

**Right to
Education and
Rights in
Education**
*An Evaluation of
National Legislation
in Light of International
Human Rights Documents*
Executive Summary



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Executive Summary

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Education Reform Initiative

The aims of Education Reform Initiative (ERI), which reflects, puts forward questions, defines problems and recommends solutions on the education policy in Turkey, are developing education policies which would ensure that all girls and boys access to education, which is among the fundamental human rights and enhance the social and economic development of Turkey, and contributing to the consolidation of participatory, transparent and innovative policy-making processes in education.

Launched within the Istanbul Policy Center at Sabancı University in 2003, ERI continues its research, advocacy and monitoring activities as well as its pilot projects in the field in accordance with its commitment to the ideal of “quality education for all”.

ERI is supported by Mother Child Education Foundation, Aydın Doğan Foundation, Bahçeşehir University, Enka Foundation, Hedef Alliance, Kadir Has Foundation, MV Holding, Sabancı University, TAV Airports, Vehbi Koç Foundation and Yapı Merkezi.

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“We’ve Got Rights in Education!”: Rights in Education Project

Education, which is a fundamental human right, is a precondition for individuals to enjoy and demand their other human rights. Access is undoubtedly a natural component of the right to education. Nevertheless, access is only one measure, and it means little if the education provided is not high quality or if individual student’s needs and opinions are not respected, valued and accommodated. Thus, the project initiated by the Education Reform Initiative in June 2007 speaks of “rights in education” and focuses on the rights of children in educational processes and settings.

The project, which as a first step aimed at contributing to the improvement of the legal framework on rights in education, has focused especially on a few particular areas in the last 22 months. One amongst those was to encourage the production of knowledge on rights in education in Turkey and to strengthen the knowledge base in this area. In this context, first, documents such as international covenants that directly or indirectly deal with access to education, quality education and respect in educational processes and settings as well as comments and reports of the international committees were reviewed, and the relevant sections were grouped under different themes. A similar process was undertaken with regards to national legislation whereby documents from the Constitution to circulars were reviewed and thematically archived. The next step was to determine the extent to which Turkey had reflected its international obligations to its national legislation.

*This executive summary belongs to the compilation **Right to Education and Rights in Education: An Evaluation of National Legislation in Light of International Human Rights Documents**, which investigates the compliance gap between international human rights legislation and national education-related legislation, and puts forward recommendations towards the removal of obstacles and inadequacies in the legal framework.*

We are aware that rights in education cannot be confined to a single project and that real progress in this area will take place only when the political and bureaucratic will accepts the principles of equality, participation and accountability, and as a result of long-term effort. We hereby invite the public authorities and other stakeholders to evaluate the recommendations presented in this publication.

Prof. Dr. Üstün Ergüder
Director
Education Reform Initiative



Introduction

Be it the writers, the project team or the experts whose views were consulted at various stages of this work, there was universal acceptance of the idea that the right to education belongs to all individuals throughout their lives and everywhere. Nevertheless, all parties also felt the need to limit this work's focus to formal and compulsory education. The main reasons underlying this delimitation are that rights in education comprise a wide variety of topics, not all of which can be included in this compilation, that the period of compulsory education plays a crucial role in the child's life and that Turkey has not yet reached its aims with regards to this level of education.

The fundamental human rights that children have in educational processes and settings include, among others, non-discrimination; development; rest, leisure and play; participation in cultural life; health; respect for their opinion; respect for private life; protection from all forms of violence; freedom of thought and expression; association; and access to information. Various academics, jurists, educators and representatives of civil society organizations who work on education, human rights and children's rights contributed to the "We've Got Rights in Education!": Rights in Education Project at various points. Determining the scope of the compilation and priority themes was one of the important points in this process. This consulting process, during which the priority issues for Turkey, possible grouping of rights and current areas of expertise were discussed, gave rise to five main themes: access to education; aim, method and content of education; protection of children from violence in educational settings; right to health in educational environments; and school facilities.

The reports in this compilation, for the most part, follow a common structure. They present the national legal framework for the issue in question and compare it to the international legal framework in order to evaluate the compliance gap. Some authors evaluated the entire legislation relevant to their topic whereas others preferred to focus only on certain documents. In the chapters recommendations, the international treaties which Turkey is not a party of or which were ratified with reservations are presented and recommendations are made towards making the national legislation more conducive to the realization of rights in education. The last part includes policy and implementation recommendations. This compilation, on the other hand, first includes a few general findings by the authors on the legislation regarding rights in education, and then shares some key observations and recommendations presented in the reports.

Işık Tüzün

Project Specialist

Rights in Education Project

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National Legislation in Light of International Human Rights Documents

A General Overview of Legislation on Right to Education

- A number of important United Nations (UN) and European Council treaties that Turkey has ratified guarantee the right to education. Among these, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Rights of the Child, and European Convention on Human Rights (ECHR), are particularly important with regards to the right to education.
- The first paragraph of Article 13 of the ICESCR regulates the right to education and recognizes the right to education of all persons under the area of jurisdiction of the states parties of the covenant. The second paragraph of the same article states the necessity of compulsory and free primary education for all persons, as well as accessibility of secondary and higher education, including technical and vocational education, for all, along with the establishment of an adequate scholarship system, with the eventual goal of providing free access. The third paragraph states that legal and natural guardians have the freedom to choose educational institutions other than those established by the state.
- The 4A model put forth in ICESCR for the adoption of a consistent approach by all states parties of international covenants on the right to education is explained in General Comment 13 as follows:

While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

 - (a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. (...)
 - (b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:
Non-discrimination (...) Physical accessibility (...)
Economic accessibility (...)
 - (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. (...)
 - (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.
- Article 29 of the UN Convention on the Rights of the Child provides guidance on the aims of education:
 1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) 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;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

- The realization of respect for human rights requires firstly that the scope of the rights are determined. Following efforts should ensure that everyone can fully and equally benefit from all rights. These require legal, judicial and administrative measures. The legal measures are a precondition for the others. Thus, first of all, legislation should be improved so that it makes the exact fulfillment of international human rights obligations possible and mandatory. In most cases where the legislation exists, yet the rights cannot be exercised, the problems are perceived to occur due to implementation or lack of appropriate intervention on the part of the judiciary. However, as administrative and judiciary measures rest on legal arrangements, most of the time, the real source of the problem is the legal arrangement itself.
- Article 90 of the Constitution of Turkish Republic ensures that if international treaties, which have been enacted through proper procedures, have different clauses from national legislation on the same subject, the international treaties will have priority in implementation. This article paves the way for the direct implementation of international covenants on human rights and more specifically on children's rights. However, this is valid only for clauses that can be directly implemented. In other words, some of the rights that are included in international covenants can be realized only when states take some legal, administrative and economic measures.
- The right to education includes a variety of negative and positive responsibilities.

For instance, the prohibition of discrimination in access to education entails a negative obligation. States must immediately fulfill their obligations stemming from non-discrimination, and therefore, this prohibition can be directly implemented. Additionally, prohibitive expressions in international covenants with regards to violence against children or maltreatment have granted direct implementability to the relevant clauses.

- Provision of free education, the establishment of an adequate number of schools and undertaking of the relevant budgetary arrangements within the scope of the right to education are a part of the state's positive responsibilities. Thus, direct implementation of international covenants through Article 90 of the Constitution is not possible in these cases. In order to realize the relevant rights, states must remove the obstacles faced by those who want to exercise this right, and also undertake the legal and administrative measures which will guarantee that it is exercised.
- Reservations carry significant importance in the evaluation of the impact of international covenants on domestic legislation since they limit states' responsibilities. When states become party to a covenant, they have the option to partially or completely prevent the implementation of a clause or multiple clauses. When ratifying a significant number of covenants, Turkey has declared reservations that will specifically impact the right to education.
- Legal changes in recent years have resulted in important developments towards the harmonization of domestic legislation with international obligations, however the legislation remains problematic.
- The first of these problems is the diffuse nature of the legislation. Another is its inaccessibility to right-holders, as the language used does not target them. Some of the laws have been in effect

for quite some time and are in old and incomprehensible language. As such, the legislation is written in a way that is understandable to those obliged with service provision, rather than to recipients of those services. Some of the concepts in the legislation are completely undefined or only vaguely defined. When concepts are not clearly articulated, they remain open to interpretation and arbitrary use.

- The legislation does not specify how and through which mechanisms the guardian by nature, the legal guardian or the child can claim their rights. Especially in cases where the state undertakes a positive responsibility as a result of a legislative regulation, these are not seen as rights that individuals can claim before the judiciary against the state. Rather, they are understood as obligations that the state is able to exercise great discretion in determining their time, scope and shape. While the legislation has rendered multiple persons and institutions

responsible, sanctions for the breach of these responsibilities have not been clearly spelled out.

- The fees required for different tasks undertaken by the courts in Turkey can obstruct access to justice in many respects. In cases where there is no legal aid, high court expenses may violate the right to effective access to courts.
- The legal aid system concerning the penal, legal and administrative codes in effect in Turkey can only be used when the judicial path is pursued. External to this system, there are no institutions providing assistance with the judicial system and/or alternative routes for children and families whose rights have been violated.
- Human rights committees in provinces and districts, as well as the Human Rights Investigation Commission at the Turkish Parliament can decide on whether a right has been violated through investigation. However, their decisions are not legally binding and cannot be implemented.

Access to Education: Non-Discrimination and Equality of Opportunity in Education

İdil Işıl Gül, PhD

- All the documents that regulate the right to access to education include the obligation that this right be realized without any discrimination. The Committee on Economic, Social and Cultural Rights (CESCR) has emphasized that the non-discrimination is instantly applicable, irrespective of the economic resources of the state, and is valid in all issues related to education.
- Regulations that prohibit discrimination in the provision of various services in

Turkey do not include all the grounds for discrimination that are included in the international treaties Turkey is party to and often include a list limited to the ones mentioned in the relevant clause. The grounds on which discrimination is prohibited in these regulations must be made compatible with the ones specified in international treaties. In addition, an open-ended expression should be included to accept that also other grounds may fall within the scope of non-discrimination.



- The definition “non-discrimination” is absent from national legislation. Thus, it is impossible to know under what circumstances one can talk about discrimination while exercising the right to education.
- It is not sufficient for the state to avoid discriminating in ways that would make access to education difficult or completely obstruct it. The state should also protect individuals against the discriminatory behaviors of third persons. The effect of the relevant regulation in the legislation is limited because the burden of proof resides with the victims of discrimination.
- Current international law does not limit discrimination to differential treatment, but also includes situations where the treatment is seemingly the same but produces unequal results. National legislation is not clear on this issue.
- Not taking individual measures for children, in other words, the absence of reasonable accommodation, must also be defined as discrimination.
- Simple and expedited methods, different from the ordinary administrative and legal processes, must be developed. If ordinary paths for rights claims take too long, children might not be able to benefit from the right to education for a long time or appropriately.
- Based on the fact that rural residents, minorities, poor families and segments of the population that have endured internal migration are at a disadvantage with regards to access to education, CESCR has stated that the state needs to undertake special efforts to guarantee these groups’ access to education. Working children should also be added to these groups.
- National legislation lessening the negative effects arising from regional differences and living in rural areas on the right to education is comprehensive. However, the disadvantaged conditions of right-holders in these situations must be kept in mind, and the legal and administrative mechanisms to be invoked in cases where the necessary measures are not taken or where measures remain inadequate must be spelled out clearly and in detail.
- The legislation states that education is compulsory and free. However, it is known that parents are asked for money either directly or indirectly under many pretexts. These actions must be subject to sanctions, and all monetary burdens of education must be perceived under this scope.
- Scholarships and boarding school possibilities should not be made contingent on the child’s success, and there should be both merit-based and needs-based schemes to enable children who are unsuccessful due to the economic situation of their families to use their right to education.
- The minimum working age set out as 12 in the 1930 Public Health Law must be changed and harmonized with Labor Law and Primary Education Law.
- Turkey is not party to the UNESCO Convention, which prohibits discrimination in education, and to the Protocol 12 of the ECHR, which expands the scope of non-discrimination. When ratifying the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), Turkey put forth the reservation that Article 26 (which extends the scope of non-discrimination) can be grounds for an individual application only if it is related to the rights enumerated in the covenant. In order to eradicate these situations that diminish the effectiveness of the struggle against discrimination, the relevant international documents must be ratified without reservations and the existing reservations must be repealed.
- Turkey must withdraw the reservations it has put on Article 27 of the ICCPR on the protection of minorities and the Article 30

of the UN Convention on the Rights of Child on the rights of children from minority and indigenous groups. Regulations against non-discrimination should protect not only the Turkish citizens but foreigners as well.

- The Lausanne Peace Treaty must be interpreted in a way that does not contradict the text itself and should also be implemented in the cases of non-Muslims that are not Armenian, Greek Orthodox and Jewish.
 - The principle of reciprocity concerns the treatment of and provision of rights to foreigners living in the jurisdiction of a state. Applying the reciprocity principle in issues regarding minorities implies that individuals belonging to minority groups are seen as foreigners. Article 5 of the Law on Private Education Institutions, which states that reciprocity will apply to minority schools, contradicts international law.
 - Expressions in the educational legislation that make references to the race/descent of Turks must be removed. These regulations contradict the national and international law where race-based differential treatment with respect to the exercise of rights and liberties is prohibited.
 - Clauses in the legislation which assume that the mother tongue of all Turkish citizens is Turkish should be changed. Turkish should only be mentioned as the official language. Reservations that are based on the 1923 Lausanne Treaty present children who are not considered minorities within this treaty from using their mother tongue in education.
 - The problems with respect to compulsory religious education must be resolved. A curriculum that does not include information on all religions, sects and beliefs will result in some children receiving information about their own religion and sect and others not being able to do so.
- In this context, the provision of exemptions is not an adequate and appropriate measure, as children have to declare the religion or sect they belong to in order to receive exemption.
- With regards to gender equality, there is no national legislation contrary to international law in terms of the provision of equality of opportunity in access to education and non-discrimination. The reasons for the discrepancy between the legislation and implementation should be investigated and the necessary steps should be taken.
 - The requirements of the UN Convention on the Rights of Persons with Disabilities must be fulfilled in the shortest possible time. Disability should be included amongst openly prohibited forms of discrimination.
 - Families and all teachers, including special education teachers, must be informed of the educational needs of children with disabilities. When teachers who are not special education teachers do not receive any training on children with disabilities, their student with disabilities may receive lower quality education and become disconnected from educational life. Thus, it is imperative that these teachers receive in-service training.
 - Special education services for children with disabilities are mostly provided by private persons and institutions; this may result in services that are subject to market dynamics instead of services with public character. An extensive inspection mechanism must be established to guarantee that these services are provided at appropriate quality level.
 - The relevant legislation mandates that educational services for children who are deprived from their freedom be determined at the time of sentencing, and that services be provided both while under custody and in prison. Necessary measures should be



taken to ensure that children, who are not under arrest but accused of committing crimes, are able to continue schooling.

- While there is detailed regulation on migrant laborers' children's access to education, the same cannot be said for asylum seekers and refugees. These people move from the cities they are obliged to reside in to big cities where they can work in the informal sector. However, as their residences are not registered in these cities, they cannot send their children to school. A related problem concerns the children of those who are in Turkey without a residential and/or work permit. If they enroll their children in schools, the authorities will become aware of their

presence within the country and they will be deported. However, international monitoring organizations do not limit the right to education only to those who are legally present in a country.

- Legal arrangements should be revised to facilitate data collection to investigate why some children are unable to benefit equally from their right to education; the eventual goal being designing and implementing policies to ensure the realization of this right for all. These data should be disaggregated with regards to the grounds for discrimination, and should not be limited to the child's enrollment status. It should also include information about on attendance, drop-outs and graduation.

Aim, Method and Content of Education in Schools

Assoc. Prof. Mesude Atay

- In order for children to fully benefit from their rights in education, the aims, methods and content of education should be aligned with the individual and social needs of children.
- A list of aims of education which have been defined with a child-centered approach on the basis of international human rights documents should be added to the Constitution. Turkey should re-evaluate its reservations to the Article 29 of the UN Convention on the Rights of the Child to ensure that all children benefit from the right to education at the highest level possible.
- The individual aims of education stem from children's right to full development and are based on the principle that education should be able to answer all the different needs that might come up in all spheres

of development. The individual aims of education in the legislation should be more emphasized. The social aims can be reached only after the individual ones have been fulfilled. The alternative might result in discrimination and inequalities arising out of differences in characteristics and status.

- Article 2 of the Basic Law on National Education (BLNE) has a limited approach in terms of the individual-centeredness. The need for responding to children's varying needs that arise from their individual differences is largely neglected in this article.
- The "Equality of Opportunity" section of the BLNE states that special measures must be taken with regards to gender, financial aid, special education and children in need of protection. However, some groups included in international legislation are neglected

by the BLNE: children from minority groups, working children, children of asylum seekers and refugees, children who are deprived of their liberty and children from rural areas.

- Bylaw on Primary Education Institutions of Ministry of National Education (MoNE) puts individual aims of education in the foreground. However, children's cultural backgrounds or other environmental conditions that give rise to certain needs are not emphasized.
- Whereas the UN Convention on the Rights of the Child and ICESCR mention concepts such as the cultural identity of the children's parents, their language and values, peace, gender equality, the friendship of all persons with different backgrounds and free society extensively, these values are either absent from or can only be found between the lines in national legal documents.
- In the general comment on the aims of education, it is stated that educational methods, including disciplinary actions, must reflect the aims and the educational philosophy present in Article 29 of the UN Convention on the Rights of the Child.
- The child-centered approach, a fundamental component of international legislation, makes it possible to respond to the needs arising from children's individual differences, and also allows children to realize their potential. Educational methods should also be differentiated in accordance with different needs of children. All relevant regulations and institutions, regardless of the age of children they serve, should have a "child-centered" approach.
- The starting point of a child-centered approach is to ensure the effective participation of children in all decision-making processes that concern them. The main components of the right to participation are the right of children to

freely articulate their views in all matters of concern to them, as well as the right to demand that these views are taken into account. In the national legislation, there is no direct regulation with respect to the children's right to participation. It is important to have a frame bylaw that will regulate children's right to participation within the educational system.

- While investigating educational methods through the framework of the UN Convention on the Rights of Persons with Disabilities, the importance of recognizing and responding to individual differences is paramount. Integration and the provision of integrated programming is also emphasized, referring to the idea that disabled individuals should be able to receive education alongside and of the same quality as their other peers.
- In addition to special education students, regulations are needed to allow for the provision of "Individualized Education Programs", when needed, to other groups of children: those whose mother tongue is not Turkish, who are in need of protection, who work on the streets, who are asylum seekers or refugees, who are deprived of their freedom or who have suffered from neglect and abuse.
- The method and content of education must be designed to promote a culture of human rights. Key aims in MoNE's Bylaw on Social Activities in Primary and Secondary Educational Institutions are respect for human rights, democracy and individual differences, as well as tolerance for different opinions, thoughts, faiths and cultural values. If these are included also in the BLNE as fundamental aims of education, this would represent a step forward, since they will be reflected in all bylaws and other legislation documents.
- The UN Convention on the Rights of the Child emphasizes the following as important aims: promoting children's respect towards their own culture,



language, values and the community in which they live or come from, as well as respect for the national values of their countries and for cultures different from their own. Additionally, Article 30 states that children must not be deprived of the right to use their own language. Lack of education in one's mother tongue or lack of possibilities to learn one's mother tongue are not considered discrimination. However, the opportunity to learn one's mother tongue and receiving education in the mother tongue are strongly recommended.

- CESCR is of the opinion that education on history of religions or morals can be allowed in public schools as long as it is provided in a manner that is unbiased, objective and respectful of the freedom of thought, conscience and expression. The committee points out that when public education includes courses on the rules of a particular religion or faith, it contradicts the related article of ICESCR on the right to education unless non-discriminating exemptions or alternatives in accordance

with the requests of parents and guardians are provided. Article 2 of ECHR's Protocol 1 states that complete realization of the right to education is conditional on individuals benefiting from educational opportunities in line with his/her own faith. The legislation should be amended so that Religious Culture and Moral Education becomes an elective course.

- The knowledge and skills that are aimed to be conveyed in the course of basic education in the international legislation are crammed into primary education, which is subject to an age limit, in the national legislation. Distance primary education programs do not present curricular variety and cannot be implemented in a child/individual-centered manner. Compensatory education programs, which have been initiated recently and aim to contribute to 100 percent enrollment rate in primary education, cannot be seen as a sustainable solution since there are no other articles with respect to its continuous implementation in the legislation.

Protection of Children's Physical, Emotional and Mental Health from Negligence, Abuse and Violence

Ulaş Karan

- Corporal punishment, sexual abuse, health screenings and protection from physical and emotional violence are the central issues in this study.
- Violence, negligence or abuse in schools result in situations that can directly affect children's right to education and can result in negative consequences especially in the school attendance and effective learning.
- There are multiple international human rights documents that present standards

for the protection of children's physical, emotional and mental health from negligence, abuse and violence. These include: UN Convention on the Rights of the Child, ICCPR, ICESCR, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ECHR. These conventions and others, along with decisions of the European Court of Human Rights (ECtHR) are considered in this study.

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- Respective human rights obligations of the states are:
 - Non-negligence and prevention of the problem, its punishment and implementation of appropriate legislation in the penal, administrative and other fields;
 - Undertaking actions to eradicate traditional perspectives and practices that contribute to this problem;
 - Organizing and incorporating into the curriculum educational activities that will encourage public officials and other individuals to avoid using violence;
 - Punishing individuals who engage in such actions in school in an appropriate manner;
 - Providing legal, administrative, health or accommodational support to victims of negligence, abuse and violence, as well as their relatives;
 - Undertaking continuous research on protecting children from negligence, abuse and violence in schools, by collecting data and statistics on these issues, evaluating current procedures and regularly updating or creating relevant action plans in accordance with the results;
 - Special methods and institutions in charge should be determined and empowered in the areas of prevention, identification, intervention and correction.
 - In this study, in addition to regulations on the prevention of maltreatment and protection of children, various laws and regulations as well as some circulars that are part of education-related legislation have been evaluated.
 - Regulations on the mechanism for complaints are significantly limited as regards the use of legal aid mechanisms, mainly due to financial problems. On the issue of court rulings regarding corporal punishment, one can observe that adequate protection for children is not provided in situations where violence is committed by educators in school.
 - The main proposals for legislative changes that arose from this evaluation are:
 - A legal regulation aimed at eradicating all kinds of violence against children in schools should be made. It should be open, comprehensive, deterring, and state that all levels and forms of violence are prohibited. It should be implemented for everyone without exceptions;
 - Article 339 of the Turkish Civil Code and Article 232 of the Penal Code must be changed to include an open and understandable expression that all kinds of violence against children, especially any form of corporal punishment believed to be beneficial for children or claimed to be used for educational purposes, are prohibited;
 - Article 103 of the Penal Code states that sexual behaviors towards children over the age of 15 are accepted as abuse only if they include coercion, threat, trickery and other factors that affect the will. Taking the status of educators and other personnel in educational establishments and their possible influence on the will of children into account, this expression must be removed. Cases where diseases are transmitted to children or that result in pregnancy or suicide should carry heavier sentences;
 - Sexual abuse, which is included in Article 105 of the Penal Code, should not be a crime that is investigated only on the basis of complaint, especially in the cases concerning children;
 - According to changes made to Article 110 of the Penal Code, persons who are guilty of depriving a person of their freedom (Article 109), can receive a sentence that is reduced by two-thirds if they set the victim free in a safe place, without causing bodily harm and before the court
-



case begins. Article 110 must be changed to ensure that its deterring effect is not undermined;

- The aggravating circumstances present in Article 278 of the Penal Code, which addresses cases where children under 15 are present, must be included in the legal obligations set out in Articles 279 and 280 of the Penal Code for educators and other personnel reporting incidents of violence, negligence or abuse encountered by children, or any doubts thereof, to the relevant institutions;
- Article 2 of the Law on the Trial of Civil Servants and Other Public Officials must include a clause that allows prosecutors' offices to pursue litigation without a warrant in cases where civil servants and other public officials commit crimes against children;
- Effective and speedy applications to administrative and legal mechanisms must be established for cases where violence and abuse occurs in spite of regulations;
- Sanctions to be imposed on personnel that inflicted violence should go beyond a change in their work station and should include education and rehabilitation;
- As regards disciplinary investigations of educators and other school personnel, a new disciplinary regulation must be formed. Violence, abuse and negligence should be defined in detail and included within actions that will result in disciplinary punishment;
- With regards to health education provided in schools, a new legal regulation which encompasses all schools and levels must be made. Health education must be made compulsory for all students, and for children who have reached a certain age, the curriculum should include sexual education classes with information on sexually transmitted diseases, as well as protection from negligence and abuse;
- A legal regulation that mandates regular health screenings in all schools and for all students in order to identify cases of violence and abuse is needed;
- A regulation that foresees the directing of children by the personnel in educational establishments to specialized institutions in cases of verified or suspected violence, negligence or abuse should be put in place;
- A legal regulation that requires reporting and recording of all forms of violence and abuse directed at children is recommended. This reporting mechanism should allow a high degree of differentiation and include detailed descriptions of cases of abuse and violence. The regulation should also mandate collection of these data in a database.
- Article 19 of the UN Convention on the Rights of the Child includes all forms of abuse and mistreatment, including not only physical violence, but also corporal or mental attack, violence or abuse; negligence or negligent behavior; and all kinds of abuse, including rape and mistreatment. Thus, the scope of the national laws must be expanded and harmonized with international standards;
- Special bodies must be formed by law. They should be put in charge for initiating the legal process by receiving applications, preparing children and their relatives for the legal process and taking any measures needed to protect the child in the legal process. They should be easily accessible by victims and their families, and should be staffed by highly qualified experts.

Right to Health in Schools

Prof. Hilal Özcebe

- The content and method of the education provided in schools is important for children to gain the knowledge needed for a healthy life and the adoption of appropriate behaviors. On the other hand, the physical, social and biological environment of the school has a direct impact on children's health.
- "School health" is all efforts undertaken to evaluate and develop the health of students and school personnel, to establish and sustain a healthy school life, and to give health education to students and hence to society.
- Article 24 of the UN Convention on the Rights of the Child states that the right to have the highest level of health and the right to use institutions that provide medical care and rehabilitation services must be recognized. When the right to health, which is included in other conventions as well, is evaluated within the school context, it gives rise to a framework encompassing the life and nutrition of children, health education, environmental health and the protection of children from accidents.
- In its general comment, Committee on the Rights of the Child emphasizes the right of adolescents to access the information relevant to their health and development as well as to their meaningful participation in society.
- According to the Public Health Law, the Ministry of Health is responsible for children's health, whereas MoNE is required to monitor the health of children in school. The responsibilities of institutions and units in MoNE with respect to protecting and enhancing the health of students, ensuring their social development, providing health education and providing the necessary health screenings have also been defined in the related legislation. The responsibilities and the division of tasks should be clarified: Monitoring children's health should be the responsibility of the Ministry of Health, whereas MoNE should be responsible for the protection of school-aged children's health and for instruction of life skills needed for proper health development.
- MoNE legislation mentions the priority of the interests of children over other concerns, the right to life, the right to health and social security right within the general framework. However, it does not adequately emphasize the right to health in terms of prevention and promotion.
- The Ministry of Health and MoNE should establish a joint "school health policy". The aims of "school health policy", based on the requirements for the right to education and health in the international legislation, should be as follows: They must include practices aimed at both protecting and improving the health of students; they must be organized in a way that enables the resolution of health problems when necessary; they must have a structure that supports treatment and rehabilitation for children with chronic health problems; they must aim towards the prevention of injuries; they should strive towards the eradication of risks to food hygiene, healthy school environment and traffic safety.
- Legal changes need to be made to ensure that children undergo regular health screenings in schools and that their development is monitored. This will enable timely interventions towards the protection and improvement of the child's health, as well as the early diagnosis of health problems and risky behavior.
- An important step taken towards healthy nutrition has been the legislative change made as regards the proper nutrition of children in bussted education.



The national legislation has rendered school administrations responsible with supervising the school cafeterias. However, there is not a widespread legal arrangement on the responsibilities of schools in this area. Cafeteria inspections have been on the forefront of the agenda in recent years. The implementation of rules regarding cafeterias must be monitored.

- Protection from cigarette and substance use has been given increased importance in the legislation. However, the legislation lacks proposals regarding appropriate prevention methods.
- National legislation lacks regulations on the provision of information to adolescents on reproductive and sexual health. The curriculum is inadequate, and schools do not provide counseling services on reproductive and sexual health.
- Aside from the curriculum, the main efforts carried out for health education are encouraging significant days and weeks designed to raise awareness on these issues. Messages on the protection and improvement of health should be conveyed during screenings and through the health education provided in schools. Some healthy behaviors that these actions should aim to impart are: having a healthy diet, regular

physical exercise, resting and sleeping properly, not using cigarettes, alcohol and substances, safe sex, protecting oneself from injury and avoiding violent behavior.

- Special explanations about children with chronic diseases are quite limited in MoNE legislation.
- There is some reference to the prevention of discrimination against children with disabilities in the legislation. However, for children and young people in special vocational rehabilitation centers, there is inadequate mention of the provision of education on necessary life skills and health.
- Within the context of environmental health, MoNE legislation focuses more on physical school environment and the standards that must be observed in this regard. There is no reference to the social environment. The scope and level of detail of the arrangements differ significantly depending on the type of institution. The national legislation includes some clauses on the physical structure of the school and the social environment, however it is lacking legal arrangements with regards to new risks and environmental health.
- Traffic safety is comprehensively included in the legislation concerning school buses and bussed education.

School Facilities

Mehmet Onur Yılmaz

- School facilities can act as barriers to the full exercise of the rights guaranteed to children by international human rights documents. School facilities can also limit the quality of education received.
- While there are few norms in international legislation related to the physical conditions of schools, it is possible to develop a human rights-based approach to schools' physical

conditions based on the interpretation of the relevant conventions such as the UN Convention on the Rights of the Child, ICESCR and the UN Convention on the Rights of Persons with Disabilities and their general comments by the international committees.

- Some norms that can be extracted from international human rights documents on school facilities are the following:

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- The number of functioning school facilities must be adequate.
 - The school must be accessible in terms of its distance from main roads and/or accessibility by public transportation.
 - The characteristics of school buildings should not prevent any child from receiving education or benefiting from the opportunities of the educational environment due to his/her individual differences.
 - School buildings must be able to facilitate the maximum development of the child's personality, talents and mental and physical abilities. It should be far away from sources that might constitute a threat to the children's health and sources of environmental pollution.
 - In the acquisition school buildings, the interests and benefits of children must be prioritized.
 - Minimum standards should be established with regards to school facilities and should be implemented at all schools.
 - Schools should be in harmony with the natural environment and be able to strengthen children's respect for nature.
 - School facilities must be able to encourage participatory education.
 - Children's participation must be ensured during the acquisition of school buildings.
 - School facilities must be adaptable to the needs of students from different social and cultural backgrounds and in line with the changing needs of society and communities.
 - Observation shows that the needs, interests and opinions of children are not prioritized in the acquisition of school buildings.
 - Opportunities must be presented for children to develop ideas and suggestions with their teachers and families on school building and environment. Children must be given the opportunity and responsibility to bring these ideas and suggestions to life.
 - The clauses in the relevant laws and regulations on the issue usually remain narrow in scope. It is of concern that the most comprehensive regulation on the quality of school facilities is in the MoNE Directive on the Standards of Private Educational Institutions, which refers only to private schools. The clauses in the educational legislation on building schools must be revised and should be based on children's rights.
 - As no relationship is established between the size of the plots and the type, project and need of schools, the plots usually do not fulfill the need. This makes it difficult to achieve the goal of "adequate number of functioning schools" as well as "reasonable accommodation" of the needs of children with disabilities.
 - There is no comprehensive principle, norm or standard regarding the process of acquisition of school facilities, which take place with the cooperation of different and multiple public institutions. This contradicts the principle written in international human rights documents that "minimum standards must be established with regards to school structures and a system that will ensure the implementation of these standards in all the schools must be established and enforced by a public authority".
 - If the "type-project" practice (realization of the same project in different locations) undertaken by the MoNE since the 1950s is evaluated from a rights-based perspective, problems resulting from a lack of focus on children and prioritizing low costs rather than the children's interests emerge. This practice, which is problematic in terms of acceptability and adaptability, must be revised with a focus on children's rights.
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