

Chapter 8

Article 13: The Right to Freedom of Expression

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1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

What Did Children Say?

Government should create guidelines in schools to teach the students about the boundaries of their freedom of speech to prevent racist/sexist/harmful comments. (*Asia-Pacific*)

We have to make sure that children enjoy freedom of expression at home, in the street, in the school, in the courts and in public spaces. (*Africa*)

(continued)

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Parents should tell us that there is harmful negative information, like naked picture, human trafficking, pornography, criticising others, learning about drugs, learning about beating. (*Africa*)

The opportunity to have access to information, libraries, schools, websites in order to, we quote, ‘be smart and know what to say.’ (*Eastern Europe*)

Overview

The right to freedom of expression represents the foundation of a free society and constitutes a central dimension of human dignity and autonomy. Its inclusion in earlier human rights treaties has always been recognised, in principle, as extending to children as well as adults, but in practice this right has not been fully acknowledged, as exemplified by the failure to include such a provision in the 1924 and 1959 Declarations on the Rights of the Child (Tobin & Parkes, 2019, p. 437). Its explicit inclusion through Article 13 of the Convention provides affirmation of its equal relevance to the lives of children, and their equal entitlement to enjoy the freedom it affords. Its aim is to assure that a child, in all spheres of their public and private life, is able to express themselves, and to seek, obtain, and share information and ideas without interference or being hampered by cultural, political, religious, or other barriers. Both dimensions are vital and mutually reinforcing. The freedom to seek and receive information provides the foundation for the child’s development and understanding of their world and, in turn, contributes towards their consequent capacity to contribute, engage and express themselves (Thorgeirsdóttir, 2006).

Article 13 of the Convention differs from Article 19(1) of the ICCPR, in that it fails to include an explicit reference to children’s rights to freedom of opinion. During the drafting of Article 13, there was a proposal to include a provision stating: ‘the child shall have the right to hold opinions without interference’ (Office of the United Nations High Commissioner for Human Rights and Rättsutskottet (Society: Sweden), 2007, p. 449). It was not included in the final text and the records of the drafting history offer no explanation for its deletion. However, the Committee has taken the view that the holding of an opinion is a precondition of the expression of views (UN Committee on the Rights of the Child, 2009, para. 81). The right to hold an opinion is therefore implicit in the right to freedom of expression.

Article 13 is not absolute and can be limited for the protection of the rights of others or for purposes of national security, public health, or morals. These restrictions broadly replicate those in the ICCPR, except that Article 13 does not include a reference to the fact that the exercise of the right itself imposes certain responsibilities on the individual. This can perhaps be explained in terms of the evolving capacities of the child and the role of parents to provide direction and guidance until such time as the child is able to exercise that responsibility for themselves.

General Principles

Article 2 Every child must be treated equally with regard to their right to free expression and inquiry, and access to information and ideas in accessible formats. However, many children can experience discrimination in exercising this right, including girls, minority and indigenous groups, children living in rural or remote areas, children with disabilities, migrants, refugees and asylum seekers, LGBTQ children, victims of sexual exploitation, and those in extreme poverty or living in institutions or alternative care. Such discrimination may be indirect, for example, through exclusion from or disadvantage in accessing opportunities to seek or impart information, in particular, and increasingly, in relation to their access to digital technologies. They may also experience direct discrimination in the form of abusive, hateful, or discriminatory communication or treatment, or hostility, threats, or punishment. In order to address potential discrimination, States Parties need to adopt measures to promote access to information, lower the cost of connectivity, provide free access to children in safe dedicated public spaces, and to invest in policies and programmes that support all children's use of digital technologies at school, home, and in their community (UNICEF Policy Lab, 2018). They should also adopt measures to prevent discriminatory harassment and harm.

Article 3 The best interests of the child are realised through the fullest possible implementation of the rights in the Convention (UN Committee on the Rights of the Child, 2013, para. 4). Accordingly, it can be understood that it is in the child's best interests to have their right to access and impart information freely fully respected. The best interests principle must also be taken into account in determining whether certain forms of information or expression might be harmful to them, bearing in mind their evolving capacities and development.

Article 6 The right to freedom of expression contributes to the fulfilment of Article 6, the right to life, survival and development, as neurobiology literature has clearly established the positive impact of expression and stimulation (giving and taking information) on the developing brain and overall development (Shonkoff, 2009). Analogies have been drawn between the necessity of freedom of expression for children's development and that of 'air and light for physical existence.' (Thorgeirsdóttir, 2006, p. 3). Additionally, the exercise of the right to access information could facilitate acquisition of information relevant to children's health and well-being consistent with Article 6 (Shonkoff, 2009).

Article 12 The right to freedom of expression is closely linked with Article 12 but differs in several significant ways. First, it is unlimited in scope, unlike Article 12 which is limited to 'all matters affecting the child.' Second, it is not limited to children capable of forming a view, as required in Article 12. Third, it includes a right to seek and receive information. Article 12 does not explicitly address the right to information, although in practice the expression of views does necessitate its provision. Finally, Article 13 imposes no obligation on adults to hear or to establish mechanisms through which to hear the views or opinions of children, a provision

which is central to the obligations under Article 12 (UN Committee on the Rights of the Child, 2009, para. 81). Together, Article 12 and 13 are mutually reinforcing. Whereas Article 13 is a right that applies equally to adults and children, Article 12 adds strengthened protection for children to express their views in recognition of their lack of autonomy in decision-making in most arenas of their lives.

Articles Related or Linked to Article 13

Article 5, the responsibilities and duties of parents to provide appropriate guidance to children must take account of their evolving capacities in exercising their Article 13 rights.

Article 14, freedom of thought, conscience, and religion is closely linked to the right to freedom of expression.

Article 15, which provides for the child's right to freedom of association and peaceful assembly, represents a means of exercising their right to freedom of expression.

Article 16 requires that children are entitled to protection of privacy when exercising their right to freedom of expression.

Article 17, together with Article 13, provide for the right to access to information.

Articles 28 and 29, rights to and aims of education require both that children are able to learn about their rights to freedom of expression and also to exercise that right within the school environment.

Article 30 addresses the rights of indigenous children and children of minorities to enjoy own culture, religion, and language, and as such is closely linked with the right to freedom of expression.

Article 31, the right to play, and cultural activities, constitutes a central aspect of children's lives where they are able and entitled to exercise freedom of expression.

Relevant Instruments

UN Universal Declaration of Human Rights (1948), Article 19, also declares the right to expression and opinion a right of every human being.

International Covenant on Civil and Political Rights (1966), Article 19(1)

International Convention on the Elimination of all forms of Racial Discrimination (1966), Article 5

UN Convention on the Rights of Persons with Disabilities (2006), Article 21 (freedom of expression and opinion, and access to information) and Article 29 (freedom of participation in public and political life).

Attributes

Attribute One: Access to Information

Children are entitled to seek and receive information. Article 13 affirms that the child is an active agent in exploring information and not merely a recipient of ideas or information provided by others. This provision extends to the widest possible interpretation of information (Pais, 1997, p. 434). Children have the right to seek out information relating to the public domain, for example, on any issue or topic in which they have an interest or which can contribute to their education or health and development, or expression of their identity. Article 13 also extends the right to government information relating to their personal history or identity, for example, access to records or original birth certificates for children who have been placed in care, adopted, or born as a result of assisted reproductive techniques (Hussain and UN Commission on Human Rights, 1998, para. 14).

The right to information encompasses oral, written, and print forms, online and offline, and from a diversity of sources including newspapers, books, magazines, radio, television, Internet, social media, and the arts. Article 13 also entitles children to information regardless of frontiers and therefore must encompass the right to access information from different cultural, linguistic, social, political, and geographic arenas. In light of the growing significance of the digital environment as a source of information for children, and the obligation to protect children from harmful material, States Parties should ensure that digital providers introduce and enforce appropriate human content moderation to meet their child users' needs for both access and protection (Council of Europe, 2018, para. 20). Where content controls, including parental control tools and school filtering systems are used to protect children from harmful information, they must balance protection against children's right to access information, consistent with children's evolving capacities.

Attribute Two: Freedom of Imparting Information (from Children to Adults)

Every child is entitled to express and impart views without restriction in respect of age or capacity to any audience or indeed, to none, and on whatever issue they choose. The Committee has elaborated that the mode of expression can include 'spoken written and sign language, non-verbal expression such as images or objects of art, and the means of expression extend to books, newspapers, pamphlets, posters, banners, digital and audio-visual media, as well as dress and personal style' (UN Committee on the Rights of the Child, 2016, para. 42). Depending on the age of the child, it might also include clothing, hairstyles, role modelling, and different forms of sexual expression and identity, as well as more typical adult agendas such political or human rights discourse, personal commentary, cultural and artistic

expression, or commercial advertising. It can also encompass content or forms that may be regarded as offensive, provided they do not breach the restrictions elaborated in paragraph 2 (UN Human Rights Committee, 2011, para. 11).

As with the right to seek and receive information, children are entitled to express their views across national, social, political, and cultural boundaries, including through the online world of the Internet and social media (LaRue & UN Human Rights Committee, 2011, paras. 20–21). Filters and other barriers, including safety measures, should not restrict children’s freedom of expression. The Committee has expressed concern that where children express political or other views and identities in the digital environment, this can attract criticism, hostility, threats, or punishment and stressed that States Parties should take steps necessary to overcome these challenges, including actions to prevent the occurrence of harassment, threats, misinformation, censorship, data breaches, and digital surveillance (Cho et al., 2020).

Children’s right to expression can only be restricted for reasons delineated in Article 13, paragraph 2, or where parents consider that limits are required in the best interests of the child, in relation to their evolving capacities and to protect them from harm.

Attribute Three: State Obligations

States Parties have an obligation to respect, protect, and fulfil the right to freedom of expression and, accordingly, must take all reasonable measures:

- To respect the right by ensuring that the state does not violate the right
- To protect the right by ensuring that non-state actors do not violate the right
- To fulfil the right by ensuring its effective realisation.

The Committee has consistently recommended that States Parties act with regard to meeting these obligations in respect of Article 13. Such action should include:

- Explicit recognition in law to safeguard the right of every child to freedom of expression, including guidance on the nature of any restrictions that can be imposed to avoid arbitrary interpretations of state laws and the Convention.¹
- Effective mechanisms for protection of rights, and remedies when rights are violated (UN Human Rights Committee, 2011, para. 21). Such remedies must be safe and accessible to children.
- Education and awareness raising to enable children to understand, and therefore be able to exercise, the right to freedom of expression, and to acquire the necessary skills with which to do so. Such measures should address attitudes

¹ See, for example, Concluding Observations for Cuba (UN Committee on the Rights of the Child, 2011a, para. 33), Ukraine (UN Committee on the Rights of the Child, 2011b, para. 39), and Georgia (UN Committee on the Rights of the Child, 2000, para. 28).

among parents, communities, and schools that might restrict or undermine children's freedom of expression (UN Committee on the Rights of the Child, 2001, paras. 33–34).

- Measures to ensure that children have access to the information sources necessary to enable them to exercise the right to freedom of expression. The Committee has emphasised the importance of access for children to information from a diversity of national and international sources (UN Committee on the Rights of the Child, 2011c, para. 47(a)). There is also increasing recognition of the necessity for children to have access to the Internet and social media given the extent to which global communications, including the development and exchange of ideas and opinions, now function within this environment (UN Human Rights Committee, 2011, para. 15).

Attribute Four: Restrictions and Limitations

Like many rights, Article 13 is not absolute and can be subject to restrictions for the respect of the rights and reputation of others and for the protection of national security or of public order, or of public health or morals. Interestingly, unlike Article 19 of the ICCPR, it does not include reference to special duties and responsibilities of individuals in the exercise of the right to freedom of expression, and there is no reference in the drafting history of the Convention to explain this omission (Office of the United Nations High Commissioner for Human Rights and Rädde Barnen (Society: Sweden), 2007, pp. 445–52). However, the restrictions themselves are identical to those in the ICCPR and it can therefore be understood that the burden of that responsibility is undertaken on behalf of the child by their parents in accordance with the child's evolving capacities (Tobin & Parkes, 2019, p. 456).

The limitations imposed by the state on the exercise of Article 13 are subject to clear guidance. They must be provided for in law and establish clear criteria. They must be in pursuit of a legitimate aim and be proportionate to the attainment of that aim. In other words, they must be reasonable and necessary (UN Human Rights Committee, 2011, para. 2). Many of the restrictions imposed on children arise in the context of school, for example, in respect of school uniforms, dress and jewellery or political views. One notable case in the United States arose when children demanded the right to wear black armbands in protest of the Vietnam war, and in breach of a school policy forbidding such behaviour. The Supreme Court ruled in the children's favour, arguing that they do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate' (*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 1969, p. 506).

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