



GLOBAL SCHOOLS FORUM

The Abidjan Principles

GSF Webinar, 18th November 2020

‘The Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education’

- A set of **principles** compiled over 3 years; signed by **organisations and individuals** (not states); managed by a **Secretariat of 5 organisations**, all with active campaigns against ‘education privatisation’
- “The Abidjan Principles promises to be the new reference point for governments, educators and education providers when debating the respective **roles and duties of states and private actors in education**. They compile and **unpack existing legal obligations** that States have regarding the delivery of education, and in particular the role and limitations of private actors in the provision of education.” (Abidjan Principles website, emphasis added)
- “...intended to be used at the **local, national, regional, and international levels** to inform **discussion, advocacy, law and policy development, and litigation**” (Right to Education website, emphasis added)

- **International human rights law** (IHRL) governs and shapes: (i) international normative agreements, agency policies and practice, (iii) national legislation, policies and practice
- The APs are part of a broader **campaign** to close down private provision of education and PPPs (advocacy campaigns; legal training; litigation; case law compilation etc.)
- They are backed by a **large advocacy infrastructure** (e.g. Education NGOs, Human Rights NGOs, Unions); only GSF providing a countervailing voice publicly?
- While they are not law: (i) they purport to interpret law and therefore have **legal force**, (ii) with enough **citations** (which they are accumulating at speed), they can become ‘soft law’ or ‘customary law’ with legal force
- On current trajectory, they will be converted into: (i) **national legislation and policies** that constrain operating space for non-state actors, (ii) **international normative agreements** (e.g. UN declarations / agreements) and **policies** (viz. GPE, EU, IDA, IFC) that do likewise

1. GSF / EPG legal opinion #1 (Oct 2018)

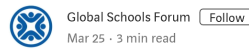
Led to softening of text and removal of Para 56 of the then 'Guiding Principles': *"States must not fund or support, directly or indirectly, any private educational operator that...b. is commercially-orientated or for-profit"*

N.B. GPE, EU and WB Group (IDA and then IFC)



2. Op-eds & debate (through 2019)

The 'Abidjan Principles' on private involvement in education: A useful framework or a step too far?



Plus some direct engagement with AP Sec



3. GSF legal opinion #2 (Oct 2020)



How to deploy this legal opinion at country, regional, global levels? And in combination with what other strategies?



Ben Emmerson, QC is a British barrister, specialising in public international law, human rights and humanitarian law, and international criminal law. From 2011 to 2017, he was the UN Special Rapporteur on Human Rights and Counter-Terrorism. Emmerson is currently an Appeals Chamber Judge of the UN Mechanism for International Criminal Tribunals sitting on the Criminal Tribunals for the Former Yugoslavia and Rwanda. He has previously served as Special Adviser to the Prosecutor of the International Criminal Court, and Special Adviser to the Appeals Chamber of the ECCC.

Abidjan Principles – 5 areas of mis-representation

1. the assertion that **states must prioritise public provision** of education
2. an insistence on **excessive regulatory requirements** with no basis in international human rights law, and that may effectively limit education provision
3. the assertion that **donors must prioritise funding public education**
4. the assertion that states have a legal obligation to set **education budgets** at a particular level
5. the framing of the Abidjan Principles as **binding legal obligations**

Abidjan Principles	GSF legal opinion
1. the assertion that states must prioritise public provision of education	“Neither the treaties nor the relevant jurisprudence seek to prescribe the means by which a State fulfils the right to education, nor do they require that provision is exclusively via public educational institutions.”

Abidjan Principles	GSF legal opinion
2. an insistence on excessive regulatory requirements with no basis in international human rights law, and that may effectively limit education provision	<p>“The Abidjan Principles provide that States are only permitted to fund non-State operators in circumstances where they meet a series of substantive, procedural and operational requirements, including that they match the salaries paid to teachers in public educational institutions and hand over all of their intellectual property and data to the State (Principles 65 to 73 in particular). There is, as far as I am aware, no basis in International Human Rights Law for such an obligation – it is certainly not evident in the relevant treaty provisions nor jurisprudence of the relevant treaty bodies.”</p>

Abidjan Principles	GSF legal opinion
3. the assertion that donors must prioritise funding public education	“There is no discernible basis under International Human Rights Law for the position adopted in Abidjan Principle 38 that donor States, whether acting on a bilateral basis or through an international organisation, must prioritise public, as opposed to non-State provision nor the provision of secondary education which is free.”

Abidjan Principles	GSF legal opinion
4. the assertion that states have a legal obligation to set education budgets at a particular level	“The second sentence, relating to funding commitments, belongs to the realm of policy, not International Human Rights Law. There is no support for the existence of such a specific obligation in the relevant treaties or jurisprudence.”

Abidjan Principles	GSF legal opinion
5. the framing of the Abidjan Principles as binding legal obligations	“The Abidjan Principles are not an accurate statement of the requirements of international law in this respect. They enshrine a strong bias against private provision. The document is deeply ideological in content. It is certainly not a legal document, and it would be wrong to view the principles as soft law standards which ought to restrict the funding options of states or international development organisations.”

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The Global Initiative
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States' Human Rights Obligations Regarding Public Services
The United Nations Normative Framework

POLICY BRIEF · 19 October 2020

“UN Statements indicate that States are required as a matter of human rights law to directly provide public services or ensure their provision by a public body.”

(GI-ESCR Policy Brief,
October 2020)

1. Do you share our **analysis** of the Abidjan Principles and associated risks?
2. What is your **experience** of the Abidjan Principles to date (particularly in your countries of operation)?
3. How can GSF (Sec + members) & others **deploy** this legal opinion at country, regional, global levels? And in combination with what other strategies?