

Definitions of legal terms concerning normative and standard setting instruments

The right to education is a fundamental and globally recognized human right, established in texts of varying legal and standard setting nature. They include conventions, recommendations, declarations, frameworks for action and charters.

These texts – often referred to as **instruments** -- do not, legally speaking, involve the same obligations. But they all serve the same end: the promotion, protection and fulfilment of the right of every person, without discrimination, to enjoy access to education of good quality.

The most common types of instruments are explained below.

- **Conventions**
- **Declarations, recommendations, charters and frameworks/plan of actions**
- **Guidelines, commentaries, studies or other reference documents**

Conventions

A convention is a binding formal agreement drafted and adopted by international bodies such as UNESCO or the United Nations. In order to become functioning and applicable law a convention has to be ratified by States, which means that they first sign it and then fulfil their own national legislative requirements. This often involves a hearing and vote in the national Parliament. When the convention is ratified (or acceded to, meaning the State expresses its agreement to be legally bound by the text but without any formal act of signature) in sufficient numbers it enters into force and becomes binding on the States that have adhered to it. A State may have reservations to certain articles in a convention, but only in so far as these do not defeat the object and purpose of the convention.

Once the convention is brought to function within that State's domestic legal order it should become justiceable: the beneficiary (or rights-holder) of the right to education, as established by the convention, can use every available legal means to secure compliance by the State (known as the primary duty-bearer). Such means may involve seeking recourse in a court of law, where the judge ultimately has the power to examine whether non-fulfilment of the States' legal obligations has taken place. Such decisions by a judge has then binding force on the State in question, and does also often have importance as a precedent-setting document, making it easier for other rights-holders to claim their rights in the

future.

Most conventions also have stipulated monitoring mechanisms, often in the form of an international committee of experts charged with examining reports from the State parties at regular intervals, thus making it the duty of the State itself to do the initial monitoring. The committee will then issue conclusions and recommendations, though with no legal binding force. These proceedings and reports may be confidential or they may be public.

Declarations, recommendations, charters and frameworks/plan of actions

These instruments are not binding and have only declamatory character. These types of instruments are not subject to ratification, though they are often accompanied by signatures or other expressions of intent. However, States and governments adhering to these declarations and recommendations thereby subscribe to moral commitments and strive towards international consensus. Such instruments clearly define the States intention to abide by them, even though there are no legal penalties for non-compliance. Furthermore, they may, by custom, become recognized as laying down rules binding upon States, as has happened with the Universal Declaration of Human Rights from 1948.

Guidelines, commentaries, studies or other reference documents

These documents are indispensable for understanding the significance and use of the legal or standard setting instruments. . They are important as they may provide either an overview of the nature of the provisions stipulated in the legal instruments, methodological tools to guide the interpretation and implementation of these instruments, as well as often also a comprehensive framework for understanding the right to education as a human right and the nature of human rights obligations, aspects neither always self-explanatory nor accessible to all.