to the rule that the most liberal States are also liberal with respect to education.

In the Netherlands, home schooling remains marginal. However it can be accepted when parents consciously consider not being able to send their child to an "available school" and when gathering the minimum number of pupil required to open a school is not possible. Generally speaking we note a wide disparity regarding this issue, even in the EU. Denmark, Finland, Ireland, The United Kingdom, Hungary do allow home schooling with no requirement whereas others are very restrictive in this respect. This is the case of Spain, Romania, Luxemburg, Bulgaria and Greece.

If we wanted to set a "rough" map of education freedoms in the EU, we could locate to the North and East of Europe countries that have the most favourable legislations. Other countries of the EU are more reluctant in this regard. However there are very different situations depending on whether we talk about France, Greece, Romania, Portugal or Bulgaria.

At the end of this study, it clearly appears that a radical change of perspective has to be done. From now on, we should not analyse freedom of education from the point of view of a service provider anymore – which is usually the perspective of the authorities – but rather be based on the subject of the right, that is to say the child, always taking into account the “superior interest of the learner”.

In other words, we will have to move on from the acknowledgement of the needs that the authorities have to meet to the acknowledgement of citizen rights, rights that impose on States clear legal obligations. “ *We are trying, said Abramovich, to shape the logic of the policy development process. The starting point must not be the existence of persons with needs that have to be assisted anymore but rather persons with the right to ask for some services or some way to act. The actions we take on are not only regarded as the achievement of moral and political mandates, but also as the way chosen in order to make effective imperative and chargeable legal obligations, imposed by human rights treaties. Those rights require obligations and obligations need mechanisms in order to make them chargeable and to achieve them.*” (V. Abramovich, 2006, P. 36)

This justiciability assumes the acknowledgement of the rights of citizens and a right interpretation of the role of the authorities as protector of the rule of law. It also put limits to State’s potential arbitrary decisions and to bad use of public economic resources that are resources of all and for all. Justiciability also refers to “*administrative procedures of the decisions amendment and policies public revenue, the advertising space for users and consumers, parliamentary bodies for policy revenue and specialized institutions that guarantee fundamental rights (people defender, consumers protection office, competition safeguards, etc.)*” (V. Abramovich, p.47)

As an alternative to the current educational model, OIDEL proposes a system based on cultural identities to be built up on three pillars:

1. Identity. Education to allow for the construction of a cultural identity.
2. Tolerance. Education to understanding and respect.
3. Human rights. Education to universality.

The subject’s identity: “Who am I?” is firstly done with reference to values that I choose. As a human being, I firstly figure out myself as being different. I do not like to be counted up as being part of a whole. The classic humiliation of the incarcerating system precisely consist of crossing out the person’s name and replace it by a number that turn the subject into one being among others.

This being so, the human being, person with necessities and possibilities, forms itself through the relation to others. The person can truly manifest the inherent dignity of each human being only if she can refer to “universal natures necessary for human dignity”. Based on this theoretical ground, an education conscious of its nature of cultural right has to clearly understand the three pillars we mentioned above.

Firstly, it is essential that education allow me to become what I want/have to be, to choose my belongings, to seek my sense/meaning. We thus could say that the right to education is ultimately a right to meaning. Consequently school must propose meaning and, as we are in a democratic context, meaning must be diverse, diverse but coherent. It is thus important to have a variety of pedagogical projects, a diversity containing meaning alternatives in order to promote diversity. Pedagogically speaking, a same diversity is required: it is also about a change of perspective, the school answering to the diversity of needs and personal choices rather than imposing an abstract norm devised for an "average-pupil".

The quest for *my* meaning has to be done in the context of a pluralistic society. It is essential to integrate **a theoretical and practical education to the respect of this difference and diversity** into education. This can be called education to tolerance. This kind of education not only has to tolerate others but also promote openness to others, desire to know and understand others. It is in schools that we can integrate what we called the "minimum requirements that a State can impose as regards education." A basic curriculum and the obligation to incorporate some academic disciplines promoting communication with others and knowledge of the environment to the program contributes to education the respect of "difference". It is important to avoid allowing the construction of personal identity to be reduced to the acceptance of a harmful "individualism".

Eventually, to be able to understand the different, without assimilating it nor rejecting it, it is also important to have a **clear education of the universal, of values that are shared beyond differences by the human condition**. These values, embodied by human rights, have to be rooted in different cultures in order to make education a coherent whole. The major difficulty regards the issue of the pedagogical project coherence that forbids both indoctrination and neutrality. There is a big temptation to fall into extremes: on the contrary I have to reinforce my coherence without harming social cohesion, but rather reinforcing the social tissue. As we saw, the cultural dimension opens the way to reach this equilibrium.

This model was inspired by, among others, Emmanuel Mounier's ideas on education in *The Personalist Manifesto* written in 1936. After having recalled that education is learning freedom, the manifesto questions that must have power over education, given these conditions? Not the State, which in a democratic system does not interfere with a person's private life. But to give this power to families would mean to grant them an arbitrary right. What is important to take into account here is the well being of the child and the well being of the city:

"Family's prerogative should not be wrongly interpreted. Family's prerogative over the State is not an arbitrary and unconditional right of the family's appropriation of the child. It is subordinate in the first place to the well being of the child, and secondly to the common good of the city (...). Here the State, with the help of educational bodies, can and must play the double role of person's protection and of common good organizer."

“With the diversity of spiritual families, only a school’s pluralistic structure can save us from dangers of a “neutral” school and the threat of a totalitarian school.”

“The State does not have the right to impose through its monopoly a doctrine and an education. Each spiritual family that shall justify locally a minimum number of children to be taught, and a minimum accord with the foundations of the city, has the right to effective means in order to ensure children its chosen education.”<sup>23</sup>

Thus, one does not grant the State the right to impose an educational doctrine. However, the State has to set up a non-dogmatic school for those who want it and monitor NGSs, all NGSs, even the ones that get no public funds.

Mounier does not ignore these difficulties because we could move from dogmatism to another, from State’s dogmatism to private dogmatism. And this dogmatism may be fateful as regards the respect for persons or democratic values.

“Danger would indeed become real if we did not recognize the need for bodies whose competence is to effectively assure persons guarantees. It is their role to ensure through the conditions imposed for teachers training, through the spirit of examinations, through inspections, that whatever doctrine is taught, it has to be done according to methods that respect and educate the person.”

“But that is not all” - concludes Mounier – “legal pluralism needs as an essential counterpart that everything be implemented in order to ensure contact between the diverse spiritual families of the city, not to reinforce a impossible dogmatic unity but a spiritual constraint, but rather to reinforce the fraternal and organic unity of the city.”

In order to achieve a long-lasting change of the perspective, a two level change is necessary: firstly, the governance of the education system and secondly, the financing system.

## **Reforming governance of the education system**

In the majority of countries, the education system does not run correctly because parties are not involved enough in policy design and implementation. Participation cannot be limited to mere consultations. It has to be a true allocation between the authorities and other actors in order to give civil society and the private sector the possibility to launch education initiatives. With Osmani we can set apart many areas of participation: the expression of preferences, election of policies, implementation, control, assessment and responsibility (S.R. Osmani, para. 36).

In this context, civil society – private or non-governmental school – must be able to provide alternative services, to lay innovative actions and to sometimes have a critical role, sometimes rallying social forces in favour of governmental projects (UNESCO,

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<sup>23</sup> The French text of the manifesto can be found on the following website:  
<http://dx.doi.org/doi:10.1522/cla.moe.man>

Education for All)<sup>24</sup>. One seeks to fully involve all the parties in the education system, by bringing their *savoir-faire* under the coordination and the responsibility of the authorities. The authorities, the State action, should be guided by the subsidiary principle, “it is crucial to systematically verify whether an authority’s intervention is really necessary.” (*White paper on Governance*, 2001, p.13)

## Changing the method of financing

The free nature of the education system raises problems, not only because of its cost but also often because neither the child nor its representatives are aware of the stress we put upon society. Knowing that the free-of-charge principle is essential to ensure all citizens access to education, it is important to devise participation modalities so that the service-user be aware of the eminent value of education but also of its cost for the community. To do so, **it is essential that the free-of-charge principle be articulated with modalities that highlight the service provided and that involve the direct responsibility of the user.**

Indeed, if responsibility is a principle of good governance, participation assumes the same importance. As far as schooling is concerned, the main participation of the citizen consists of having the possibility to direct the personal process of education. Parents, as responsible of the minor child, act according to the child’s interests and according to what they esteem to be the “meaning” of life. We could say, with A. Sen, that education means raising freedoms to choose the kind of life we would like to live.

The Commission chaired by J. Delors, who wrote the Report on education and training for the 21<sup>st</sup> century, presented to UNESCO in 1995<sup>25</sup>, proposed a system that would give subvention for individual training granting each citizen the right to some years of formation according to the chosen branch, one’s itinerary, one’s experience and one’s own schedule. The citizen would be responsible for its formation at anytime. This responsibility would go along with some basic requirements, legitimately set up by the national community, as described in paragraph 1 of article 13 of the Covenant.

This way of financing is not only a purely technical solution. It introduces financing in the rights field and enables the more accurate determination of the obligations of the rights holders and those of the community. This method is more appropriate to promote the justiciability of the right to education as a right to services. It is well known that States are little disposed to accept this justiciability, for fear of economic claims – the only existing means of repair in case of right violation – coming out of hardly calculable amounts. Yet quantifying these amounts as credits for formations would allow the authorities to know what are their financial obligations towards each citizen.

This way of financing has been studied at large by the general Commissioner to the French plan in a report in 2001. It was inspired by the following principle: “*In order to*

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<sup>24</sup> See Introduction p. 11

<sup>25</sup> International Commission on Education for the 21st century (1996), *L’éducation renferme un trésor*, UNESCO, Odile Jacob, Paris. Also on this theme see, G. Haddad, in the section *Enseignement*, Dictionnaire Culturel Robert.

*ensure more equal opportunities, each individual has from birth on a capital of training granted by the State, defined, up to this point, through number of years of training. This measure aims to correct current inequalities with respect to the advantage of the public education investment that to a large extent depends on the length and the profile of the initial training of each person and hence of the socio-professional category to which parents belong to.”* (Commissariat Général au Plan, 2001, P. 1999.).

One would give to each person from birth on, a twenty-years capital, the average length of studies. This capital would progressively run out while being used and would be refilled through professional activity. The first phase would be the basic training that seeks to achieve the knowledge of a common culture. After this phase, the right holder could go for a long training or a short training in keeping some of their capital, in having some professional training or in collecting training and professional experience. (I. Voirol, 2007)

Whatever modality is chosen, the principle of credit-training seems to be an adequate means to make the right to education accountable, at the same time granting both responsibility and autonomy to each citizen. Thus is the subject of right at the heart of policies, as it is required by human dignity.

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