

Constitutional Approaches to the Right to Education



WORLD Policy Analysis Center

NUMBERS TO NOTE

83%

of constitutions explicitly protect some aspect of the right to education

63%

of current constitutions adopted before 1970 include a right to education

100%

of current constitutions adopted since 2000 include a right to education

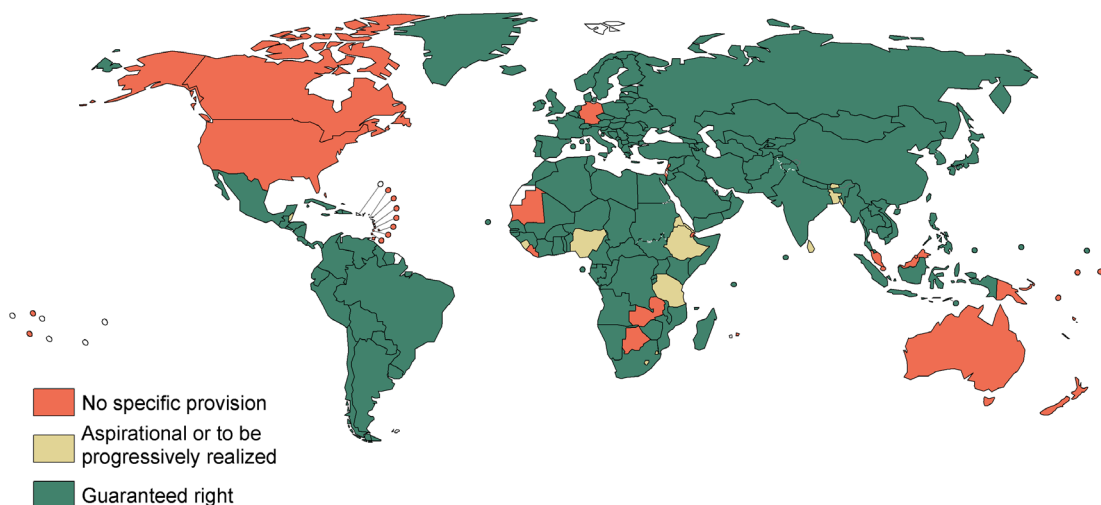
ABOUT ADVANCING EQUALITY

To learn more, please see [Chapter 9](#) of the open-access book [Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide](#) (Jody Heymann, Aleta Sprague, and Amy Raub; University of California Press, 2020).

Analyzing the constitutions of all 193 United Nations countries, *Advancing Equality* traces 50 years of change in constitution drafting and examines how stronger protections against discrimination, alongside core social and economic rights, can transform lives.

- The benefits of education for individuals, families, and economies are numerous and well known:
 - *Income and earnings:* In general, increased educational attainment leads to higher-paying jobs and lower rates of unemployment
 - *Health:* Studies have found that higher educational attainment supports better health outcomes for both men and women, while female education in particular leads to lower infant, child, and adult mortality rates; lower rates of stunting and malnutrition; and higher rates of immunizations
 - *Gender equality:* For each additional year a girl stays in school, her wages rise between 10 and 20 percent, while her odds of early marriage decrease
 - *Economic growth:* Greater educational attainment was responsible for around half the economic growth across 30 OECD countries from 1960 to 2008
- At the same time, 59 million primary school-age children remain out of school globally, due to barriers including poverty and discrimination
- Enshrining the right to education in the constitution can provide a powerful foundation for its realization, including by eliminating financial barriers, prohibiting discrimination, and improving quality:
 - In **Colombia**, the constitution's protection of free education led to the removal of fees that had prevented enrollment by children displaced by internal conflict
 - In **India**, a decades-long movement to establish a fundamental right to education resulted in a constitutional amendment and then a landmark law, the Right to Education Act, which has improved enrollment and narrowed the gender gap nationwide
 - In two recent cases from **South Africa**, advocates successfully demanded the provision of desks, chairs, and textbooks in

Does the constitution explicitly guarantee some aspect of citizens' right to education?



rural and under-resourced schools, citing both the constitution's right to education and its prohibition on indirect racial discrimination

- As of 2017, 83% of countries explicitly protect some aspect of the right to education
 - 68% of constitutions explicitly protect the right to primary education
 - 46% explicitly extend this protection to secondary education
 - 31% protect the right to tertiary education
- Some countries address financial barriers:
 - 53% of constitutions guarantee that primary school will be tuition-free for all citizens, while a further 4% include commitments to “progressively realize” free primary education and a further 8% use aspirational language
 - 30% guarantee tuition-free secondary school for all citizens, while a further 5% commit to progressive realization and a further 3% include aspirational provisions
- Addressing discrimination is less common:
 - 22% of constitutions explicitly guarantee non-discrimination or equal opportunities in education generally or for 3+ groups
- An additional 13% of constitutions provide these guarantees to 1 or 2 specific marginalized groups
- Education rights have become more prevalent over time:
 - Just 63% of current constitutions adopted before 1970 include a right to education, compared to all constitutions that have been adopted since 2000
 - Whereas only 51% of current constitutions adopted in the 1970s protect free primary education, 79% of those adopted in 2010–2017 do so
- Individual countries reveal different paths to strengthening rights and implementation, such as expanding the scope of the right to education, advocating for an aspirational provision to become an enforceable right, and urging the adoption of new laws detailing the right's scope. Examples include:
 - In **Mexico**, the legislature amended the constitution in 2012 to extend the guarantee of free education from primary to secondary school
 - In **Swaziland**, parents brought a lawsuit in 2009 to compel the government to implement the 2005 constitution's commitment to provide free primary education within 3 years of its enactment



WORLD Policy Analysis Center

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The **WORLD Policy Analysis Center (WORLD)** aims to improve the quantity and quality of globally comparative data on policies affecting health, development, well-being, and equity.

With these data, **WORLD** informs policy debates; facilitates comparative studies of policy progress, feasibility, and effectiveness; and advances efforts to hold decision-makers accountable.

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