Right to Education Initiative

# Violations of the right to education - Brief

Violations of the right to education occur when a state fails, either deliberately or through neglect, to comply with its human rights obligations regarding education.

## Violations are linked to states' obligations

To identify violations of the right to education by a state, you must know what its obligations are as defined under international law (treaties ratified by the state) or national law (constitutions, education acts or other laws related to education).

States' violations may relate to:

- their obligations to respect, protect and / or fulfil the right to education
- their obligations under the 4As framework, meaning states' obligations to make education available, accessible, acceptable and adaptable
- their obligations to ensure access (economic, physical, administrative)
- their obligations to ensure quality education
- their obligations to finance education to the maximum of their available resources

## Violations may be due to states' commission or omissions

Violations of the right to education may occur through direct action of states (act of commission) or through their failure to take steps required by law (act of omission).

## Deprivations and inequalities in the enjoyment of the right to education are not always associated to violations of the right to education

Deprivations and inequalities in the enjoyment of the right to education may indicate possible violations of the right to education, but this is not always the case. To identify violations, we look at what states have done or not done to respect, protect and fulfil the right to education, including their efforts to progressively fully realise the right to education.

© Right to Education Initiative, 2026

## States have obligations of progressive realisation and of immediate effect, which are important to differentiate when assessing violations of the right to education

The obligations of progressive realisation can be met over a period of time while the obligations of immediate effect are non-negotiable and have to be met immediately.

- **Obligations of progressive realisation**

As for other economic, social and cultural rights, international human rights law allows states to realise the right to education *progressively*, implicitly recognising that they may have resource constraints and that it may take time to fully implement all the dimensions of this right. They are allowed to implement some dimensions of the right to education by steps. For instance, making first higher education free for economically disadvantaged students and then to all students when they have the resources to do so.

**Elements of the right to education that are subject to progressive realisation include**: free secondary education; free technical and vocational education and training (TVET); free higher education; free fundamental education for all those who have missed all or part of their primary education; improvement of the quality of education.

However, recognising that some dimensions of the right to education can be realised progressively does not mean that states are allowed to sit and do nothing until they have sufficient resources to realise and fulfil the right to education. On the contrary, they have to move as expeditiously and effectively as possible toward the full realisation of the right to education, demonstrating they are making every possible effort towards this aim. **This requires them to mobilise the maximum of their available resources towards the realisation of the right to education**, primarily through domestic resources, including through a fair and progressive taxation, or through international assistance and cooperation.

The obligation of states to progressively realise the right to education implies that **states should not take deliberate backward steps by adopting measures that will repeal or restrict existing guarantees of the right to education**. For example, the introduction of school fees when education used to be free, or the reduction of the number of school seats or the decrease of the education budget *could* constitute retrogressive measures, if unjustified. To justify such measures, a state would have to demonstrate that it adopted the measure only after carefully considering all the options, assessing the impact and fully using its maximum available resource.

- **Obligations of immediate effect**

Despite the above-mentioned aspects of the right to education that are subject to progressive realisation, no matter how limited their resources are, **all states have immediate obligations to implement the following aspects of right to education**:

© Right to Education Initiative, 2026

➔ ensure minimum core obligations to meet the essential levels of the right to education, which includes prohibiting discrimination in access to and in education, ensuring free and compulsory primary education for all, respecting the liberty of parents to choose schools for their children other than those established by public authorities, protecting the liberty of individuals and bodies to establish and direct educational institutions

➔ take appropriate steps towards the full realisation of the right to education to the maximum of its available resources. A lack of resources cannot justify inaction or indefinite postponement of measures to implement the right to education. States must demonstrate they are making every effort to improve the enjoyment of the right to education, even when resources are scarce.

## Examples of violations

- The introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education;
- Allowing discrimination, for example by denying access to children who cannot produce a birth certificate;
- The failure to take measures which address *de facto* educational discriminations;
- The use of curricula inconsistent with the aims of education; textbooks that incites hatred
- The failure to introduce, as a matter of priority, primary education which is compulsory, available and free to all;
- The failure to take "deliberate, concrete and targeted" measures towards the progressive realization of secondary, higher and fundamental education
- The failure to provide schools with enough textbooks and other necessary supplies;
- The failure to provide good training for teachers or to pay them adequate salaries;
- The prohibition of private educational institutions;
- The failure to ensure private educational institutions conform to the "minimum educational standards";
- The denial of staff and students' academic freedom; The failure to finance education adequately;
- Cuts in the education budget, not justified;
- The introduction of enrolment fees for secondary schools where it was free before.

**See also illustrative cases**:

- Failing to deliver textbooks (South Africa)
- Failing to regulate private actors' involvement (Uganda)
- Using separated classes for Romani children (France)
- Prohibiting pregnant school girls from accessing school (Sierra Leone)
- Failing to provide accommodation for persons with disabilities to access tertiary education (Mexico)
- Denying access to public schools due to irregular administrative status (Spain)
- Excluding a child with disabilities from the mainstream education system (Spain)

© Right to Education Initiative, 2026

- Failing to provide school meals (South Africa)
- Using corporal punishment in schools (South Africa)
- Denying admission to a 5 years old boy to school because he was believed to be HIV positive (Sri Lanka)
- Failing to meet the adequacy requirements of the Constitution regarding the state education financing system, and therefore failing to provide approximately one-fourth of public school students, particularly minority students, with basic skills in reading and math (Kansas, USA)
- Parents not letting their daughters attend swimming lessons (Switzerland)
- Private schools not respecting minimum standards (Kenya, Uganda)
- Introducing mandatory religious lessons (Norway)
- Not awarding an official certificate of completion for secondary education to a disabled child despite he has met all the requirements of his personalised education project (Argentina)
- Closing a facility that provided intensive services and individualised assistance to students with severe learning disabilities. (Although the School District was subject to severe funding constraints, it was found to have not acted with a bona fide and reasonable justification) (Canada)
- Not providing free transportation (Colombia)
- Not treating a transgender student according to his identity (Colombia)

This list is only illustrative as there are much more violations of the right to education.

## To go further

- Right to Education Initiative, UNESCO. 2019. Right to Education Handbook (chapters 3, 4)
- Right to Education Initiative Monitoring guide
- Amnesty International, Right to Education Initiative. 2012. Haki Zetu: ESC Rights in Practice - Right to Education
- Fons Coomans, 2007. Identifying violations of the right to education

© Right to Education Initiative, 2026