



WORKING PAPER 24

What is the scope of the “respect of the liberty of parents”?

Ignasi Grau



OIDEL

What is the scope of the “respect of the liberty of parents”?

Ignasi Grau

Abstract / Resumen / Résumé

The Universal Declaration of Human Rights enshrined freedom of education, acknowledging the important role of parents, as well as recognizing this freedom as a human right. The subsequent legal recognition in international treaties of this freedom has been done under more ambiguous formulas, “respect for the liberty of parents”. Some authors have questioned that this formulation includes positive obligations by the state. The aim of this working paper is to prove on the basis of the main human right treaties and the doctrine of its interpretative organs that the “respect for the liberty of parents” cannot be limited to negative obligations in order to guarantee a full realization of the right to education.

La Declaración Universal de los Derechos Humanos consagra la libertad de enseñanza reconociendo el importante papel de los padres, así como el reconocimiento de esta libertad como derecho. El posterior reconocimiento legal en tratados internacionales de esta libertad ha utilizado fórmulas un poco más ambiguas, en especial el “respeto a la libertad de los padres”. Algunos actores han cuestionado que la formulación “respeto a la libertad de los padres” no atañe obligaciones positivas por parte del estado. En esta investigación demostraremos en base a los principales tratados internacionales sobre derechos humanos y la doctrina de sus órganos interpretativos que el “respeto a la libertad de los padres” no puede limitarse a obligaciones negativas si se quiere proteger el derecho a la educación de forma holística.

La Déclaration Universelle des droits de l’Homme consacre la liberté d’enseignement en reconnaissant, d’une part, l’importance du rôle des parents et, d’autre part, en octroyant le statut de droit à cette liberté. L’ultérieure reconnaissance juridique de cette liberté dans les instruments internationaux a employé des formulations certainement ambiguës, notamment « le respect de la liberté des parents ». En ce sens, certains acteurs se sont demandé si cette formulation n’implique pas des obligations positives pour l’État. En effet, tout au long de cette recherche, nous démontrerons sur la base des principaux traités internationaux sur les droits de l’homme et de la doctrine de leurs organes d’interprétation que « le respect de la liberté des parents » ne peut pas se limiter à des obligations négatives si l’on veut protéger le droit à l’éducation de manière holistique.

The States Parties to the present Covenant undertake to have respect for the liberty of parents

1. Introduction:

One of the main challenges that different stakeholders face in different debates on the right to education is the extent of the word “respect” in reference to the “liberty of parents”. The different stakeholders of the right to education have spent a lot of energy trying to discuss the scope of this expression, and the word respect.

The Universal Declaration of Human Rights (UDHR) recognizes the parental rights under the following formula *“Parents have a prior right to choose the kind of education that shall be given to their children”* (art.26.3). The declaration states clearly that parents have a “right” and that this right consist on choosing *“the kind of education that shall be given to their children”*. The scope of the declaration is wide. Probably the memory of the Nazi regime, and more precisely the monopole of the educational system, has facilitated a flawless drafting of the recognition of parental rights in the UDHR (GLENDON, 2001, p. 159 and 190).

Nevertheless, the UDHR is not a juridical document but a political one, therefore a transposition of its content into an international covenant was requested. The transposition of the recognition of parental rights was carried out with a more vague language. This might be due to the different juridical discussions rooted in the different perceptions during the Cold War, which was taking place at the time (GLENDON & KAPLAN, 2009). Among the different articles that the international community acknowledged on the parental rights in the field of education, the article that probably has been the source of most controversy is the 13.3 of the ICESCR. This article states that *“The States Parties to the present Covenant undertake to have respect for the liberty of parents”*. This wording has had a significant effect in many subsequent international relevant documents since then. Two good examples of this are the International Covenant on Civil and Political Rights, or the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11.

The scope of this written construction raises many questions, debates and opportunities concerning the right to education. Our understanding of this expression has had and will have an enormous impact in the way by which we realize the right to education, and particularly in the realization of parental rights and the rights of non-governmental schools. Because of this, we have studied this topic in depth to shed some light on the content of this expression and to be able to find bigger consensus around this expression.

To achieve our goal, we are going to assess the different references to “respect” regarding the “liberty of parents”. We are going to interpret this word through the spirit of the treaty, through the observation of the use of the word respect concerning other rights and through the light of the doctrine of the different human rights bodies.

Without the aim of being exhaustive, we will first review in the following pages the main references to the respect in the liberty of parents in the United Nations’ main human rights treaties. Later, we will observe the references to some of the most relevant regional human right treaties. Moreover, we will refer to some Constitutions and constitutional jurisprudence to shed some light on these articles.

2. UN International Human Rights Treaties:

a. Convention against Discrimination in Education (1960)

The Convention against the Discrimination in Education (CADE) is the first legally binding international instrument entirely dedicated to the right to education.

In this treaty we can already observe the expression “*respect the liberty of parents*” under the following formula: “*It is essential to respect the liberty of parents (...) firstly to choose for their children institutions other than those maintained by the public authorities (...) and, secondly, (...), the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction*” (art.5.1.b). In this treaty, the respect of the liberty of parents has two cornerstones: First, the capacity parents have of choosing for their children institutions other than those maintained by public authorities and secondly, the rights of parents of granting their children a religious and moral education that is not inconsistent with their convictions. In line with this article the CADE recognizes that “*It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language*” (art.5.1.c). In this point it is hard to say if public authorities have positive obligations. Moreover, it is also too soon to start talking about the cultural approach of the right of education and the extent that the word respect for the realization of this right. We will deepen on this concept once we arrive to the International Covenant on Economic, Social and Cultural Rights.

What consequences can be drawn from the way these articles have been drafted? What is the nature of the obligations for the state in the word respect? The reason to be of CADE is defining discrimination. CADE defines discrimination in its article 1: “*the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education*”. The question we might ask is the following: what if the due respect to parents is something that only certain privileged groups, such as wealthy families, can enjoy? Would it be in these cases justified as a positive action of the states? In the commentary prepared by UNESCO on the CADE it warns that in order to eliminate sources of discrimination, the state not only has negative obligations, but also positive obligations to promote equality among different actors (DAUDET & SINGH, 2001). In the CADE we already can guess that the word “*respect*” in reference to the liberty of parents cannot exclusively refer to the exercise of negative obligations. This would go in line with the constitutional Spanish jurisprudence, which warns that the publicly granted gratuity of education cannot be limited to governmental schools. Otherwise, the liberty parents have of choosing the education for their children would be *de facto* impossible (STC 31/2018). The French Constitutional Council (23rd of November of 1977) has pronounced sentences on the same direction¹.

¹ The Constitutional Council, recalling the principle of free and secular public education, said that this last principle “cannot exclude the existence of private education, nor the granting of aid of the State to this teaching in the conditions defined by law “ FAVOREAU and L. PHILIP L. (2001): *Les grandes décisions du Conseil Constitutionnel*, Paris, Dalloz, pp. 342-356

b. International Covenant on Economic, Social and Cultural Rights (1966)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is together with the International Covenant on Civil and Political Rights one of the first juridical international UN treaties that derives from the UDHR. Regarding our quest, the ICESCR refers to the “*respect for the liberty of parents*” in its article 13.3:

“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”.

This article is similar to the one we have observed in CADE, but there is an important difference that we might take into account to understand the extent of the word “*respect*”. Instead of using the expression “*those schools maintained by the public authorities*” (5.1.b CADE), this article refers to “*those established by public authorities*”.

What is the scope of the word respect in this article? The CADE admits that the realization of the right of education requires governmental and non-governmental schools to be maintained by public authorities. The ICESCR does not recognize this. There are two possible interpretations to be drawn from this. The first interpretation is that the ICESCR, unlike CADE, does not recognize the possibility of having non-governmental publicly funded schools. The second interpretation is that the ICESCR understands that the “*respect for the liberty of parents (...) to choose for their children schools, other than those established by the public authorities*” (art. 13.3) recognizes the scenario in which public authorities can publicly fund non-governmental schools to grant parents the possibility of choosing “*for their children schools, other than those established by the public authorities*”. This second interpretation would put coherence between the CADE and the ICESCR.

The Committee on Economic, Social and Cultural Rights (CESCR), which is the organ that can clarify this kind of questions has reacted to the scope of the right to education in different general comments. The outcome of these different general comments concerning the “respect for the liberty of parents” can be confusing. Many education stakeholders after reading the General Comment nº13 on the Right to Education of the Committee on Economic, Social and Cultural Rights consider that the state only has negative obligations towards the liberty of parents. This General Comment points that the obligation of respect “*requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education*” (CESCR, 1999, GC. 13, par. 46). Moreover, the Committee in the same documents warns that “*A State party has no obligation to fund institutions established in accordance with article 13 (3) and (4)*” ((CESCR, 1999, GC. 13, par.54). Indeed, after reading this, it could seem that there is under no circumstance a positive obligation from the state to subsidize any alternative educational option. This sentence might surprise us. Nevertheless, this would be based on a partial reading of the doctrine of the Committee. To answer and to deep on the scope of the word respect it is essential to deep on the cultural dimension of the right to education.

1. The cultural dimension of the right to education

Together with article 13 concerning the right to education the ICESCR also recognizes cultural rights in its article 15.1 under the following words:

“The States Parties to the present Covenant recognize the right of everyone:

To take part in cultural life;”

The cultural dimension of the right to education can be crucial to better understand the scope of *“the respect of the liberty of parents”* and the obligations of public authorities towards them. In this regard, in the following pages we are going to assess in-depth this dimension.

1.1. What is culture?

Before we go in depth into the relation between cultural rights and the right to education, it is worth exploring what is culture according to the Committee on Economic, Social and Cultural Rights. The CESCR points culture is *“a broad, inclusive concept encompassing all manifestations of human existence”* (CESCR 2009, GC.21, par.11). In this regard, it defines culture as a dynamic, living and evolving process, with a past, a present and a future (CESCR 2009, GC.21, par.11). We must stress that the definition of the ICESCR does not conceive culture as something fixed and static, but something that can be modified and modulated by individuals and communities (CESCR 2009, GC.21, par.12).

The Committee expresses the end of culture, which is to *“give expression to the culture of humanity”* (CESCR 2009, GC.21, par.12). In this regard, culture is a way through which human beings express their existence and *“build their world view representing their encounter with the external forces affecting their lives (...). Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities”* (CESCR 2009, GC.21, par.13).

To have a clearer image of what culture is, the Committee ventures to give a non-closed list of elements that encompasses culture *“ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions”* (CESCR 2009, GC.21, par.13). It is essential to have a fair acknowledgment of the cultural approach of the right to education and that this goes beyond pure folklore, and bears into account essential elements of the identity of the human being such as religion, traditions or language.

Bearing in mind this definition, we can start deepening on the cultural dimension of the right to education so we can have a better understanding of the meaning of respect concerning the liberty of parents.

1.2. The cultural approach of the right to education:

Is there a connection between these two rights? Indeed, the Committee has stressed this relationship in multiple occasions, including the two General Comments on the Right to Education (CESCR 1999, GC.11, par.2 & CESCR 1999, GC.13, par.1) and in the General Comment on Cultural Rights” (CESCR 2009, GC.21, par.2). A good example of that is when it points that *“the right of everyone to take part in cultural life is also intrinsically linked to the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an*

atmosphere of mutual understanding and respect for cultural values” (CESCR 2009, GC.21, par.2).

This connection is especially relevant when taking into consideration the purpose of the right to education. Article 13.1 of the ICESCR points this is *“the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms”* and to enabling *“all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups”*. Furthermore, the Committee stresses that the first part of this article, *“the full development of the human personality”* is *“perhaps the most fundamental”* objective of this right (CESCR 1999, GC.13, par. 4).

The Committee in its GC.21 sheds some light on this purpose when it expresses that education plays a crucial role enabling *“individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values”* (CESCR 2009, GC.21, par.2). The Committee in the same GC mentions, *“States should recall that the fundamental aim of educational development is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth* (CESCR 2009, GC.21, par.26). The fundamental obligation of the state from a cultural perspective is not exclusively the transmission of the common cultural and moral values within the state, but also within the different communities. We could find a society in which this set of common values is not enough for setting the full development of human personality; therefore, the role of the communities, and parents, is crucial.

Having determinate the relation between education and cultural rights, and the connection between the purposes of these two rights, the question raised is: what are the obligations of the state to ensure the cultural approach of the right to education?

The Committee established that an appropriate application of this right should exhibit four essential and interrelated features (CESCR 1999, GC.13, par. 6):

- a) Availability: An amount of functioning of educational facilities and programs should be available within the jurisdiction of the State Party.
- b) Accessibility: facilities and programs should be accessible to everyone.
- c) Acceptability: *“the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4))”*;
- d) Adaptability: *“education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings”*

The Committee established the same four conditions, plus another one, for the full realization of the right to everyone to take part in cultural rights (CESCR 2009, GC.21, par. 7):

- a) Availability: *“Presence of cultural goods and services that are open for everyone to enjoy and benefit from (...)”*.

- b) Accessibility: *“effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination”*.
- c) Acceptability: *“entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved”*.
- d) Adaptability: *“the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities” (...)*.

The extra condition for cultural rights is:

- e) Appropriateness: *“refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples”*.

When analysing the features of the right to education and the features of cultural rights, it seems that a cultural approach of the right to education requires at least that children can have access to an education that is acceptable from a point of view of relevance and cultural adequacy. This implies that the education provided can be accepted by families and the communities that children belong to. The acceptability and the appropriateness of education require that the right to education is adapted to be respectful and relevant to the cultural needs of the child and of the cultural diversity of the society.

In the field of education, we can affirm that an education that is acceptable and adaptable to the cultural characteristics of the child should be also appropriate. Moreover, we can affirm that to fulfill this right, acceptable and adaptable education should be available and accessible for all children with independence of their cultural background. This spirit is present in some declarations of the Committee when, for instance, it recalls article 5 of the World Declaration on Education for All *“Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community”* (CESCR 1999, GC.13, par. 9). Or when it points *“secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings”* (CESCR 1999, GC.13, par. 12).

This approach has become mainstream for the realization of the right of minorities. Without the aim of being exhaustive, we illustrate this with a good example: the C169 Indigenous and Tribal Peoples Convention states that *“governments shall recognize the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose”* (art 27. al. 3).

1.3. Obligations of the state

Now that we have some notions of what according to the CESCR would be the nature of the cultural approach of the right to education we are going to go in depth on the obligations of the state toward this right.

The CESCR has established three kind of obligations of the states towards the realization of the right to education: the obligations to respect, protect and fulfil (CESCR 1999, GC.13, par. 46).

The obligation to respect *“requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education”* (CESCR 1999, GC.13, par. 47).“

The obligation to protect *“requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education”* (CESCR 1999, GC.13, par. 47).

The obligation to *“requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education”* (CESCR 1999, GC.13, par. 47).

When later the Committee describes the specific obligation it is quite confusing on how it is going to implement a cultural approach of the right to education. In this regard, it stresses *“the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples”* or *“fulfil (provide) the availability of education by actively developing a system of schools”* (CESCR 1999, GC.13, par. 50). It follows concretizing three core obligations of the right to education, this core includes an obligation: *“to ensure the right of access to public educational institutions (...); to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties”* (CESCR 1999, GC.13, par. 57).

As we have seen previously, one sentence that sounds shocking among the obligations of the states is *“A State party has no obligation to fund institutions established in accordance with article 13 (3) and (4)”* (CESCR 1999, GC.13, par. 54). It seems at first that the State does not have any positive obligation towards parental rights, nevertheless this matter is much more complex and requires a further explanation.

Let us see what the Committee says concerning the obligations of the states concerning cultural rights to have a more holistic understanding of education as a cultural right.

The CESCR establishes clearly that the realization of cultural rights requires both negative (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive obligations (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods) (CESCR 2009, GC.21, par. 6). The nature of these obligations is the same as the ones we have observed for the right to education. Once again, the definition of the CESCR of respect, protect and fulfill when referring to cultural rights (CESCR 2009, GC.21, par. 48) is almost identical to the one that refers to the right to education previously observed (CESCR 1999, GC.13, par. 47). The interpretation of the CESCR concerning cultural rights gives a new nuance to the definition of the word respect by saying, *“The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone”* (CESCR 2009, GC.21, par. 49). In this sentence we already can observe that the State might have something more than exclusively negative obligations.

Furthermore, according to the Committee, when referring to the implications of education as a cultural right points that public authorities have some explicit positive obligations. For instance, in relation to state-run schools it stresses *“The inclusion of cultural education at every level in school curricula, including history, literature, music and the history of other cultures, in consultation with all concerned”* (CESCR 2009, GC.21, par. 54.c). This would be essential in order to guarantee that all children have an education that is acceptable and adaptable (CESCR 1999, GC.13, par. 16 and CESCR 2009, GC.21, par. 13). As we have observed, these two notions are essential to guarantee the cultural approach of the right to education, and the implication of the different communities is essential to guarantee it.

But, in relation to the obligations of the state, the CESCR goes further. The cultural approach goes in two senses. First, children have to learn and understand the cultural practices that exist in the whole society (CESCR 2009, GC.21, par.26). In this regard, according to the Committee, school programs should include the cultural specificities in the curricula, but not only for the minorities, but also for all the students (CESCR 2009, GC.21,, par 27). The other sense of this right is to *“enable children to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong”* (CESCR 2009, GC.21, par. 26). A proper understanding of its own cultural background is essential to shape and mirror *“values of well-being and the economic, social and political life of individuals, groups of individuals and communities”*.

The projected scenario by the Committee is that States could realize this through state-run schools. Nevertheless, it is not hard to imagine that in an increasingly plural world more and more communities and families will feel excluded and discriminated due to the impossibility of drafting cultural appropriate education curriculums for all. This could be because their cultural background is excluded from the main subjects or because of the incapability of the school system to transmit to children of certain communities the tools their need to deep in their culture. This is especially problematic for those persistent and discriminated minorities.

In this regard, the Committee states that *“A State party has no obligation to fund institutions established in accordance with article 13 (3) and (4)”* (CESCR 1999, GC.13, par. 54). Nevertheless, from a cultural perspective, the Committee points that the State have *“To respect and protect the right of everyone to engage in their own cultural practices, while respecting human rights which entails, in particular, respecting (...) freedom to choose and set up educational establishments”* (CESCR 2009, GC 21, par. 55.c). If we read this in line with the obligations of the state parties *“to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial measures”* (CESCR 2009, GC 21, par. 51) we could put more context to the obligation of the state towards non-governmental schools. The respect for the liberty of parents does not entail a global obligation of funding all the educational options parents’ desires. Nevertheless, as far as parents educational choices are essential to guarantee the cultural approach of the right to education the state has positive obligations. Parents are the main people held accountable –as we will observe later- and the best advocates for ensuring the transmission of these cultural values –language, religion ...-, therefore, the respect for their liberties when these liberties are exercised to perform the cultural approach of the right to education can imply positive obligations.

To sum up, states have no obligation to fund non-governmental schools, nevertheless, it seems that there should some positive obligations towards those non-governmental schools and parental educational options which are essential to guarantee cultural rights for those persistent minorities whose culture might be neglected in state-run schools. Without that, it is hard to

imagine a scenario in which all communities can feel that their children are receiving an education that is acceptable and adaptable to their culture (CESCR 2009, GC.21, par. 16 and CESCR 1999, GC. 13 par. 5). Therefore the word respect can imply something more than just negative obligations from the state.

2. Other articles of the ICESCR:

Another interesting way to understand the scope of the word respect is to observe how this word is understood in other article of the ICESCR. In this regard, we can observe the word respect concerning freedom for scientific research and creative activity in the article 15.3:

“The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.”

The Committee on Economic, Social and Cultural Rights develops the extension of the respect to this freedom in its General Comment 25:

The Committee understands that the fulfillment of “respect” by the states imply mostly negative obligations. In this regard, the obligations of the State towards this liberty concerns the protection of the researchers and its freedom to research, neither of which are absolute. In the same line, the Committee underlines that *“The obligation to respect requires that States parties refrain from interfering directly or indirectly in the enjoyment of this right”* (CESCR 2020, GC.25, par.42)². Nevertheless, the Committee does not deny that the word “respect”, in this field, could imply positive obligations. In this regard, the sentence in which the Committee expresses the scope of the liberty of research points that *“This freedom includes, at the least,”* (CESCR 2020, GC.25, par.13)³ pointing that the following explanation is not closed. In the same line, the examples of obligations of respect include the elimination of *“obstacles to international collaboration among scientists”* or the *“barriers to accessing quality science education and to the pursuit of scientific careers”*, which in many cases could only be done by a positive action of the State (CESCR 2020, GC.25, par.42).

We can conclude that according to the doctrine of the CESCR the scope of the word respect refers primarily to negative obligations. Nevertheless, it seems fair to recognize also that the word respect could entail in certain situations positive obligations from the part of the state to ensure the realization of certain rights, such as the cultural dimension of the right to education.

² “The obligation to respect requires that States parties refrain from interfering directly or indirectly in the enjoyment of this right. Examples of the obligation to respect are: eliminating barriers to accessing quality science education and to the pursuit of scientific careers; refraining from disinformation, disparagement or deliberate misinformation intended to erode citizen understanding of and respect for science and scientific research; eliminating censorship or arbitrary limitations on access to the Internet, which undermines access to and dissemination of scientific knowledge; and refraining from imposing, or eliminating, obstacles to international collaboration among scientists, unless such restrictions can be justified in accordance with article 4 of the Covenant” (CESCR 2020, GC.25, par.42).

³ “This freedom includes, at the least, the following dimensions: protection of researchers from undue influence on their independent judgment; the possibility for researchers to set up autonomous research institutions and to define the aims and objectives of the research and the methods to be adopted; the freedom of researchers to freely and openly question the ethical value of certain projects and the right to withdraw from those projects if their conscience so dictates; the freedom of researchers to cooperate with other researchers, both nationally and internationally; and the sharing of scientific data and analysis with policymakers, and with the public wherever possible. Nevertheless, freedom of scientific research is not absolute; some limitations are possible” (CESCR 2020, GC.25, par.13).

c. International Covenant on Civil and Political Rights (1966)

In 1966, along with the ICESCR, it was adopted and opened for signature and ratification the International Covenant on Civil and Political Rights (ICCPR). This human right treaty also can be of our interest, not only because it refers to the liberty of parents, but also because it refers to the word respect when referring to this liberty.

The word respect is used by the ICCPR in referring to many right, but specifically at the beginning the ICCPR uses it in reference to all human rights (art.2 ICCPR) and later specifically in relation with liberty of parents.

The article 2 of the ICCPR⁴ can give us some clues on how we could understand the extent of the world respect.

As we can observe, article two starts pointing that *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant”*. Although this article refers to “respect” and to “ensure” it does not make a clear distinction between to which rights each word refers and the extent of these two words. In relation to this wording, the Treaty Mechanism in charge of interpret this treaty, the Human Rights Committee (CCPR), *“The legal obligation under article 2, paragraph 1, is both negative and positive in nature”* (CCPR, 2004, GC.31, par.6). The extent of the positive nature of these obligations is *“the protection of individuals”*, *“the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected”* (CCPR, 2004, GC.31, par.8). The Committee does not define the extent of this protection. We might ask ourselves; does this refer to protection towards violence? Could this concern also the protection toward poverty or inequality too?

Article two of the ICCPR continues insisting that States take the *“necessary steps”* in the form of constitutional and legislative measures *“to give effect to the rights recognized”*. Finally, this article points that the obligation of the state is *“To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”*.

This article gives the impression that the existence of positive actions in the realization of the rights and liberties recognized in this treaty should not be closed.

⁴ “1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

The second relevant reference that draws our attention relates to the liberty of parents. We can find this in article 18.4 ICCPR:

“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

Indeed, the ICCPR and the CCPR do not imply explicitly that respect for the liberty of parents includes positive obligations of the state. Nevertheless, the Committee recognizes the importance that this “respect” has for freedom of religion. Moreover, it recognizes that the ways this liberty could be exercised is through the freedom to choose teachers and the freedom to establish religious schools (CCPR, 1993, GC.22, par.4). In this regard, the Committee acknowledges that article 18 is inconsistent with *“policies or practices having the same intention or effect, such as for example those restricting access to education”* (CCPR 1993, GC.22, par.5). Scenarios such as discriminatory practices that restraint certain communities from having an acceptable education according to their religious beliefs could require an action from the government that goes beyond protecting the exercise of this right. Would it be discriminatory that public funding is going exclusively to state-run schools? It should not surprise that under these circumstances certain religious or cultural communities became *de facto* excluded from the possibility of choosing the schools due to a discrimination in the way the school system is funded. In this regard, it is interesting to recall the recent jurisprudence of the US Supreme Court which recalls that banning aid to religious schools imposes *“a heavy burden on people on faith and their ability to educate their children in that faith”* (Espinoza v. Montana Department of Revenue, 2020). Moreover, in line with what we have observed previously on the way in which discrimination is understood in CADE the state not only has negative obligations, but also positive obligations to promote equality among different actors. For that matter, we can affirm in line with the article 2 of the CCPR that the word “respect” also when referring to the liberty of parents to ensure the religious and moral education should imply positive obligations.

The cultural approach of the right to education that we have observed previously, it is also pertinent on the extent of the word respect in this treaty. To deep on this aspect of the ICCPR we must refer to article 27 of the ICCPR: *“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”*. This article can be useful to shed some more light to positive obligations towards the cultural approach to the right to education. This article is interesting for us. First, because cultural rights are crucial for the realization of minorities’ rights, and second, because it treats culture, language and religion – as article 18 of the ICCPR-, all together. This article specifically refers to rights, and therefore it acknowledges that the essence of cultural rights does not imply exclusively negative obligations, but positive. This is reaffirmed by the Human Rights Committee when it points that *“a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party”* (CCPR, 1994, GC.23, par.6.1). The Committee reaffirms that when stresses that *“positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion”* (CCPR, 1994, GC.23, par.6.2). As does the CESCR, the CCPR acknowledges the need to recognize positive obligations of the state in the

realization of cultural rights. In this regard, it seems that the “respect” to the liberty of parents to ensure the religious and moral education of their children could imply positive obligations.

d. Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC), adopted in 1989, acknowledges an important role to parents for the realization of the rights of children. The acknowledgment of the role of the parents in this convention can give us a better understanding of the scope of the expression “*respect for the liberty of parents*”. According to article 18.1 of the CRC “*Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child*”. The basic concern of parents in the exercises of this responsibility has to be the best interest of the child (CRC, art.3). In the exercise of this responsibility, states have certain obligations. As stated in article 18.2 “*States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children*”. At first glance we can affirm that parents are the primary responsables for the upbringing of the child, that the criteria to exercise this responsibility is in the best of the child’s interests and that the public authorities shall render appropriate assistance to parents in the performance of their responsibilities.

The best interests of the child have different dimensions, one of them being rooted in the cultural dimension. Children are not isolated islands, they are part of a community and therefore they are embedded in a cultural context. The cultural dimension of the child is protected in different articles of the CRC. Article 8 recognizes the “*right of the child to preserve his or her identity*”. Moreover, article 14.1 also acknowledges the freedom of religion, conscience and thought. The articles of the CRC, as well as the doctrine of the Committee on the Rights of the Child (CRCh) largely recognizes this dimension “*Children’s rights are not detached or isolated values devoid of context, but exist within a broader ethical framework*” (CRCh, 2001, GC1, par.7).

Upbringing plays an important role in the construction of the identity of children. Authors such as Alfred Fernandez talk about education as a “*self-giving instrument of meaning*” (FERNANDEZ, A, 2009). The identity of children together with the role of the family as a fundamental unit of the society in the upbringing of children are important cornerstones of the best interest of the child (CRCh, 2014, GC 14, par. V.A.1.b-c). In the articles concerning the right to education the CRCh states: “*The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own*”. The Committee on the Rights of Children points that “*this article (par.29.1) underlines the importance of respect for parents, of the need to view rights within their broader ethical, moral, spiritual, cultural or social framework, and of the fact that most children’s rights, far from being externally imposed, are embedded within the values of local communities*” (CRCh, 2001, GC1, par.7). For carrying out these responsibilities, parents require in the realization of this right the proper recognition to successfully fulfill their commitment in the best interests of the children. The recognition of the responsibility of parents requires for them some room in which they can choose freely what they consider is better for their children bearing in mind the cultural, spiritual and moral dimensions. This is specifically stated by the CRC in its article 14.2 when it points that the respect of the rights and duties of parents “*to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child*” shall be granted by the States. This responsibility is in coherence with the respect of the respect of the liberty of parents, as stated in article 13.3 of the ICESCR and 18.4 of the ICCPR.

If we englobe all these dimensions –identity, moral, cultural and spiritual- under the umbrella of cultural rights, we could all agree, once again, that parents play an essential role in the realization of the cultural dimension of the right to education. As we have observed, in the CRC, as in other treaties, the cultural dimension of the right to education is not just a facultative decision of parents, but an aim of education. As we saw earlier, parents have child-rearing responsibilities that children receive an education that goes beyond mathematics, language and science and that enables them to relate to their immediate culture and community. Bearing that in mind, one might ask, should parents hold this responsibility alone? Should the choices that parents take to accomplish this responsibility be conditioned by the social means of each family?

As underlined in article 18.2 *“States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children”*. Therefore, states should assist parents in the realization of these responsibilities.

This is especially relevant to ensure that those families who are not part of the mainstream culture can participate in the realization of this rights. The Committee has clarified that states have positive, and even financial, obligations on the realization of the rights of children *“In terms of budgets, “implementing children’s rights” means that States parties are obliged to mobilize, allocate and spend public resources in a manner that adheres to their obligations of implementation”* (CRCh, 2016, GC.19, par. 27). The Committee also clarifies the extent of the word “respect” in terms of budgets implementing children’s rights: *“Respect” means that States parties should not interfere directly or indirectly with the enjoyment of children’s rights. In relation to budgets, this means that the State shall refrain from interfering with the enjoyment of the rights of the child by, for example, discriminating against certain groups of children in budget decisions, or withdrawing funding or diverting resources away from existing programmes providing for children’s enjoyment of economic, social or cultural rights”* (CRCh, 2016, GC.19, par 27.a). In a plural society, if public authorities are funding certain cultural perspectives and a group of parents belonging to a concrete cultural community are excluded from providing the education they want for their children due to the lack resources, this could be constitute discrimination. This discrimination not only can have an effect on the “respect of the liberty of parents” – although this does not appear explicitly in the CRC- but also to the exercises of the responsibilities that the CRC recognizes to parents. Bearing this in mind, the expression “respect of the liberty of parents” that we can observe in other treaties must implies something more than just negative obligations on the side of the state.

To confirm that the word respect can imply positive obligations we can observe other articles slightly related with what we have being observing. The word respect appears in other articles which could be related with the cultural dimension of the right to education. Article 31.2 points that *“States shall respect and promote the right of the children to participate fully in cultural and artistic life (...)”*. The Committee in various General Comments repeats that *“The obligation to respect requires States parties to refrain from interfering, directly or indirectly, in the enjoyment of the rights”* (CRCh, 2013, GC.17, par. 54) (CRCh, 2013, GC.16, par. 26). Once again, a quick reading of the previous sentence seems to limit the obligation of respect to exclusively negative obligations. Nevertheless, once observed from a cultural perspective, we can affirm that this is more complex. In the same line, the CRCh points that in the field of the participation of in cultural and artistic life the word “respect” implies positive obligations for public authorities such as the

support of caregivers through the creation of environments that facilitate children to play or awareness raising duties ⁵ (CRCh, 2013, GC.17, par. 56).

On this point, the CRCh has even clarified that the word respect not only can imply positive obligations, but public investment *“States should invest in measures to challenge widespread cultural attitudes which attach low value”* (CRCh, 2013, GC.17, par. 56).

The Convention on the rights of the Child shed some light on the relation between parents, children and public authorities in the realization of an upbringing of children in which all the actors can play a role. In this field, parents are considered as crucial and trusted actors in which the community relies to take the best decisions for their children. In this regard, the word “respect”, and more specifically concerning the “liberty of parents” should be read a constructive link between public authorities and parents. Therefore, in line with what we have observed previously this cannot be interpreted in a restrictive way, but with positive implications for the public authorities.

e. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRAMW) also refers to the *“respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children”* (art. 12.4 ICPRAMW). The respect of this liberty is worded in almost the same way as in the ICCPR.

Although the Committee on Migrant Workers do not develop the scope of this respect for the liberty of parents, this Convention has articles that also resemble others of the Human Rights Covenants previously reviewed.

First, we must warn that the liberty of parents is a liberty linked with the right to freedom of thought, conscience and religion (art.12.1 ICPRAMW) as in the article 18 of the ICCPR.

Moreover, cultural rights are conceived in the same way that we have seen in the previous covenants. Article 31 ICPRAMW points that

“1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

2. States Parties may take appropriate measures to assist and encourage efforts in this respect.”

⁵ “The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of every child, individually or in association with others, to realise his or her rights under article 31, including: (a)Support for caregivers: Guidance, support and facilitation with regard to the rights under article 31 should be provided to parents and caregivers in line with article 18, paragraph 2, of the Convention. Such support could be in the form of practical guidance, for example, on how to listen to children while playing; create environments that facilitate children’s play; allow children to play freely and play with children. It could also address the importance of encouraging creativity and dexterity; balancing safety and discovery; the developmental value of play and guided exposure to cultural, artistic and recreational activities. (b)Awareness raising: States should invest in measures to challenge widespread cultural attitudes which attach low value to the rights provided for in article 31, (...)”.

Bearing in mind that cultural rights are understood the same way they are understood in the covenants previously reviewed, we could say that the word respect in relation with liberty of parents goes beyond negative obligations.

3. Regional Human Rights treaties:

Other than the International Human Rights treaties, we have to bear in mind the regional human rights. In regions, such as Europe, Africa or Asia, the regional human rights documents have had a relevance that cannot be dismissed when we consider a holistic human rights approach interpretation.

a. The European Convention on Human Rights (1950)

The European Convention on Human Rights (ECHR) guarantees most of the same fundamental rights the UDHR recognizes. It does not recognize the right to education; this is why this was latter complemented by Protocol Nos. 1 two years later (1952). This has not been the only Protocol.

The article 2 of the Protocol 1 states:

“Right to education. No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

We can observe once again the use of the word “respect”, but instead of referring the “liberty of parents” it refers to the “right of parents”. Protocol 1 does not make any reference to the right “to choose for their children schools, other than those established by the public authorities”, but as in the former documents it links this liberty/right with the “religious and philosophical convictions”.

We can point three relevant elements of this article in line with the UN recognition of parental rights. First of all, the recognition of parents as crucial actors of the realization of the right to education. Secondly, the recognition of the voice of parents in the realization of the right to education, acknowledging the “rights of parents”. And thirdly, the religious and philosophical convictions –both rooted in the cultural dimension of the human being- as the reason that justifies the exercise of the “rights of parents”. We can observe the link between these three dimensions and their link in the jurisprudence of the European Court of Human Rights: “*parents being primarily responsible for the “education and teaching” of their children - that parents may require the State to respect their religious and philosophical convictions.*” (Kjeldsen, Busk Madsen and Pedersen v. Denmark, 7 December 1976, par. 52). This recognition of parents can recall us the recognition of the US Supreme Court when it says “*the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.*” (Pierce v. Society of the Sisters, 268 US 510)

Concerning the scope of the word respect the jurisprudence of the ECHR has stated “*The second sentence of Article 2 of Protocol No. 1 aims in short at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of the “democratic society” as conceived by the Convention*” (Folgerø v Norway, 29 of June 2007, par 84.b). It would be atypical

that the state only had negative obligations towards this liberty, bearing in mind that this is a dimension essential for the preservation of the “*democratic society*”. Moreover, deepening in the details of the obligations of the State the ECHR points that that “*The two sentences of Article 2 of Protocol No. 1 must be interpreted not only in the light of each other*” (Folgerø v Norway, 29 of June 2007, par 84.b). That means that the undeniability of “*the right to education*” and the “*respect of the right to parents*” have to be understood together. The court expresses the consequence of understanding these two dimensions together when it points that “*the State shall respect the right of parents*” “*means more than “acknowledge” or “taken into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State*” (Lautsi and Others, 18 March 2011, par. 61 and, Campbell and Cosans v. United Kingdom, 25 February 1982, par. 37). It seems clear that there are positive obligations of the public authorities for the realization of this right. What is the extent of these obligations? The positive obligations toward the realization of this right are not limitless. The Court has pointed that “*in the context of Article 2 of Protocol No. 1, that concept implies in particular that this provision cannot be interpreted to mean that parents can require the State to provide a particular form of teaching*” (Lautsi and Others, 18 March 2011, par. 61). Nevertheless, bearing in mind that the respect to the rights of parents is in line with the protection of their religious and philosophical convictions, the cultural approach developed by the ICESCR could be useful to think the extent of this obligations.

As in the treaties previously reviewed, the Court has never deepen more than that on the duties of the state concerning the realization of educational pluralism. Nevertheless, although it is not an exhaustive reflection on the scope of this obligations, the Court warns that the state cannot refrain of the realization of these rights. For all what we have seen, we can point that it seems unlikely that it would acknowledge the realization of educational pluralism only implies negative obligations of the state.

b. American Convention on Human Rights; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural - "Protocol of San Salvador" (1988)

The Additional Protocol to the American Convention on Human Rights in the Area of Economic and Cultural Rights, mostly known as the “*Protocols of San Salvador*” does not use the word respect. Nevertheless, the mention of 13.4 of the Protocol of San Salvador points:

“In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.” We can highlight once again that in the Protocol of San Salvador the liberty of parents is recognized as a right. Moreover, the Protocol of San Salvador does not use the word respect.

Nevertheless, the expression “*In conformity with the domestic legislation of the States Parties*” might sound like that the extent of this right is conditional on the willingness of Member States. By that, I meant that the only obligation of the states would be a negative obligation – not to limit this right. “*In conformity with the domestic legislation of the States*” is an expression that exists only in one article of the protocol and, within this region, we can observe in the American Convention of Human Rights in the article 22.7 concerning in this field the right to exile.

The Protocol of San Salvador is an Additional Protocol of the American Convention on Human Rights “*Pact of San Jose*”. The Protocol of San Salvador states in its article 1.1 that the “*The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and*

to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms”, more over its article 2 points: “the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms”

This first two articles confirm that the expression “*In conformity with the domestic legislation of the States*” would mean that the states have to develop this right in its domestic legislation if they have not. In this regard, it would be atypical, otherwise if states can dispose of the extent of a human right in their national legislation as if it was civil law. We can conclude that an expression that would understand this expression differently would empty the content of this right, transforming this in just some part of civil law.

4. Conclusions:

The aim of this document was to shed some light on the scope of the expression “respect for the liberty of parents”. We have observed in this document that parents are perceived as responsible of the upbringing of children. The main criteria of the upbringing process is that parents have to take into account the best interest of the child. The best interest of the child is a complex reality, nevertheless one of its important spheres is the cultural dimension of children. Children have the right to know who they are and to build an identity. The international community has considered that the construction of an identity is an important dimension of the right to education, therefore they have recognized the liberty of parents in order they can transmit to their children an education in line with their religious and philosophical convictions. In the same line we have observed that the state has a duty to assist parents in the realization of the cultural dimension of the right to education. Otherwise, the liberty that enables parents to provide to their children an education respectful with their convictions would be a privilege instead of a human right. In this regard, we can affirm that the realization of the right to education is not only a social endeavor in which many actor play a crucial role. Therefore, the respect of the liberty of parents is the recognition that parents are a crucial actors or the realization of the right of education and that the relations between them and public authorities should be built under the premises of trust and confidence. It would be weird under this circumstances to limit the duties of public authorities to exclusively negative to guarantee this collaboration and the exercise of this liberty.

5. Bibliography:

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. (1999). *General Comment 11: Plans of action for primary education (art.14)*. Geneva. E/C.12/1999/4

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. (1999). *General Comment No. 13: The right to education (article 13 of the Covenant on Economic, Social and Cultural Rights)*. Geneva. E/C.12/1999/10.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. (2009). *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*. Geneva. E/C.12/GC/21.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. (2020). *General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)*. Geneva. E/C.12/GC/25.

COMMITTEE ON THE RIGHTS OF THE CHILD. (2001). *General comment No. 1: The Aims of Education*. Geneva. CRC/GC/2001/1.

COMMITTEE ON THE RIGHTS OF THE CHILD. (2013). *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*. Geneva. CRC/C/GC/14.

COMMITTEE ON THE RIGHTS OF THE CHILD. (2013). *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*. Geneva. CRC/C/GC/16.

COMMITTEE ON THE RIGHTS OF THE CHILD. (2013). *General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)*. Geneva. CRC/C/GC/19

COMMITTEE ON THE RIGHTS OF THE CHILD. (2016). *General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4)*. Geneva. CRC/C/GC/19

DAUDET, Y., & SINGH, K. (2001). *Politiques et stratégies d'éducation 2, Le droit à l'éducation : analyse des instruments normatifs de l'Unesco*. Paris. UNESCO.

EUROPEAN COURT OF HUMAN RIGHTS (7 December 1976) *Kjeldsen, Busk Madsen and Pedersen v. Denmark*

EUROPEAN COURT OF HUMAN RIGHTS (29 of June 2007) *Folgerø and Others v. Norway*

Espinoza v. Montana Department of Revenue, 591 U.S. (2020)

Pierce v. Society of the Sisters, 268 US 510 (1925)

FERNANDEZ, A. (2009) *Le droit à l'éducation. Vers un culture des droits de l'home. Droits humains, cultures, économie et éducation*. Diversités, Genève.

GLENDON, M. A. (2001). *A World made new. Eleanor Roosevelt and the Universal Declaration of Human Rights*. The Random House.

GLENDON, M. & KAPLAN, S. (2009). *Renewing Human Rights. First Things*. Available: <https://www.firstthings.com/article/2019/02/renewing-human-rights>

HUMAN RIGHTS COMMITTEE. (1993). *General comment no.22 (48) (art.18)*. Geneva. CCPR/C/21/Rev.1/Add.4

HUMAN RIGHTS COMMITTEE. (1994). *General Comment No. 23: The rights of minorities (art. 27)*. Geneva. CCPR/C/21/Rev.1/Add.5

HUMAN RIGHTS COMMITTEE. (2004). *General Comment No. 31 [80] - The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*. Geneva. CCPR/C/21/Rev.1/Add.13