THE RIGHT TO EDUCATION: A COMPARATIVE VIEW
Argentina, Uruguay, Chile and Finland

Vernor Muñoz
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The UNESCO Regional Bureau of Education for Latin America and the Caribbean commissioned the present study as a way of contributing to an informed debate which, with the support of all relevant actors, is enabling the development of an education system in Chile, in line with the Right to Education.

We wish to thank all those who have contributed to the preparation of this document, particularly to the author, Vernor Munoz and his team, to the Ministry of Education of Chile and to the National Forum on Quality Education for All of Chile.

In UNESCO, we have the firm intention to continue to support countries in the Region in the implementation of actions that advance the cause of the right to an education of quality for all.

Jorge Sequeira
Director
UNESCO Regional Bureau of Education for Latin America and the Caribbean.
Introduction

The efforts undertaken for education to achieve its main purpose have led to a questioning of market-driven trends that define education as a marketable service and not as a human right.

The purpose of education is inspired from the key instruments of international human rights’ law (the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child, amongst others), and clarified by treaty monitoring bodies.¹

We know that the right to education is not just access to formal schooling. Nor is it simply something that the State has to guarantee only to children and adolescents. It is a human right that – by definition – all persons, regardless of their age, can demand.²

Furthermore, besides being individually guaranteed, education is a social right that is best expressed when people exercise their citizenship. It is not limited to a certain stage in life but is life-long, for all men and women.

Precisely for this reason, this study has been motivated by the need to return to the core meaning of education, which is to achieve the development of human potential and dignity. We understand education as a right that must be permanently exercised, in the framework of all other human rights.

UNESCO bases its work on these premises, and embraces several universally shared objectives:

- Achieving quality education and life-long learning for all;
- Mobilizing scientific knowledge and science policies for sustainable development;
- Addressing emerging social and ethical issues;
- Promoting cultural diversity, intercultural dialogue, and a culture of peace;
- Building inclusive knowledge societies through information and communication.³

The Education for All Global Monitoring Reports have warned of the serious crisis facing education.⁴ This crisis is characterized by indifference, weak national education policies, and a current lack of interest on the part of cooperation agencies and the international community to turn their promises into acts.

It is obvious that there has been progress. However, the efforts to position education as the cornerstone of state policy have yet to show promising results.

¹ Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, and the Committee on Economic, Social and Cultural Rights.
³ See: www.unesco.org/new/en/unesco
According to the 2011 Education for All Global Monitoring Report\(^5\), there will be a shortfall in yearly funding for education of 20 billion dollars and the inequalities within countries mirror the disparities that exist internationally with respect to secondary education.

The reaction to this reality has not been one of passivity and indifference since, as is well known, hundreds of thousands of people have formed movements demanding the right to education. Lately, the most vivid expression has been in Chile, where children, adolescents, and university students have played a leading role.

Motivated by the massive call for free and quality education by students in Chile, the UNESCO Regional Bureau of Education for Latin America and the Caribbean, based in Santiago, Chile (OREALC/ UNESCO Santiago),\(^6\) commissioned the present study, which aims to analyse the regulatory framework for education and contribute to the human rights approach in Chile’s education system.

UNESCO considered that an appropriate mechanism for the analysis would be to compare legislation in Argentina, Uruguay, Chile, and Finland, with special attention to Chilean legislation. This approach allows the author to highlight specific legal traits and, from there, reach an understanding of the strengths and shortcomings of present regulations in aligning education more closely with the human rights’ framework.

The first three countries of the study are neighbours and members of MERCOSUR (Common Market of the South).\(^7\) Finland is an extra–regional reference, with its own distinct socio-cultural parameters; in addition, it also is one of the education systems that have scored highest in the most recent PISA reports.\(^8\) A review of how Finnish education is regulated\(^9\) gives a broader perspective and may offer new ways of improving educational legislation and jurisprudence and building regional standards, inspired by the need to respect, protect, and achieve the right to education.

OREALC/ UNESCO Santiago set the objective for this report, which takes as its reference points the obligations, laid down in the International Covenant on Economic, Social and Cultural Rights and clarified by the treaty monitoring body in the General Comment No. 13.\(^10\)

The study does not go into detail on the particular laws of any one country, since this might mean losing sight of what is essential. Nor has it been the goal to analyse how the different educational systems work; nor is there any investigation into the obstacles that threaten the realization of the right to education beyond what is laid down in the norms and regulations.

\(^6\) It is also UNESCO’s national office in Chile.
\(^7\) Argentina and Uruguay are full members, while Chile is an associated member.
\(^8\) OECD Programme for International Student Assessment.
\(^9\) Unofficial translations of Finnish regulations have been used for this study.
Obviously, given the complex nature and in some cases the “conceptual vacuum” of certain norms, it has been necessary to add information and comments that facilitate the understanding of the legislation. Furthermore, a simple vocabulary has been used to make the comprehension of technical terms easier for a wider public.

The document is divided into sections. The first one explains the methodology of the study, and introduces the conceptual and regulatory framework of the right to education, as stipulated in General Comment No. 13 of the Committee on Economic, Social and Cultural Rights. The second section provides the historical context of the legal frameworks of the countries concerned and includes a brief description of the constitutional and legal provisions that deal with education. The third section presents the critical-comparative analysis of regulations governing education in each of the selected countries. The fourth section offers conclusions and recommendations.

Readers interested in the details of the regulatory provisions may refer to the appendices (only available in the electronic report)\(^\text{11}\), which contain an itemized list of regulations and a summary of the most relevant articles of national laws.

The author wishes to thank Jorge Sequeira and Paz Portales, respectively Director and Programme Coordinator of UNESCO Regional Bureau of Education for Latin America and the Caribbean (OREALC/UNESCO Santiago); the team at the Ministry of Education of Chile, for their total openness and cooperation; Petra Packalen, Advisor to the Secretariat of International Relations of the Finnish National Board of Education; and colleagues Tere Arteaga, Claudio Vicente Millacura Salas, Virginia Goldaracena, Mariela Belski, Camilla Croso, and Christian Courtis, who provided support in the preparation of this study.

\(^\text{11}\) Available at [www.unesco.org/santiago](http://www.unesco.org/santiago)
1. Methodology

The objective of the present study is a comparative analysis of the legal frameworks and related laws that govern education in four countries: Argentina, Uruguay, Chile, and Finland.

For Solá de Cañizares, the methodological notion of “comparison” involves the scientific weighting of different judicial systems or one of their aspects, and the causes that gave rise to them, along with the resulting effects on the respective social contexts. For Julio Ayasta Gonzáles, the aim of comparative law is to look at the judicial systems of several countries, with the aim of determining common points and differences, and their causes. For Eduardo García Máynez, it is not only the legal framework that can be compared, but also the institutions and legal systems at different times and places.12

The comparative method in law thus takes into account different elements such as the legal institutions and systems, jurisprudence, verdicts, legal norms and customs. However, for the present study, the author has considered education laws and related legislation that are in force in the four selected countries, in order to determine common points and differences and to draw conclusions from that analysis about the evolution of such laws and the criteria for reforming and improving them. The reference for the comparison is the conceptual framework of General Comment No. 13 of the Committee on Economic, Social and Cultural Rights.

The categorical thematic analysis method has been applied to compare laws. In this way, categories are obtained through the use of simple codification and categorization.13

Categorical thematic analysis14 is composed of three concurrent flows of activity: data,15 their clarification,16 and their dynamic reporting.17

The comparative analysis was based on this methodology, and was made up of the following phases:

Phase 1: Document review to select the laws for analysis in each country.

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15 It is the process of selecting, focusing, simplifying, abstracting, and transforming field data. This process is carried out in every qualitative project. Reducing data is not separate from analysis; it is part of it. Analytical decisions are made about which segments to codify, which ones to keep, which patterns summarize a number of segments best, which emerging arguments should be accepted. Reduction is a way of analysing that sharpens, classifies, focuses, discards, and organizes data, in order to arrive at final conclusions that can then be verified. It is a condensation of data. In the present comparative study, codification was used as a reduction strategy.
16 Assembling information that is organized, compressed, and that allows us to draw conclusions and take action.
17 Drawing conclusions and checking; noting irregularities, patterns, reports, possible configurations, causal flows, and propositions. Conclusions are checked as the analysis develops.
Phase 2: Consultation with experts to determine the relevance of analysed legislation.
Phase 3: First screening of data (to reduce the quantity of information). Creation of a matrix with information about current laws and some others that determine the historical context, along with general reflections on the legal framework under study (Appendices 1 to 4).
Phase 4: Once the information from each country was processed, it was possible to carry out a comparison to determine common elements and differences, and to obtain critical conclusions that would allow the identification of shortcomings, strengths that would foster reforms towards achieving respect for the right to education, and the fulfilment of that right. The four conceptual and regulatory elements that characterize the right to education, according to the internationally accepted interpretation of the Committee on Economic, Social and Cultural Rights of the United Nations have been mainstreamed in the final report.

**Conceptual framework of the right to education**

The Committee states that “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. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;
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:

i) Non-discrimination – education must be accessible to all, especially the most vulnerable groups, in law and in fact, without discrimination on any of the prohibited grounds;

ii) Physical accessibility – education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);

iii) Economic accessibility – education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be “free to all”, States parties are required to progressively introduce free secondary and higher education;

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, to parents; this is subject to the educational objectives required by Article 13 (1) and such minimum educational standards as may be approved by the State;

d) **Adaptability** – education has to be flexible so it can adapt to changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

When considering the appropriate application of these ‘interrelated and essential features’ the best interests of the student shall be a primary consideration.”
2. Regulatory frameworks: background elements

ARGENTINA

Argentina’s National Constitution was enacted on 25 May 1853, and was revised in 1994.

Law No. 1429 was passed in 1884 to regulate primary education. This law did not guarantee equal quality in education, as each province was allowed to make its own provisions with varying levels of quality for different segments of the population.

The conclusions of Argentina’s Congress on Education, which took place between 1985 and 1988, laid the foundations for change. Other significant events in this regard were the establishment of the National Council for Culture and Education, the redefinition of the mandate of the Ministry of Culture and Education, and the process of decentralization and transfer of educational services to provincial jurisdictions.

These developments paved the way for the enactment of the National Education Law in 1993. For the first time, Argentina has a regulatory instrument covering all levels and categories of education, and applicable country-wide.\(^{18}\)

The present Constitution mentions education in three of its articles. Article 5 states that “each province shall enact its own constitution under the republican, representative system, in accordance with the principles, declarations, and guarantees of the National Constitution, ensuring its administration of... elementary education.” Article 14 establishes that “all inhabitants of the Nation are entitled to the following rights, in accordance with the laws that regulate their exercise, namely: ... to teach and to learn.” Lastly, Article 75 asserts that Congress is empowered “to provide for the prosperity of the country, for the advancement and welfare of all the provinces, and for the progress of education, drawing up general and university educational plans.”\(^{19}\)

As a result of the period of upheaval in 2001, when the then President Fernando De La Rúa was removed from office, it became necessary to consolidate Argentina’s political and institutional foundations for state intervention to address social demands.

After the Educational Funding and Vocational and Technical Education laws were passed, the government began a consultation process for new education legislation: the National Education Law (LEN, by its Spanish–language acronym) was passed in 2006, while Néstor Kirchner was President (2003–2007) and Daniel Filmus Minister of Education.\(^{20}\)

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\(^{18}\) La transformación educativa en Argentina y la Ley Federal de Educación (http://www.mflor.mx/materias/temas/transformacioneducativa.htm).


This law aims to make all educational services progressively universal,\textsuperscript{21} it created the National Council of Education,\textsuperscript{22} which is empowered to establish, seek agreement on, and coordinate national education policy, while ensuring the convergence and harmonization of the national education system. Consultative bodies of the National Council were also established, namely the Education Policy Council, the Economic and Social Council, and the Council for Curriculum Reform.

Decisions made by the Council are binding, which means that the national government has recentralized decision–making.

The National Council of Education designs and establishes organizational criteria, pedagogical models, and other necessary provisions to make educational services progressively universal for children from the age of four, with priority to low–income sectors and also the implementation of full–day schooling.

The LEN is introducing elements that are changing educational structures. This is the case with Article 17, which deals with the national education system, comprising:

Four levels:
1. Early childhood education
2. Primary education
3. Secondary education
4. Higher education

Eight categories:
1. Vocational and technical education
2. Artistic education
3. Special education
4. Life–long education for youth and adults
5. Rural education
6. Inter–cultural bilingual education
7. Education in detention
8. Home and hospital education

The following legislation was consulted to develop the present comparative study:
- Argentina’s National Constitution
- National Education Law of 2006
- Higher Education Law No. 24.521 (updated in 2006)
- Vocational and Technical Education Law No. 26.058
- Educational Funding Law
  Law No. 26.427, which established educational internships within the national Education System on 26 November 2008


\textsuperscript{22} Ibid.
The Republic of Uruguay has had six constitutions. They were in force for the following periods: 1830–1917; 1918–1933; 1934–1942; 1942–1952; 1952–1967; and 1967 to the present. The current Constitution has been amended through plebiscites in 1989, 1994, 1996, and 2004.

After the declaration of independence in 1825, Uruguay needed to organize an education system that satisfied the basic needs of its then small population. National and local authorities did not respond adequately: many laws, decrees, and provisions were passed, but in the end the economic and human resources that were invested were always lower than the resources invested in political and military conflicts (revolutions, uprisings, civil wars).

The vacuum caused by the lack of public education was filled by private schools, which developed significantly in quantity and in quality and covered the needs of the burgeoning national bourgeoisie. For this reason, private education was limited to Montevideo (although public schools did not provide adequate coverage to the rest of the country either).

School reform was launched in late 1868, when José P. Varela and a group of young intellectuals established the Society of Friends of Popular Education (SAEP, by its Spanish-language acronym), with the aim of promoting school reform based on the models of the United States and Argentina. The de facto government of Coronel Latorre appointed Varela to a top post in education. This allowed Varela to develop an education bill that not only made education free – which was already the case in other countries – but also made it compulsory, imposed strong restrictions on religious education, and included significant grassroots participation in managing and directing public education. The government passed the bill in 1877, which modified the original proposal; while it accepted that education is free and compulsory, religious schools were recognized with few limitations and an extremely centralized school system established.

Despite this setback, secondary education grew rapidly, extended its coverage, and by the middle of the 20th century had reached almost one quarter of secondary school-age children. This expansion was linked to the fact that the middle class had begun to value secondary education as a way of avoiding manual and unskilled work, and providing access to what were considered more prestigious jobs.

The University, which by the middle of the 19th century only had a law school, began to modernize with new schools of medicine (1875) and mathematics (1885), giving middle- and upper-class youth the opportunity to study in non–traditional fields. By the end of the century, secondary – known as “preparatory” – education was broader and more modern, with three schools offering a spectrum of professional careers. The 1885 Organic Law – developed by Rector Vázquez Acevedo– concentrated greater power with the university authorities and allowed better operational capacity.
The period from the mid-1950s to the early 1970s was one of the most painful for Uruguay’s education system, and was only overcome once the military dictatorship had ended. During that time, the education system was basically inert although it managed to expand its coverage and become stronger within the social context. Middle school – especially secondary education – almost became the normal extension of primary education, and the Universidad de la República increased its student population significantly.

Authorities believed that the national crisis of the 1970s required stronger ideological control of society, and that the education system had to be guided with an iron fist. The Education Law of 1973 was the instrument used to abolish all educational autonomy, and to put an end to protests and revolt. It legalized repression, as part of the dictatorial system that was in power.

When political life was normalized after the end of the dictatorship, all political and social forces jointly developed – among other measures – a new education law that explicitly stated: “The moral and civic independence of the learner will be fully guaranteed … official decisions made by steering or consultative bodies will not hamper the right to petition or the exercise of the freedom of thought of educational staff and students … Teaching and learning will be implemented without controls that could infringe free access to all modes of cultural expression.”

In 2006, the National Debate on Education included the National Education Congress, and the results of that process were explained in the final report of the Educational Debate’s Organizing Committee (CODE, by its Spanish–language acronym).

In 2007, all materials that had been collected were processed, and meetings and debates were organized with the educational institutions involved: ANEP, Universidad de la República, the Education Coordinating Committee, and political and labour union sectors. In 2008, the content of a bill was discussed publicly and in Uruguay’s Congress.

Authorities and officials of the Ministry of Education went to institutions and towns throughout Uruguay, and conducted countless interviews and meetings. The goal was to inform and to hear opinions that would contribute to the main objective of achieving life-long quality education for all.

Uruguay’s current Constitution addresses the issue of education in the following articles:

Article 68: Freedom of education is guaranteed. Legislation will regulate the intervention of the State only to maintain public hygiene, morality, safety, and order. All parents or

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23 Bralich, J., Historia de la educación uruguaya, (http://www.rau.edu.uy/uruguay/cultura/histoweb.htm)
guardians have the right to choose the teachers and institutions that they wish for their children’s education.

Article 69: Private educational and cultural institutions are exempt from paying national and municipal taxes, which represents a subsidy for their services.

Article 70: Primary and secondary education is compulsory (both with a rural and an industrial/vocational focus). The State will promote the development of scientific research and technical education. Legislation will make these provisions possible.

Article 71: Public primary, secondary, higher, industrial/vocational, artistic, and physical education shall be free and considered as a public good. Specialization scholarships for cultural, scientific and industrial/vocational purposes and the establishment of local libraries will be considered in the same manner. All teaching institutions will focus on the moral and civic development of students.

The National Secondary Teachers Federation (FENAPES, by its Spanish-language acronym), and the Inter-Union Assembly of Workers/National Convention of Workers (PIT–CNT, by its Spanish-language acronym), the student movement, parents, and the Technical Teachers Assemblies (ATD, by its Spanish-language acronym), opposed the bill presented by the government. They considered that the new scenario was a step backwards, and that the vote in Congress was a defeat for the grassroots movement and for teachers’ unions.

The elements that these organizations described as negative are: the gap between reality and what was written; for example, the fact that the law mentions the Participatory Councils as the entities in charge of regulating educational centres, while these centres have not yet been properly organized. Also, the organization of Provincial Committees on Education is not feasible, because the councils, the University Education Institute, the Higher Tertiary Institute, and teachers’ election processes are not functioning.25

Other basic challenges for the implementation of the law are in the coordination and planning of numerous committees, many of them with duplicate membership. For this to be resolved, an intense work calendar would be needed for each deliberation, discussion, and decision-making forum.

This increase in participation and decision-making bodies could generate either a greater capacity to reach agreements and consensus, or a bigger risk for the management of education policy. New conflicting needs and interests could emerge among the different groups of actors, as well as delays and blockages (and a mixture of these two scenarios in the short and medium term).

25 Informe de la Comisión de Ley de Educación de FENAPES (con aportes de la mesa ejecutiva), http://www.fenapes.org.uy/bolets/bol_32/p5.htm)
In summary, enforcing this law represents a challenge for those who lead the education system at different levels, for those who contribute to the planning and implementation of policies intended to change, improve and innovate institutions and their environments, as well as for those who are in charge of assessments.  

The following legislation was consulted for this comparative study:

- Constitution of the Republic of Uruguay
- General Law of Education No. 18437
- Appointment of members of the National Education Steering Council (Law No. 16115) of 21 July 2008
- Law No. 15.739: Education
- Emergency Law is passed. Articles 1–4, 6–28, and 44–50 are repealed
- Law No. 12.549: Universidad de la República
- Law No. 17.015: Early childhood education
- Law No. 18.154: Early childhood education, primary education, and the first three years of secondary education
- Law No. 16.802: Day-care centres

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CHILE

Chile has been governed by nine constitutions, from the constitutional statutes during the struggle for independence to the Constitution of 1980 that is still in force. After several attempts, Chile achieved constitutional stability in 1833, when the foundation was laid for later legislation, adopted in 1925 and in 1980.

The 1925 Constitution was drafted during the mandate of President Arturo Alessandri Palma, and was approved through a national plebiscite. When the military dictatorship took power in 1973, the junta suspended the 1925 Constitution, although it formally declared that it was still in force. Congress was dissolved, and in October 1973 a commission was formed with the purpose of drafting a new Constitution. This body was made up of seven members who were loyal to the military. Their work concluded in 1978 and was later revised twice, the first time by a commission that was chaired by former President Jorge Alessandri, and the second time by the junta itself.

The 1980 Constitution, which is the current one, was subject to 54 modifications in 1989 and one amendment of several regulations in 2005 and was approved by both houses of Congress with a broad national consensus.27

Regarding education, Article 19, Point 10 asserts: “The objective of education is the complete development of the individual in the various stages of life. Parents have the preferential right and duty to educate their children. The State shall provide special protection for the exercise of this right. Basic education is mandatory; to that effect, the State must finance a system designed to ensure free access thereto for the entire population. It is, likewise, the duty of the State to promote the development of education at all levels, encourage scientific and technological research, artistic creation, and the protection and increase of the cultural heritage of the Nation. It is the duty of the community to contribute to the development and improvement of education.”

Article 19, Point 11 states: “Freedom of teaching includes the right to open, organize and maintain educational establishments. Freedom of education has no other limitations but those imposed by morals, good customs, public order, and national security. Officially recognized education cannot be directed towards propagating any type of political-partisan tendency. Parents have the right to choose the educational establishment for their children. A constitutional organic law shall establish the minimum requirements for each of the levels of primary and secondary education and shall provide for the objective norms of general application that may enable the State to watch over compliance therewith. The same law shall, likewise, establish the requirements for educational establishments of all levels to obtain official recognition.”

Between 1950 and 1995, Chilean education went through processes such as the expansion of coverage in the formal system, the diversification of types of institutions and curricula, a modernizing trend in curricular aspects themselves, and the adoption of educational policies and management reforms.

27 Constitución política de la República de Chile. Historia constitucional chilena. (http://www.gob.cl/la-moneda/constitucion-politica/)
During this period, constitutional norms and a social consensus assigned a significant role to the State for education; at the same time, freedom of education was recognized and the private sector was allowed to be part of the educational supply. In 1970, there was a private education sector that was officially acknowledged and was considered as “a partner of the State in its educational duties”, provided it adopted the official curricula and complied with all official requirements. The State supported those “partners” in education by facilitating subsidies.

Funding was one of the main problems for education during that time. In order to expand and improve education, the State assigned large sums that went from 12 to 20% of the national budget. A great part of the education budget was destined to paying salaries. However, the rapid growth in the number of teachers, required by the expansion, and other expenses and costs kept salaries at relatively low levels. Teachers became highly organized and unions began to present their demands.

The government of President Salvador Allende (1970–1973) allocated to education the highest amount of resources of that period: it strengthened coverage and advanced equal opportunity policies. Allende pushed through the decentralization of the public education system with “regional coordinating committees”, and tried to make the system less bureaucratic and more participatory with the "regional and local education councils". However, his administration became bogged down by the rigid nature of state institutions, and by the social and ideological conflict in which his prematurely interrupted government had to operate.

The military junta headed by Augusto Pinochet (1973–1990) introduced significant changes in the education management system. The first phase consisted of an unprecedented military and governmental intervention in the functioning of schools and universities. Under the pretext of trying to depoliticize and to bring new order to institutions and management, an authoritarian regime of tight controls was imposed on daily educational processes.

In 1977, the Ministry of Education relinquished the administration of a large number of secondary vocational–technical schools and institutes, and handed them over to private corporations that had been created by industrial, commercial, and agricultural business associations. The private sector was left with the task of expanding and improving the system, and the State retreated to a role of intervening in situations where private investors were not able to act or where they carried out their duties in an inefficient manner.

The universities existing before 1937 were taken over by the military government who “appointed” a rector in each of them. This “appointed rector” then proceeded to nominate all other academic and administrative personnel; all regulatory tasks within the university campus were thus concentrated in his power. This situation changed in 1987 when universities and institutes that received state subsidies had a board of directors, in
charge of selecting the rector and the other main authorities, and also of executing several administrative functions.\textsuperscript{28}

The Organic Constitutional Law of Education, Law No. 18962, known as LOCE by its Spanish-language acronym, was published in the Official Journal on 10 March 1990, the last day that the military was in power. It recognized the right to education and freedom of teaching; it established minimum requirements and objectives for primary and secondary education; and it regulated the official recognition of educational establishments at all levels, including at university level.

The regulations stated that, based upon the core content proposed by the Ministry of Education, educational establishments were free to design curricular areas, in accordance with their study programmes.

Also, the law put limits on the actions of the Executive, and the government only had a subsidiary role awarding subsidies to third parties, public or private providers which, in turn, managed the funds allocated to education.

Key elements of the regulatory framework were:

- **Freedom of teaching**: It guaranteed freedom without limits, except those of morals, good custom, public order, and national security.
- **Core curriculum**: It established minimum curricular requirements for all levels of primary and secondary education, and it entrusted the State with enforcement.
- **Right**: Regulations recognized education as a right that must be protected and safeguarded by the State.
- **Recognition**: The Ministry of Education was in charge of officially validating primary, secondary, and higher education establishments.
- **Limitations**: Regulations restricted the power of the Executive to intervene in matters related to or modifications to be made in the education sector.

The harshest criticism by students was that the law gave “preference to the freedom of teaching over the right to education”, which, according to them, allowed any private investor to establish a school in an unregulated manner, therefore turning education into a “business” and undermining its quality.

Students demanded that the executive branch of government be more active in guaranteeing the quality and funding of the public education sector. They wanted “the State to be the only guarantor and administrator of Chilean public education.”\textsuperscript{29}

The 2009 General Law of Education, Law No. 20370 (LGE, by its Spanish-language acronym), was the government’s alternative to the LOCE, which was repealed. This law represents a new institutional framework for primary and secondary education, but higher education norms remained untouched.


\textsuperscript{29} El Mercurio, “Aspectos clave sobre la LOCE”, (http://www.emol.com/noticias/nacional/2006/06/05/221167/preguntas-y-respuestas-aspectos-clave-sobre-la-loce.html).
Besides the rights that are guaranteed by the Constitution, international treaties, the right to education, and freedom of teaching, the LGE is based on the following principles:

- **Universal and permanent nature of education**: Lifelong education must be accessible to all.
- **Quality of education**: All students, regardless of conditions and circumstances, must achieve the general objectives and learning standards that are established by the law.
- **Equity**: All students must have the same opportunity to receive a quality education.
- **Autonomy**: The system is based on the respect and promotion of autonomy of all educational establishments.
- **Diversity**: The different educational processes and projects must be promoted and respected, along with the cultural, religious, and social diversity of students.
- **Responsibility**: All actors in the education process must fulfil their duties and be publicly accountable.
- **Participation**: Members of the education community have the right to be informed and to participate in the process.
- **Flexibility**: The system must allow the adaptation of the process to the educational realities and projects of different institutions.
- **Transparency**: Information about the education system, including income, expenditures, and academic scores must be available to all citizens.
- **Integration**: Mixed enrolment of students from different social, ethnic, religious, economic, and cultural backgrounds.
- **Sustainability**: Respect for the environment and a rational use of natural resources must be promoted.
- **Intercultural character of education**: The system must acknowledge and value each person regardless of culture or origin, and take into consideration the individual student’s language, worldview, and history.  

After the social mobilizations of 2006, known as the “Penguin Revolution”, the LOCE was replaced by the General Law of Education in 2009.

Along the same lines, in June 2011, students called for demonstrations in Chile’s main cities, and achieved a massive turnout. They too demanded a stronger role for the State in education.

As a first proposal, President Sebastián Piñera and then Minister of Education Joaquín Lavín announced a package that included as its pillars the so–called “Comprehensive National Agreement on Education” and the Education Fund of 4 billion dollars.

In response to some of the students’ main demands, Piñera announced the establishment of an Under–Secretariat for Education and of a Superintendent’s Office.

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for Education (charged with ensuring that universities are not-for-profit entities), and he promised that a debate would be opened about profit-making in higher education. He added that making all education public "constitutes a serious mistake, and deeply harms quality and freedom in teaching."

Students received the announcement with scepticism, and criticized it very strongly. They believed that official statements were "out of tune with the student mobilization".

On July 18th, President Piñera made an important change in his cabinet: Joaquín Lavín left the Ministry of Education and was replaced by the then Minister of Justice Felipe Bulnes. The new minister asserted: "Students deserve credit for making their voices heard, and for having created a consensus about the reforms that must be implemented." He called on students to give up their strikes and demonstrations, and added that "now is the time to sit down and work out how to build, along with all political forces, and with their contributions, the solutions that the country needs."

On August 1st, Minister Bulnes presented the document entitled "Políticas y propuestas de acción para el desarrollo de la educación chilena" (Policies and proposals for action for the development of Chilean education), which consisted of 21 measures. The main points were the "de-municipalization" of public education and the reform of the scholarship and student loan system for higher education, besides others already mentioned in the first government proposal, such as the establishment of the Superintendent’s Office for Higher Education, to monitor that there is no profit-making in education. Hours after the new measures were announced, numerous barricades were put up throughout Santiago, in a show of discontent with the government offer.

On August 17th, Minister Bulnes announced a new proposal with which the government tried to put an end to the demonstrations. The new proposal included a mixed system of scholarships and student loans for the three poorest quintiles of the population, a renegotiation of student loans for 110,000 people in order to get DICOM (a credit rating agency) to take them off bad credit report lists, and reducing interest rates for government-backed student loans from 5.6% to 2%.

There was also a promise to submit, within 40 days, legislation regarding the "de-municipalisation" of public education, placing schools under decentralized public agencies; the establishment of a Superintendent’s Office for Higher Education to monitor and ensure that universities are indeed not-for-profit institutions; and a proposal to reform the Constitution, so the right to quality education would be enshrined. Student leaders rejected this latest government proposal. They thought that it would only perpetuate indebtedness for the poorest sectors.

The following laws and decrees were considered for this study:

- Chile’s National Constitution
- General Law of Education No. 20370
- Law on school violence No. 20536
- Law No. 20529 of the national system of quality control for early childhood, primary, and secondary education, and its monitoring
- Decree–Law No. 2 with the consolidated, coordinated, and systematized text of Law No. 20370, with enacted norms of Decree–Law No. 1 of 2005
- Law No. 20330, which promotes the work of young professionals and technicians in less developed municipalities
- Law No. 19992, which establishes a compensatory pension and other benefits for people described therein
- Decree No. 32 (2005), which regulates the assignment of educational benefits covered by Law No. 19992
- Law No. 20405, which creates the National Human Rights Institute, and awards benefits to surviving spouses of deceased political prisoners. It also reactivates the commission in charge of identifying victims of state terrorism
- Law No. 20158, which establishes different benefits for education professionals and modifies certain legal bodies
- Supreme Decree 39/2011, which modifies Decree No. 337 of 2010, regulating the 2010 scholarship programme for higher education
- Law No. 20129, which establishes a national system of quality control for higher education
- Decree 297/2009: Ministry of Education. Under–Secretariat of Education approves regulatory framework for the procedure to halt income tax refunds by the National Treasury
- Law No. 20027 of 2005, Ministry of Education, which establishes norms for higher education funding
- Decree 266, Ministry of Education. The publication is annulled. It was published in the Official Journal No. 39963 of 18 May 2011, Volume I, page 1. and subsequent pages. It was replaced by Law 20248
- Law of preferential school subsidies
- Decree–Law No. 3631 of 28 February 1981
- Decree–Law No. 3541 of 13 December 1980
- Law No. 19532, which established full–day schooling and norms of enforcement
- Law No. 19074, which authorizes persons who obtained degrees abroad to work in their professions
- Law No. 1903, which establishes regulations for the renegotiation of government–backed university student loans
- Law No. 19168, which gives the mentioned attributions to the educational institutions that it names
- Law No. 19239, which establishes the Universidad de los Lagos
- Law No. 19287 of 1994 on soft student loan funds
- Law No. 19305, which modifies the statutes of the mentioned universities regarding the election of rectors, and establishes norms for the modification of statutes
- Law No. 19584, which modifies Law No. 18962, the Organic Constitutional Law of Education, incorporating higher education institutions that are recognized by the State
- Decree No. 257 of 1 July 2009
- Law No. 18956, which restructures the Ministry of Public Education (not developed)
- Law No. 19464, latest modification: 26 February 2011, Law No. 20501, which establishes norms and awards salary increases for non–teaching personnel at the educational establishments mentioned therein
- Law No. 20244 of 19 January 2008, which introduced modifications to Law No. 19.464, establishing norms and awards salary increases for non–teaching personnel
- Law No. 20422 of 10 February 2010, which establishes norms on equal opportunity and social inclusion for the handicapped
- Decree–Law No. 2 with the consolidated, coordinated, and systematized text of Decree–Law No. 2, concerns state subsidies for educational establishments. Latest version: 12 September 2009
- Decree No. 315 of 2011. Ministry of Education, Under–Secretariat of Education, regulates requirements for obtaining, maintaining, or losing official state recognition at early childhood, primary, and secondary educational facilities (not developed)
- Decree No. 548, latest version of 25 May 2011. It approves the norms for the physical location of educational establishments, with the minimum requirements that the establishments mentioned and recognized as partners of the State in education must comply with, according to the level and modality of education that they offer (not developed)
- Decree–Law No. 1 of 10 September 1996, latest version of 1 May 2011, with the consolidated, coordinated, and systematized text of Law No. 19070, which approved the statutes for education professionals, and the laws that complement it and modify it (not developed)
- Law No. 20501/2011 on quality and equity in education
- Decree–Law No. 1 of 30 December 1980, latest version of 2 January 1986
- Decree–Law No. 4, which establishes norms for the funding of universities, latest version of 4 December 2008
- Decree–Law No. 2 of 21 January 1986, with the consolidated, coordinated, and systematized text of the Organic Statutes of the Council of University Rectors (not developed)
- Decree–Law No. 2 of 7 January 1981, which establishes regulations for universities
- Decree–Law No. 3 of 31 December 1980, latest version of 18 January 1993, which establishes salary regulations for Chilean universities (not developed)
- Decree–Law No. 24 of 16 April 1981, latest version of 3 January 1986, which establishes regulations for vocational training centres
- Decree–Law No. 5 of 16 February 1981, which establishes regulations about professional training institutes, latest version of 30 November 1996
- Law No. 20044 of 23 August 2005, which establishes financing attributions for state universities
- Law No. 19989 of 31 December 2004, which establishes attributions for the National Treasury, and modified Law No. 19848 about the renegotiation of student loans
- Law No. 19496 of 7 July 1997, latest version of 3 February 2010, which establishes regulations for the protection of consumer rights (not developed)
- Law No. 19699 of 16 November 2000, latest version of 23 June 2003, which gives compensation and other benefits to public employees who are also students of higher level technical careers
- Law No. 20374 of 7 September 2009, which allows state universities to establish a mechanism of retirement incentives for employees and gives other benefits that are listed
- Decree No. 40 of 3 February 1996, latest version of 25 September 2009, which established basic objectives and mandatory core curriculum content for primary education and establishes general regulations for their enforcement (not developed)
- Decree No. 220 of 18 May 1998, latest version of 19 August 2009, which establishes basic objectives and mandatory core curriculum content for secondary education and established general regulations for their enforcement (not developed)
- Law No. 20529 on a quality control system for early childhood and primary education
Between 1917 and 1922, the Finnish Parliament put in place the basic structure for an independent nation, with the enactment of the Constitution Act and other laws that were necessary in order to have a State legal system. Special laws safeguarded the basic democratic rights of citizens.

The Constitution Act of 1919 was drafted and adopted in the midst of strong ideological crosswinds and a fierce conflict between different interest groups.

For centuries, the monarchical system had consolidated itself peacefully, and a significant part of the upper classes had accepted it as an established feature of the political landscape. The main elements of traditional Nordic monarchies were then adapted to republican norms.

In the 1990s, an open dispute emerged between Parliament and the President, and this led to a reform of the laws governing the State. The constitutional reform had a different basis and pursued diverse objectives: (1) the codification of constitutional laws; (2) the unification, modernization, and updating of regulatory structures, and (3) a revision of the division of powers. The new Constitution entered into force on 1 March 2000.31

The current Finnish Constitution addresses education in the following articles:

Article 16: Educational rights
(1) Everyone has the right to basic education free of charge. (2) The public authorities shall guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop without being prevented by economic hardship. (3) The freedom of science, the arts, and higher education is guaranteed.

Regarding universities, Article 123 points out:
(1) Universities are self-governing. (2) Provisions on the principles governing the other educational services arranged by the State and the municipalities, as well as on the right to arrange education in private educational institutions, are laid down by an Act.

The Basic Education Act was enacted in 1998, after 30 years of major reforms in the education system. The law is highly pragmatic in that the ideological principles of Finnish education have been translated into common language.32

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For each student, it is important:
- To have a warm and welcoming environment
- To have a learning pace that is adapted to each child
- To have an early detection of learning disadvantages or disorders, and access to specialized help
- To receive a high level of attention
- To be active and committed
- To have a degree of freedom of choice
- To be evaluated in a motivating way

For expert teachers, it is important:
- To be a valued professional
- To be selected through a demanding process
- To have a specialized initial training
- To have a reasonable work schedule, with a broad definition of duties
- To have optimal material conditions
- To have full pedagogic freedom
- To have expert university-level professors
- To have a clearly defined continuing education

Evaluation as a lever for change
- A system of permanent evaluation
- Evaluation as a legal obligation

The results of the first PISA study, carried out in 2000, gave public visibility to Finland’s Basic Education Act.

PISA, the Programme for International Student Assessment of the Organization for Economic Cooperation and Development (OECD), aims to evaluate to what point students close to finishing compulsory schooling have acquired the skills necessary to participate fully in the knowledge society.

PISA brings to the forefront those countries whose students have performed well and thus establishes ambitious goals for other countries.

In the first PISA evaluation, Finland was first in reading, out of 43 countries (the 30 OECD countries plus 13 associated countries); reached fourth place in mathematics; and third in science. While remaining one of the top countries with regard to the efficiency of the education system, Finland improved its position in PISA 2003: out of 41 participating countries, it was first in the three subject areas that had been evaluated in 2000, and second in problem resolution, a subject introduced in 2003.

Finland’s “human development index” is 0.947, which places it in the category of High Human Development countries, those with a per capita income of $10,726 or more. Along with Norway and Sweden, Finland has one of the lowest rates of inequality in the
world (0.25 to 0.30 in the Gini index). The segment of the population considered as poor is 2%.\textsuperscript{33}

The following legislation was considered for this study:

- Finland’s National Constitution of 1 March 2000
- Basic Education Act 628/1998
- Universities Act 558/2009

3. A comparative view of the right to education in Argentina, Uruguay, Chile, and Finland

Availability

The right to education is not only a social right, although it is strongly associated with the provision of a service. Nor is it limited to a mere pedagogic experience either, since it goes beyond the school to include everything which has a lasting bearing on education itself.\(^{34}\)

In this sense, education can transform social structures and also has the capacity of changing the way we conduct our lives, teaching and learning processes, and definitely civic responsibility.

Therefore, education is an enabling right, because it allows the realization of all human rights, in the construction of the knowledge that gives dignity to life. It is also then a civil, political, economic, and cultural right.

As a basic requirement, availability of education requires States to have a regulatory framework for the respect, protection, and compliance with the rights stipulated in the International Bill of Human Rights, and generally with those of the universal and regional instruments governing the right to education.

The obligation to respect human rights requires States to avoid measures that would prevent the enjoyment of the right to education. The obligation to protect those rights also requires States to prevent third-party obstacles to the right to education. To comply with their international obligations, States must implement positive measures that will help individuals and communities to exercise their right to education.

As a general rule, States have an obligation to enforce compliance with a specific right whenever individuals or groups of individuals are unable to realize this right on their own with the means at their disposal.\(^{35}\)

Therefore, having laws in place that guarantee the right to education is the first obligation of the State.

At the same time, this obligation implies a double condition: first, that education laws have a human rights approach, and second, as a result of the first condition, that education itself must pursue the goals stipulated by international human rights law. In other words, it is not the right to “any education”.


\(^{35}\) Committee on Economic, Social and Cultural Rights, General Comment No. 13, op. cit, paragraphs 46–47.
The right to education

The constitutions of all four countries include the education of the population as one of the national goals.

In the case of Argentina, since it is a federal republic, the Constitution also calls on each province and on the autonomous city of Buenos Aires to plan, organize, supervise and finance the national education system in a concerted and consistent manner, guaranteeing access to education through “the enacting of laws and basic organizational measures to ensure participation in public state education as well as the autonomy and self-sufficiency of national universities. The Constitution also establishes the principles of non-discrimination, equity and free public state education. (Articles 5 and 75).

The Constitution of Uruguay declares, in Article 71, education to be a social utility and that public primary, secondary, vocational/industrial, artistic, and physical education should be free; it also guarantees the freedom of teaching (Article 68).

The Chilean Constitution asserts in Article 19, Point 10: “The objective of education is the complete development of the individual in the various stages of life. Parents have the preferential right and duty to educate their children. The State shall provide special protection for the exercise of this right. Basic education is mandatory; to that effect, the State must finance a free-of-charge system designed to ensure full access thereto for the entire population. It is, likewise, the duty of the State to promote the development of education at all levels, encourage scientific and technological research, artistic creation, and the protection and increase of the cultural heritage of the Nation. It is the duty of the community to contribute to the development and improvement of education.”

Article 16 of the Finnish Constitution establishes the right of every person to free basic education and guarantees access to higher education. It also affirms that public authorities through the enactment of laws will guarantee opportunities for people to have access to other education services in accordance with their capacities and special needs, and also the opportunity for personal development regardless of economic difficulties.

The four constitutional texts establish the main obligations of the State regarding education, despite the differences in depth, methods, and shades of meaning.

In the case of Argentina, the Constitution gives the State the highest and broadest level of responsibility in planning, organizing, supervising, and funding education, while in the other countries these matters are covered by ordinary legislation.

The Chilean Constitution emphasizes the protection of the right of parents to choose the way in which their children will be educated. Finland’s Constitution guarantees educational opportunities, and Uruguay’s gives priority to education as a public good.
The universally accepted obligation of complying with and of realizing the right to education is not explicit in the last three cases, although the legal frameworks clarify the breadth and the limitations. The realization of the right to education corresponds to the generic obligation of the State to act and react,\textsuperscript{36} both through plans and programmes that are part of a consistent and inclusive education policy, and in the development of fairness mechanisms that provide the resources for people to demand compliance with that right. These dimensions should be part of the constitutional text, since international treaties about the State’s duty to act and react are binding.

While the Constitutions of Uruguay and Chile refer to the levels and modalities of education, Argentina’s constitution addresses the general education system, and Finland’s mentions basic education (which is defined by national or provincial legislation, depending on the case).

The Constitutions of Finland, Uruguay, and Argentina explicitly guarantee access to university level education, while Chile’s does not. Nonetheless, since the Chilean Constitution refers to “all levels of education”, it may be inferred that the State has the obligation of promoting the development of higher education.

Objectives of education

Education has had different objectives throughout history, depending on the social, political, and ideological context. In general, Latin America’s education systems were moulded by the modernity of industrial society, and became strongly utilitarian, “standardizing”, patriarchal, and exclusive, and as a result of which these systems have subordinated teaching and learning processes to the needs of the market.\textsuperscript{37}

With the “emergence”\textsuperscript{38} of human rights, these models have been questioned, since the goals of education in the new universal regulatory framework have gone well beyond manpower training and assigning stereotypical social roles.\textsuperscript{39}

The judicial and ideological foundations provided by human rights treaties have had a great influence in the constitutional and legal reforms of Latin American countries, which have incorporated a large part of the principles related to education contained in these international instruments.


\textsuperscript{38} Law–making, institutionalization, the development of a legal doctrine, jurisprudence, and an interdisciplinary theory on human rights.

\textsuperscript{39} “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.” (Article 26 (2) of The Universal Declaration of Human Rights).
“The context, in which these laws emerged, particularly those drafted in the first half of the decade, was marked by three significant aspects. The first is the privileged place assigned to education in the new development model, which included it as one of the priority policy areas. Secondly, the continued relevance –as part of social policy– of recommendations geared towards redefining the role of the State, which inevitably permeated the education debate. Recommendations that should be highlighted are those that promoted a transition from centralized to decentralized institutional structures, the initiative to privatize social and education services, and the proposed switch from a universalist approach to one more focused on policies dedicated to disadvantaged sectors. Thirdly, the environment of optimism that prevailed in the first part of the decade characterized that context, due to the initial effects of the reforms. This way, the laws emerged at a time of great expectation regarding the privileged role that education would have in the new model of development, where the envisioned scenario would be one of growing economic and social expansion…”

However, the permanent dichotomy between legal rhetoric and social practice remains an issue in almost all countries of the region, although that is not part of the analysis of the present study.

In any case, the new goals of education may be found in current legislation. According to Argentina’s National Law of Education, the country’s education system must guarantee equality, free schooling, equity, and participation, based upon the principles of quality, comprehensive, and life–long education.

Article 1 of that law regulates the right to teach and to learn that is enshrined in the Constitution and in the international treaties that have been incorporated into it. It legitimizes thus the principles stipulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, and the American Convention on Human Rights with its Optional Protocol, among other treaties.

Also, Article 8 of Argentina’s education law states: “Education will provide the necessary opportunities to develop and strengthen the life-long comprehensive training of all persons, and to promote in each student the capacity to define his or her life project, based on the values of freedom, peace, solidarity, equality, respect for diversity, justice, responsibility, and the common good.”

Article 10 of that law adds: “The State shall not sign bilateral or multilateral free trade agreements that would result in education being considered as a for–profit service, or encourage any market–driven transformation of public education.”

This principle is also included in Article 14 of Uruguay’s General Law of Education: “No agreement or treaty will be signed, bilaterally or multilaterally, with States or

international organizations, that directly or indirectly would lead to consider education as a for-profit service or to encourage its transformation in a market-driven manner."

The Uruguayan law declares education as a basic human right (Article 1), focusing on the search for a harmonious and integrated life through work, culture, entertainment, health care, respect for the environment, and the responsible exercise of citizenship, as key factors of sustainable development, tolerance, the full realization of human rights, peace, and understanding among peoples and nations” (Article 3).

These principles are complemented with the goals of the national education policy that are established in Article 13, and that seek, among other objectives, the promotion of justice, solidarity, freedom, democracy, social inclusion, social integration, and the education of persons to be thoughtful, self-sufficient, and non-discriminatory. The Uruguayan law also gives constitutional status to international treaties that the country has ratified, and considers them as key elements of education proposals, programmes, and actions; it marks those treaties as a basic reference for education in general (Article 4).

Meanwhile, in accordance with its General Law of Education, Chile’s education system is based on the rights guaranteed by the Constitution and the international treaties that have been ratified and that are still in force; in particular, it is based on the right to education and the freedom of teaching (Article 3).

Even though there is no explicit acknowledgement of education as a human right, the articulation of the General Law of Education with international treaties clearly commits the Chilean State to comply with the right to education in line with the terms stipulated in those treaties.

Article 6 establishes the duty of the State to “guarantee quality education and to see that it is offered to all, in the public and private sectors.” It also includes the obligation of the State to “ensure equal opportunity and inclusive education, in particular by helping reduce inequalities caused by economic, social, ethnic, gender, territorial or other types of differences” (Article 9).

Article 10 explains the rights of students with respect to the principles established in the preceding article.

Finland’s Basic Education Act\(^\text{41}\) includes as objectives of education the ethical and human development of pupils as responsible members of society, and the acquisition by them of the knowledge and skills that are necessary for life. In accordance with this law, education shall promote civilization and equality in society and as well as the requirements of pupils to participate in education for their personal development.

The differences, mentioned in regulatory frameworks in relation to the conception and breadth of the obligations of the State and to the declaration of objectives, highlight the

\(^{41}\) Basic Education Act 628/1998.
need to advance in the construction of a common language regarding the goals of education.

While the obligation to protect is more obvious in the cases of Argentina and Uruguay, Finnish legislation seems to emphasize the promotion of equality and ethical development, and Chilean laws focus on the “predisposition” for quality and universal access.

Legal clarity in the goals of education is an integral part of establishing the principle of legality. It is also absolutely necessary for the development of public policies on education.

It is without doubt necessary to include in the legal framework the obligation to respect, protect, and comply with the right to education, for the State to implement all immediate and programmatic actions towards the realization of this human right. These actions are not limited to promoting education or freedom of teaching. It is imperative that concrete measures and affirmative actions be taken, so that all persons may exercise this right.

On the one hand, education goals determine institutional priorities, which include curricular development and, on the other, they also define the nature and breadth of education management, which requires adequate funding and lays the foundation for steady progress in guaranteeing free education for all.

Compulsory schooling

Compulsory schooling is two–fold. On the one hand, it covers the specific duties of parents or legal guardians of children and adolescents,\(^{42}\) in accordance with Articles 3, 5, 18, and 27 of the Convention on the Rights of the Child.

This obligation seeks to ensure that children and adolescents are not excluded from educational opportunities due to a decision that their parents or guardians may have made.

On the other hand, compulsory schooling refers to the concrete measures that the State must take for the realization of the right to education, which according to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child should cover the availability, accessibility, acceptability, and adaptability of education.

Given the fact that many families cannot send their children to school because of poverty and other forms of social exclusion, the State must also assume certain related duties, in accordance with the principle of non–discrimination, so that children and adolescents are not denied this right.

\(^{42}\) Many legislative frameworks also assign parental education responsibilities to youth of a certain age.
The same Covenant states that primary education must always be compulsory; secondary education in its different forms shall be made generally available and accessible to all, and higher education shall be made equally accessible to all (Article 13).

The Universal Declaration of Human Rights asserts that elementary education shall be compulsory, and that technical and professional education shall be made generally available (Article 26–1).

In connection with the mentioned principles of international law, Argentina’s National Law of Education stipulates that compulsory schooling goes from the age of 5 to the end of secondary education. It adds that early childhood education covers children aged from 45 days to five years old inclusive, and that the last year of early childhood education is compulsory (Articles 16 and 18).

The law also specifies the duty to make educational services universal for four-year olds, and includes norms to guarantee compulsory schooling for all persons deprived of their liberty in detention facilities or elsewhere, when sentence conditions allow (Article 55).

Argentina’s Law for Education Funding takes into account the need to increase investment so that a minimum of 10 years of compulsory schooling is ensured for all children and youth (Article 2, Point b).

According to Uruguay’s Constitution, primary and secondary education is compulsory, both in rural or industrial vocational settings (Article 70).

Thus, in line with the Constitution, the General Law of Education establishes compulsory early childhood schooling for children aged four and five, as well as primary and secondary education. To that effect, the norm states that pedagogic time and curricular activities shall be extended to primary education and lower level secondary pupils (Article 7).

Article 35 of that law affirms that “formal education of youth and adults shall have as its basic goal the completion of compulsory schooling for all persons who are older than 15.”

According to Chile’s Constitution, primary and secondary education are compulsory, and the State has the duty to ensure access to the whole population. According to the constitutional text, access to secondary education is extended to the age of 21 (Article 19, Point 10).

These principles are taken up in Article 4 of the General Law of Education. In Article 25, the same law states that primary education shall last six years, the same duration as secondary education, for which four years are to be dedicated to general courses and two years for specialized training.
According to the law, early childhood education will not have a mandatory duration. Article 26 does not place any minimum requirement for access, and adds that attendance at this level is not a pre-requisite for admission to primary education.

Finland’s Basic Education Act establishes compulsory schooling for every child of seven and above. The mandatory character ends when primary education curricula have been completed, or ten years after the beginning of compulsory schooling (Section 25).

Section 26 ensures the right to attend early childhood education for the year preceding the beginning of compulsory schooling.

Funding

The amount of funding for public education has been broadly discussed in different international fora. Obviously, the financial needs of education depend on many interrelated variables that range from demographic and age composition to factors and means of production, tax–collection efficiency, and the social and economic capacities of a country.

In the search for a universal reference, UNESCO proposed a standard of 6% of the Gross Domestic Product as the minimum percentage that States should allocate for education.

This figure has not been free from criticism, since for a country low on resources with a high demographic density, 6% is insufficient. In the opposite case, for a high-income country, it is astronomical.

Therefore, it makes sense for each State to interpret this standard as a way of dedicating resources “to the maximum of its available resources” in order to guarantee the right to education, so that in practice the 6% of GDP figure is not understood as a rigid measuring point.

Argentina’s National Law of Education establishes the duty of the State to ensure funding for the national education system, in a consolidated and exclusive education budget, which shall not be lower than 6% of the Gross Domestic Product (Article 19).

This provision complements and makes operational the content of the Education Funding Law, through which the national and provincial governments and the autonomous city of Buenos Aires were under the obligation to increase investment in education between 2006 and 2010 in order to improve “efficiency in the use of resources, with the objective of guaranteeing equal opportunities in learning, of supporting policies aimed at enhancing the quality of education, and of strengthening scientific–technological research, reasserting the strategic role of education, science,

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43 As the International Covenant on Economic, Social and Cultural Rights stipulates in Article 2.
and technology in the economic, social, and cultural development of the country” (Article 1).

The law set yearly targets, corresponding to percentage increases in public education spending, until 6% of GDP was reached in 2010.

The increment is allocated particularly for: i) improving teachers’ salaries; ii) adapting establishments to accommodate growing enrolment; iii) prioritizing the teaching career by ensuring training, in order to improve education quality (Article 5).

The law also has a specific allocation over five years for federal shared resources, with the aim of guaranteeing equity and solidarity in the national education system (Article 7).

Argentina’s Vocational and Technical Education Law establishes a national fund for this kind of education, which cannot be lower than 0.2% of the total current income in the consolidated annual budget; it is estimated separately from the resources allocated by the Ministry of Education, Science, and Technology.

In the case of Uruguay, the General Law of Education stipulates that “the State shall provide the necessary resources to guarantee the right to education…”, although it does not set a minimum percentage for this sector’s funding (Article 19). This guarantee applies to the functioning of the education system, for which the law includes the allocation of resources needed to achieve the objectives set forth in the education plan (Article 41).

Chile’s General Law of Education includes the duty of the State to fund primary and secondary education, and to guarantee public funding for the first and second levels of transition of early childhood education (Article 4). Nonetheless, this law also makes provision for a mixed education system, including one that is owned and managed by the State or its agencies, and another that is private, whether subsidized or fee-paying, that ensures parents and legal guardians the freedom of choosing an educational establishment for their children.

According to this principle, State funding covers the public system and also contributes resources to the subsidized system, of which there are around 26 different types.

Funding for public higher education in Chile comes from the resources that the State contributes directly to higher education institutions (Decree–Law No. 4, which regulates funding for universities), and also from tuition fees and other payments by students and their families, who may have access to state–backed student loans.

State resources for universities, professional institutes and vocational/technical training centres recognized as higher education institutions, are allocated yearly as an indirect contribution. The amounts are set according to the best 27,500 scores from the previous year for first–year higher education students, from lowest to highest, from the
results achieved on the University Admissions Test (PSU, by its Spanish-language acronym) in Language and Maths (Article 3.1 of Decree–Law No. 4). That list is the basis for the weighting system that determines the allocation of resources per student (Articles 3.2, 3.3, 3.4, 3.5, 3.6).

The General Law of Education has a scholarship system with different denominations and beneficiaries that is regulated by Supreme Decree 39/2011, which at the same time modifies Decree No. 337 of 2010, issued to regulate the higher education scholarship system. At the same time, Law No. 20.027 of 2005 sets the norms for higher education student loans.

In the case of Finland, the Basic Education Act stipulates that funding for early childhood and primary education is provided by the government's law on transfers for basic local services, and that other forms of funding – related to operational costs – shall be granted in accordance with the provisions of the Act on the Financing of Education and Culture. Regulations do not establish a specific percentage of Gross Domestic Product, but they include financing for “pre— and post—school activities” (Section 43).

The Universities Act obliges the Ministry of Education to provide the funds from the national budget that universities require to meet their obligations as laid down by law. These funds are increased each year, in accordance with the annual rise in the university index, taking into account the extent, quality and effectiveness of the operations and other scientific policy objectives (Article 49).

The duty of the State to fund the public education system is not subsidiary to private initiatives or parental responsibilities. It is part of what the International Bill of Human Rights and international instruments has set forth. Thus, the tuition–free nature of education and financing must be seen as complementary issues.

Public funding for education is not a purely economic issue, since it allows for education to be guaranteed as a universal human right, and seeks to create, maintain, and foster conditions of equality and to protect the principle of non–discrimination, which is basically achieved by strengthening the processes of socialization based on respect for people's dignity.

In other words, the State should not finance “any” education. It should fund education that is aimed at satisfying the objectives included in the framework of human rights and the duties related to the realization of those rights.

Public funding corresponds to a vision of education as a right, and not as a marketable good. For this reason, it means much more than the allocation of money. It means making a substantial commitment that goes beyond simply managing the system.

44 The aims of education were masterfully clarified in General Comment No. 1 of the United Nations Committee on the Rights of the Child, CRC/GC/2001/1, 17 April 2001.
For this reason, the State needs to give priority to funding public schools, instead of private ones, since financing education is a political decision that implicitly carries a certain view of society, a certain idea of social justice, and the will to develop equal opportunities for all.

In the case of Chile, it is worth noting the elaborate mechanism of subsidies that indicates the existence of a complicated school system at the institutional and functioning levels. This system seems to give preference to the protection of the freedom of teaching instead of guaranteeing the right to education.

When subsidizing private schools is a widespread practice, it leads to a reduction in the role of the State, which becomes a mere provider instead of a guarantor of the right to education. Despite the controls that may exist with regard to institutional efficiency and effectiveness, and compliance with curricular aims, education management is no longer in the hands of the State. Therefore, this situation represents an inadequate delegation of the obligations that international human rights law has established.

Free schooling

Free schooling is a principle that is related to the right of access to education. Although this study could have expanded on it under the sub-title of “accessibility”, the author has chosen to present it immediately after the sub-title of “funding”, to make it easier to understand how issues of social investment are linked.

Tuition-free education is inevitably associated with public education, and linked to compulsory schooling. However, this does not mean ignoring the fact that private education is widely accepted around the world. Furthermore, a small proportion of private education is also tuition–free, as in the case of education offered by charities and some religious communities.

The International Covenant on Economic, Social and Cultural Rights (Article 13), requires that primary education shall be compulsory and free to all, and that secondary and higher education shall progressively become free of charge.

The progressive introduction of free education is based on Article 2 of the Covenant, which obligates States to achieve, by all appropriate means, the full realization of the right to education.

With this understanding, free secondary and university-level education should be guaranteed within a certain timeline, in accordance with the resources of each country and as a result of development and social inclusion processes.

“Taking steps” to achieve free secondary and university-level public education, as indicated in Article 2 of the Covenant, is an immediate obligation. It cannot be delayed.
Free primary, secondary, and university-level education is legally guaranteed in Argentina, Uruguay, and Finland, but in Chile there are still significant limitations, as is explained below.

Article 75 of Argentina’s Constitution guarantees free public education, and the National Law of Education declares in Articles 4 and 11 that all levels and types of education shall be tuition–free.

Article 71 of Uruguay’s Constitution declares that public primary, secondary, higher, industrial/vocational, artistic, and physical education shall be free. This principle is developed further in Articles 15 and 16 of the General Law of Education. Additionally, the Law of Early Childhood Education asserts that the free nature of early childhood education offered by the State is of social interest (Article 3).

In the case of Chile, the Constitution establishes the principle of free primary and secondary education (Article 19, Point 10), while the General Law of Education states that the State has the obligation to provide free education at the educational facilities that it owns (Article 4).

Nonetheless, in what represents a contradiction with the General Law of Education, the subsidized secondary education system is not free. Moreover, subsidized educational centres in the “jointly financed” category can demand monthly payments from students, as indicated in Article 24 of Decree–Law No 2.

All educational establishments that receive state subsidies, be they municipal or private, may also charge, for the admission process, an amount no higher than the tuition fees established annually by the Ministry of Education.

The regulation of Chile’s subsidized education system is covered by several legal instruments such as the General Law of Education, Law No. 20370; Law No. 20529 of the national system of quality control for early childhood, primary, and secondary education; Law No. 20248 of preferential school subsidies; Decree–Law No. 32 of 2005 that regulates educational benefits included in Law No. 19992; Law 19464 with the latest modification of 26 February 2011; Law No. 20501 that regulates and concedes salary increases for non–teaching staff at the educational establishments that it mentions; and Decree–Law No. 2 on state subsidies for educational establishments.

It is important to add that Article 11 of the General Law of Education asserts that subsidized establishments cannot cancel the enrolment of children whose parents have not paid tuition fees, and Article 13 makes it an obligation for owners of subsidized educational centres to declare the amount and conditions under which students are charged for the admission process.

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45 Article 16 of Decree–Law No. 2 states: “Subsidized secondary education establishments shall be allowed to charge tuition in the amount that the Ministry of Education determines every year…”
On the other hand, Article 30 of Decree–Law No. 2 makes it mandatory that a student who needs to enrol must have a place guaranteed at an educational establishment in his or her municipality. This may also apply if the pupil is rejected during the admission process at an educational centre that is subsidized with public funds.

Generally, free secondary education is guaranteed at municipal (public) schools.

The law of preferential school subsidies establishes this benefit for students whose socio–economic situation limits their opportunities to participate in the education process (Article 2). Students attending subsidized schools whose owner has signed an agreement with the Ministry of Education are entitled to this subsidy (Articles 4 and 7).

Article 16 of that same law establishes a subsidy for “concentrations of students in need”. Educational centres that sign up and stay within the preferential education regime have access to that subsidy.

In accordance with the terms of Decree–Law No. 4 on funding for universities, public universities are not free in Chile.

Finland’s Constitution establishes the right to free primary education. Section 31 of the Finnish Basic Education Act stipulates that education, books, educational materials, and learning resources are free. Additionally, it establishes the right of students with special educational needs to have interpretation and assistance free of charge. Section 34 includes the right to free medical care for students who suffer injuries as a result of accidents that occur in school and during the trip to and from the educational centre.

Finland’s Universities Act guarantees free undergraduate level education (Section 8.1), and also prohibits charging tuition for undergraduate studies to citizens of countries that are members of the European Union (Section 10.2).

The regulatory frameworks that have been mentioned show a shared tendency in favour of free schooling in Argentina, Uruguay, and Finland. Obviously, it is possible that when the implementation of the norms is examined, there may be in these countries cases of non–compliance, particularly because tuition-free education does not mean that parents and guardians do not have other expenses related to their children’s education. In situations of poverty, education is not always guaranteed even when there are no direct charges.

The concept of free education should be broader, so that economic obstacles that families face, and that do not allow access to education can be dealt with in a comprehensive manner.

As has been explained, the Chilean education model authorizes giving public funds to municipal and private establishments, and allows them to charge monthly fees, in the case of “jointly financed” centres, and tuition in the case of other subsidized secondary schools.
Katarina Tomaševski believes that the principle upon which voucher and subsidies systems rest “is enhancement of consumer (in this case parental) choice and an assumed enlargement of this choice through competition amongst schools. An additional, albeit implicit reason, has been the wish to subject public schools to competition, since they are seen as having monopolized schooling.”

These systems are underpinned mainly by the idea of protecting private investment in the creation of educational centres, and do not take into consideration the concept of education as a public good. Thus, controversies related to this kind of system usually revolve around economic arguments, and move away from the meaning and purpose of the right to education.

Even if there are strict processes of supervision and control, the Chilean education system is characterized by privatization initiatives, which can lead to segmentation, exclusion, and discrimination, besides the emergence of selective mechanisms.

According to official data, private educational establishments that receive subsidies went from 32% in 1990 to 52% in 2011, while municipal educational centres went from 58% to 39% during the same period.

It should not be forgotten that private education is a complement, and not a main component of a duty of the State.

With the exception of Chile, in the Latin American region it is uncommon for large amounts to be taken from the national budget and used to subsidize private educational centres. Frequently, this type of spending is geared towards supporting alternative academic projects, such as religious, artistic, and other types of education.

Contrary to other countries, where the issue of subsidies is not extensively legislated, in Chile there are many regulations both detailed and scattered, which reveal the extent and the impact of the subsidized sector in education. According to official figures, it represents 48% of the total offer (compared to 45.5% of municipal schools).

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47 Ibid., paragraphs 40–41.

48 Ministry of Education of Chile (2011), Sistema de Información General de Estudiantes (SIGE), Módulo Asistentes de la Educación – Establecimientos, Centro de Estudios MINEDUC.


50 Ministry of Education of Chile (2011), Sistema de Información General de Estudiantes (SIGE), Módulo Asistentes de la Educación – Establecimientos, Centro de Estudios MINEDUC, op. cit. Also see: Elacqua, G. et al., “Segmentación escolar en Chile: Consecuencia inesperada de un sistema de vouchers”, in Muñoz, V. (editor) (2006), El oro por las cuentas: miradas a la mercantilización de la educación, Luna Híbrida Ediciones, San José. According to this study, the system of subsidies that was installed 30 years ago has constituted a significant change in the distribution of public–private enrolment. It has remained mostly unaltered in its key components, and has increased private sector participation in education. While there is no consensus among researchers about the impact of the subsidies system in terms of quality, the evidence is over–conclusive about its effects in terms of segmentation.
The logic of privatization can be observed in other procedures, like admission exams that are authorized by Article 11 of the General Law of Education.

While discrimination in the treatment of students is illegal, there is no doubt that admission exams have differentiation criteria and effects, which in practice lead to selectivity and probably to stigmatization.

Organization

The organization of education systems set out in the legislation of each country, usually follows standards that recommend school levels according to age, and the academic paths to be followed, according to curricular plans and programmes.

Argentina includes early childhood, primary, secondary, and higher education (Chapters II and V of the National Law of Education).

In Uruguay, formal education is organized in levels and types that correspond to the different stages of the education process, and include early childhood, primary, lower level secondary, higher level secondary, tertiary, and graduate education (Article 22 of the General Law of Education).

Formal education in Chile is organized in four levels: early childhood, primary, secondary, and higher education, and includes modalities for specific sectors.

The Chilean education system contains an interesting variation: full–day schooling, which was determined in Law No. 19532, and which seeks to commit primary education establishments (3rd to 8th grade) to a minimum of 38–hour weeks, and secondary schools to 42–hour weeks.

However, this system has not received enough support, with some sectors arguing that it does not guarantee an improvement in student performance.

Finland organizes its education system in early childhood, primary, secondary, and university level (Basic Education Act). Different types of education also follow standardized criteria in the four countries, with academic, artistic, technical/vocational, and adult education offers, among others. Argentinean legislation includes education for persons who are in the context of deprivation of liberty, which represents a welcomed exception in Latin America.
Accessibility

Material Accessibility

Argentina’s Constitution establishes the conditions for each province to guarantee access to education. The provinces shall enact laws and take organizing and grassroots measures that will ensure participation in the public education system, as well as the autonomy and self-sufficiency of national universities. The Constitution also lays down the principles of non–discrimination, equity, and free access in public education (Articles 5 and 75).

These principles are explained further in the National Law of Education, by which the State guarantees all citizens access to information and knowledge, and the conditions to remain at and graduate from all levels of the education system, as well as the free nature of all levels and types of public education.

Those principles are part of the Uruguayan system, where education is presented as a basic human right that is guaranteed and promoted by the State. The General Law of Education recognizes the freedom and the right of all students to have access to “all sources of information and culture”, and that “teachers have the duty of making those sources available” (Article 11).

Material access to educational opportunities is included in Chile’s regulatory framework, since the Constitution and the General Law of Education call on the State to pay special attention to the protection of this right, by promoting the development of education at all levels and seeking its delivery to all. As has been mentioned before, the General Law sets out the admission processes; these are not part of the regulations in other countries.

Finland’s Basic Education Act makes access universal. In the case of primary education, it also takes into account the participation of boys and girls, and access to day care services.

Economic accessibility

The conditions of poverty and exclusion that affect a great part of Latin America, have led governments to create social security programmes, directed mainly at the most vulnerable families and communities.

Finland does not have to deal with the situations of social marginalization that most Latin American countries continue to face, including those countries that are considered in this study.
In that sense, conditional cash–transfer programmes for families in need, scholarship and benefits programmes, and other types of assistance for students in the national education system are present in Chile, Argentina, and Uruguay.

In the case of Chile, the General Law of Education and related legislation created an impressive catalogue of scholarships and benefits. For higher education, the scholarships named "Bicentenario", "Juan Gómez Millas", "Nuevo Milenio", “Hijos de los Profesionales de la Educación”, "Vocación de Profesor", and "Excelencia Académica" might alleviate in a certain way the financial difficulties facing students, since university-level education is not free, as it is in the other countries.

Economic accessibility to education requires the existence of a public budget that is sufficiently robust to allow the creation and maintenance of assistance programmes for students and their families.

In the case of Finland, the Basic Education Act stipulates that there must be reserves for public universities, in order to ensure appropriate funding for higher education.

In keeping with the need to ensure equal learning opportunities and to support policies to improve education, Argentina’s Law of Education Funding sets out an investment increase in education, science, and technology, as well as a more efficient use of resources for the period 2006–2010.

The increased funding stipulated by this law sought to enrol 100% of five–year–olds in early childhood education and to ensure the growing enrolment of three and four year olds, while giving priority to disadvantaged sectors; to guarantee a minimum of ten years of compulsory schooling for all children and adolescents; to ensure the inclusion of children and youth with special educational needs; to make sure that at least 30% of all primary education pupils have access to extended or full–day schooling; to promote resource allocation strategies and mechanisms that aim to guarantee –through the implementation of compensation systems– the inclusion and maintaining in school of children and youth from homes living below the poverty line; to eradicate illiteracy and to strengthen the democratization, quality, innovation processes, and relevance of university level education.

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51 Law No. 19949 and Decree No. 29 (2011) established the “Chile Solidario” programme. While this programme is considered as a social protection initiative for the poor, it does have a special psychosocial approach contained in the family accompaniment of the “Puente” (Bridge) programme. More specifically, the idea is to articulate all public programmes around the needs of beneficiaries. Since April 2011, new special components for families in extreme poverty situations have been added through the Bonus for an Ethical Family Income initiative.

52 Through Decree No. 1602/2009, the Government of Argentina has implemented a per child bonus that has been called “General per Child Bonus for Social Protection.” This policy is focused on children whose parents do not have regular work. This bonus was created as a complement for the law of family bonuses, Law No. 24714.

53 Uruguay’s Law No. 18227 for family bonuses created the Programme of Conditioned Monetary Contributions, directed at children and adolescents from vulnerable socio–economic homes.. It is part of the “Equidad” programme, which has been implemented since 2008, and is mainly focused on education. Monetary transfers tend to have a significant impact in situations of poverty and extreme poverty. At the same time, the transfers encourage children and youth to stay in the formal education system, or to return to it in the case that they had left.
Non–discrimination

By adopting democratic principles, the constitutions of the concerned countries recognize, for all persons, the right to education related to the respect and exercise of the other human rights, as recognized by instruments of international human rights law.

Argentina’s Constitution celebrates the ethnic and cultural pre–existence of indigenous peoples, and guarantees respect for their identity and the right to bilingual intercultural education.

Argentina’s National Law of Education includes, among the objectives of educational policy, the requirement to ensure conditions of equality, while respecting existing differences among people, and rejecting gender or any other type of discrimination; as well as promoting at all levels and types of education the understanding of the concept of eliminating all discrimination.

Uruguay’s General Law of Education entrusts the State with the duty of guaranteeing the rights of minorities or vulnerable sectors, with the goal of ensuring equal opportunities in the full exercise of the right to education and effective social inclusion. Also, it establishes participation as a basic principle of education, and it calls on the State to give specific support to persons or sectors that are particularly vulnerable, in order to allow them to enjoy equal opportunities in access, retention, and learning achievements.

Chile’s General Law of Education explicitly refers to educational inclusion and equal opportunities as duties of the State, which should in particular strive to reduce inequalities resulting from economic, social, ethnic, gender, or territorial factors. To this end, the legislation sets out the task to disseminate widely knowledge of rights and the principles of active participation in society for persons with disabilities. Among its educational goals, the Chilean system seeks – in educational institutions with high percentages of indigenous students – to develop learning that will allow pupils to maintain their command of the indigenous language, to learn about the history and culture of their people, and to understand different types of texts in oral and written form.

Finland’s Constitution includes the principle of equality before the law, which is fundamental in guaranteeing educational opportunities (Article 6). It also includes freedom of religion and of conscience, the right to one’s own language and culture, and the right to education. In the case of the latter, the constitutional text puts the emphasis on equal opportunities of access to education that is different from basic education (Articles 11, 16, and 17). The Finnish Constitution also shares the concern for multi-ethnic recognition, appreciation, and inclusion, when it defines the Sami and Roma languages and cultures as part of the cultural heritage of the country.

54 However, the Committee on the Rights of the Child has expressed its concern about the fact that the principle of non–discrimination is not applied in Chile to indigenous children, poor children, girls, children with disabilities, and children who live in rural areas, particularly about the access to appropriate health care and educational services. See Concluding Observations/Comments CRC/C/15/Add.173, 3 April 2002, paragraph 26.
In keeping with the recognition of the principle of equality enshrined in the Constitution, the Basic Education Act includes Sami and Roma, as well as sign language, as languages of instruction. Even further, it authorizes teaching in languages that are different from the students’ first language, if it does not put their learning capacity at risk. This law also stipulates that for those persons who reside in Sami regions, education shall be provided in that language. In cases where the educational institution uses more than one teaching language, parents or legal guardians must choose the teaching language for their children.

Acceptability

The acceptability of education has at least two significant meanings. On the one hand, it refers to the need of having a supply of quality education, and on the other hand, it addresses the need to have education that is culturally relevant for the community.

Quality and relevance are inextricably linked in educational processes, since knowledge, capacities, and skills are not constructed in isolation from people's social and cultural environment.

For this reason, quality in education is not synonymous with good student performance. Otherwise, we could adopt a quantitative approach that would reduce the richness of learning to a few data about performance, which are usually more related to the limitations of the system than to the good use, enjoyment, and appreciation of the education experience.

The construction of knowledge within inclusive societies, participation, respect for diversity, and the realization of human rights are at the core of education.

According to the Committee on the Rights of the Child, education means much more than the mere access to formal schooling. It includes the right to a specific quality of education, as well as to a broad range of life experiences and learning processes that will allow children and adolescents, both individually and collectively to develop their personalities, talents, and abilities for a full and satisfactory life within society.56

As can be inferred from Articles 28 and 29 of the Convention on the Rights of the Child, good quality education shall be the one that allows for the construction of awareness, knowledge, and actions that protect and develop the dignity of life and human rights in all people. An education that does not realize human rights is a low quality education.

55 The Committee on the Rights of the Child has recommended to the Government of Finland enhancing the knowledge of teachers about different cultures and the difficulties faced by children. It has recommended hiring more Roma professionals at schools, including special needs' assistants. This was done as a result of observing the high absenteeism and drop-out rates, low performance, and the high number of boys and girls in special education classes. See Concluding Observations/Comments: Finland CRC/C/FIN/CO/4, 3 August 2011, paragraphs 52–53.
56 Committee on the Rights of the Child, General Comment No. 1, CRC/GC/2001/1, 17 April 2001.
The right to education constitutes a collective responsibility that implies respect for the individual traits of each person. It is the practice of diversity, in the sense that learning presupposes recognizing and respecting the other. Therefore, there is a possibility for consensus, accepting dissent, and having a respectful dialogue focused on peaceful coexistence.

The search for relevance in education must lead educational systems to strengthen intercultural practices, as a preparation for democratic life.

The need to construct active, inclusive, responsible, and autonomous citizenship must also be built on the basis of the different cultures, languages, indigenous traditions, and customary law.

This interaction in the autonomy of peoples and persons leads to a very rich learning process and encourages the strengthening of capacities and opportunities, since the more endogenous education experiences there are, the better and broader will the preparation of education resources be.57

The right to education of each people arises from the need to maintain and express a key sense of belonging and of origin, which has to do with a different kind of resistance, related to the right to cultural, social, and political autonomy.

Additionally, that right to education entails the need to develop ways of ensuring the enrichment of educational modalities, based on local realities and aspirations of the communities.

All these considerations and factors allow us to understand that education quality is a dynamic phenomenon that is in construction, that must be defined as a process, and that must be based on pluralistic participation, in line with people’s historical experiences and needs.

These reflections serve as an introduction to the normative texts that are often quoted, and are useful to determine the degree of compliance with the principles enshrined in the Convention on the Rights of the Child, which the four countries in this study have signed.

According to Argentina’s National Law of Education, primary education seeks to ensure that all boys and girls have access to a body of general knowledge that will allow them to participate fully in family, school, and community life in a way that is appropriate for their age.

Meanwhile, the law assigns to secondary education the goal of training adolescents and youth for the full exercise of citizenship, work, and the continuation of their studies. For this, secondary education must promote access to comprehensive knowledge through

57 Inter–American Institute of Human Rights (2003), *Campaña educativa sobre derechos humanos y derechos indígenas*, San José, p. 173.
the different subject areas of which it is composed, besides its main problems, contents, and methods: to develop the necessary capacity for an intelligent and critical comprehension and use of the new vocabulary created in the field of information and communication technologies; to develop vocational guidance processes and stimulate artistic creation, free expression, aesthetic taste, and the understanding of different cultural manifestations.

In order to guarantee the quality of education, cohesion, and national integration, the Ministry of Education, Science, and Technology, jointly with the National Education Council, shall: a) determine common structures and curricular contents, and core learning priorities for all levels of compulsory schooling; b) establish mechanisms for total or partial periodic renovation of such common curricular contents; c) ensure the strengthening of initial and continuing teacher training; d) implement an assessment policy that is conceived as a tool for improving education quality; e) encourage innovation and experimentation processes in education; f) provide all schools with the materials that are necessary to ensure quality education, such as infrastructure, scientific and technological equipment, physical education and sports supplies, libraries and other pedagogic materials, giving priority to schools that disadvantaged students attend.

In the case of Uruguay, education shall consider the human rights enshrined in the Universal Declaration of Human Rights, the country’s Constitution, and the international treaties that Uruguay has ratified, as key elements that shall always be included in educational proposals, programmes, and actions, and shall generally become an essential reference framework, particularly for educators who work in any of its institutions (Article 4 of the General Law of Education).

The General Law of Education establishes, as the goals of national education policy: promoting justice, solidarity, freedom, democracy, social inclusion, regional integration, and the search for a kind of learning that will allow people to achieve comprehensive development; training thoughtful, self–sufficient, considerate, non–discriminatory citizens who adopt leading roles in society; promoting the development of national identity from a democratic approach, based on the search for alternative solutions in the resolution of conflicts, a culture of peace, different forms of expression, and cultural diversity; encouraging creativity, artistic, scientific, and technological innovation, incorporating work as one of the basic components of the education process.

In Chile, the General Law of Education establishes the general objective of guaranteeing quality education and of making it available to all (Article 6).58

In line with this principle, the Agency for Quality in Education and the Superintendent’s Office for Education are in charge of guaranteeing education quality, in accordance with

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58 The Committee on the Rights of the Child has recommended to the Chilean government discussing and analyzing the principles and provisions of the Convention, in order to include them in the curricula of all levels of the education system. Concluding Observations: Chile, CRC/C/15/Add.173, 3 April 2002, paragraph 19.
the law of the national system for ensuring quality in early childhood, primary, and secondary education.

The General Law guarantees that all students, independently of their condition and circumstances, must reach the general learning objectives and standards, and all students must have the same opportunities to receive quality education, giving priority to persons or groups who require special support (Article 3).59

The Agency for Quality in Education must design and implement an assessment system for the performance of educational establishments and providers. This evaluation must be based on performance standards that the Ministry of Education has developed, and that the National Education Council has approved.

The performance evaluation for educational establishments and providers shall be geared towards strengthening their institutional and self–assessment capacities and improvement plans, and ensuring the continuous improvement of the quality of education they offer (Article 38).

The national system for ensuring quality in early childhood, primary, and secondary education (Law No. 20529) shall consider:

   a) Learning standards for students that are in line with the general objectives stipulated by the law and with their respective curricular bases.
   b) Other indicators of education quality and of standards for the performance of establishments and their owners.
   c) Policies, mechanisms, and instruments to support members of the education community and educational establishments, so that they can achieve learning standards and other indicators of education quality, thus strengthening institutional and self–assessment capacities and continuously improving the education that is offered.

Law No. 19253 regulates the protection, promotion, and development of indigenous rights, and establishes the National Indigenous Development Board. “… Recognizing, respecting, and protecting indigenous cultures and languages includes: a) the use and conservation of indigenous languages alongside Spanish in areas with a high density of indigenous people; b) the establishment of a national education system with curricular unity, so that students have access to an appropriate level of knowledge about indigenous cultures and languages (Article 28), as well as plans and promotion of indigenous cultures.”

According to Article 32 of this law, the intercultural bilingual education system must prepare indigenous students for interacting both within local society and beyond it.

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59 The Committee on Economic, Social and Cultural Rights had expressed in 2004: “While noting the progress made in increasing education coverage, the Committee is concerned at the disparity in the quality of education offered in municipal and private schools. The Committee is also concerned about the relatively high drop–out rates, especially among teenage girls” E/C.12/1/Add.105, 1 December 2004, paragraph 29.
In Finland, the quality of education is determined based on evaluation processes led by the Assessment Council, which responds to the Ministry of Education and is made up of independent experts. According to Section 21 of the Basic Education Act, the purpose of evaluating education is to support its development and to improve learning conditions. Also, the National Board of Education must carry out nationwide evaluations on specific issues, selected learning results according to classroom hours, and the curriculum.

Adaptability

Adaptability in education is based on acknowledging human diversity. The idea is that educational establishments develop curricular and administrative processes that are flexible enough to be adapted to students’ needs.

Diversity is appreciated by recognizing the different identities existing in educational establishments. For this reason, recognizing and protecting differences in an educational context may help nurture deep-rooted democratizing practices, and thus empower historically marginalized sectors.

Adapting education to the needs of students implies practising inclusion, which by itself enriches the whole school environment. On the one hand, it offers opportunities to groups that are discriminated against, and on the other hand it counters stereotypes and discrimination.

Adaptability is a key component of the right to education, which covers all students. Nonetheless, it is common for this element to be mentioned when referring to persons with special educational needs.


In keeping with these obligations, States should develop legislative and financial frameworks that focus on recognizing inclusive education as a right and go beyond the services provided for persons with disabilities. States should also identify common norms in relation to the right to education; establish a basic framework for the participation of persons with disabilities and their family members; ensure transition processes from segregated to inclusive educational environments; clearly identify persons and officials of the Ministries of Education in charge of assuming the duties and responsibilities regarding inclusion; guarantee an appropriate and sustainable
allocation of resources; and set up monitoring and evaluation mechanisms.\textsuperscript{60}

The regulatory frameworks of the countries under observation include some key elements of the principles that guide inclusive education, although in practice it is very likely that transition processes face significant obstacles, which this study will not examine.

Argentina’s Constitution lays the foundation of an education that is geared towards the consolidation of national unity while respecting local and provincial particularities. It assigns constitutional status to human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Some articles include affirmative action measures in favour of different vulnerable groups, among them persons with disabilities.

Also in Argentina, with the goal of guaranteeing the right to education and school integration, and favouring the social insertion of persons with disabilities, the National Law of Education obliges authorities in each jurisdiction to take the necessary measures\textsuperscript{61} to open the way for a comprehensive education that will allow access to technological, artistic, and cultural knowledge, ensure coverage for special education services, transportation, technical and material resources needed to develop the school curriculum and guarantee physical accessibility of all school buildings.

In the Argentinean system, home and hospital education has been established for early childhood, primary, and secondary levels to guarantee the right to education for all students who –for health reasons– are not able attend an educational institution regularly for at least thirty consecutive days, as part of compulsory schooling.

The aim of this provision is to guarantee equal opportunities for students, allow them to continue with their studies, and reinsert them into the common system whenever possible.

Distance learning is a pedagogic option that can be applied to all levels and types of the national education system; it can contribute to the achievement of education policy objectives, and can be applied to both formal and non–formal education.

Uruguay also includes, as an option, distance learning be it assisted or online.

As part of Uruguay’s adaptability policies, students who are pregnant have the right to continue with their studies, in particular to enter and remain in the educational centre, to receive specific educational support, and to justify their pre- and post-natal absences, which cannot be used as a reason for them to fail their school year.


\textsuperscript{61} Nonetheless, the Committee on the Rights of the Child has expressed its concern about the insufficient efforts made in Argentina to ensure that the training of professionals who work with children with disabilities will provide them the necessary knowledge and skills, particularly regarding inclusive education. \emph{Concluding Observations: Argentina}, CRC/C/ARG/CO/3-4, 21 June 2010, paragraph 56.
Chile also offers special or differential education and curricula. The criteria and guidelines for curriculum development must be approved by the National Education Council.

Special or differential education is of a cross-cutting nature at all levels, be it in regular or special educational establishments. It provides a set of services, human resources, technical experts, specialized skills and support to address the special needs that any student might present, temporarily or permanently during his or her schooling, as a result of a shortcoming or a specific learning difficulty.

According to the law, the special education modality and school integration projects must have guidelines in order to build appropriate curricula for special schools and schools whose administrators wish to develop integration projects.

The Chilean model of adaptability includes curricular adjustments for specific educational needs, like those implemented in the framework of intercultural education, prison schools, and hospital schools, among others. It is a regulatory initiative that responds to the general principles of international norms.

In the case of Finland, the Basic Education Act establishes mechanisms to guarantee the right to education for students who are hospitalized, and entrusts local authorities with the duty of enforcement.

If a child has an illness or disability that prevents him or her from achieving the objectives of basic education within the envisioned timeline, the law stipulates that compulsory schooling shall begin one year earlier than provided and be 11 years in duration (Section 25).

Undoubtedly, this provision is problematic, because it does not show that educational processes may be adapted to the special capacities of children.

4. Conclusions

Although this study has identified common issues and concerns regarding the right to education, the regulations that have been analysed vary in their reach, development and nuances, depending on the historical and political specificities of each country.

In any case, given that the States under study have ratified the international human rights instruments that deal with the standards on the right to education, there is a trend towards recognizing those rights and incorporating them into current legislation. To

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62 However, the Committee on the Rights of the Child has expressed its concern about the lack of medical personnel in schools, particularly staff who can give psychological support to boys and girls. Concluding Observations: Finland, CRC/C/FIN/CO/4, 3 August 2011, paragraph 42.
begin with, the constitutions establish key obligations for governments and public institutions in general.

For example, the principles of equality, tuition–free access, equity, non–discrimination, and respect for diversity are included in the constitutional texts, even if there are variations or contradictions in the way that they are delivered in legislation.

This reaffirms the significance of sharing efforts around inclusive education regulatory approaches, not only by considering and implementing measures for persons with disabilities, but also by opening the way for others to comprehend diversity, and thus the adaptability of educational processes.

Diversity (cultural, gender, social, in skills, in needs) should characterize all educational processes. That is why the law and the practice, translated into public policy, should promote plurality, and not consider homogeneity and uniformity as the only possibility for action.

As guarantors of the right to education, States should give priority to the protection of diversity that would facilitate the recomposition of the social fabric, and eradicate the disadvantages and asymmetries that affect the educational experiences of boys, girls, adolescents, and youth in a negative way.

The differences in the regulatory frameworks, related to the conception and breadth of state duties and with the objective declaration of purposes, shows the need to move forward in the construction of a common language around the goals of education.

Strengthening shared approaches regarding educational goals would also lead to greater regional integration (not only at the economic level) and more intense processes of multilateral cooperation in education, science, technology, and cultural issues.

As has been observed, Chile, Argentina, and Uruguay have some common trends in their legislation directed at marginalized sectors. The effect of that legislation in education suggests that there are opportunities to strengthen shared approaches, as in the case of migrant populations and indigenous communities.

These concerns could be addressed by making sure that educational issues are included in all multilateral discussions.

The four countries have common legal visions and actions with respect to compulsory education, and serious efforts are being made to improve funding for education. However, there is a need for legal mechanisms that would ensure a progressive increase in education spending, for example, by assigning annual goals, as contained in Argentina’s legislation.

Regarding the quality of education, there is a special emphasis on evaluating performance, which undoubtedly is important. However, there should be qualitative
evaluations from a human rights approach, based on the development of indicators for exclusion and discrimination, among others.

The crisis in education is linked to problems that these States share, such as difficulties in budget allocations, low quality, discrimination, and the treatment of education as a marketable commodity. The transgressions are so broad, that they question, challenge, and invite us to work for a new order.

The struggle for tuition–free access to education is a regional issue, and the demand for better conditions emerges as a result of demonstrations that began this year in Chile, and have expanded to other countries in Latin America.

According to the Chilean Observatory of Educational Policy, the General Law of Education contains some structural elements that do not consider education as a right, and are the cause of the emergency situation that the country is going through. For example:

- The law does not solve social asymmetries and disparities that have been documented in educational opportunities.
- The right to education is not guaranteed in the same way that other rights are, like the right of private property, freedom of teaching, and the free enterprise system.
- The rights of the owner of an educational establishment are given more priority than the participation of education sector actors in their education.
- The law does not change the role of the State, which is limited to “subsidizing”.
- The law does not introduce changes to the system of education funding. This system is based on direct transfers to the owners of educational establishments. It is harmful, because it encourages competition among schools to enrol more students in order to cover their monthly expenses.

These elements have led students to reject the law and the educational system as a whole, because they consider them as favouring a disproportionate participation of the private sector in education. The non–free character of education in Chile is obviously a central issue.

Additionally, the study has exposed the tremendous dispersion of the regulatory framework for education in Chile, which makes it more complicated to comprehend it and slows down its enforcement.

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63 ¿Por qué la Ley General de Educación no mejora el sistema educativo en sus pilares?, (http://www.opech.cl/bibliografico/doc_movest/pt_lge_no_solucion.pdf)