

Right to Education Project: Environmental Scan – International Examples

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Overview of the Context of the Environmental Scan

“The right to education includes not only the right to access education but also the right to *quality education*.” – *Right to Education Handbook 2019*

All children have a right to education. This right is enshrined in various international and provincial legal documents, however there is no mechanism to assess Ontario’s or Canada’s progress on the right to a quality education. For over 20 years, People for Education (PFE) has been using the annual school survey to track the effects of policy and funding changes in Ontario’s publicly funded schools. Now, PFE wants to ensure that we have a way of understanding and monitoring how all children’s rights to a quality education that prepares them for long-term success are being met.

This **environmental scan** provides an overview of work being done internationally to promote and uphold children’s right to education nation-wide. This scan will be used to inform the work that can be done in Ontario and Canada.

The Right to Education

People for Education (PFE)’s Right to Education project is a multi-year initiative to develop a framework and a set of key indicators to define and measure progress on young people’s right to an education that prepares them for success in a globalized and rapidly-changing world.

The 4As Framework: Available, Accessible, Acceptable, Adaptable

In the previous discussion paper, the 4As Framework—available, accessible, acceptable, adaptable—was identified as being the most comprehensive description of the right to education. It was adopted by the UN Committee on Economic, Social and Cultural Rights to contextualize the right to education and it – along with the UNESCO (2019) Right to Education Handbook—may provide the most useful foundations for the next steps in PFE’s Right to Education project. Interestingly, this framework includes both “public” and “private” education.

Table 1 provides an overview the essential features of education that are captured in each aspect of the 4As framework (UNESCO, 2019; p. 76).

Table 1. Description of the 4As

4 A’s	Education must be...
Available	<ul style="list-style-type: none"> • Establish, develop and manage an education with schools in all locations and in sufficient quantity • Safe school buildings (e.g. classroom, library, sanitation systems, computer and IT facilities, playgrounds) • Quality teaching (education and training, recruitment, labour rights, trade union freedoms) • Freedom of non-state actors to establish private educational institutions • Resource allocation matching human rights obligations • Learning materials and other equipment necessary for teaching and learning
Accessible	<ul style="list-style-type: none"> • Non-discrimination at all levels and types of education • Elimination of legal and administrative barriers

	<ul style="list-style-type: none"> • Elimination of financial barriers (e.g. user fees) • Provision of free and compulsory primary and secondary education and progressively free education at all other levels and types of education • Elimination of practices keeping children and adolescents out of school (e.g. child marriage and child labour) • Schools must be within safe and reachable distance • Provision of school transportation, where necessary • Measures to prevent drop-outs and to identify out of school children and get them back into the education system
Acceptable	<ul style="list-style-type: none"> • Quality education in public and private schools • Must meet the aims of education • Must recognize that children are right-holders • Culturally appropriate and relevant education • Free from any form of violence (e.g. gender-based violence) • Parental freedom to send their children to private schools offering education in line with their religious, moral or philosophical beliefs • Alternative schools offering alternative pedagogies or languages of instruction • All forms of private education must meet minimum educational standards
Adaptable	<ul style="list-style-type: none"> • Meets the unique needs of students (e.g. children with disabilities, LGBTQI, Indigenous students) • Respond to the changing needs of society • Respond to local needs and context

Adapted from UNESCO (2019)

Quality Education

Inherent in the right to education is the quality of the education that right-holders are accessing. There is no universal definition for quality education as it is dependent on the social, economic, and environmental context of the education system. However, there are common components of education that can be assessed to determine the level of quality (UNESCO, 2019).

According the UNESCO (2019) Right to Education Handbook, the three components of a quality education are (see Figure 1):

- 1) Teachers and learning process:** trained and qualified educators are key to determining how important content is taught.
- 2) Content:** International human rights law (IHRL) asserts that quality education content is rights-based, meaning it is non-discriminatory and meets the goals of education. The content of education should also foster the learning of both knowledge and skills. Knowledge includes subject-specific content and skills include basics skills (e.g. literacy and numeracy) and essential skills (e.g. critical thinking, creative talents, and development of good social relationships).
- 3) Learning environment:** the quality of the learning environment extends beyond the physical building of the school and includes the broader community. The learning environment should foster the full development of children and maintain inclusivity to ensure quality.

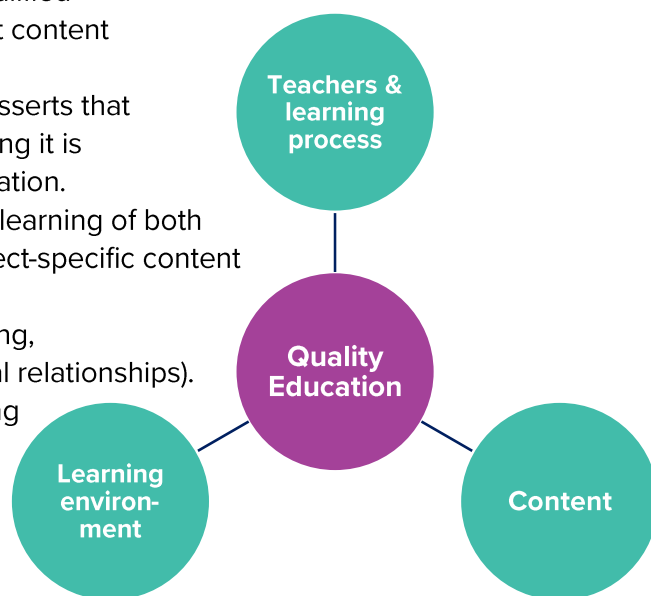


Figure 1. Components of Quality Education

Enabling the Enforcement of the Right to Education

As explained in the Background paper prepared for the 2017/8 Global Education Monitoring Report, legal accountability is only one strategy among others for the enforcement and realisation of the right to education (ActionAid International & Right to Education Initiative, 2017, p.37). UNESCO and the Committee on Economic, Social and Cultural Rights (CESCR)¹ have also noted that legal and political processes enabling rights-holders to seek effective representation is accessible only if the right-holders are familiar with those processes if their right to education is violated. This is why they must receive a minimum basic education which will give them the knowledge and tool to address challenges of this nature (Ibid p.44-45).

Awareness of the Right to Education

In 2015, the UN General Assembly announced the 2030 Development Agenda, *Transforming our World*, with 17 Sustainable Development Goals (SDG). The fourth SDG, 'Quality Education,' ensures inclusive and equitable quality education and promotes lifelong learning opportunities for all.

With the fourth SDG in mind, legal guarantees and enforcement mechanisms in place are not enough to ensure the right to education justiciable. The right-holders need to be aware about what is included in their rights as far as the quality of education, for the right to education to be truly fulfilled.

International studies show that children and human rights education is still not present as part of the educational system nor do they act as an empowering tool for rights-holders. Torney-Purta et al. (2008) used the results from the IEA Civic Education Study of civic knowledge and attitudes of nearly 90,000 14-year olds in 28 countries and examined them from the aspect of human rights.

"All learners acquire the knowledge and skills needed to promote sustainable development...through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development."

- SDG Indicators, Target 4-7

The results showed that questions about children's rights were more likely to be correctly answered in countries where the government focused on human rights in its intergovernmental dialogue (p.873). For example, in post-communist countries where governments emphasize human rights in their intergovernmental discourse, the students scored moderately well on knowledge of both domestic and international human rights (p.865-868).

UNICEF conducted a survey in 26 countries with representatives from central and local government, NGOs, UNICEF, private sector, schools, university/teacher education institutes, and child rights offices. The results present a mixed picture. Fewer than half of the states surveyed have a requirement in their curriculum for all children to learn about child rights. The study also makes it clear that few states adequately monitor the quality of child rights education provision, and similarly a few states have mainstreamed children's rights into teacher education (p.22).

¹ UNESCO. 2006. Report of the fourth meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the monitoring of the right to education focusing on the justiciability of the right to education, Annex, 175 EX/28, para. 19. Available at www.right-to-education.org/resource/report-fourth-meeting-joint-expert-group-unesco-crecosoc-cescr-monitoring-right-education

Case Study: Fair Schools Now!

People for Education's Right to Education project closely aligns with the work of Fair Schools Now! in the state of California (United States). Fair Schools Now! explicitly focuses on the legal rights of children to have access to a quality education and the Right to Education Project uses legal documents as the basis for working towards greater accountability in the system.

Fair Schools Now! is a coalition of parents, students and organizations (e.g. The Campaign for Quality Education) that have assembled to ensure that California lives up to its constitutional responsibility that, "All children in California have the right to a quality education." They are enforcing this fundamental right to every child under the State Constitution by requiring California to adequately and equitably fund its public schools.

The Campaign for Quality Education v. California Lawsuit

In 2010, the *Campaign for Quality Education v. California* lawsuit was filed to enforce the fundamental right all children in California have to a quality public education. The Campaign for Quality Education (CQE) was made-up of individuals from various groups and non-profit organizations who represent low-income students and parents from across California. The CQE is part of Fair Schools Now!

Specifically, the complaint in *CQE v. California* made two legal claims regarding funding:

(1) Promoting children's fundamental right: the current funding system prevents schools from providing children with their fundamental right to have an education that will allow them to participate fully in society's economic and civic life; and **(2) Common standards across schools:** the school funding system does not maintain consistency in the academic standards of schools.

The lawsuit identified the disparity in achievement experienced by lower income, English language learners, and students of colour in comparison to their peers in other states. One of the reasons for this is the lack of funding from the State towards public education.

In April 2016, the California Appeals Court ruled that the State constitution did not guarantee a minimum education quality. Fair Schools Now! is continuing to fight in the courts, but there have been no updates since 2016 on their progress.

Regional Human Rights Law

Regional human rights law adapts international human rights standards to adjust for the region-specific cultures, values, practices and traditions. They are established by state governing bodies. Of the 48 legally-binding right to education instruments², 28 of them are regional. Appendix B includes a summary of the regional human rights laws that include the right to education in Africa, the Americas, the Arab States, Asia and Pacific and Europe.

² Legal instrument: It formally expresses a legally enforceable act, process, or contractual duty, obligation, or right. Retrieved from <https://definitions.uslegal.com//legal-instrument/>

The Council of Europe and European Union

The Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education³ was adopted by the Committee of Ministers in 2010⁴. The charter calls on member states to include democratic citizenship and human rights education in the curricula for pre-primary, primary and secondary school, as well as for vocational education and training. The charter also calls on the member states to promote human rights education with non-governmental organisations and youth organisations.

In 1999, the Commissioner for Human Rights was established as an independent and impartial non-judicial institution with the role to promote education in and awareness of human rights. The Commissioner is assisting member states in the implementation of human rights standards, identifying possible shortcomings in the law and practice and providing advice regarding the protection of human rights across Europe.

Council of Europe

The Council of Europe (CoE) is an international organization founded in 1949 with the aim to uphold human rights, democracy and the rule of law in Europe. In 1950, the CoE drafted the European Convention for the Protection of Human Rights and Fundamental Freedoms, that entered into force in 1953. The Convention created the European Court of Human Rights.

The right to education is guaranteed with Article 2 of the Protocol 1 to the European Convention on Human Rights:

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.

The CoE also developed other human rights instruments that are vital for the protection of the right to education including the European Social Charter, which embeds education within several articles:

- **Article 7:** The right of children and young persons to protection;
- **Article 10:** The right to vocational training;
- **Article 15:** The right of persons with disabilities to independence, social integration and participation in the life of the community; and
- **Article 17:** The Right of Children and young persons to social, legal and economic protection.

The European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities on the other hand include provisions that protect the education in minority languages.

³ See <https://www.coe.int/en/web/educ/charter-on-education-for-democratic-citizenship-and-human-rights-education>

⁴ Recommendation CM/Rec (2010) 7

European Union

The Right to Education in the European Union (EU) is defined with Article 2 of the Protocol 1 to the European Convention on Human Rights (as given above) and Article 14 of the Charter of Fundamental Rights of the EU (2000):

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

European Policy Cooperation (ET 2020 Framework)

In 2009, the Council of the EU adopted a new strategic framework, the European Policy Cooperation (ET 2020 framework), with the following objectives:

- Making lifelong learning and mobility a reality;
- Improving the quality and efficiency of education and training;
- Promoting equity, social cohesion and active citizenship;
- Enhancing creativity and innovation, including entrepreneurship, at all levels of education and training.

The following benchmarks were also established through the ET 2020 framework to be achieved by 2020:

- At least 95% of children (from 4 to compulsory school age) should participate in early childhood education;
- Fewer than 15% of 15-year-olds should be under-skilled in reading, mathematics and science;
- The rate of early leavers from education and training aged 18-24 should be below 10%;
- At least 40% of people aged 30-34 should have completed some form of higher education;
- At least 15% of adults should participate in lifelong learning;
- At least 20% of higher education graduates and 6% of 18-34 year-olds with an initial vocational qualification should have spent some time studying or training abroad;
- The share of employed graduates (aged 20-34 with at least upper secondary education attainment and having left education 1-3 years ago) should be at least 82%.

The benchmarks, although considered to be a necessary minimum rather than a goal, still envisage for example that 15% of 15-year-olds might still be under-skilled in reading, mathematics and science by 2020, and that there might be 10% early leavers from education. Benchmarks like this, although perhaps formulated to present realistic expectations, present violation of the universal right to education, particularly if analyzed using the provisions of the UN human rights treaties that provide a more comprehensive definition that includes availability, accessibility, and adaptability of education. Also, it is not enough to have a legal right, enforcement mechanisms must also be in

place. This includes the possibility of legal recourse, which requires that the right to education be justiciable.⁵

Not all member countries of the CoE and EU have the right to education guaranteed in their constitutions. However, as parties to the European Convention and Charter of Fundamental Freedoms, there is an enforcement mechanism for the right to education to be guaranteed through the European Court of Human Rights and the Court of Justice of the European Union (see Appendix A).

Country Profiles: Justiciable Examples

Finland and Sweden provide good examples of incorporating the right to education in their policies. They are parties to both Council of Europe (CoE) and European Union (EU) treaties and they guarantee the right to education in their constitutions.

	Finland	Sweden
Justiciability on national level	Justiciable	Justiciable
Regional legal framework	CoE, EU	CoE, EU
Governance	Highly decentralized, including decentralized curriculum with only the core designed on national level.	The Swedish parliament determines the laws and the government determines regulations for schools. The municipalities implement the steering documents.
Compulsory Education	Nine to ten years from age of seven until completing the basic education	Ten years from age of six
Free Education	Education is free without fees at any level (including pre-primary and university).	Free compulsory education. Preschool is free for lower income families and heavily subsidized for everyone else. Higher education is free of charge for Swedish, EU/EEA, and Swiss citizens.
Indigenous Education	Saami students may be educated in their mother language since 1983 in certain schools.	Sweden has separate Sami School Board as an administrative agency that regulates public Saami schools.

Finland

Education System

The main objective of Finnish education policy is to offer all citizens equal opportunities to receive education⁶. This is why the education is free without fees at any level (including pre-primary and university).

Finnish children have been guaranteed compulsory basic education since their *Compulsory Education Act* of 1921. Their basic compulsory education spans nine to ten years and children begin

⁵ A justiciable right to education means that when this right is violated, the right-holder can take their claim before an independent and impartial body, and if the claim is upheld, be granted a remedy, which can then be enforced (International Commission of Jurists 2008:1).

⁶ See https://www.oph.fi/english/education_system

at the age of seven. Primary and lower secondary education is compulsory and free of charge, including free school materials, school meals and commuting.

The Finnish Parliament forms educational legislation and policies that are implemented by the Ministry of Education and Culture (MEC), which is responsible for developing educational, scientific, cultural, sporting and youth policies. The Finnish National Agency of Education (FNAE) implements and monitors development in the educational sector.

Monitoring and Protection of Human Rights

The Human Rights Centre was established in connection with the Office of the Parliamentary Ombudsman in 2012. The Human Rights Centre and the Parliamentary Ombudsman together form Finland's national human rights institution which fulfils the "Paris Principles" set by the United Nations for autonomous and independent statutory national actors that promote and monitor human rights. (Ibid, p.15)

Human Rights Education

In 2017, the Government of Finland adopted the second National Action Plan on Fundamental and Human Rights 2017–2019⁷ that included human rights education as one of its four major themes. This Action Plan was based on the recommendations by the Human Rights Centre (2014), and international human rights monitoring bodies that have called for the state to take on a stronger responsibility for the provision of human rights education.

The new Action Plan includes the following measures:

- Increasing the Government's capacity in fundamental and human rights issues;
- Fundamental and human rights education and training at schools;
- Increasing knowledge of fundamental and human rights among asylum seekers; and
- Strengthening a human rights-based approach in Finland's public funding instruments for the private sector.

Right to Education

The Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) identified several concerns that impact children's right to education in Finland: discrimination against children of immigrant background and Roma children; insufficient resources for children who speak the Saami languages; and sexual and gender-based harassment against girls, including bullying, including via Internet and mobile phones.

In an effort to ensure equal access to inclusive education for all children, the CESCR and CRC recommend the following strategies:

- Systematically collect disaggregated data on bullying in schools;
- Enhance teachers' knowledge of different cultures and difficulties children face and employ more Roma professionals in schools, including as special needs assistants, in order to provide better support to children and their families;

⁷ See http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/79849/OMML_25_2017.pdf

- Include the rights of minorities in teachers' training and school curricula;
- Encourage more parents whose children are not attending day-care programs to enroll their children in early childhood development programs;
- Enhance the measures undertaken to combat all forms of bullying and harassment; and
- Pay more attention to children's well-being in schools.

Sweden

Education System

In 1994, it was mandated in the Swedish Constitution that children have a right to free basic education (elementary and secondary education)⁸. The legal framework of education is constituted by *The Education Act* covering education from preschool to adult education.

The Swedish education system includes free compulsory education for ten years from the age of six. Pupils have access without charge to books and other learning tools as are needed for a modern education as well as free nutritional school meals and transportation, if needed. Since 1992, Sweden provides public funding for charter schools (*friskola*). Parents and their children can choose among tuition-free schools, whether municipal or private. The number of the charter schools in Sweden is growing.

Sweden has a decentralised education system, steered by goals defined at a central level. The main central authority in charge of the school system is the National Agency for Education, which provides support, supervision, follow-up and evaluation of all school activities in order to improve quality and outcomes.

The national minorities in Sweden are Saami, Swedish Finns, Tornedalians, Roma and Jewish populations.

Monitoring and Protection of Human Rights

In Sweden, human rights are guaranteed by three of the four constitutional laws: *The Instrument of Government*, *the Freedom of the Press Act* and *the Fundamental Law on Freedom of Expression*. Also, the European Convention on Human Rights has been incorporated into Swedish domestic law since 1995.

The Child and Student Ombudsman (Barnoch elevombudet - BEO) promotes children and young people's rights according to the UNCRC. The Child and School Student Representative works with the Equality Ombudsman to counteract degrading treatment, discrimination and harassment of children and students.

Human Rights Education

The Education Act (2011) lays down that the purpose of education within the school system, which includes imparting and establishing respect for human rights and the fundamental democratic values on which Swedish society is based. Furthermore, education shall be designed in such a way that it is consistent with fundamental democratic values and human rights such as the inviolability of human life, individual freedom and integrity, the equal value of all people, equality between women and men and solidarity with the weak and vulnerable. The Act also states that everyone

⁸ See <https://www.loc.gov/law/help/constitutional-right-to-an-education/sweden.php>

working within education should promote human rights and actively combat all forms of degrading treatment. (CESCR, 2015).

Right to Education

Indigenous and minority groups. The Committee on Economic, Social and Cultural Rights recommended that the State party take immediate steps to provide indigenous children and children belonging to minority groups with educational opportunities that allow them to develop their mother tongue skills (E/C.12/SWE/CO/6, para. 46). The Committee also recommended that the State party broaden the access to bilingual education in areas populated by indigenous peoples and minority groups, and that it increases the availability of Sami and minority language teachers, including by substantially increasing the resources for training teachers in national minority languages (ibid.).

Students with disabilities. The Committee also urged the State party to adopt a human rights-based approach to disability and to take measures to ensure that every child with disabilities is given the opportunity and all the necessary assistance to reach the highest level of education possible given his or her individual capacities. (CRC/C/SWE/CO/5, Para. 40)

Migrant students in transit. Children who are considered as being migrants in transit face difficulties in accessing education and have higher drop-out rates. The Committee recommended that the State party amend its legislation to ensure that children considered as being in transit are provided with full access to education and provide opportunities for those who have dropped out of school to re-access schooling (CRC/C/SWE/CO/5, Para. 52).

Religion. The case Eriksson v. Sweden (11/1988/144/209⁹) in front of the European Court of Human Rights included the right to education (Article 2 of Protocol No.1 of the ECHR) and addressed the part “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.”

Country Profiles: Non-Justiciable Examples

Unlike Finland and Sweden, Denmark and Australia do not have the right to education incorporated into their national policies (i.e. not justiciable). However, there have been recommendations made to both countries to promote and improve justiciability.

	Denmark	Australia
Justiciability on national level	Not justiciable	Not justiciable
Regional legal framework	CoE, EU	N/A
Governance	The Ministry of Education establishes goals and content, and the municipalities manage overall quality of their schools.	Shared responsibility of the Australian (Federal) Government and the individual State and Territory Government.

⁹ <https://hudoc.echr.coe.int/eng?i=001-57481>

Compulsory Education	From six years of age up to finishing 9 th grade or alternatively when the pupil turns 17 years old.	Between five and 15 to 17 years depending on the state of residence.
Free Education	Free public schools. Higher education is free of charge for Swedish, EU/EEA, and Swiss citizens. Full-time university students are eligible for Statens Uddannelsesstøtte (State Educational Support Grants). Childcare is partially free.	Government public schools are free but they charge voluntary contribution fee.
Indigenous Education	Under the authority of the Greenland Home Rule Act (1978), Greenland has assumed powers of self-government over several areas of domestic affairs, such as education. Education in Greenland is bilingual in Greenlandic and Danish.	‘Closing the gap’ is a government strategy that aims to reduce disadvantage among Indigenous and Torres Strait Islander people

Denmark

Education System

The Danish Constitution (chapter VII, section 76) guarantees that, “All children have the right to a free education in public schools.”

The Danish public school called, *Folkeskole* is a comprehensive school covering primary and lower secondary education. The *Folkeskole* coincides with the compulsory education from six years of age up to finishing 9th grade or alternatively when the pupil turns 17-years-old.

The upper secondary education is divided in two programs: general upper secondary education programmes, which primarily prepares students for higher education, and vocational upper secondary education and training programmes, which primarily prepare students for a career in a specific trade or industry.¹⁰

University education is free and full-time students are eligible for *Statens Uddannelsesstøtte* (State Educational Support Grants) and are “getting paid to go to school”.¹¹

Education policy is decentralised and delivered by municipalities. The Ministry of Education establishes goals and content, and the municipalities manage overall quality of their schools, setting local objectives and conditions and supervising them.¹²

All children with legal residency have the right to education. Asylum-seeking children may be offered an education equivalent or attend regular public schools, if the arrangement is approved by the local authorities and the school in question (DK Ministry of Integration 2010). Due to a recent increase in the number of refugees arriving in Denmark, the Danish Ministry of Education proposed

¹⁰ See http://hfc.dk/media/252204/the_danish_education_system_pdfa.pdf

¹¹ See <https://denmark.dk/society-and-business/lifelong-education>

¹² See https://www.oecd.org/education/EDUCATION%20POLICY%20OUTLOOK%20DENMARK_EN.pdf

a law in 2016 to expand the framework for the reception of immigrant students in the education system.

Since 2012, children with disabilities in Denmark are included in general teaching and not separated in parallel systems. The Danish Institute in their report on the *Right to Education* provided concrete recommendations for how a child's rights are safeguarded in cases of school refusal following from non-adapted school offers.¹³

The major Indigenous population in Denmark are the Indigenous Greenlanders that are historically and linguistically related to the Inuit and live both in Greenland and Denmark. Compulsory education lasts 10 years from ages 6 to 14 and education in Greenland is bilingual in Greenlandic and Danish.¹⁴

Monitoring and Protection of Human Rights

Denmark has a Parliamentary Ombudsman to investigate complaints in all matters relating to public governance, including maladministration by central or local authorities.

To accelerate the integration of the conditions of children and young people in social planning, it was decided in 1993 to establish a National Council for Children as a safeguard of children's rights. The National Council for Children which as an independent institution funded by the state provides advice to the Government and Parliament on children's issues.

In 2006, the Youth for Human Rights Denmark was established to promote human rights education throughout the country by means of art, music, dance and theater.

Human Rights Education

There is no national action plan on human rights education for Denmark and thereby no overview of if and how human rights are incorporated in educational curricula.

In 2013, the Danish Institute for Human Rights mapped human rights education in Denmark. The study revealed the need to strengthen human rights education in Danish primary and lower secondary schools and at teacher university colleges. There were seven recommendations that the Danish Institute advised to improve human rights education and to promote equal opportunity and a non-discriminatory learning environment. In 2016, fundamental freedoms and human rights were incorporated into the objectives of higher secondary schools.

Right to Education

All children with legal residency in Denmark have the right to free public education. The Committee on the Rights of the Child (CRC) in their concluding observations (CRC/C/DNK/CO/5, s.12) recommended that the State party needs to Ensure that all children, including those attending boarding schools, or foreign children attending a temporary educational facility, have access to the standard educational system in accordance with the Act on Public Schools. To further develop inclusive education, the CRC recommended: prioritizing inclusive education over the placement of children in specialized institutions and classes; and, training specialized teachers accordingly in integrated classes.

¹³ See https://www.humanrights.dk/sites/humanrights.dk/files/dansk_pub_pa_humanrights.dj/retten_til_uddannelse.pdf, p.10-13

¹⁴ See <https://www.iwgia.org/en/greenland/265-the-Indigenous-greenlanders>

Australia

Education System

Education and training is a shared responsibility of the Federal Government and the individual State and Territory Governments. Under the Commonwealth Constitution, education in Australia is primarily the responsibility of the State and Territory Governments.

The Australian Government is responsible for allocating funding and assessments. State and Territory Governments are responsible for infrastructure and maintenance funding, the payment of teachers, principals and non-teaching staff and the administration and management of all resources within schools. (DFAT, 2017, p.8)

School is compulsory for all children aged between five and 15 to 17 years depending on the state of residence.¹⁵ Australia has a highly privatised education system and the proportion of private investment in Australian schools is much greater than in other Organisation for Economic Cooperation and Development (OECD) countries. In 2016, 34.6 per cent of school student enrolments were in private schools. (DFAT, 2017, p.4)

‘Closing the gap’ is a government strategy that aims to reduce disadvantage among Aboriginal and Torres Strait Islander people with respect to life expectancy, child mortality, access to early childhood education, educational achievement, and employment outcomes.¹⁶

Monitoring and Protection of Human Rights

The first National Children's Commissioner¹⁷ was appointed in February 2013. The role of the Commissioner is to promote public discussion and awareness of issues affecting children; conduct research and education programs; consult directly with children and representative organisations; and examine Commonwealth legislation, policies and programs that relating to children's human rights. The creation of the office was proposed by the Australian Human Rights Commission¹⁸ in 2010.

The Aboriginal and Torres Strait Islander Social Justice Commissioner advocates for the rights of Indigenous Australians, including children.

Australia has a Commonwealth Ombudsman that can investigate complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department/agency or prescribed private sector organisation.

Human Rights Education

The Australian National Curriculum incorporates knowledge and understanding of human rights for students in Grades 3 to 10. Students study the freedoms and responsibilities of Australian citizens, the Australian Government's role and responsibilities at a global level, such as

¹⁵ See Australian Government Department of Social Services, <https://www.dss.gov.au/our-responsibilities/settlement-services/education>

¹⁶ See *Closing the gap*, <https://closingthegap.pmc.gov.au/>

¹⁷ See <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/national-children-s-commissioner>

¹⁸ Australian Human Rights Website: <https://www.humanrights.gov.au/>

participation in the UN, and how Australia's international legal obligations shape Australian law and government policies (CRC/C/AUS/5-6, s.47).

Right to Education

The Committee on Economic, Social and Cultural Rights (CESCR) in their concluding observations on the fifth periodic report of Australia (E/C.12/AUS/CO/5) showed their concern about the limited availability of culturally appropriate early education programmes for indigenous children, especially in remote areas.

The Committee was also concerned about inequitable State funding for schools, which is leading to a form of segregation in education in which public schools are underfunded and academic performance depends strongly on the income of the family.

Another recommendation from the Committee was for the State party to take effective steps to ensure that children with disabilities, including those with cognitive impairments, can access inclusive education (s.56).

The Committee also recommended that the State party intensify its efforts to promote and preserve indigenous languages including through the effective implementation of the National Framework for Aboriginal Languages and Torres Strait Islander Languages (2015) and take further steps to ensure that indigenous languages are systematically taught in schools with a significant presence of indigenous children. According to the list of issues prepared in relation to the combined fifth and sixth periodic reports of Australia (CRC/C/AUS/Q/5-6), the Committee on the Rights of the Child is also concerned about school attendance and improving educational outcomes of Aboriginal and Torres Strait Islanders children.

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Appendix A

European Court of Human Rights¹⁹

The European Court of Human Rights is an international court established in 1959 by the European Convention on Human Rights. The Court is based in Strasbourg and its jurisdiction is recognized by all 47 member states of the Council of Europe.

As established in Article 34 of the ECHR, the “Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.” However, there is an admissibility criteria (Article 35) that the “Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

The Case-law Guide on Article 2 of Protocol No. 1 – Right to education²⁰ (updated as of April 2019) cites 64 cases that have been selected among the leading, major, and/or recent judgments and decisions related to right to education. The cases address the following issues:

- Restrictions on the access to education based on language; admissions criteria and entrance examinations; school fees; nationality; minimum age requirement by means of an education certificate; conviction, detention and criminal investigation; deportation; application of disciplinary measures, such as suspension or expulsion from school; health.
- Discrimination in access to education on the basis of disability, administrative status and nationality; ethnic origin.
- Respect for parental rights and the possibility of exemption and conspicuous religious symbols.²¹

Article 2 of Protocol 1 to the European Convention on Human Rights emphasises the liberal aspect of the right and is phrased in negative terms, as a prohibition to deny any person the right to education (EU Network of Independent Experts on Fundamental Rights, 2016, p.142). However, as interpreted by the European Court of Human Rights, it cannot be inferred that the State only has obligations to refrain from interference and no positive obligation to ensure respect for this right. The right to education, as interpreted by the ECtHR, covers a right of access to educational institutions existing at a given time (Belgian linguistic case, § 4, p. 31), transmission of knowledge and intellectual development (Campbell and Cosans v. the United Kingdom, § 33) but also the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which have been completed (Belgian linguistic case, §§ 3-5, pp. 30-32), for example by means of a qualification (ECHR, 2019. p.7, para.11).

The Special Rapporteur highlights some of the case-law in their report on Justiciability: “Discriminatory practices against Roma with mental disabilities were found to violate the right to education under the European Convention on Human Rights²². The European Court of Human

¹⁹ Official website of the European Court of Human Rights: <https://www.echr.coe.int>

²⁰ https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf

²¹ The full information on the case-law is available in the HUDOC database: <http://hudoc.echr.coe.int/>

²² Horvath and Kiss v. Hungary, Application no. 11146/11, January 29, 2013

Rights held that Roma children must be integrated into mainstream classes; their right to education was violated by the placement of a Croatian national of Roma origin in Roma-only classes rather than ethnically “mixed classes”²³. In another case referring to schools for Roma children only, the Equal Treatment Authority of Hungary concluded that authorities responsible for the local system that segregated students violated the principle of equal treatment” (A/HRC/23/35, p. 14, para.49). The Center for Justice and International Law (CEJIL) and the Latin American Campaign for the Right to Education (CLADE for its Spanish acronym) in their publication Summaries of Jurisprudence: Right to Education compiled the main decisions made by the regional tribunals related to the right to education. They included the following case-law from the European Court of Human Rights:

Access to education

- Cyprus v. Turkey Application N° 25781/94 Judgment of May 10, 2001
- Timishev v. Russia Applications N° 55762/00 and 55974/00 Judgment of December 13, 2005

Compulsory primary education

- Konrad v. Germany Application N° 35504/03 Decision on admissibility of September 11, 2006

Disciplinary powers

- Irfan Temel v. Turkey Application N° 36458/02 Judgment of March 3, 2009

Equality and non-discrimination

- D.H. and others v. Czech Republic Application N° 57325/00 Judgment of November 13, 2007

Higher education

- Leyla Şahin v. Turkey Application N° 44774/98 Judgment of November 10, 2005

Migrants

- Timishev v. Russia Applications N° 55762/00 and 55974/00 Judgment of December 13, 2005

Persons deprived of liberty

- Velyo Velez v. Bulgaria Application N° 16032/07 Judgment of May 27, 2014

Religious freedom

- Grzelak v. Poland Application N° 7710/02 Judgment of June 15, 2010
- Leyla Şahin v. Turkey Application N° 44774/98 Judgment of November 10, 2005
- Lucia Dahlab v. Switzerland Application N° 42393/98 Decision on admissibility of February 15, 2001

Religious instruction

- Grzelak v. Poland Application N° 7710/02 Judgment of June 15, 2010
- Folguero v. Norway Application N° 15472/02 Judgment of June 29, 2007

Quality of education

- D.H. and others v. Czech Republic Application N° 57325/00 Judgment of November 13, 2007

Sexual education

- Jiménez Alonso and Jiménez Merino v. Spain Communication N° 51188/99 Decision on admissibility of May 25, 2000

Use of the Islamic headscarf

- Leyla Şahin v. Turkey Application N° 44774/98 Judgment of November 10, 2005

The Court of Justice of the European Union²⁴

²³ Orsus and Others v. Croatia, 16 March 2010

²⁴ Official website of the Court of Justice of the EU: https://curia.europa.eu/jcms/jcms/j_6/en/

The Court of Justice of the European Union is the judicial institution of the European Union and of the European Atomic Energy Community (Euratom). It is made up of two courts: Court of Justice and the General Court. Their primary task is to examine the legality of EU measures and ensure the uniform interpretation and application of EU law.

The Court of Justice of the EU was established in 1952 and is located in Luxembourg. The Court primarily settles legal disputes between national governments and EU institutions, however it can also, in certain circumstances, be used by individuals, companies or organisations to take action against an EU institution.

The European Committee of Social Rights

The European Committee of Social Rights²⁵ (ECSR) is the body responsible for monitoring compliance in the States party to the European Social Charter through two complementary mechanisms: collective complaints lodged by the social partners and other non-governmental organisations and through national reports drawn up by Contracting Parties. The ECSR decisions had important role in ensuring the right to education of persons with disabilities²⁶, as well as ensuring that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education (ECSR, 2018, p.109). The ECSR has also addressed in their rulings the quality of teaching, the hidden costs of education and attendance (ECSR, 2018, p.174).

The European Ombudsman

The European Ombudsman²⁷ investigates complaints about maladministration by EU institutions, bodies and agencies. The Ombudsman is also responsible for ensuring that the EU's institutions and bodies guarantee fundamental rights in their work and fulfil their commitments under the Charter of Fundamental Rights.

According to the database on the website, the Ombudsman prepared recommendations to the European Commission on cases Ombudsman addressing school fees, age limitations on training programs and special educational needs.

The European Network of Ombudsmen²⁸ was established in 1996 and connects the European Ombudsman, national and regional ombudsmen with the aim of ensuring complainants can get help at the appropriate level.

²⁵ Official website of the ECSR: <https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights>

²⁶ Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48;
Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No. 41/2007, decision on the merits of 3 June 2008, §34

²⁷ Official website of the European Ombudsman <https://www.ombudsman.europa.eu/en/home>

²⁸ See <https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/about/en>

Appendix B

Overview of Regional Human Rights Law in Various Regions

Region	Framework	Regional Human Rights Laws
Africa	African human rights framework is derived from the African Union (AU)	<ul style="list-style-type: none"> • African Charter on Human and People's Rights (1981, Banjul Charter) • African Charter on the Rights and Welfare of the Child (1990) • Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) • African Youth Charter (2006) • Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009, Kampala Convention)
Americas	Americas framework was develop from the Organization of American States (OAS)	<ul style="list-style-type: none"> • Charter of the Organization of American States (1948, as amended) • American Declaration on the Rights and Duties of Man (1948, Bogota Declaration) • American Convention on the Human Rights (1969, Pact of San Jose, Costa Rica) • Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988, Protocol of San Salvador) • Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994, Convention of Belém do Pará) • Inter-American Convention of the Elimination of All Forms of Discrimination against Persons with Disabilities (1999) • Inter-American Democratic Charter (2001)
Arab States	The League of Arab States (LAS) and the Organisation of Islamic Cooperation (OIC) include the right to education in their human rights instruments.	<ul style="list-style-type: none"> • Cairo Declaration on Human Rights in Islam (1990) • Revised Arab Charter on Human Rights (2004)
Asia and Pacific	Do not have legally binding human rights instruments. Adopted the Association of Southeast Asian Nations (ASEAN) which references the right to education.	<ul style="list-style-type: none"> • Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (2012)
Europe	Council of Europe (CoE) is the primary European human rights framework. European Union is more concerned with protecting and promoting human rights.	<ul style="list-style-type: none"> • European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ECHR⁹) • Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952, Protocol 1) • European Convention on the Legal Status of Migrant Workers (1977)

		<ul style="list-style-type: none"> • European Charter for Regional or Minority Languages (1992) • Framework Convention for the Protection of National Minorities (1995) • Revised European Social Charter (1996) • Charter of Fundamental Rights of the European Union (2000, EU Charter) • Convention on Preventing and Combating Violence against Women and Domestic Violence (2011, Istanbul Convention)
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¹European Court of Human Rights