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*Migration, displacement and education:  
Building bridges, not walls*

**The status of the right  
to education of migrants:  
International legal framework,  
remaining barriers at national level  
and good examples of states' implementation**

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*‘Human rights are not a matter of charity, nor are they a reward for obeying immigration rules. Human rights are inalienable entitlements of every human being, wherever they are and whatever their status.’*

Navi Pillay, Former United Nations High Commissioner for Human Rights<sup>1</sup>

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<sup>1</sup> Pillay, N. 2011.

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## ABSTRACT<sup>2</sup>

In 2017, there were an estimated 258 million people living outside their country of origin. Of them, about 30 million were school-aged. Migrants include different groups such as refugees, asylum seekers, migrant workers, stateless, undocumented migrants and internal displaced persons. The right to education of migrants, irrespective of their legal or migration status, is guaranteed under international law on the basis of the human rights principles of equality and non-discrimination. The main treaties guaranteeing the right to education apply to all migrants. In addition, migrant-specific treaties include provisions on the right to education. This international legal framework applies only to the extent that states have committed to it. At national level, migrants face legal and practical barriers to effectively enjoying their right to education. Some states show good examples of protecting the right to education of migrants in law and in practice.

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<sup>2</sup> Written by the Right to Education Initiative (RTE) - a global human rights organisation focusing on the right to education. RTE promotes education as a human right, making international and national law accessible to everybody. We conduct research and legal analysis and we develop tools and guides to help understand and effectively use human rights mechanisms to claim and enforce the right to education. We build bridges between disciplines (human rights, education and development), actors (CSOs, international organisations, academics), and language communities, linking international, national and local advocacy with practical engagements leading to positive changes on the ground. For more information, see RTE website: [www.right-to-education.org](http://www.right-to-education.org). This report was written by Delphine Dorsi and Fanny Petit. Special thanks to Advocates for International Development and the following law firms for their generous pro bono work in providing information about the implementation of the right to education at national level: Allen & Overy, DLA Piper, Onyango and Company Advocates, Orrick, White & Case.

## INTRODUCTION

In 2017, there were an estimated 258 million people living outside their country of origin,<sup>3</sup> which would be the fifth most populous country of the planet if they came together to form a country.<sup>4</sup> As explained by the UN Office of the High Commissioner for Human Rights (OHCHR), ‘they move for a variety of reasons from the search for better living and working conditions to security, due to poverty, conflicts, human rights violations or environmental degradation. While for some migration is a positive and empowering experience, migrants, notably those in an irregular situation, tend to live and work in the shadow, are disproportionately vulnerable to discrimination and marginalization and are often denied their fundamental rights, such as the right to education.’<sup>5</sup>

As of 2017, 30 million migrants were school-aged children.<sup>6</sup> Of them 28 million, or 1 in 80 were living in forced displacement – this includes 12 million child refugees and child asylum seekers,<sup>7</sup> and 16 million children living in internal displacement due to conflict and violence. In addition, there were 7 million children internally displaced by natural disasters.<sup>8</sup> According to statistics, refugee children are five times more likely to be out school than other children. Only 50 per cent of refugee children are enrolled in primary school, and less than 25 per cent of refugee adolescents are enrolled in secondary education.<sup>9</sup>

As highlighted by the former Special Rapporteur on the right to education, Vernor Muñoz, ‘*there is ample evidence that migrant, refugee and asylum-seeking students in many countries face a higher risk of marginalization with regard to education systems and opportunities when compared with native students*’.<sup>10</sup> Legal, administrative and practical barriers prevent them from effectively enjoying their right to education.

Yet, everyone has the right to education, including migrants, irrespective of their legal or migration status, based on the human rights principles of equality and non-discrimination. International human rights law also

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<sup>3</sup> United Nations. 2017.

<sup>4</sup> OHCHR. 2014.

<sup>5</sup> OHCHR. *Migrants and human rights*.

<sup>6</sup> UNICEF et al. 2018.

<sup>7</sup> According to the European Union Agency for Fundamental Rights, more than 600,000 children applied for asylum in the EU in 2016, including some 100,000 unaccompanied children. See EU Agency for Fundamental Rights. 2017b.

<sup>8</sup> UNICEF. 2018.

<sup>9</sup> UNICEF. 2017a. p. 5. Citing Nicolai, S. et al. p. 10.

<sup>10</sup> Muñoz, V. 2010. Para. 34.

emphasises the right to education of specific categories of migrants, such as refugees or internal displaced persons.

In addition, with the Education 2030 agenda adopted in 2015, States have politically committed to ‘ensure inclusive and quality education and promote lifelong learning opportunities *for all*,<sup>11</sup> including migrants.<sup>12</sup> They ‘note[d] with serious concern that, today, a large proportion of the world’s out-of-school population lives in conflict-affected areas, and that crises, violence and attacks on education institutions, natural disasters and pandemics continue to disrupt education and development globally’ and ‘commit[d] to developing more inclusive, responsive and resilient education systems to meet the needs of children, youth and adults in these contexts, including internally displaced persons and refugees.’

Following the 2016 adoption of the New York Declaration for Refugees and Migrants, which reaffirmed the human rights of all refugees and migrants, regardless of status, and pledged to fully protect such rights, including the right to education,<sup>13</sup> State representatives pledged to move towards the adoption, in 2018, of a Global Compact on Refugees and a Global Compact for Safe, Orderly, and Regular Migration. Relevant stakeholders have called for the right to education to be at the core of States’ commitments under these two Global Compacts.<sup>14</sup>

In the meantime, with the help of experts, UNESCO is currently drafting a Global Convention on Recognition of Higher Education Qualifications to reduce the obstacles faced by students, teachers, researchers and job-seekers outside their countries of origin, which may be submitted for adoption in 2019.<sup>15</sup>

The average length of time a refugee spends in exile is about 20 years, which is more than an entire childhood, and represents a significant proportion of a person’s productive working years.<sup>16</sup> Therefore, ensuring that migrants have their fundamental rights legally protected and fully implanted by States is one of the most important challenges for the international community. As emphasized by the Committee on Economic, Social and Cultural Rights (CESCR),<sup>17</sup> education ‘*is both a human right in itself and an indispensable means of realizing other human rights*’. It also stands as the ‘*primary vehicle by which economically and socially*

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<sup>11</sup> Our italics. See Sustainable Development Goal 4 of the 2030 Agenda for Sustainable Development, adopted in 2015. Available at: <http://www.un.org/sustainabledevelopment/education/>

<sup>12</sup> UNESCO. 2016a. Para. 5.

<sup>13</sup> *New York Declaration for Refugees and Migrants* (2016). Reference to the right to education in New York Declaration refers to the right to education of migrants and refugees in paras. 32, 39, 44, 57, 59, 79, 82 and 84.

<sup>14</sup> See, for instance: Education International. 2017.

<sup>15</sup> See UNESCO. 2017b.

<sup>16</sup> UNHCR. 2016.

<sup>17</sup> The CESCR is the body of 18 independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. For more information see: <http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>

*marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities’.*<sup>18</sup>

Given the actual trends worldwide and the barriers migrants have to face to effectively enjoy their right to education, it is crucial for States to comply with their international obligations in this regard, as well as to strive and take all necessary actions to ensure that all migrants, refugees and forcibly displaced people placed within their jurisdiction have access to their fundamental right to education.<sup>19</sup>

This paper recalls that all individuals – migrants included, irrespective of their legal or migration status, - are entitled to the universal right to education, as recognized and protected under international law. The legal protection accorded to migrants also varies according to different factors (among which are the reasons for leaving the country of former residence, the length of the stay, the legal status awarded) and, for this reason, some categories of migrants enjoy specific status and additional rights under migration-related instruments. This paper provides definitions to clarify these different status (I) before describing the international legal framework for the protection of the right to education of migrants (II). Then, drawing from some relevant research findings and available data, the paper points out current legal, administrative and practical barriers to migrants’ education at national level (III) as well as good examples of national implementation of the right to education of migrants (IV).

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<sup>18</sup> CESCR. 1999. Para.1.

<sup>19</sup> UNESCO. 2017c.



## DEFINING THE MAIN PERSONS OF CONCERN

Before looking at the international legal framework protecting the right to education of migrants and analysing the scope of the implementation of this right at the national level, it is important to define who are the persons scrutinized, and how they might differ from each other due to several characteristics, such as their reason to move or relocate, their place of refuge or new residence, and their legal status in their new place of residence.

### Migrants

The International Organization for Migration (IOM) provides a general and broad definition, which encompasses all types of migrants, and highlights the complexities associated with the displacement of people, which can take different forms and arise for different reasons. It defines a migrant as *‘any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.’*<sup>20</sup>

Migration is either **international** – meaning that the person is crossing an international border and is leaving a country to establish itself on the territory of another country – or **internal** – when people move from one area of a country to another for the purpose or with the effect of establishing a new residence.

Moreover, migration is either **voluntary** – when a person chooses to move in order to improve his/her life – or **involuntary/forced** – meaning that a person is forced to leave his/her place of habitual residence due to an element of coercion, which includes threats to life and livelihood, whether arising from natural or man-made causes.

Another way of looking at migration can be through the lens of the person’s legal status in his/her new place of residence. This classification refers to the distinction between **documented** and **undocumented** migrants – the latter being migrant persons who enter and/or stay in a country without the appropriate documentation. This distinction is purely administrative. The Global Migration Group<sup>21</sup> stresses that ‘the

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<sup>20</sup> International Organization for Migration. 2011.

<sup>21</sup> The Global Migration Group is an inter-agency group bringing together heads of agencies to promote the wider application of all relevant international and regional instruments and norms relating to migration and encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration. The GMG is particularly concerned with improving the overall effectiveness of its members and other stakeholders in capitalizing upon the opportunities and responding to the challenges presented by international migration. For more information see: <http://www.globalmigrationgroup.org>

irregular situation in which international migrants may find themselves should not deprive them of either their humanity or their human rights.’<sup>22</sup>

Additionally, some migration-specific international human rights instruments provide legal definitions of the specific categories of migrants they focus on as provided below.

## Refugees

According to Article 1 A (2) of the Convention Relating to the Status of Refugees (1951 Refugee Convention or CSR), a refugee is a person who, *‘owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country’*.<sup>23</sup>

In addition, the 1969 Organization of African Unity (OAU) Convention defines a refugee as any person compelled to leave his or her country *‘owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality’*.<sup>24</sup>

Similarly, the 1984 Cartagena Declaration states that refugees also include persons who flee their country *‘because their lives, security or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order’*.<sup>25</sup>

## ‘Mandate Refugee’

According to its Statute, the UN High Commissioner for Refugees (UNHCR) provides international protection, under the auspices of the United Nations, to refugees falling within the competence of his Office.<sup>26</sup>

The Statute contains definitions of those persons to whom the UNHCR’s competence extends, which are very close to the definition of the 1951 Refugee Convention.<sup>27</sup>

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<sup>22</sup> OHCHR. 2014. Statement of the Global Migration Group on the human rights of migrants in an irregular situation. 30 September 2010.

<sup>23</sup> 1951 Refugee Convention, as modified by the 1967 Protocol.

<sup>24</sup> OAU Convention governing the specific aspects of refugee problems in Africa, 1969.

<sup>25</sup> 1984 Cartagena Declaration on Refugees, available at: [https://www.oas.org/dil/1984\\_cartagena\\_declaration\\_on\\_refugees.pdf](https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf) (Accessed 24 January 2018)

<sup>26</sup> 1950 Statute of the Office of UNHCR. p. 6.

<sup>27</sup> 1950 Statute of the Office of UNHCR, Paragraph 6 (a) (i) and (ii), p. 6-10.

Thus, a person who meets the criteria of the UNHCR Statute qualifies for the protection of the UN provided by the UNHCR, regardless of whether or not he/she is in a country that is party to the 1951 Refugee Convention or whether or not he/she has been recognized by his/her host country as a refugee under this instrument. A person can thus simultaneously be both a ‘mandate refugee’ and a refugee under the 1951 Refugee Convention.<sup>28</sup>

### **Prima facie recognition of refugee status**

While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. Recourse has therefore been had to so-called ‘group determination’ of refugee status, whereby each member of the group is regarded *prima facie* as a refugee. *Prima facie* recognition of refugee status occurs in situations of large-scale arrivals of refugees, where the need to provide assistance is extremely urgent and where it may be impossible, for practical reasons, to carry out an individual determination of refugee status for each member of a group.<sup>29</sup>

Refugee status may be recognized *prima facie* by the UNHCR or by States, pursuant to any of the applicable refugee definitions (Article I.A (2) of the 1951 Refugee Convention, one of the definitions in the refugee regional instruments, the definition provided by the UNHCR’s statute and refugee mandate.<sup>30</sup>

### **Refugee ‘sur place’**

A person who was not a refugee at the time he/she left their country, but who meets the criteria to be recognized as a refugee at a later date, is called a refugee ‘sur place’.<sup>31</sup> Persons who departed their country

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*“The competence of the High Commissioner shall extend to:*

*A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.*

*(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it”.*

<sup>28</sup> For more information regarding “mandate refugees”, see UNHCR. Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status. (2011). Paras. 13-19. Available at: <http://www.unhcr.org/3d58e13b4.pdf> (Accessed 6 February 2018)

<sup>29</sup> For more details on prima facie recognition of refugee status, see: UNHCR. 2015. Also: Refugee Studies Center. 2010.

<sup>30</sup> See UNHCR. 2011 and UNHCR. 2015.

<sup>31</sup> See UNHCR. 2011.

of origin or former place of habitual residence before the situation/event giving rise to a *prima facie* approach may also benefit from a declaration of refugee status on a *prima facie* basis.<sup>32</sup>

## Asylum seekers

An asylum seeker is a person who is seeking protection as a refugee and is still waiting to have his/her claim assessed. Although the 1951 Refugee Convention does not provide any clear definition of the term ‘asylum seeker’, according to the UNHCR, asylum seekers are persons who move across borders in search of protection ‘*but whose request for sanctuary has yet to be processed*’.<sup>33</sup>

The European Union shares the same view as the UNHCR, the European Directive laying down minimum standards for the reception of asylum seekers<sup>34</sup> defines an ‘applicant’ or an ‘asylum seeker’ as ‘*a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken*’.<sup>35</sup> This definition has been reproduced in all the European directives on the topic of asylum.

## Internally Displaced Persons (IDPs)

The Kampala Convention and the United Nations Guiding Principles on Internal Displacement refer to IDPs as being ‘persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border’.<sup>36</sup>

## Stateless Persons

Article 1 of the United Nations Convention relating to the Status of Stateless Persons defines a stateless person as ‘*a person who is not considered as a national by any State under the operation of its law*’.<sup>37</sup> As such,

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<sup>32</sup> UNHCR. 2015.

<sup>33</sup> See UNHCR’s website: <http://www.unhcr.org/pages/49c3646c137.html>

<sup>34</sup> Directive 2013/33/EU of the European Parliament and of the Council of Europe.

<sup>35</sup> Ibid. Article 2(c).

<sup>36</sup> UNCHR. 1998 and Kampala Convention. 2009.

<sup>37</sup> 1954 Convention relating to the Status of Stateless Persons.

a stateless person lacks those rights attributable to national diplomatic protection of a State, no inherent right of sojourn in the State of residence and no right of return in case he or she travels.

Statelessness arises in a variety of contexts. It occurs in migratory situations, for example, among some expatriates who lose or are deprived of their nationality without having acquired the nationality of a country of habitual residence. Most stateless persons, however, have never crossed borders and find themselves in their 'own country'.<sup>38</sup>

## Migrant workers

Article 2.1 of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW, 1990) defines a migrant worker as a *'person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.'*

### Possible overlap between the different 'categories' of migrants

It is highly difficult to put migrants in specific categories, as their reasons for moving, as well as their legal status and corresponding rights might evolve over time. One person's situation might thus fall within different categories at the same time.

For instance, internal migrants include both people who are forced to move (IDPs) and people who chose to establish themselves to a new place of residence for economic reasons (internal migrant workers) as well as for cultural reasons (nomadic and pastoral people).

Forced migration not only includes refugees and asylum seekers but also people forced to move due to external factors, such as environmental catastrophes or development projects (for instance, the so-called 'climate refugees').

Moreover, even if they have fled for similar reasons to refugees, IDPs legally remain under the protection of their own government – even though that government might be the cause of their flight – their legal status and attached rights are thus different from those of asylum seekers and refugees.

Furthermore, although refugee status and statelessness are distinct, there may be connections between the two. It is possible to be both a refugee and stateless, and to the extent that stateless persons meet the definition under Article 1 of the 1951 Refugee Convention, they are refugees under international law.

Pending their application for international protection, asylum seekers enjoy temporary protection under international refugee law and benefit from the same legal treatment as other documented foreign nationals in their host country. However, their legal status will change once a decision is reached on their application for asylum. Asylum seekers will either be recognized as a refugee or granted international protection under relevant asylum legislation, or, they may become undocumented migrants in their host country (in case of rejection of their application, if no other way of regularization of their situation is identified under national or regional applicable legislation).

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<sup>38</sup> UNHCR. 2014.

## THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF THE RIGHT TO EDUCATION OF MIGRANTS

The international legal framework guaranteeing the right to education of migrants encompasses treaties,<sup>39</sup> which create binding obligations to states,<sup>40</sup> and other sources of ‘soft law’ that are not binding, such as declarations and resolutions, frameworks for action, UN treaty bodies’ and UN Special procedures’ interpretation of treaties (general comments and recommendations) or human rights guiding principles.

This international legal framework guarantees the right to education of migrants, irrespective of their legal or migration status, based on the human rights principles of equality and non-discrimination (A). The general provisions included in the main treaties guaranteeing the right to education apply to migrants (B). International human rights law also emphasises the right to education of specific categories of migrants (C).

### The principle of equality and non-discrimination at the basis of the right to education of migrant

‘The principles of equality and non-discrimination lie at the heart of international human rights law and are directly related to that of universality which affirms that every human being has fundamental rights.’<sup>41</sup> The Universal Declaration of Human Rights (UDHR) states that ‘all human beings are born free and equal in dignity and rights’<sup>42</sup> and that ‘everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind’,<sup>43</sup> including the right to education recognised in Article 26.<sup>44</sup>

The core international human rights instruments guaranteeing the right to education also affirm the principles of equality and non-discrimination, including the International Covenant on Economic, Social and

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<sup>39</sup> Also called charters, conventions or covenants.

<sup>40</sup> If the treaty is ratified by the state.

<sup>41</sup> OHCHR. 2014.

<sup>42</sup> Article 1 of the UDHR.

<sup>43</sup> Article 2 of the UDHR.

<sup>44</sup> Article 26 reads: “1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. 2. 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. Parents have a prior right to choose the kind of education that shall be given to their children”.

Cultural Rights (ICESCR, Article 2.2<sup>45</sup>), the Convention on the Rights of the Child (UNCRC, Article 2.1<sup>46</sup>), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, Article 1<sup>47</sup>) and the UNESCO Convention against Discrimination in Education (CADE, Articles 1.1<sup>48</sup> and 3<sup>49</sup>). The main regional human rights instruments also guarantee the right to education without discrimination, which relevant provisions are directly drawn from the up-cited international human rights treaties.<sup>50</sup>

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<sup>45</sup> Article 2.2 of the ICESCR reads: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>46</sup> Article 2.1 of the UNCRC reads: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

<sup>47</sup> Article 1 of ICERD reads: ‘In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.’

<sup>48</sup> Article 1.1 of the CADE reads: “For the purposes of this Convention, the term ‘discrimination’ includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education (...).”

<sup>49</sup> Article 3 of the CADE reads: In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries ;

(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

<sup>50</sup> At the European level, the instruments protecting the right to education are the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR – Article 14) and its Optional Protocols No. 1 (1952) and 12 (2000); the European Social Charter (Articles E, 10 and 17), as well as the Charter of Fundamental Rights of the European Union (Article 14).

As far as Africa is concerned, the African Charter on the Rights and Welfare of the Child (Article 11) and the African Charter on Human and People’s Rights (Articles 2 and 17) are worth mentioning.

Furthermore, the Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador, the Arab Charter on Human Rights and the ASEAN Human Rights Declaration (AHRD)<sup>50</sup> all contain some provisions recognizing the right to education to everyone, exempt of any form of discrimination.

In 2016, a *Declaration on Strengthening Education for Out-of-School Children and Youth* was adopted by ASEAN heads of state, which, inter alia, reaffirms the importance of the right of every person to an education, including compulsory free primary education, and secondary education to be made available through every appropriate means.

In application of these key human rights principles, *everyone* has the right to education. States have an immediate obligation to ensure equality and non-discrimination in the access and enjoyment of the right to education.<sup>51</sup> States should ensure that their laws, regulations and administrative practices do not discriminate against migrants.

#### **APPLICATION OF THE PRINCIPLES OF EQUALITY AND NON-DISCRIMINATION TO MIGRANTS, IRRESPECTIVE OF THEIR LEGAL AND IMMIGRATION STATUS**

The CESCR, in its General Comment 20 on *Non-discrimination in economic, social and cultural rights*, recalls that ‘the right of *all*<sup>52</sup> children to education (...) should be fully protected’ and underlines: ‘any difference of treatment must pursue a legitimate aim that is compatible with the nature of the rights enshrined in the Covenant and must meet the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the objective a State seeks to realise and the measures it takes or avoids taking to achieve that objective.’ Although legal and immigration status is not explicitly listed as a prohibited ground of discrimination, the committee affirmed: ‘Covenant rights [including the right to education] apply to everyone, including non-national such as refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.’<sup>53</sup>

The Committee on the Rights of the Child (CRC), in its general comment No. 6 noted that ‘the enjoyment of the rights stipulated in the Convention [must] be available to all children ... irrespective of their nationality, immigration status or statelessness.’<sup>54</sup> In its general comment No. 22 adopted in 2017 it goes further, specifying that ‘the non-discrimination principle of the Convention on the Rights of the Child obliges States parties to respect and ensure the rights set forth in the Convention to all Children, whether they are considered, inter alia, migrants in regular or irregular situations, asylum seekers, refugees, stateless and/or victims of trafficking, including in situations of return or deportation to the country of origin, irrespective of the child’s or parents’ or legal guardians’ nationality, immigration status or statelessness.’ It adds: ‘States parties should ensure that migrant children and their families are integrated into receiving societies through the effective realisation of their human rights and access to services in an equal manner with nationals.’<sup>55</sup>

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<sup>51</sup> CESCR. 1999. Para. 43.

<sup>52</sup> Our italics.

<sup>53</sup> CESCR. 2009. Para. 30.

<sup>54</sup> CRC. 2005. Para. 12.

<sup>55</sup> CMW and CRC. 2017a. Paras 9 and 22.



The Committee on the Elimination of Racial Discrimination (CERD), in its general recommendation No. 30, asked all State parties to ensure that laws prohibiting racial discrimination cover non-citizens, regardless of their immigration status, and that their implementation has no discriminatory effects on them.<sup>56</sup>

At regional level, the Inter-American Court of Human Rights judged: ‘The obligation to respect and ensure the principle of ... non-discrimination is irrespective of a person’s migratory status in a State. In other words, States have the obligation to ensure this fundamental principle to its citizens and to any foreigner who is on its territory, without any discrimination based on regular or irregular residence, nationality, race, gender, age or any other cause.’ It is worth mentioning that the Inter-American Court of Human Rights also shared the opinion<sup>57</sup> that the principle of non-discrimination ‘forms part of general international law’ and ‘has entered the realm of *jus cogens*’,<sup>58</sup> meaning that this principle applies to all states whether or not they are a party to a specific international treaty.<sup>59</sup>

## **GUARANTEEING NON-DISCRIMINATION IN LAW AND IN PRACTICE**

States must ensure that their constitutions, as well as domestic laws and policies, do not discriminate on prohibited grounds against a particular individual or group. They must also adopt measures to prevent, alleviate or eliminate the occurrence of conditions or attitudes that cause or perpetuate discrimination.<sup>60</sup> Their obligations regarding the right to education include<sup>61</sup>:

- To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
- To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;
- Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;
- Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;
- To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

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<sup>56</sup> CERD. 2002.

<sup>57</sup> Inter-American Court of Human Rights. 2003.

<sup>58</sup> *Jus cogens* refers to certain fundamental, overriding principles of international law, from which no derogation is ever permitted.

<sup>59</sup> OHCHR. 2014. p. 26.

<sup>60</sup> OHCHR. 2014. p. 28.

<sup>61</sup> Article 3, CADE.

## ADDRESSING BOTH DIRECT AND INDIRECT DISCRIMINATIONS

A law, policy or practice may appear neutral, but have a disproportionate impact on the rights of migrants. Imposing a rule that children enrolling for school must show a birth certificate, for example, discriminates against irregular migrant children who do not possess such documents or cannot easily obtain them.<sup>62</sup>

Regarding this issue, the CRC ‘recommends that states parties take all necessary measures to ensure that all children are registered at birth’ and ‘reminds states of the importance of facilitating late registration of birth, and ensuring that children who have not been registered have equal access to ... education’.<sup>63</sup> In their 2017 joint General Comment on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, the CRW and the CRC urged States parties ‘to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents’. The committees stressed that ‘legal and practical obstacles to birth registration should be removed’ and that ‘children who have not been registered should be ensured equal access to ... education’.<sup>64</sup>

According to the CESCR, ‘requiring a birth registration certificate for school enrolment may indirectly discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.’<sup>65</sup>

### **The right to education of children of Haitian descent in the Dominican Republic**

In the Dominican Republic, many children of Haitian-Dominican descent face discrimination in accessing education on the grounds of nationality. While Dominican domestic law stipulates that children must not be denied education due to a lack of documentation proving their identity, Dominican children of Haitian descent often face difficulties obtaining government-issued birth certificates as a result of discriminatory nationality legislation which had the effect of depriving many Haitian-Dominicans of Dominican citizenship. This discriminatory nationality legislation was challenged before the Inter-American Court of Human Rights in the 2005 case of *Yean and Bosico Children v. the Dominican Republic*. In this case, the Interamerican Court of Human Rights recognized States’ obligation to ensure access to education to migrant children in need of international protection<sup>66</sup>.

The Court considered that denying the right to nationality to children because of the migratory status of their parents, and thus denying them access to education because of lack of nationality documents, is a violation

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<sup>62</sup> Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Population. 2011. *Undocumented migrant children in an irregular situation: a real cause for concern*, Doc. 12718. Cited in OHCHR. 2014.

<sup>63</sup> CRC. 2006.

<sup>64</sup> CMW and CRC. 2017a.

<sup>65</sup> CESCR. 1999.

<sup>66</sup> Inter-American Court of Human Rights. 2014. Para. 104.

of the Dominican Republic's obligations under the Inter-American Convention for Human Rights<sup>67</sup>. Despite this important decision, the situation is still unresolved<sup>68</sup>.

## LIMITATIONS

The ICESCR, in the same Article that affirms the principle of non-discrimination, states that 'Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.'<sup>69</sup> The OHCHR notes however that this Article must be narrowly construed, being relied upon only by developing countries and referring *only* to economic rights, meaning that 'States may not treat citizens and non-citizens differently with respect to social and cultural rights.'<sup>70</sup> It states that the right to education 'has been variously classified as an economic right, a social right and a cultural right.' And that 'It is all of these'.<sup>71</sup> As such, this article 2.3 does not apply to the right to education.

In addition, the CESCR affirmed that a lack of available resources cannot be considered as an objective and reasonable justification for a difference of treatment 'unless every effort has been made to use all resources that are at the state's party *disposition* in an effort to address and eliminate the discrimination, as a matter of priority.'<sup>72</sup> States interventions that restrict or limit rights are permissible only to promote the 'general welfare in a democratic society'<sup>73</sup> rather than, for example, for immigration objectives or border controls.<sup>74</sup>

In summary, the principles of equality and non-discrimination enshrined in the above-mentioned human rights treaties oblige States parties to respect and ensure the right to education, as set forth in these conventions, to all individuals placed under their jurisdiction, whether they are considered, *inter alia*, migrants in regular or irregular situations, asylum seekers, refugees or stateless persons, including in

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<sup>67</sup> For further details regarding this decision, see ESCR-Net, Case of the Jean and Bosico Children v. The Dominican Republic. Available at: <https://www.escri-net.org/caselaw/2006/case-jean-and-bosico-children-v-dominican-republic-eng>

<sup>68</sup> See for instance, Amnesty International. 2018. Republica Dominicana 2017/2018. Available at: <https://www.amnesty.org/es/countries/americas/dominican-republic/report-dominican-republic/>. CIDH Republica Dominicana. Desnacionalización y apátrida en Republica Dominicana. Available at:

<http://www.oas.org/es/cidh/multimedia/2016/RepublicaDominicana/republica-dominicana.html>

<sup>69</sup> Article 2.3.

<sup>70</sup> OHCHR. 2014. p. 31.

<sup>71</sup> CESCR. 1999. *General Comment No. 11: Plans of Action for Primary Education*. Para. 2. Available at: <http://www.refworld.org/docid/4538838c0.html> (Accessed 25 August 2018)

<sup>72</sup> CESCR. 2009. Para. 13.

<sup>73</sup> Article 4 of the ICESCR.

<sup>74</sup> OHCHR. 2014. p. 32.

situations of return or deportation to the country of origin. Regarding these particular situations, the CRC and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) state that ‘if determined that it is in the best interest of the child to be returned, an individual plan should be prepared, together with the child where possible, for his or her sustainable reintegration. The committees stress that countries of origin, transit, destination and return should develop comprehensive frameworks with dedicated resources for the implementation of policies and comprehensive inter-institutional coordination mechanisms. Such a framework should ensure, in case of children returning to their countries of origin or third countries, their effective reintegration through a rights-based approach, including immediate protection measures and long-term solutions, in particular access to education.’<sup>75</sup> These two committees also highlight that ‘States should put in place adequate measures to recognize the child’s former education by acknowledging previously obtained school certificates and/or issuing new certification based on the child’s capacities and capabilities, to avoid creating stigmatization or penalization. This is equally applicable to countries of origin or third countries in the case of return’.<sup>76</sup>

## The content of the right to education of migrants

### GENERAL PROVISIONS APPLYING TO ALL MIGRANTS

As explained above, on the basis of the principles of equality and non-discrimination, all migrants have the right to education as guaranteed under international human rights law, particularly under the ICESCR<sup>77</sup>, the UNCRC<sup>78</sup> and the CADE<sup>79</sup>.

Migrants, irrespective of their legal or migration status, have the right to receive an education, which is available, accessible, acceptable and adaptable:<sup>80</sup>

- Education for migrants, including functioning educational institutions and programmes, has to be **available** in sufficient quantity. This requires buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically

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<sup>75</sup> CMW and CRC. 2017a. Para 32.

<sup>76</sup> CMW and CRC. 2017b. Para. 61.

<sup>77</sup> Articles 13 and 14.

<sup>78</sup> Articles 28 and 29.

<sup>79</sup> UNESCO. 1960. CADE. Available at:

[http://portal.unesco.org/en/ev.php-URL\\_ID=12949&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html)

<sup>80</sup> The 4 As framework was developed by the first UN Special Rapporteur on the right to education, Katarina Tomaševski, and adopted by the CESCR in its General Comment 13 on the right to education (1999, para.6). To be a meaningful right, education in all its forms and at all levels shall exhibit these interrelated and essential features: Available, Accessible, Acceptable and Adaptable. On the 4As applicable to refugees’ right to education. See UNESCO. 2017c. p. 22.

competitive salaries, teaching materials, and so on; as well as facilities such as a library, computer facilities and information technology.<sup>81</sup> States have the obligation to ensure education is available to everyone. In the context of migration, it requires the states to ensure that there are spaces available to welcome migrants, either international or internal, in established public schools. In addition, in the context of massive flux of migrants, in refugee camps for instance, states, in cooperation with the international community, have to provide temporary schools.

- Education for migrants has to be **accessible**<sup>82</sup>, physically and economically, without discrimination.<sup>83</sup> States should prevent discriminatory practices towards migrants, particularly international migrants, and facilitate their access to schools and universities, in particular regarding their possible lack of documentation (e.g. identification and academic transcripts).<sup>84</sup> States have to ensure that migrants, as any other person, can access education in a safe environment either by attendance at some reasonably convenient geographic location or via distance learning programmes. In addition, education for migrants has to be affordable to migrants, as any other person, as defined under international law. States have the obligations to provide free primary education and progressively free secondary and higher education. Access to education also requires the State in some cases to provide free transport or allocate grants to low-income families to support the indirect costs of education (e.g. transport, uniform, lunch...).<sup>85</sup>
- Education for migrants has to be **acceptable**, that is, the form and substance, including curricula and teaching methods, must be appropriate and of good quality. It is essential that states and the international community not only ensure access to education to migrants but also good quality education, particularly in emergency contexts such as in refugee camps. The education migrants received, in its different forms (including temporary and informal education) has to meet the minimum educational standards established by the State, which has to respond to the aims of education.<sup>86</sup>

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<sup>81</sup> CESCR. 1999. Para 6a.

<sup>82</sup> CESCR. 1999. Para 6b.

<sup>83</sup> On non-discrimination, see p. 14 for more details.

<sup>84</sup> UNESCO notes that 'in case transcripts are unsocial or incomplete, other sources of documentary evidence may be used to help corroborate the background papers of the applicant, including diplomas and certificates of completion, student ID cards, published lists of students, proof of tuition payment, proof of passing state examinations, professional licences or certificates, statements of professional standing or status, and membership cards for professional associations.' UNESCO. 2017c. p. 22.

<sup>85</sup> See Muñoz, V. 2010. Para. 19.

<sup>86</sup> According to Article 26 of the UDHR: 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms'. This has been reaffirmed and developed in the ICESCR (1966, Article 13.1) and the UNCRC (1989, Article 29.1), as interpreted by the CRC in General Comment 1 (2001) on the aims of education. Based on this international legal framework, students must receive a

- Education for migrants has to be **adaptable**, so that it is able to meet their unique needs. This may require States, and the international community, to provide mobile schools for internal migrants such as pastoralists or Roma, or temporary schools, for instance for refugees living in camps. It may also require States to provide classes in the mother tongue of the students or language lessons to support their integration in the classes given in the language of the host countries.

The 4 As framework highlights the importance of guaranteeing for migrants, both the right to access education (making it available and accessible), and the right to receive an education of good quality (making it acceptable and adaptable).

In their Joint General Comment on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, the CRC and the CMW states:

*The principle of equality of treatment requires States to eliminate any discrimination against migrant children and to adopt appropriate and gender-sensitive provisions to overcome educational barriers. This means that, where necessary, targeted measures are needed, including additional language education, additional staff and other intercultural support, without discrimination of any kind. States are encouraged to dedicate staff to facilitating access to education for migrant children and to promoting the integration of migrant children into schools. In addition, States should take measures aimed at prohibiting and preventing any kind of educational segregation, to ensure that migrant children learn the new language as a means for effective integration. State efforts should include early childhood education as well as psychosocial support. States should also provide formal and non-formal learning opportunities, teacher training and life skills classes.*

*States should develop concrete measures to foster intercultural dialogue between migrant and host communities and to address and prevent xenophobia or any type of discrimination or related intolerance against migrant children. In addition, integrating human rights education, including on non-discrimination, as well as migration and migrants' rights and children's rights, within education curricula would contribute to preventing in xenophobic or any form of discriminatory attitudes that could affect migrants' integration in the long term.<sup>87</sup>*

## **SPECIFIC PROVISIONS APPLYING TO CERTAIN CATEGORIES OF MIGRANTS**

In addition to the core international human rights instruments protecting the right to education of everyone, including migrants, on the basis of the principles of equality and non-discrimination, migration-specific

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quality education that enables their personalities, talents and abilities and to live a full and satisfying life within society. The aims of education go far beyond acquiring numeracy and literacy skills. Basic skills also include 'life skills such as the ability to make well-balanced decisions; to resolve conflicts in a responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life'.

<sup>87</sup> CMW and CRC. 2017b. Paras. 62-63.

instruments also contain provisions regarding the right to education of certain categories of migrants: refugees (a), asylum seekers (b), stateless persons (c), migrant workers and their children (b), and internal displaced persons (d). These instruments are worth mentioning as they can be referred to in order to strengthen the legal framework already provided by the core human rights instruments.

## Refugees

The 1951 Convention relating to the Status of Refugees (CSR) and its 1967 Protocol (PCSR),<sup>88</sup> adopted before the ICESCR and the UNCRC, contain specific provisions related to the right to education of refugees and, to a certain extent, asylum-seekers.

Article 22 of the CSR states that refugees and their children should have the same treatment as nationals with respect to elementary education. The right to elementary education recognized to refugees under Article 22 does not, however, include the right to receive a public education in the parents' language.<sup>89</sup>

With respect to other education levels, Article 22.2 of the CSR lays out a non-exhaustive list of measures from which refugees should benefit preferentially or at least not benefit any less than other non-nationals in access to their studies, including the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges, and the award of scholarships. As far as education-related fees and charges are concerned, Article 29.1 lays out a specific legal obligation to treat refugees the same as nationals. This means that when read together with Article 22.2, refugees shall benefit from the lowest fees any public educational institution may levy. Therefore, when non-nationals benefit from lower fees and charges, the same applies to refugees. In addition, Article 4 of the Convention guarantees the religious freedom of refugees and specifically 'freedom as regards the religious education of their children'.<sup>90</sup>

Mirroring the content of international refugee law, Article 22 of the UNCRC protects the right to education of refugee children and requires that governments adopt appropriate efforts to cater for the special needs of these children.<sup>91</sup>

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<sup>88</sup> Convention Relating to the Status of Refugees (1951) and Protocol relating to the Status of Refugees (1967). The Protocol removes the temporal and geographic restrictions of the Convention.

<sup>89</sup> The use of 'elementary education' in the 1951 Refugee Convention is derived from Article 26 (1) of the UDHR (1948), which states that 'everyone has the right to education; education shall be free, at least in the elementary and fundamental stages; elementary education shall be compulsory'. See Grahl-Madsen, A. 1997. p. 50. Elementary education corresponds to the initial stages of formal education. See UNESCO, 2009. Experts' consultation on the operational definition of basic education. Available at: <http://unesdoc.unesco.org/images/0018/001802/180253e.pdf> (Accessed 28 January 2018)

<sup>90</sup> Article 4 thus allows refugee parents to refuse religious education (either entire institutions or religious classes that form part of the curriculum in a given school) if it conflicts with their own, and to choose between existing alternatives, provided by either the state or private institutions.

<sup>91</sup> UNCRC (1989). Article 22.

In this regard, the UNCRC clearly indicated that refugee children, including unaccompanied and separated children, should enjoy all the rights granted to refugees under international refugee and human rights law: ‘unaccompanied or separated children recognized as refugees and granted asylum do not only enjoy rights under the 1951 Refugee Convention, but are also entitled to the fullest extent to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory’.<sup>92</sup>

Moreover, in accordance with international refugee law, Article 27 of the EU Qualification Directive<sup>93</sup> guarantees full access to education for refugee children, as well as for children eligible for subsidiary protection, under the same conditions as nationals.

In 1966, the Asian-African Legal Consultative Organization (AALCO) adopted the non-binding Bangkok Principles on Status and Treatment of Refugees. Although they do not specifically refer to the right to education, these Principles highlight that States ‘shall accord to refugees treatment no less favourable than that generally accorded to aliens in similar circumstances, with due regard to basic human rights as recognised in generally accepted international instruments.’<sup>94</sup>

#### **Rights of refugees recognized on a *prima facie* basis**

*Prima facie* recognition of refugee status is not to be confused with an interim or provisional status, pending subsequent confirmation. Rather, each refugee recognized on a *prima facie* basis benefits from refugee status in the country where such recognition is made, and enjoys the rights attached to such status, contained in the above-mentioned applicable instruments.<sup>95</sup>

#### **Asylum seekers**

Pending the examination of their application for international protection, asylum seekers and their children are protected under internal refugee law.

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<sup>92</sup> CRC. 2005. Para. 76.

<sup>93</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, and for the content of the protection granted (recast), OJ 2011 L 337 (Qualification Directive).

<sup>94</sup> Asian-African Legal Consultative Organisation. 1996. Article IV(1).

<sup>95</sup> UNHCR. 2015.



As applicants for international protection, they are entitled to the protection of Article 22 and Article 29 of the 1951 Refugee Convention and should thus have the same treatment as nationals with respect to elementary education.

Article 22 of the Convention on the Rights of the Child, mentioned above, is also relevant as it refers to both refugee and asylum-seeking children, requiring that governments adopt appropriate efforts to cater the special needs of these children.<sup>96</sup>

In this regard, the UNCRC affirmed that ‘the obligation stemming from Article 22 of the Convention to take “appropriate measures” to ensure that a child, whether unaccompanied or accompanied, who is seeking refugee status receives appropriate protection entails, inter alia, the responsibility to set up a functioning asylum system and, in particular, to enact legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realize this treatment in accordance with applicable rights codified in the Convention and in other international human rights, refugee protection or humanitarian instruments to which the State is a party’. The committee also underlined ‘the complementary nature of the obligations under Article 22 and those deriving from international refugee law’, requiring States to ‘apply international standards relating to refugees as they progressively evolve when implementing Article 22 of the Convention’.<sup>97</sup>

At the European level, according to EU Asylum Law (Article 14 of the Reception Conditions Directive<sup>98</sup>), asylum-seeking children should have access to the education system under the same conditions as nationals, as long as an expulsion measure against them or their parents is not actually enforced. Furthermore, access to education should not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the child.<sup>99</sup>

Article 17.3 of the EU Return Directive specifies that children in detention ‘shall have the possibility to engage in leisure activities appropriate to their age, and shall have, depending on the length of their stay, access to education’.<sup>100</sup>

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<sup>96</sup> UNCRC (1989). Article 22.

<sup>97</sup> CRC. 2005. Paras. 64-65.

<sup>98</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013.

<sup>99</sup> EU Agency for Fundamental Rights. 2017a. p.3.

<sup>100</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24 December 2008.

If their application for international protection succeeds – that means, if they are recognized as refugees or granted international protection under other humanitarian grounds<sup>101</sup> – asylum seekers and their children will enjoy the same protection as refugees.

If their application for asylum is rejected, they will be placed in the same situation as undocumented migrants - unless permission to stay is provided on grounds. In any case, rejected asylum seekers still enjoy the core content of the right to education, as enshrined in international human rights treaties; such rights being guaranteed to everyone and not just those lawfully residing within the territory of the state.

### **Stateless persons**

The 1954 Convention relating to the Status of Stateless Persons,<sup>102</sup> also adopted before the ICESCR and the UNCRC is based on a core principle: no stateless person should be treated worse than any foreigner who possesses a nationality. This Convention stipulates that stateless persons must be treated like nationals of the State with regards to certain rights such as elementary education.<sup>103</sup>

With regard to primary education, Article 22 affirms that the States ‘shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education’ and they also ‘shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships’.<sup>104</sup>

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<sup>101</sup> Under EU Asylum law for example, asylum seekers who do not fall within the scope of the 1951 Refugee Convention might still be granted international protection under the European Union’s subsidiary protection regime set out in Council Directive 2004/83/EC of 29 April 2004 – and thus be entitled to a set of core rights recognized to beneficiaries of international protection.

<sup>102</sup> There are two primary Conventions relating to the rights of stateless persons in international law. The first, the 1954 Convention, came into force the same year as the Refugee Convention came into force. The second, the 1961 Convention, focuses on the prevention and reduction of statelessness.

<sup>103</sup> The 1954 Statelessness Convention requires states parties to accord to stateless persons:

- The same rights as citizens in relation to freedom of religion, intellectual property, access to courts and legal assistance, rationing, access to primary education, public relief, labour rights and social security.
- Treatment which is as favourable as possible and at least as favourable as that accorded to foreign nationals, in relation to the acquisition of property, freedom of association, access to employment, self-employment, housing and access to secondary and tertiary education.
- Treatment which is at least as favourable as that accorded to foreign nationals in relation to freedom of movement.

<sup>104</sup> 1954 Convention relating to the Status of Stateless Persons, Article 22.

The CRC and the CESCR have also affirmed that the right to education is not dependent on citizenship.<sup>105</sup> The standards laid down in the 1954 Convention thus complement and strengthen States' human rights commitments under the core human rights treaties.<sup>106</sup>

### Refugees and stateless persons under international law

A stateless person may never have crossed an international border. Some stateless persons, however, may be eligible for protection under international refugee law.

International human rights law and statelessness law offer complementary protection to refugees and stateless persons, and given the breadth of accessible rights, international human rights law may be better placed in certain situations to provide protection in situations not envisaged by the core Refugee and Statelessness Conventions.

Certain obligations set out in international refugee law and statelessness law have the status of customary international law (for instance, the principle of *non-refoulement*) and are therefore binding on all the states in question, whether or not such states have ratified the international conventions which set these obligations.

### Migrant workers and members of their families

Articles 12.4, 30, 43 and 45 of the ICPRMW<sup>107</sup> protect the right to education of migrant workers and members of their families. Moreover, Article 7 prohibits discrimination of any kind with respect to the rights set forth in this Convention.

These provisions must be read together with those of general human rights treaties which also guarantee the right to education, and in particular, Article 13 of the ICESCR.

In this regard, the CMW affirmed, in its General Comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, that:

*Article 30 of the Convention protects the 'basic right of access to education' of all children of migrant workers 'on the basis of equality of treatment with nationals of the State concerned'. Article 30 also provides that access to public preschool educational institutions or schools shall be without prejudice to the migration status of the child concerned or parents of the child. The committee, in accordance with*

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<sup>105</sup> In its concluding observations on Iran, the CRC recommended: "that all children, including refugee children, have equal educational opportunities on all levels of the educational system without discrimination based on gender, religion, ethnic origin, nationality or statelessness". See CRC. 2005. *Concluding Observations: Iran*. UN Doc. CRC/C/14619, Para 496.

In its 2004 concluding observations on Azerbaijan, the CESCR noted its concern regarding the "persistent de facto discrimination against foreign citizens, ethnic minorities and stateless persons in the fields of housing, employment and education"; while also expressing concern that the Azerbaijani law concerning stateless persons "does not provide free compulsory education to non-Azerbaijani children". See CESCR. 2004. *Concluding Observations: Azerbaijan*, UN Doc. E/C.12/1/Add.104, Paras 15 and 33.

<sup>106</sup> UNHCR. 2010.

<sup>107</sup> ICPRMW (1990).

*Article 13 of the International Covenant on Economic, Social and Cultural Rights, is of the view that States parties must provide free and compulsory primary education for all, including children of migrant workers, regardless of their migration status ... . Access to secondary education by children of migrant workers must be ensured on the basis of equality of treatment with nationals. Accordingly, whenever children who are nationals have access to free secondary education, States parties must ensure equal access by children of migrant workers, irrespective of their migration status.<sup>108</sup>*

In 2017, the CMW and the CRC addressed the specific situation of migrant children in two joint General Comments, which complement each other.<sup>109</sup> These General Comments provide States parties with essential guidance with regard to the full protection and implementation of migrant children's right to education.<sup>110</sup> At the regional level, Article 14 of the European Convention on the Legal Status of Migrant Workers (1997) is also worth mentioning, as it protects the right to education of migrant workers and their children.<sup>111</sup>

### ***Internal displaced persons***

The UN Guiding Principles on Internal Displacement<sup>112</sup> identify the rights relevant to the needs and protection of internally displaced persons (IDPs).

While they do not have the status of binding law, these Guiding Principles, endorsed by the United Nations General Assembly in the 2005 World Summit Outcome, reflect and are consistent with existing international human rights law and international humanitarian law and restate in greater detail existing guarantees which apply particularly to IDPs.

Principle 23 emphasizes the fact that all persons have the right to education and that 'the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion'. It also states that special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

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<sup>108</sup> CMW. 2013. Paras. 5-11 and 75-79.

<sup>109</sup> CMW and CRC. 2017a. and CMW and CRC. 2017b.

<sup>110</sup> Ibid. See in particular paras. 59-63.

<sup>111</sup> European Convention on the Legal Status of Migrant Workers (1997). Available at: <https://rm.coe.int/1680077323> (Accessed 29 January 2018)

<sup>112</sup> OHCHR. 1998.

At the regional level, the 2009 Kampala Convention for the protection and assistance of IDPs<sup>113</sup> recognizes the right to education of IDPs in its Article 9.2 (b).<sup>114</sup>

These two instruments, specifically addressing the rights and needs of IDPs, must be read together with other relevant international human rights law and international humanitarian law provisions guaranteeing the right to education to all, including IDPs.

In this regard, it should be recalled that, as citizens, IDPs retain all their rights and protection under both international human rights and humanitarian law. Therefore, they have a right to education and training in their new communities.<sup>115</sup>

This is often recalled by the CESCR, in its concluding observations with regard to reports of States dealing with IDPs. For instance, in its concluding observations with regard to the report of Colombia, the committee recommended ‘that the State party strengthen its efforts to ensure reintegration and the possibility of an adequate standard of living for returned refugees and internally displaced persons, so that they have access to ... education’.<sup>116</sup> More particularly, as far as the right to education is concerned, the committee recommended that Colombia should ‘redouble its efforts to eliminate the disparities in access to education between urban and rural areas and to ensure proper access to education for children and adolescents, particularly indigenous, Afro-Colombian and internally displaced children and adolescents’.

### **Nationals/citizens and documented foreign migrants**

Nationals of a State (including internally displaced persons and internal migrant workers) and foreigners legally entitled to reside on a State’s territory (refugees and other beneficiaries of international protection, asylum seekers [pending the decision on their application for international protection], documented migrant workers and members of their families, children under 18 years old) are right-holders and fully enjoy the protection of their right to education, as enshrined in international and national legal instruments.

General principles of equality and non-discrimination also apply to them: they should not be denied access to quality education and States should take necessary measures to adapt their educational policies to their specific needs.

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<sup>113</sup> This Convention came into force in 2012, after having been ratified by fifteen States of the African Union. The Kampala Convention is significant as it is the first instrument which legally binds an entire region on matters related to preventing situations of mass displacement and to resolving the vulnerabilities and needs of those who have been displaced, including by establishing a legal framework for cooperation among stakeholders.

<sup>114</sup> Kampala Convention (2009) Article 9.2(B) reads: States Parties shall (...) provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include (...) education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities.”

<sup>115</sup> For more information on the legal framework protecting the right to education of IDPs, see: E. Ferris and R. Winthrop, 2011.

<sup>116</sup> CESCR. 2017. *Concluding Observations about the Report of Colombia*. UN Doc. E/C.12/COL/CO/6, para. 52. Available at: [http://www.un.org/fr/documents/view\\_doc.asp?symbol=E/C.12/COL/CO/6&TYPE=&referer=http://www.un.org/fr/documents/ind ex.html&Lang=E](http://www.un.org/fr/documents/view_doc.asp?symbol=E/C.12/COL/CO/6&TYPE=&referer=http://www.un.org/fr/documents/ind ex.html&Lang=E)

Indeed, non-nationals, who ordinarily reside in a State, should be held to be entitled to the same treatment as nationals with regards to all aspects of Article 13 of the ICESCR.

The CESCR confirmed, in this regard, that migrant workers in a regular situation, refugees and their children should be treated on the same footing as nationals with regards to the enjoyment of the right to education.<sup>117</sup>

### **Undocumented foreign migrants**

At a minimum, undocumented migrants and their children are entitled to the general protection of their right to education, as protected under international human rights instruments. They are thus entitled to enjoy those aspects of Article 13 of the CESCR which form part of the core content of the right to education.

The status of undocumented migrant should not be used as justification for the violation of the right to education, and all restrictions based on migrants' legal status must thus pursue a legitimate aim and be proportionate to the achievement of this aim.

Article 3(e) of the CADE requires States 'to give foreign nationals resident within their territory the same access to education as that given to their own nationals'.

The CESCR underlined the fact that 'the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status'.<sup>118</sup> It also noted that 'all children within a State, including those with an undocumented status, have a right to receive education'.<sup>119</sup>

The CRC strongly encourages States 'to expeditiously reform legislation, policies and practices that prevent or discriminate against children affected by migration ... in particular those in an irregular situation, from effectively accessing services and benefits such as ... education ... among others'.<sup>120</sup>

However, in its 2010 report focusing on the right to education of migrants, refugees and asylum seekers, the former Special Rapporteur on the right to education raised concerns about 'the incomplete realization of the right to education of migrants, refugees and asylum seekers (or children thereof) of irregular status'.

After mentioning the international instruments recognizing the principle of equality of treatment irrespective of legal status<sup>121</sup>, the Special Rapporteur highlighted the 'lack of ratification' of such instruments, 'as indicative of State apathy in this regard'.<sup>122</sup>

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<sup>117</sup> See, for instance, the Concluding Observations of the CESCR with regards to the report of Canada, E/1999/22, §414.

<sup>118</sup> CESCR. 1999. Para. 34.

<sup>119</sup> CESCR. 2009. Para. 30.

<sup>120</sup> CRC. 2012. Para. 86.

<sup>121</sup> International Labour Organization (ILO) Migrant Workers Convention No. 143 (Supplementary Provisions) (arts. 1 and 9), the United Nations Migrant Workers Convention, the final report of the 1994 International Conference on Population and Development (principle 12) and the 2000 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (para. 12)

<sup>122</sup> Muñoz, V. 2010. Para. 29.

## **Migrant children – including unaccompanied and separated children**

Until they reach the age of 18, all migrant children, including unaccompanied and separated children, have their right to education protected under international human rights treaties, and should fully enjoy and access this right, irrespective of their legal status.

The rights of the child recognized in international human rights law, including the general principle of the ‘best interests of the child’, must be given primacy in the context of international migration: children’s rights must be integrated by States into migration-related frameworks, policies, practices and/or other measures.<sup>123</sup>

In two recent joint general comments, the CMW and the CRC recalled the inherent vulnerability of all migrant children, ‘who are migrants themselves, either alone or with their families’, and highlighted that ‘in the context of international migration, children may be in a situation of double vulnerability as children and as children affected by migration’.<sup>124</sup>

In this regard, the CMW and the CRC affirmed that: ‘All children in the context of international migration, irrespective of status, shall have full access to all levels and all aspects of education, including early childhood education and vocational training, on the basis of equality with nationals of the country where those children are living. This obligation implies that States should ensure equal access to quality and inclusive education for all migrant children, irrespective of their migration status. Migrant children should have access to alternative learning programmes where necessary and participate fully in examinations and receive certification of their studies.’<sup>125</sup>

In its General Comment No. 6 (2005), the CRC identified several measures that should be taken to protect the access to education of separated and unaccompanied children. In particular, it affirmed that ‘every unaccompanied and separated child, irrespective of legal status, shall have full access to education in the country they that they have entered ... . Such access should be granted without discrimination and in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels.’ (para. 41).<sup>126</sup>

The committee also affirmed that ‘the unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities’ (para. 42).<sup>127</sup>

In its Statement on the Duties of States Towards Refugees and Migrants under the ICESCR, the CESCR recalled that ‘all children within a State, including those with an undocumented status, had a right to receive education’.<sup>128</sup>

The CRW and the CRC also emphasized that ‘in accordance with the Guidelines for Alternative Care of Children, States should provide adequate follow-up, support and transition measures for children as they approach 18 years of age, particularly those leaving a care context, including by ensuring access to long-term regular migration status and reasonable opportunities for completing education, access to decent jobs and

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<sup>123</sup> CMW and CRC. 2017a. Para 13.

<sup>124</sup> Ibid.

<sup>125</sup> CMW and CRC. 2017b. Para. 59.

<sup>126</sup> CRC. 2005. Para. 41.

<sup>127</sup> Ibid. Para. 42.

<sup>128</sup> CESCR. 2017.

integrating into the society they live in', and they additionally encouraged States 'to take protective and support measures beyond the age of 18 years'.<sup>129</sup>

The former Special Rapporteur on the right to education, however, noted that the international framework applicable to the situation of independent child migrants 'remains incomplete, as it fails to specifically and systematically address the circumstances of unaccompanied child migrants'.<sup>130</sup> At the European Union level, undocumented migrant children's right to education is implicit rather than explicit - it derives from the provision that all children are entitled to education, regardless of their migration or asylum status. The absence of a clear legislative and policy framework in this regard contributes to confusion about their child's right to education on the part of families with irregular or uncertain migration or asylum status.<sup>131</sup>

Children of EU migrants who move to another EU Member State benefit from the most favourable entitlement:<sup>132</sup> they have the right to be admitted to their host State's general educational, apprenticeship and vocational training courses under the same conditions as nationals, including admission to public, private, compulsory and non-compulsory education.<sup>133</sup>

## States' international commitment to the right to education of migrants

The international treaties mentioned above only apply to states that have ratified them, meaning they have formally accepted the binding obligations they contain. Annex 1<sup>134</sup> includes a table presenting the status of ratifications of the main international treaties guaranteeing the right to education of migrants:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Rights of Child (UNCRC)
- The UNESCO Convention against Discrimination in Education (CADE)
- The Convention relating to the Status of Refugees (CSR or 1951 Refugee Convention)
- The Protocol to the Convention relating to the Status of Refugees (PCSR)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW)

The table shows the number of ratifications by treaties and indicates for each state which treaties they have ratified. All states have ratified the UNCRC (196), except the US, so the right to education of migrant children

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<sup>129</sup> CMW and CRC. 2017b. Para. 3.

<sup>130</sup> Muñoz, V. (2010). Para. 28.

<sup>131</sup> UNICEF. 2016.

<sup>132</sup> The Court of Justice of the EU has interpreted this entitlement broadly to ensure equal access, not just to education, but also to broader, education related social benefits, as well as to any benefits intended to facilitate educational attendance. See, for example: CJEU, C-3/90, M.J.E Bernini v. Minister Van Onderwijs en Wetenschappen, 26 February 1992.

<sup>133</sup> Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ 2011 L141/1, Article 10; and Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ 2004 L 158, Article 24(1)

<sup>134</sup> See p. 70.



is protected worldwide at international level. The other main treaty guaranteeing the right to education, the ICESCR, is also widely ratified (167), followed by the CSR (145) and its Protocol (146).<sup>135</sup>

As explained in the above section, the human rights treaties that contain general provisions guaranteeing the right to education (ICESCR, UNCRC and CADE) protect the right to education on the basis of the human rights principles on equality and non-discrimination. The other treaties (CSR/PCSR and ICPRMW) include provisions on the right to education that only apply to specific categories of migrants (refugee and migrant workers).

The table proposes a classification showing states' level of commitment to the right to education of migrants, by country and globally:

- Only 16 per cent (31 states) show a very high level of commitment having ratified all six treaties.
- 21 per cent (41 states) are highly committed. They have either ratified the ICESCR or the CADE<sup>136</sup> and all the other treaties.
- About half of the states (48 per cent, 95 states) have ratified at least two main treaties guaranteeing the right to education (the UNCRC and either the ICESCR the CADE, or both) and also the CSR.<sup>137</sup>
- 3 per cent (6 states) have ratified at least two main treaties guaranteeing the right to education (the UNCRC and either the ICESCR the CADE, or both) and also the ICPRMW
- 28 per cent (55 states) show a very low level of commitment.

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<sup>135</sup> Few states have ratified the Protocol without having ratified the Convention. However, they are counted as the Article 1.1 of the Protocol states that "the states parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to Refugees", including Article 22 on the right to education. The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees: <http://www.unhcr.org/4d93528a9.pdf> , also make clear in para. 9 that 'By accession to the 1967 Protocol, States undertake to apply the substantive provisions of the 1951 Convention to refugees as defined in the Convention, but without the 1951 dateline. Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to States parties to the Convention.'

<sup>136</sup> Articles 13 and 14 of the ICESCR (1966) are based on the CADE (1960), adopted before in 1960. While the UNESCO Convention is a specific treaty on the right to education, not allowing any reservation, the ICESCR only contains two Articles but offers strongest human rights mechanisms to ensure its implementation. Having ratified one of them still shows a high level of commitment to the right to education.

<sup>137</sup> Refugees are a particularly vulnerable group as they have been forced to leave their country. For this reason, we choose to classify the states that have ratified the 1951 Refugee Convention (but not the ICPRMW) as showing a higher commitment than the states that have ratified the ICPRMW (but not the 1951 Refugee Convention).

## LEGAL, ADMINISTRATIVE AND PRACTICAL BARRIERS TO MIGRANTS' EDUCATION AT NATIONAL LEVEL

Despite States' international legal commitments to the right to education of migrants as described above, at national level, migrants face various legal, administrative and practical barriers in the enjoyment of their right to quality education, and this even when inclusive and protective laws exist. Such barriers include:

- Discriminatory laws and policies
- Temporary protection
- Documentation requirements
- Lack of educational structures or school closures
- Lack of information
- Schools geographically inaccessible
- Schools fees and other costs
- Language of instruction
- Lack of qualified and experienced teachers
- Social integration issues

### Discriminatory laws

Although the international legal framework clearly states that migrants, irrespective of their legal or migration status, have the right to access education without discrimination, some states, even when they are parties of treaties guaranteeing the right to education, still have discriminatory laws preventing migrants from accessing education.

**Some national laws discriminate against non-citizens.** Although China acceded to the CSR and its 1967 Protocol, it has incorporated few provisions of these instruments into domestic law. Article 32 of the Constitution only declares that China 'may grant asylum to foreigners who request it for political reasons'.<sup>138</sup> Moreover, under the Chinese Constitution, the right to education is only recognized for 'Chinese citizens'; leaving international migrants and refugees without their right to education being recognized under Chinese legislation. In Greece, Article 16.4 of the Constitution recognizes the right to free education for every 'Greek citizen' only. However, this is in contradiction with international and European Union law provisions, which prevail over Greek constitutional and domestic legislation. Greece should amend its constitution especially

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<sup>138</sup> Library of Congress. 2016.

as its national legislation transposing EU asylum directives recognizes the right of asylum seeker minor children and refugee children to access education.<sup>139</sup>

**Other national laws discriminate between non-citizens.** In Egypt for instance, Sudanese and Syrian children may access the national education system but refugees from other countries are barred from public schools.<sup>140</sup>

**There are also laws that discriminate against a certain category of migrants, particularly undocumented migrants.** In South Africa for instance, although under Constitutional and domestic educational legislation the right to education is guaranteed to all children, irrespective of national origin or legal status, the Immigration Act (2002) bars undocumented migrants from being enrolled in schools.<sup>141</sup> In Europe, five Member States of the European Union (Bulgaria, Finland, Hungary, Latvia and Lithuania) have laws that do not entitle undocumented migrant children to attend school, despite a constitutional provision establishing a right to education and/or that education for children is compulsory.<sup>142</sup>

**Sometimes, laws discriminate between citizens.** In China, children of rural migrant workers must pay additional fees in order to be enrolled in urban public schools, due to the discriminatory *hukou*, or household registration system,<sup>143</sup> which puts them on an unequal footing compared to their urban peers.<sup>144</sup>

**The CESCR and the CRC have raised concerns regarding these discriminatory laws.** For instance, the CESCR expressed its concern about the Australian Benefit Entitlement Act which links access to education to legal residency status noting that it has ‘contributed to a precarious situation for undocumented migrants and rejected asylum seekers in the State party’. The committee urged Australia to ‘put in place a comprehensive strategy to ensure that everyone, including undocumented migrants, enjoy the minimum essential levels of all Covenant rights’, including the right to education.<sup>145</sup> The CRC recently expressed its concern about discriminatory laws in Barbados, noting that ‘the constitutional protection from discrimination (section 23.3

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<sup>139</sup> See, for instance, Presidential Decree No. 220/2007 transposing the EU Directive 2003/9/EC on minimum standards on the reception of asylum seekers.

<sup>140</sup> UNESCO and UNHCR. 2016. p. 8.

<sup>141</sup> Section 2(1)(c) authorizes the Department of Home Affairs to “inspect institutions of learning to ensure that illegal foreigners are not enrolled therein”. Section 39(1) of this same Act states that “no learning institution shall knowingly provide training or instruction to (a) an illegal foreigner; (b) a foreigner whose status does not authorise him or her to receive such training”.

<sup>142</sup> UNICEF. 2016.

<sup>143</sup> China operates a household registration system known as the *hukou*, which designates a resident’s status as being either urban or rural; and ties the provision of essential public services to *hukou* status, with only urban *hukou* holders being eligible for social protection tied to their workplace.

<sup>144</sup> See the box regarding the discriminatory *hukou* system in China, page 45.

<sup>145</sup> CESCR. 2017. *Concluding observations about the report of Australia*. Paras. 39-41. Available at: [E/C.12/NLD/CO/6](https://www.unhcr.org/refugees/article/5c12nldco6)

[a]) is not fully applicable to migrant children’ and that ‘the amendment of the Education Act limits the award of bursaries, grants, awards and scholarships to citizens of the State party and excludes migrant children even when they are legal residents’. The committee thus recommended ‘that the State party consider extending constitutional protection to all children, including migrant children, in particular in the area of education’.<sup>146</sup>

### Temporary protection for unaccompanied and separated children

In the EU Member States, unaccompanied and separated children are in many cases offered temporary protection status, which comes to an end once the person reaches 18 years old. In most cases, when they turn 18, no other residence status is offered to these young adults, even though they might still be attending school or vocational training.<sup>147</sup>

In this regard, the CMW and the CRC recently stated, in a joint General Comment, that: ‘To respect children’s right to education, States are also encouraged to avoid disruption during migration-related procedures, avoiding children having to move during the school year if possible, as well as supporting them to complete any compulsory and on-going education courses when they reach the age of majority. While access to upper-level education is not compulsory, the principle of non-discrimination obliges States to provide available services to every child without discrimination on the basis of their migration status or other prohibited grounds.’<sup>148</sup>

### Requirement of documents for enrolment

As stated by the former Special Rapporteur on the right to education, Vernor Muñoz, “the requirement for presentation of national documentation (such as authentic birth certificates or evidence of legal residence status) directly discriminates against refugees (who may have fled their homes) and irregular migrants when they seek opportunities for education and training.”<sup>149</sup>

These document requirements include birth certificates or other identification documents, proof of residency, vaccination documents, and recognised diploma.

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<sup>146</sup> CRC. 2017. *Concluding observations about the report of Barbados*. Paras. 54-55. Available at: [CRC/C/BRB/CO/2](https://www.unhcr.org/refugees/article/5c9d9d9d.html)

<sup>147</sup> UNICEF 2016.

<sup>148</sup> CMW and CRC. 2017b. Para. 60.

<sup>149</sup> Muñoz, V. 2010. Paras. 59 and 62.

## REQUIREMENT OF BIRTH CERTIFICATE OR IDENTIFICATION DOCUMENTS

In the Middle-East, in countries such as Lebanon, Jordan, Iraq, Iran, Egypt, many children of migrants, refugees and asylum seekers cannot access educational facilities on account of their lack of documentation including birth certificate, proof of former school registration or parents' documentation.<sup>150</sup>

In Uruguay, migrant and refugee populations might face some administrative difficulties in accessing education, as to be enrolled in educational facilities up to high school, one must present an identification document required by the solicited school.<sup>151</sup>

In Spain, migrants, displaced people and refugees are often barred from accessing educational facilities, due to the lack of a valid passport or identity card. Such a documentation requirement is not included as such in national law, but in the supplementary legislation that is approved by the different regions to regulate the access to education of all alumni, either Spanish or foreign citizens.<sup>152</sup>

Across Europe, **Roma children** often do not have birth certificates or any formal identity document – due to the socially isolated nature of their lifestyle. This impacts these children's school attendance, as the production of such identity documents is often a condition for school enrolment. For example, in Ukraine, Romania and Bosnia and Herzegovina, Roma children are frequently refused admission to schools as a result of being unable to produce the required identification documents.<sup>153</sup>

In Russia, **stateless children** are often unable to access primary education, as they lack the required documents to register. In its 2017 concluding observations with regard to the report of Russia, the CESCR has highlighted his concerns about the 'instances of obstacles faced by child asylum seekers and child refugees in access to education owing to a lack of identity or registration documents'.<sup>154</sup>

## REQUIREMENT OF A PROOF OF RESIDENCY

In Europe, the requirement of a proof of residency (for instance, a utility bill) is a barrier for Roma children to register in school such as in Greece, where Roma settlements are not connected to Greece's national grid or in Turkey, where Roma do not have a registered address.<sup>155</sup>

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<sup>150</sup> Equal Rights Trust. 2017b. See also Human Rights Watch. 2016 and Human Rights Watch. 2017a.

<sup>151</sup> Ministerio de Relaciones Exteriores de Uruguay, *Vivir en Uruguay*, pp. 31-32. Available at [www.mrree.gub.uy](http://www.mrree.gub.uy).

<sup>152</sup> Information provided by the Spain based law firm Allen & Overy.

<sup>153</sup> Equal Rights Trust. 2017b. p.77.

<sup>154</sup> CESCR. 2017. *Concluding observations about the report of the Federation of Russia*, UN Doc. E/C.12/RUS/CO/6, para. 56.

<sup>155</sup> Equal Rights Trust. 2017b. p.78.

In Spain, to be entitled to the right to education, one must be registered in the municipal census. This requires a legal arrangement proving the right of the person to reside in the corresponding address. Such requirement bars most migrants, asylum seekers and refugees from accessing education, as they often lack such legal arrangement.<sup>156</sup>

#### REQUIREMENT OF IMMIGRATION DOCUMENTS

In South Africa, refugee students may also be barred from pursuing their tertiary education studies due to the lack of a study permit issue by the Department of Home Affairs.<sup>157</sup> Although the Refugees Act provides exempts students from having to obtain a study permit, in practice, institutions (both at the tertiary and lower education levels) turn away refugee students due to lack of required documentation.<sup>158</sup>

In 2014, in Russia, the Ministry of Education adopted the ambiguously worded Order 32, which has been interpreted by several school head teachers as requiring foreign citizens to present documentary evidence of their right to stay in Russia for their children to be enrolled in school.<sup>159</sup> Following such interpretation, without a clear legal status, the children of refugees cannot receive an education in Russia, although they have the right under applicable national and international law.<sup>160</sup>

#### REQUIREMENT OF RECOGNISED DIPLOMA, PARTICULARLY TO PURSUE HIGHER EDUCATION

In Uruguay, to continue high school or university studies started in another state, migrants and refugees must first have their education and diplomas recognised in Uruguay, and therefore pass through a rather long a complicated procedure. As a result, many applicants might be barred from continuing their education for lack of recognition of their past studies.<sup>161</sup>

In South Africa, foreign-trained students must have their qualifications evaluated by the South African Qualifications Evaluation Authority. To obtain a certificate of evaluation, the procedure is long and costly,

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<sup>156</sup> Information provided by the Spain based law firm Allen & Overy.

<sup>157</sup> According to the Immigration Act, migrants who wish to enrol in tertiary education facilities in South Africa must provide a study permit – issued either by the South African Embassy in their country of origin or by the Department of Home Affairs. However, Department of Home Affairs often refuses to issue such permits to migrants who entered the country illegally or came with a visitor permit and who remained on South African soil after their permit expired.

<sup>158</sup> Crush and Tawodzera, 2011. UNHCR, 2007. UNHCR, 2015a. IRIN, 2012.

<sup>159</sup> Human Rights Watch, 2017d.

<sup>160</sup> Open Democracy, 2017.

<sup>161</sup> Information provided by the law firm White & Case. See Universidad de la República Uruguay, *Requisitos de ingreso para estudiantes extranjeros*. Available at: [http://www.universidad.edu.uy/renderPage/index/pagId/79#heading\\_116](http://www.universidad.edu.uy/renderPage/index/pagId/79#heading_116).

which often bars migrant students from pursuing their education at the tertiary level. As a result, many students are undertaking programmes that are not suited for them.<sup>162</sup>

In their 2017 Joint General Comment, the CRW and the CRC highlighted that ‘States should put in place adequate measures to recognize the child’s former education by acknowledging previously obtained school certificates and/or issuing new certification based on the child’s capacities and capabilities, to avoid creating stigmatization or penalization. This is equally applicable to countries of origin or third countries in the case of return.’<sup>163</sup>

### **A major issue is the non-respect of the law in practice**

In Uzbekistan for instance, the Constitution and legislative acts recognize that the right to education should be enjoyed by everyone without distinction of any kind, in accordance with the international agreements ratified by the State.<sup>164</sup> However, in practice, school officials often require proof of municipal residence (*propiska*), possession of a passport, or capacity to speak the national language as pre-conditions to school enrolment. Such requirements make it difficult for internal migrants, refugees or other migrant children to access education.<sup>165</sup>

In Russia, although in a 2015 decision, Russia’s Supreme Court made it clear that ‘the absence of the listed documents [such as a registered place of residence or domicile] cannot be sufficient grounds for refusing the enrolment of a child in any educational institution which has free places’, in practice, ‘school directors are not in no hurry to enrol children without registration.’<sup>166</sup>

In Argentina, although the National Education Law<sup>167</sup> and the Migration Law<sup>168</sup> guarantees access to education for migrants without ‘National Identity Documents’, to be enrolled in school, undocumented migrants must still provide an identity document issued by their country of origin. Therefore, in practice, migrant and refugee children who do not have any original identity document will be barred from accessing educational facilities.<sup>169</sup>

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<sup>162</sup> Information provided by the law firm White and Case.

<sup>163</sup> CMW and CRC. 2017b. Para. 61.

<sup>164</sup> Uzbekistan is a State party to the most important and relevant international legal instruments recognizing the universal right to education: CADE, ICESCR, CRC, CEDAW, CERD, Convention on technical and vocational education. However, Uzbekistan is not a party to the 1951 Refugee Convention.

<sup>165</sup> Information provided by the law firm White & Case.

<sup>166</sup> For more information on the “Nurbek Kurbanov” case, see: Open Democracy, 2017.

<sup>167</sup> See Article 143 of the Argentinian National Education Law No.26.206.

<sup>168</sup> Migrations Law N° 25.871.

<sup>169</sup> See, in this regard, the Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: Argentina. CMW/C/ARG/CO/1, para. 27, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CMW/C/ARG/CO/1&Lang=Fr](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CMW/C/ARG/CO/1&Lang=Fr) (Accessed 28 January 2018). See also the particular case of Bolivarian immigrants: Eduardo Domenech, 2014.

In South Africa, several administrative, medical and identification documents are often required to register at a public school (birth certificate, immunisation card, transfer card/last school report); although provision of such documents is not required by national legislation and policies.<sup>170</sup>

In 2014, Turkey revised its legal framework and issued a Circular laying out new regulations for the education of temporary protection beneficiaries – most of them being Syrian children.<sup>171</sup> This new regulation lifted restrictions that required Syrian children to produce a Turkish residency permit to register for school. However, in practice, many Turkish schools continue to demand such documents, as a condition for enrolment.<sup>172</sup>

In France, a circular specifically provides that the administration should have responsibility for ensuring that children can continue to go to school if their refugee camp is dismantling: ‘with the support of mayors and associations, Department of Education services, in particular those in charge of the schooling of newcomers and children of the travelling community, will take responsibility without delay to support children living in camps with a view to ensuring continuity [of their education]’. In reality, this circular has not always been complied with. When the oldest camp of the Paris region was dismantled in 2015. More than 80 families used to live in this camp and most of the children were attending school. Associations were looking after them for many years. Six months before the dismantling, a court ordered the administration to provide accommodation, social care and sanitary support to families. However, after the dismantling, the Associations indicated to the *Défenseur des Droits* that they had lost track of 42 out of 50 children enrolled in the camp’s mobile classroom. The only information they received was that eight children had been able to enrol in an ordinary school.<sup>173</sup>

### **Lack of educational structures or school closures**

In Spain, migrants, displaced people and refugees face segregation in education due to the high concentration of migrant children in certain public schools.<sup>174</sup>

In Greece, the Government has collaborated with international organizations to provide access to education to migrant children and to better integrate them into the national education system.<sup>175</sup> Despite this, access to education – be it formal or non-formal – remains impossible for the thousands of asylum-seeking children, especially for those who are retained on the Greek Islands, in the so-called ‘hotspots’. Common barriers to access to government specific non-formal educational programmes and public schools are lack of documentation (proof of residence or other personal data, proof of requested vaccinations) but also lack of

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<sup>170</sup>The South African Constitution guarantees a right to education, irrespective of national origin or legal status. Domestic legislation is consistent with Constitutional provisions in this regard. According to the Admission of Learners to Public School Act (2001), residence permits are not required to enrol in public schools. Government policy also allows for provisional registration when the person cannot provide any identification document.

<sup>171</sup> For more information regarding this Circular, see HRW. 2015. P. 16.

<sup>172</sup> Equal Rights Trust, 2017b. p. 73-74.

<sup>173</sup> 2016 Report on children’s rights, *Défenseur des droits*, p. 33.

<sup>174</sup> In Catalonia for instance.

<sup>175</sup> UNICEF. 2017b.



educational structures and programmes on the Islands (where NGOs and volunteers step in to fill the void).<sup>176</sup> On the Greek islands, however, NGOs and volunteers have stepped in to fill the lack of available educational facilities and programmes. Various NGOs and volunteers have undertaken the role of providing education to the thousands of asylum-seeking and refugee children who would have otherwise been prevented from accessing education.<sup>177</sup>

In conflict or environmental disaster contexts, schools can be closed. In Yemen for instance, in a study conducted in 2016, teachers noted that the civil war was having a significant impact on the access to education of displaced children, and that in some regions –such as Hadhramaut – the schools were mostly closed, meaning that children were simply unable to attend school.<sup>178</sup> In 2017, in Barbuda, after a hurricane, the population was displaced to Antigua and the schools closed. Parents from Barbuda have had to fight for the re-opening of the schools.<sup>179</sup>

In 2017, the CRC expressed its concern about the situation in Georgia, regarding ‘limited educational services and opportunities for integration for internally displaced families’.<sup>180</sup>

## Lack of information

Even when national legislation fully protects their right to education, migrants, particularly the most vulnerable ones (e.g. asylum-seekers, refugees and undocumented migrants) are often not aware of their rights. For instance, in Italy, access to education is granted to all, without discrimination on the basis of citizenship or legal status. However, in practice, migrants, refugees, asylum seekers and other foreign citizens are not always aware of their rights and therefore, many of them remain excluded from the right to education and access to educational facilities and programmes.<sup>181</sup>

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<sup>176</sup> Human Rights Watch, 2017c. Due to the massive and unexpected flows of refugees, migrants and asylum seekers who entered Greece since 2015, various NGOs and volunteers have also actively undertaken the role of providing education to the members of these communities. See, for example, The Independent, 2016.

<sup>177</sup> Information provided by the law firm White & Case.

<sup>178</sup> Ibid.

<sup>179</sup> See for instance: <https://antiguaobserver.com/barbudan-parents-demand-schools-fixed/>

<sup>180</sup> CRC. Concluding observations about the report of Georgia (2017), para. 38. Available at: [CRC/C/GEO/CO/4](https://www.unhcr.org/refugees/crc/c/georgia/2017)

<sup>181</sup> Information provided by the law firm White & Case.

## Schools geographically inaccessible

Schools may be not accessible either because they are too far or unsafe to reach.

**Internal displacement arising from conflict or other humanitarian crises can mean that children are required to live in areas where schools are geographically inaccessible.**

For example, a study conducted in 2011 on the situation in Yemen showed that many families have been displaced and ended up living in refugee camps located far away from schools.<sup>182</sup>

Similarly, in Iraq, access to education among internally displaced children is reportedly ‘commonly hindered by the distance of learning facilities from places of residence’, with the security situation making it unsafe for internally displaced children to travel the distances needed to reach the nearest schools.<sup>183</sup>

In its 2017 concluding observations about the report of Pakistan, the CESCR recommended that Pakistan should ‘improve the living conditions of internally displaced persons living in camps and ensure their access to ... education’.<sup>184</sup>

**Nomadic communities** can face difficulties in physically accessing primary schools, arising directly from the fact that they do not live in one fixed area. Some concrete illustrations of this barrier to accessing schools and educational programmes come from research conducted in the Horn of Africa, where over 10 per cent of the population are considered to be nomads or pastoralists.<sup>185</sup> For example, in Ethiopia, there is a high risk that children coming from nomadic or pastoralist communities might not attend school, as they most often need to travel long distances to reach the towns where the educational facilities are located.<sup>186</sup>

Due to the massive and unexpected flows of **refugees, migrants and asylum seekers** who entered Greece since 2015, a specific EU policy applies, which results in the retention of thousands of asylum-seeking and refugee children on several Greek islands, combined with an interdiction to move to the mainland.<sup>187</sup> Access to education therefore remains impossible for many children, as most of the educational facilities are located on the Greek mainland, which is out of geographical reach.<sup>188</sup>

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<sup>182</sup> Equal Rights Trust, 2017b, p.73-74.

<sup>183</sup> Ibid.

<sup>184</sup> CESCR. Concluding observations about the report of Pakistan (2017), para. 28. Available at: [E/C.12/PAK/CO/1](#)

<sup>185</sup> Equal Rights Trust. 2017b, p.74.

<sup>186</sup> Ibid. pp. 74-75.

<sup>187</sup> For more information on the restriction of liberty faced by asylum seekers on the Greek islands, in application of the “EU-Turkey deal”, see Amnesty International. 2017.

<sup>188</sup> Human Rights Watch, 2017c.

## Schools fees and other costs

In South Africa, domestic legislation and policy regarding school enrolment fees is rather inclusive and explicitly provides leeway for those who cannot pay.<sup>189</sup> Thus, in principle, fees should not be an insurmountable barrier to accessing educational facilities for low-income students.<sup>190</sup> However, in practice, school administrators, who are either unaware of such policies or reluctant to implement them, turn children who are unable to pay their school fees away from school.<sup>191</sup>

In Turkey, 85 per cent of Syrian refugee children live outside refugee camps. Many of these children cannot access education due to a lack of money to pay for transport, supplies and any tuition fees required by private temporary education centres.<sup>192</sup> A research study conducted in 2015 in Turkey revealed that only 6 per cent of the school-aged population among Syrian refugees were enrolled in public schools,<sup>193</sup> while many families cannot afford the tuition fees that must be paid to access the temporary education centres.

In Lebanon, thousands of school-aged refugee children are out of school due to socio-economic constraints, which make it impossible for parents to afford transport costs and school supplies.<sup>194</sup>

## Language of instruction

The language of instruction can act as a major barrier to migrant students' integration, even if they are enrolled and are attending school. Indeed, knowledge of the national and/or local languages is deemed essential to integrate migrants, refugees and forcibly displaced persons in terms of their continued learning and development and to participate in society.

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<sup>189</sup> Section 5(1)(a) of the South African Schools Act (1996) states that “no learner may be refused admission to a public school on the grounds that his or her parent is unable to pay or has not paid the school fees determined by the governing body”. Schools are required to exempt learners from households with incomes that fall below a prescribed means test, and certain categories of children are automatically eligible for full exemptions.

<sup>190</sup> A 2007 High Court Judgment clarified that the exemption policy must be implemented by schools and enforced by provincial education departments. Moreover, in 2007, a new national funding policy was implemented in which the poorest 40 per cent of schools were granted no-fee status.

<sup>191</sup> For more information on this issue, see UNHCR. 2017.

<sup>192</sup> In 2014, the Turkish Government began to accredit, in parallel to its public school system, a system of private “temporary education centres” that offer a Syrian curriculum throughout the country. This curriculum was approved by the education ministry of the Syrian Interim Government, a cabinet of Syrian opposition authorities in exile in Turkey. For more information on this issue, see Human Rights Watch. 2015.

<sup>193</sup> Available data shows that most Syrian refugees are hosted by Turkey, Lebanon and Jordan and that significant numbers of Syrian refugee children cannot attend school in these countries: 63 per cent of Syrian refugee children are out of school in Turkey, 80 per cent in Lebanon and 45 per cent in Jordan. For more details, see Equal Rights Trust, 2017b, p.73-74.

<sup>194</sup> For more detailed information regarding these barriers, see Human Rights Watch. 2016.

In South Africa for instance, schools are required to teach students using their mother tongue from Grade 1-3; thereafter they can be taught in English or Afrikaans until the end of Grade 12. However, migrant children in primary school may not be able to understand and speak local languages (e.g. Zulu, Xhosa, Sotho). Teachers often switch between several South African official languages, meaning that a number of migrant students are unable to understand the class.<sup>195</sup>

### Lack of qualified and experienced teachers

The shortage of teachers is a major obstacle to access and good quality education for refugees, asylum seekers and migrants. Schools with a large proportion of migrant and refugee students are often the most disadvantaged in terms of funds and qualified and experienced teachers. Teachers also most often lack the pedagogical, psychological and didactical education and training to adequately respond to the challenges posed by multilingual, multicultural and multi-ethnic learner groups.<sup>196</sup> This is for instance the case of Spain where there is a lack of resources to run specific language classes and inadequate teacher support.<sup>197</sup>

### Social integration issues

In South Africa, despite inclusive and integration focused domestic legislation and policy regarding the right to education of migrants, asylum seekers and refugees, reports and research show that in practice, many foreign and migrant children experience xenophobic and racist behaviours and attitudes in schools.<sup>198</sup>

In its 2016 concluding observations about the report of Ecuador, the CRC recommended that the State ‘develop a strategy aimed at combating discrimination and xenophobia in schools, in particular against migrant, refugee and asylum-seeking children’.<sup>199</sup>

#### CASE STUDY: The Lebanon Crisis Response Plan

The Lebanon Crisis Response Plan recognizes that all children aged 3-18 ‘have a right to and are eligible to access education, irrespective of their status’.<sup>200</sup>

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<sup>195</sup> Information provided by the law firm White & Case.

<sup>196</sup> Muñoz, V. (2010). Paras. Pp. 49-53.

<sup>197</sup> See for instance IUNDIA, 2003.

<sup>198</sup> For more information on this issue, see Vandeyar, S. 2017.

<sup>199</sup> CRC, Concluding Observations about the report of Ecuador, 2016, para. 37. Available at: [CRC/C/ECU/CO/5-6](https://www.unhcr.org/refugees/crc/2016/05/16-crc-ecuador-observations.html)

<sup>200</sup> The Lebanon Crisis Response Plan 2017-2020 is a joint, multi-year plan between the Government of Lebanon and its international and national partners : for more details, see Government of Lebanon and the United Nations. 2017.

Non-formal education was also part of this Plan's response to the education of many Syrian children. It introduced an accelerated learning pilot programme that offered a condensed curriculum to children who had missed up to two years of schooling between grade 1 and 9.<sup>201</sup>

In 2012, the Ministry of Education and Higher Education issued a memorandum instructing public schools to enrol Syrian refugees regardless of their residency status and to waive school enrolment fees. It also opened afternoon "second shift" classes in 238 public schools to provide Syrians with formal education.<sup>202</sup>

In 2014, the Ministry of Education and Higher Education adopted the Reaching All Children with Education (RACE) policy, which has helped increase the number of Syrians enrolled in public schools.<sup>203</sup>

In 2016, Lebanon adopted a five-year RACE II plan with the goal of enrolling 440,000 Syrian children in formal education by the 2020-2021 school year.

Despite, these important steps, numerous barriers prevent many Syrian children from accessing education and Lebanon needs much more international support to respond to the needs of Syrian refugees.

In 2017, the CRC, while 'noting the commendable role that the State party has played in ensuring the protection of the overwhelming number of refugees in its territory' urged Lebanon to 'ensure the right to compulsory and free education for all and continue efforts aimed at improving access to education by refugee, asylum-seeking and stateless children by addressing barriers to access to education, including inadequate facilities and funding'.<sup>204</sup>

#### **CASE STUDY: The discriminatory *hukou* system prevents many Chinese internal migrant children from accessing quality education**

In China, the so-called *hukou* household registration system treats millions of rural-to-urban Chinese internal migrants as second-class citizens within their own country.<sup>205</sup> Internal migrants with a rural *hukou* do not have access to public services, despite working in a city, resulting in the children of these migrant workers facing discrimination in accessing free public education. The issue is getting more pressing as the number of migrant children living in cities continues to increase.<sup>206</sup>

Although they are Chinese citizens, children of internal migrants as a group are denied the same educational opportunities as their peers in urban areas.

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<sup>201</sup> Human Rights Watch. 2016, p. 27.

<sup>202</sup> Ibid.

<sup>203</sup> Human Rights Watch. 2016.

<sup>204</sup> CRC. Concluding observations about the report of Lebanon (2017), paras. 35-36. Available at: [CRC/C/LBN/CO/4-5](https://www.crc.org/docs/2017/04/crc-obs-lebanon-2017.pdf)

<sup>205</sup> China operates a household registration system known as the *hukou*, which designates a resident's status as being either urban or rural; and ties the provision of essential public services to *hukou* status, with only urban *hukou* holders being eligible for social protection tied to their workplace.

<sup>206</sup> Children now represent between 5 per cent and 10 per cent of the migrant population in the cities. The size of the internal migrant population ranging between 150 and 200 million, this would represent between 7.5 and 20 million children. For more information on this issue, see : People's Republic of China – Internal migrants: Discrimination and abuse, The human cost of an economic "miracle", Amnesty International, 2007, available at: <https://www.amnesty.org/download/.../64000/asa170082007en.pdf> (Accessed 28 January 2018).

Moreover, Chinese legislation prohibits against the charging of tuition fees by state schools<sup>207</sup>. However, in practice, state schools charge a variety of fees and, in addition to the school fees paid by all students, internal migrants have to pay additional fees that local children with permanent urban *hukou* do not have to pay.<sup>208</sup>

For instance, in Beijing, migrant parents wishing to enrol their child in a local school are required to submit dozens of residential and employment documents. Due to this almost insurmountable barrier, it is estimated that 90 per cent of internal migrants do not have proper documentation necessary for their children to attend a state school.<sup>209</sup>

Internal migrants have responded by setting up their own privately-run and privately-funded schools, especially for their own children. However, these alternative schools, which are poorly resourced and at risk of being closed by local authorities at any moment, do not offer an adequate solution to the problem of educating internal migrant children and do not absolve the Chinese authorities of their obligation to provide access to free, compulsory, primary education to all children without discrimination.<sup>210</sup>

The situation is a violation of China's obligation, under both international and national law, to realise the right to education – particularly the right to free and compulsory education – for millions of Chinese children.<sup>211</sup>

The CESCR and CERD, have noted their concerns regarding the *hukou* system and have called the Chinese Government to put an end to the continued discrimination faced by internal Chinese migrants, including in access to education.<sup>212</sup>

#### **CASE STUDY: the barriers faced by the Rohingya in Indonesia, Malaysia, Bangladesh and Thailand**

Several international and regional NGOs have recognised that Rohingya in Bangladesh, Malaysia and Thailand are refugees.<sup>213</sup> However, Bangladesh, Malaysia and Thailand have not ratified the treaties which are most directly relevant to the Rohingya – namely the Refugee Convention and the two Statelessness Conventions.<sup>214</sup>

In Indonesia, Thailand, Bangladesh and Malaysia, Rohingya children face significant difficulties and are often denied access to school, due to discriminatory nationality law, lack of birth certificate and lack of legal status of their parents.<sup>215</sup> The lack of legal status impacts on the ability of Rohingya to access other rights, including

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<sup>207</sup> Chinese law stipulates the right to education, including nine years of free, public, education without discrimination : see Article 46 of the 1982 Constitution, Articles 9, 18, 29 and 36 of the 1995 Education Law.

<sup>208</sup> People's Republic of China – Internal migrants: Discrimination and abuse, The human cost of an economic “miracle”, Amnesty International, 2007, pp. 32-35, available at: <https://www.amnesty.org/download/.../64000/asa170082007en.pdf> (Accessed 28 January 2018).

<sup>209</sup> Ibid. pp. 34-36.

<sup>210</sup> Ibid. pp. 26-27.

<sup>211</sup> Amnesty International. 2007. pp. 32-35.

<sup>212</sup> CESCR, Concluding observations on the second periodic report of China, UN Doc. E/C.12/CHN/CO/2, 2014, Para. 15; CERD, Concluding observations of CERD, UN Doc. CERD/C/CHN/CO/10-13, 2009, Para 14.

<sup>213</sup> Asia Pacific Refugee Rights Network. 2016; Fortify Rights. 2016. p. 3; Wake, C. and Cheung, T. 2016; Amnesty International, “Bangladesh pushed back Rohingya refugees amid collective punishment in Myanmar”, Amnesty International. 2016; Equal Rights Trust. 2014, p. 13.

<sup>214</sup> As a result, unless a relevant provision of the Conventions has attained the status of customary international law, these countries are not bound by the specific obligations under international law in relation to stateless persons and refugees as set out in these Conventions.

<sup>215</sup> See Equal Rights Trust. 2017a.

the right to education.<sup>216</sup> The denial of nationality has a particular impact on Rohingya children in Malaysia, as although there is almost universal primary education for Malaysian citizens, access to education for migrant children is very limited as they are not permitted to register in state-funded schools.<sup>217</sup> Due to their protracted situation of statelessness, Rohingya children are unable to satisfy registration requirements and have particular difficulties in gaining access to formal education. Stateless children are excluded from the education system and do not have the opportunity to undertake relevant examinations meaning that they rarely go on to secondary education and are further subject to exploitation.<sup>218</sup>

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<sup>216</sup> As Bangladesh, Malaysia and Thailand have not ratified the Refugee or Statelessness Conventions, Rohingya refugees face difficulties securing recognition of their refugee status and are frequently considered economic migrants by the States in which they seek refuge.

<sup>217</sup> Equal Rights Trust. 2017a. p. 37.

<sup>218</sup> UNHCR. 2012. p. 9.

States show interesting examples of the implementation of the right to education at national level as illustrated below.

In 2017, the CRC highlighted that ‘despite the difficult economic, political and security context’, the Central African Republic ‘has continued to host and integrate refugee and asylum-seeking children’. Against this background, the committee welcomed ‘the measures taken to provide ... education to children in camps for refugees and internally displaced persons.’<sup>219</sup>

Within the European Union, several Member States made it explicit in their national legislation that children with irregular immigration status are entitled to receive primary and secondary education.<sup>220</sup>

In Spain for instance, the constitution guarantees that every child, regardless of his or her immigration status, has the right to receive free and compulsory education.<sup>221</sup> Under Law 2/2009, the right to education extends to all foreigners in Spain legal and illegal migrants, displaced persons, refugees and asylum seekers included.<sup>222</sup>

In France, both national and international applicable regulations provide for non-discrimination in access to education for all children living in France, regardless of their nationality. The Preamble of the Constitution of the Fourth Republic (1946)<sup>223</sup> provides that ‘the nation grants each child ... equal access to education’. The Education code specifically provides that school attendance is compulsory for French and foreign nationals

<sup>220</sup> UNICEF, 2016.

<https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

<sup>223</sup> The preamble of the Constitution of the Fourth Republic has constitutional standing. It is still applicable today even though a new Constitution was adopted in 1958 when the Fifth Republic was established.



living in France from the age of 6 to the age of 16.<sup>224</sup> It specifies that no discrimination should be made between pupils as ‘education is the first national priority’.<sup>225</sup> In addition, a Circular dated 25 January 2016 provides that ‘In France each child and teenager has the right to education, regardless of his administrative situation’.<sup>226</sup> In other words, undocumented migrants benefit from the same right to education as other migrants (refugees, migrants who benefit from a resident permit ... . In that regards, foreign children under 18, whether documented or undocumented, benefit from an absolute protection when they are on the French territory and therefore cannot be forced to leave France, which is an essential corollary to migrants’ right to education.<sup>227</sup>

In Russia, according to the Constitution, and the Russian Federal law on Education, every child has the right to education. Federal law specifically states that foreign citizens, including recognized refugees and stateless persons, shall enjoy equal rights with citizens of the Russian Federation, as to the obtaining of pre-school, primary basic and secondary general education, as well as vocational education on a publicly accessible and free-of-charge basis.<sup>228</sup>

In Uruguay, all inhabitants have a right to education, including migrants and refugees, who are afforded the same rights as any other resident of Uruguay in application of the Constitution, the General Law of Education, the Immigration Act and the Refugees Act.<sup>229</sup>

In Argentina, under Article 4 of the National Education Law No. 26.206, the right to education is granted to all those living in Argentina. In addition, Article 143 establishes that the right to education should be guaranteed for those migrants without a National Identity Document (DNI), through the presentation of documents issued in their original country according to Articles 6 and 7 of the Migration Law N°25.871. Under Article 6 of this law, undocumented migrants and their families are placed on an equal footing to nationals with regard to their enjoyment of social rights. Article 7 of the same law states that ‘under no circumstances shall the irregular status of an immigrant prevent his or her admission as a student to an educational

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<sup>224</sup> Article L. 131-1 of the French code of education.

<sup>225</sup> Article L. 111-1 of the French code of education.

<sup>226</sup> Circular concerning minors deprived temporarily or permanently of the protection of their family and persons presenting themselves as such, 25 January 2016, n° 2016-01, p. 4.

<sup>227</sup> Law n° 93-1027 of 24 August 1993 on the control of immigration and the conditions of entry, reception and residence of foreigners in France.

<sup>228</sup> Article 43 of Russia’s Constitution guarantees the right to a free education, accessible to all. Article 78(1) the Federal Law No. 273-FZ “On Education in the Russian Federation” (2012) addresses the right of foreign citizens in Russia to free pre-school, primary, and secondary education.

<sup>229</sup> Article 71 of the Constitution of the Oriental Republic of Uruguay; Article 1 of the General Law of Education No. 18.437 (2006); Articles 1, 3, 6, 8 and 11 of the Immigration Act (Law No. 18.250 of 2008); Article 20 of the Refugees Act (Law No. 18.076).

institution, whether public or private, national, provincial or municipal, primary, secondary, tertiary or university'.<sup>230</sup> Hence, all those living in Argentina have the right to education, including the stateless or those waiting for asylum.

### ***Recognition of the right to education of IDPs without discrimination***

In Uganda, the National Policy for Internally Displaced Persons specifically identifies the right of displaced children to 'the same access to education as children elsewhere in Uganda'. The policy also provides for the adoption of 'affirmative' action programmes to assist and encourage the participation of IDPs in education. It further calls for 'special efforts' to be undertaken to ensure full and equal participation in education by IDP women and girls.<sup>231</sup>

### ***Recognition of the right to education of stateless people without discrimination***

Slovenia recognises the right to education of stateless people. Article 10 of its Elementary School Act provides that 'Children being foreign citizens or without citizenship and living in the Republic of Slovenia have the right to compulsory elementary education under equal conditions as the citizens of the republic of Slovenia.'<sup>232</sup>

### **Migrant children's access to pre-school without discrimination**

In France, Article L-113-1 of the National Education Code allows all children to be enrolled in pre-school near their residence from the age of three and a Circular of the Minister for National Education clarifies that there can be no discrimination regarding admission of foreign children.<sup>233</sup>

In Italy, the 1998 Immigration Act guarantees migrants the right to instruction in the same manner as it does for Italian citizens, regardless of migration status.<sup>234</sup> Moreover, the right to mandatory school education recognized under Italian law is interpreted so as to include the right to access pre-school, regardless of the legal or administrative status of the children or their parents. In a 2008 Order, the Tribunal of Milan ruled that access to pre-school could not be restricted or made more burdensome by discrimination on the basis of citizenship, legal or residential status; indicating that pre-school, although not properly within the definition of mandatory school system, is fundamental for the preparation of the latter.<sup>235</sup> In 2010, the

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<sup>230</sup> UNICEF. 2010. p. 13.

<sup>231</sup> Brookings-Bern Project on Internal Displacement. 2008, p.229.

<sup>232</sup> Law on the Elementary School Official Journal of the Republic of Slovenia, No 12, 1996:  
<http://www.unesco.org/education/edurights/media/docs/e8a5e9be1fcacc34981c772e937360ab27278f42.pdf>

<sup>233</sup> UNICEF. 2016, p. 5.

<sup>234</sup> UNICEF. 2010, p. 14.

<sup>235</sup> Tribunal of Milan, Order (*Ordinanza*) of February 11, 2008.

municipality of Florence acknowledged the right of undocumented children to attend pre-school. Other Italian cities have followed suit.<sup>236</sup>

In Belgium, the Flemish Ministry of Education conducted an information campaign aimed at improving participation in early-age education and care (ages 3-6) by new migrants and children with foreign mother tongues.<sup>237</sup> A letter circulated by the Ministry grants undocumented migrant children the right to attend school, prevents school head teachers from informing the police about the administrative status of children and their parents, and guarantees that they will not be arrested within the vicinity of the school.<sup>238</sup>

In Serbia, Article 14 of the Law on Preschool Education provides that children that are foreign citizens, as well as children from vulnerable groups without proof of residence or other personal identity documents, refugees or displaced persons are permitted to enrol in a pre-school and/or school delivering the preparatory pre-school programme under the same conditions and in the manner regulated for the citizens of Serbia.<sup>239</sup>

### **Migrants' access to higher education: recognition of foreign learning, skills, qualifications and experiences**

In Portugal, significant educational measures have been taken to ensure a rapid integration of refugee students in the national education system, including the adoption of specific guidelines for granting the equivalence of qualifications more rapidly.<sup>240</sup>

### **MEASURES TO FACILITATE THE EDUCATION OF NOMADS**

In northern Mali, the Government has established special schools in which teachers follow the students as the populations move around the country, thus allowing continuity in the education provided.<sup>241</sup>

In Nigeria, the Act on Compulsory Free Universal Basic Education provides for free basic education, including for nomads and migrants<sup>242</sup> and in 1989 the State established a National Commission for Nomadic Education.<sup>243</sup>

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<sup>236</sup> UNICEF. 2010. p. 14.

<sup>237</sup> See <http://www.onderwijs.vlaanderen.be/kleuterparticipatie> (Accessed 26 January 2018).

<sup>238</sup> UNICEF. 2010. p. 13.

<sup>239</sup> See Boly Barry, K. 2017, para. 93.

<sup>240</sup> UNESCO. 2017a. pp. 22-23.

<sup>241</sup> See Boly Barry, K. 2017, para. 97.

<sup>242</sup> See Compulsory, Free Universal Basic Education Act, 2001, Article 15:

<http://www.lawnigeria.com/LawsoftheFederation/Compulsory,-Free-Universal-Basic-Education-Act,-2004.html>

<sup>243</sup> <http://www.ncne.gov.ng>

## MEASURES TO ENSURE FREE ACCESS TO EDUCATION

Iraq adopted numerous measures such as providing school supplies, furniture and free compact discs containing all course material to compensate for the poor delivery of books to displaced students, as well as funds to transport them from their place of residence to school.<sup>244</sup>

## MEASURES TO FACILITATE MIGRANTS' ENROLMENT IN SCHOOL

In Greece, Law No. 3386/2005 on the entrance, living and social integration of third country nationals into the Greek territory allows children with inadequate documentation to enrol with the Greek schooling system.<sup>245</sup> Article 72.3 states:

*Documentation similar to that required for Greek nationals shall be required for the enrolment of minor third-country nationals to public schools. By way of exception, children of third-country nationals may enrol in public schools with insufficient documentation when:*

- a. They are protected by the Greek State in the capacity of refugees or persons under the protection of the UN High Commission;*
- b. They come from countries in which disorderly situations prevail;*
- c. They have applied for asylum;*
- d. They are third-country nationals residing in Greece, even if their legal residence therein has not been regulated.*

Greek Law No. 4251/2014 enacting the code on Immigration and Social Integration has a similar provision.<sup>246</sup>

In Italy, there is no obligation under national immigration law to produce documentation relating to residence permits in order to access mandatory school education free of charge.<sup>247</sup> This means that undocumented migrants should not experience difficulties in this regard when enrolling their children in school. In February 2014, the Italian Ministry of Education, University and Research enacted specific guidelines for the reception and integration of foreign students. These guidelines state, inter alia, that proof of residence permit is not required and that no one should be barred from enrolling in any educational facility due to the lack of such a document.<sup>248</sup> In a judgment on February 27, 2014, the Italian Council of State

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<sup>244</sup> UNESCO. 2017a. p. 23.

<sup>245</sup> Article 72, [https://www.unodc.org/res/cld/document/law-3386-2005-on-the-entry--residence-and-social-integration-of-third-country-nationals-on-greek-territory.html/Law No. 3386-2005.pdf](https://www.unodc.org/res/cld/document/law-3386-2005-on-the-entry--residence-and-social-integration-of-third-country-nationals-on-greek-territory.html/Law%20No.%203386-2005.pdf)

<sup>246</sup> Article 21 <http://www.refworld.org/docid/54eb40114.html>

<sup>247</sup> Legislative Decree No. 286/1998: <http://www.refworld.org/pdfid/54a2c23a4.pdf>

<sup>248</sup> These guidelines are accessible at:

(*Consiglio di Stato*) clarified that, when a student without a residence permit reaches the age of 18, they will be entitled to pursue their education studies until they obtain a final high school degree.<sup>249</sup>

In Afghanistan, the Education Law specifies that the lack of an identification card will not prohibit a child from attending school.<sup>250</sup>

#### **MEASURES TO FACILITATE MIGRANTS' INTEGRATION ADAPTING TO THEIR SPECIFIC NEEDS, INCLUDING LANGUAGE CLASSES AND SPECIFIC PROGRAMMES**

In Italy, the Permanent Territorial Centres (*Centri Territoriali Permanenti*), which replaced the former Provincial Centres for Adult Education (*Centri Provinciali di Istruzione per Adulti*), are specifically designed for foreign minors and young adults who have not completed their compulsory education. These centres offer Italian language classes and other cultural activities, and focus on designing an educational experience aimed at facilitating integration and access to the labour market.<sup>251</sup>

Also in Italy, specific projects aimed at integrating Roma children into the Italian education system and guaranteeing their right to education are implemented. One of the most important is the 2014-2020 National Project for the Integration of Roma, Sinti and Caminanti children.<sup>252</sup>

In Spain, refugee and asylum seeker children are considered as children with specific educational needs under Spanish Educational laws and are entitled to access specific programmes if they have missed out on education and/or are not proficient in the language.<sup>253</sup> Each autonomous region's administration is responsible for enacting adequate regulations and policies to address these specific needs. In Catalonia for instance, Law 10/2010 on the welcoming of migrant and returned persons sets out an obligation by the regional and local authorities to take measures to facilitate the welcome process of migrant persons in several areas, including education (among the suggested measures are special classes, school support and Catalan language training).<sup>254</sup> In Madrid, the regional authorities have put in place the Welcome Schools Programme

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<http://www.integrazionemigranti.gov.it/Pagine/Cerca-nel-sito.aspx?k=istruzione#k=istruzione#s=11>

<sup>249</sup> Italian *Consiglio di Stato*, judgement of February 27, 2014, No. 1734. This case involved a Thai citizen, enrolled in school, who had not been authorized to renew her study permit after turning 18 years old.

<sup>250</sup> Education Law of Afghanistan (2001), Article 6.

<sup>251</sup> See *Ministero dell'Istruzione dell'Università e della Ricerca* (MIUR) ordinance of July 29, 1997 No. 455 and MIUR decree of October 25, 2007.

<sup>252</sup> This 2014-2020 project received an important proportion of EU funding.

<sup>253</sup> See Organic Law 8/2013, Article 78 and 79: <https://www.boe.es/buscar/act.php?id=BOE-A-2013-12886>

<sup>254</sup> See Ley 10/2010, de 7 de mayo, de acogida de las personas inmigradas y de las regresadas a Cataluña: [http://noticias.juridicas.com/base\\_datos/Anterior/r0-ca-l10-2010.html](http://noticias.juridicas.com/base_datos/Anterior/r0-ca-l10-2010.html). See also: [http://treballiaferssocials.gencat.cat/ca/ambits\\_tematicos/immigracio/politiques\\_i\\_plans\\_dactuacio/pla\\_2017\\_2020/](http://treballiaferssocials.gencat.cat/ca/ambits_tematicos/immigracio/politiques_i_plans_dactuacio/pla_2017_2020/)

(*Programa Escuelas de Bienvenida*) aimed at supporting and improving migrant children's access to education.<sup>255</sup> In Andalusia, the Integral Plan for Migrants sets out the measures to be taken by the authorities to facilitate the reception and integration of migrant children into education programmes. Specific steps have also been taken to improve the knowledge of Spanish among migrant children (temporary language classes, language support programmes for migrants, virtual Spanish classes, Spanish classes for foreign persons).<sup>256</sup>

Germany has adopted a targeted support strategy for poorer-performing pupils which focuses particularly on children and young people from migrant backgrounds. The strategy prioritizes cooperation with parents and migrant organizations and provides intercultural day-care centres for children and schools.<sup>257</sup>

In Greece, schools are welcoming in more refugee and migrant children, after major efforts by the Greek Ministry of Education, Research and Religious Affairs supported by UNICEF and aimed at enrolling as many migrant children as possible 'through communication, sensitization and interpretation, teacher training, homework support, early childhood education and non-formal education for children out of school or who are still on the move to relocate to other countries'.<sup>258</sup> Since 1985, domestic law provides for the establishment of intercultural schools across Greek territory.<sup>259</sup> The programmes and classes offered in such schools are designed to respond to the specific needs of, inter alia, migrants, refugees, asylum seekers and repatriated Greeks.

In Somalia, some teachers are travelling with the nomadic groups and thus provide access to 'mobile' education.<sup>260</sup>

### ***Specific measures for travelling communities***

France is one of the few countries which has developed a specific policy for receiving and supporting the travelling community.<sup>261</sup> A 2012 Circular recalls that pupils belonging to this community enjoy the same right

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<sup>255</sup> See:

[http://www.madrid.org/dat\\_este/supe/tecnologias-informacion-comunicaciones/archivos/recursos\\_tic/recursos\\_oeste.htm](http://www.madrid.org/dat_este/supe/tecnologias-informacion-comunicaciones/archivos/recursos_tic/recursos_oeste.htm)

<sup>256</sup> <http://www.juntadeandalucia.es/organismos/justiciaeinterior/areas/politicas-migratorias/planes-inmigracion.html>

<sup>257</sup> UNESCO. 2017a. p. 22.

<sup>258</sup> See UNICEF. 2017b.

<sup>259</sup> See Greek Law No. 1566/1985 ("Structure and operation of primary and secondary education and other provisions", Government Gazette 167/30.09.1985, Issue A'); Law No. 2413/1996 ("Greek education abroad, intercultural education, and other provisions", Government Gazette 124/14.06.1996, Issue A').

<sup>260</sup> Carr-Hill, R. A., Education of children of nomadic pastoralists in Somalia: Comparing attitudes and behaviour", *International Journal of Educational Development*, Vol. 40, 2015, p. 167. Cited in Equal Rights Trust, 2017b. p.75.

<sup>261</sup> "L'accueil et l'accompagnement des gens du voyage", Court of audit, 11 October 2012.

to education as any other children in France, regardless of the length and type of their stay and accommodation.<sup>262</sup>

One of the main issues that travelling communities face in relation to their children's schooling is that of finding sites where they can stay as there are often long distances between these sites and the schools. The French administrative departments are primarily responsible for defining the areas and municipalities in which travelling communities are allowed to park and stay. In that respect, 1990 and 2000 laws relating to hosting and housing of the travelling community state that school opportunities should be taken into account when departments determine these areas.<sup>263</sup> In principle, they cannot remain on a site for more than five months. In practice, municipalities sometimes only allow for a much shorter stay, for instance 45 days, which does not support children's schooling.<sup>264</sup> However, a 2006 Circular recommends that families with children should be entitled to extend their stay until the end of the school year.<sup>265</sup>

The French court of auditors noted that 'schooling of children from travelling families tends to improve in territories where a reception area is provided, specifically when the internal rules allow the extension of the stay when children attend school'.<sup>266</sup> For example, in the Seine-et-Marne department, where long stays are allowed for families who commit to ensuring that their children regularly attend school, around 90 per cent of children go to primary school. By contrast, academic services from Hérault highlighted difficulties in the schooling of children belonging to the travelling community. This was notably due to the very short length of the stay allowed in areas dedicated to the travelling community with no exemption for families with pupils who attend school.<sup>267</sup>

#### **France: examples of legal and non-legal means for failure to respect the policies regarding migrant children's school enrolment**

##### **CONDITIONS FOR SCHOOL REGISTRATION**

Mayors are in charge of children's registration for nursery and primary school.<sup>268</sup> Registration for secondary schools takes place directly at the school in the administrative area where a pupil lives.

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<sup>262</sup> Circular n° 2012-141 of October 2, 2012 regarding the organization of allophone children.

<sup>263</sup> Law n° 90-449 of 31 May 1990 for the implementation of the right to housing; Law n° 2000-614 of 5 July 2000 on the reception and housing of travellers.

<sup>264</sup> 2016 Report on children's rights, *Défenseur des droits*, p. 35.

<sup>265</sup> Circular of August 3, 2006 regarding the implementation of the provisions of the departmental plan of travelling community reception, p. 3

<sup>266</sup> Court of auditors, Reception and Support of Travellers, October 2012, p. 160.

<sup>267</sup> *Ibid.* p. 161.

<sup>268</sup> Article L. 2122-27 of the General code of territorial authorities; Article L. 131-6 of the Education code.

Registration at a French school is never subject to the production of a residence permit. As a 2016 Circular recalled: 'It is not for the Ministry of Education to control foreign pupils' status in relation to regulations concerning the entry and stay of foreigners in France. The school enrolment of foreign pupils, whatever their age, cannot be made conditional on the submission of a residence permit.'<sup>269</sup>

As for French pupils, the following documents do have to be produced: (i) a family record book, identity card or birth certificate, (ii) vaccination certificate and (iii) proof of residency.<sup>270</sup>

- Regarding the vaccination certificate, the *Défenseur des droits* (ombudsman) recalled: 'up-to-date vaccination is essential for the physical reception of children; however it cannot be grounds for denying children administrative enrolment'. The Circular of 1 October 2012 therefore recalls that 'even if a family cannot provide one or several of the necessary documents at the time of enrolment, the pupil must benefit from provisional admission pending submission of documents necessary to his admission at the earliest possible date.'<sup>271</sup>

- Regarding the proof of residency, the *Défenseur des droits* recalled: 'The city of N. must promote and facilitate domiciliation of families living in camps, even when they are unlawful, in order to facilitate children's access to education. The *Défenseur des droits* recalls that the term used with respect to domiciliation is the concept of "installation" which must be interpreted as broadly as possible.'<sup>272</sup> Pursuant to a recent Law of 27 January 2017, Article L.131-5 of the Education Code now states: 'Status and housing patterns of families living in a municipality cannot be a valid grounds for refusing admission to a child who is subject to compulsory education.'

## PRACTICAL DIFFICULTIES

### Reluctance of some mayors to register foreign pupils

Mayors and directors of secondary schools must respect the principle of equal access to education. As a consequence, when the three aforementioned documents are provided, they cannot refuse to register a pupil. Even when one or more of these documents are missing, pupils should be accepted into school provisionally.<sup>273</sup> In addition, if for any reason a mayor refuses to register a child, prefects have the obligation to proceed with registration.<sup>274</sup> In practice, some mayors have refused to register children who were residing in their municipality but were administratively domiciled in another municipality. Others have refused registration on the basis of illegal residence in their municipality, or the illegal administrative status of the parents. These practices are discriminatory and have been overturned by French courts.<sup>275</sup> In addition, failure to respect the principle of equal access and discrimination against a pupil based on their administrative

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<sup>269</sup> Circular concerning minors deprived temporarily or permanently of the protection of their family and persons presenting themselves as such, 29 January 2016, n° 2016-01, p. 15, annex 6.

<sup>270</sup> "*L'inscription à l'école élémentaire*", Primary school registration; "*Inscription au collège*", Middle school registration; "*Inscription au lycée*", High school registration; Decision of the *Défenseur des droits* n° 2017-134, 7 November 2017, §46.

<sup>271</sup> Decision of the *Défenseur des droits* n° MDE-2013-92, 7 May 2013 on the primary schooling of children residing in illegal settlements.

<sup>272</sup> Decision of the *Défenseur des droits* n° MDE-2013-92, 7 May 2013 on the primary schooling of children residing in illegal settlements.

<sup>273</sup> Circular of the Official Bulletin n° 2014-088 of 10 July 2014 on Primary and Secondary Teaching.

<sup>274</sup> Article L. 2122-34 of the General Code of Local Authorities.

<sup>275</sup> For instance, Administrative Tribunal of Cergy, 15 November 2013, n°1101769. See also, Document 22 - Decision of the *Défenseur des droits* n° 2017-091, 27 March 2017, regarding a mayor's refusal to register a four year old child to a nursery school on the ground that he was living in a hotel.



status, or the fact that they are foreign, is a breach of the law and may give rise to criminal charges.<sup>276</sup> As an example, the Mayor of Montfermeil has been fined because he refused to enrol foreign pupils in the school in his municipality.<sup>277</sup> In 2016, the city of Ris-Orangis was fined on the same grounds.<sup>278</sup> In 2017, the *Défenseur des droits* criticised the Mayor of Levallois for the same behaviour.<sup>279</sup> In this decision, the *Défenseur des droits* recommended that the Mayor should keep him updated about the school enrolment process in the municipality so as to ensure that all registration requests were granted

### Challenging a decision to refuse enrolment

If a mayor refuses to enrol a child in the school, parents have various means of challenging this refusal.

*Administrative claim:* Parents can file an administrative claim before the prefect of the department in which the school is located. The prefect will review the case and decide to uphold or to reverse the mayor's decision.<sup>280</sup>

*Referral to the Défenseur des droits:* The *Défenseur des droits* is a non-jurisdictional, independent administrative authority, in charge of defending people's rights in France. A claim can be filed before the *Défenseur des droits* by anyone<sup>281</sup> who believes they have been subject to discrimination, believes a child's rights have been violated, faces difficulties with a public service body, or where a State representative failed to observe due process.<sup>282</sup> The *Défenseur des droits* has powers of inquiry and powers of intervention, such as: to resolve a conflict by mutual agreement by making recommendations or through mediation, to request disciplinary action against a security officer, to request observations before a court in order to recommend sanctions by the administration against a physical person or legal entity at the origin of the discrimination.<sup>283</sup> The *Défenseur des droits* can therefore intervene in cases of discrimination with respect to pupils' registration at school. For example, it rendered a decision in which it urged a mayor to accept the primary school registration of a child who was living in an illegal camp.<sup>284</sup>

*Judicial appeal: Action for annulment (recours en annulation):* The purpose of this action is to annul and reverse the decision if the claimant thinks the mayor's decision is unlawful. The competent administrative court is the one in which the mayor's municipality is located. This appeal must be made no later than two months after the mayor's decision. Legal representation is not mandatory.<sup>[L SEP]</sup> For instance, the Administrative Tribunal of Paris annulled a 2002 decision in which a mayor refused to register children for school on the basis that they were allegedly living in an illegal accommodation.<sup>285</sup>

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<sup>276</sup> Articles 225-1, 225-2 and 432-7 of the Criminal Code.

<sup>277</sup> Court of Appeal of Paris, March 12 1992, n° 7813/91.

<sup>278</sup> Administrative Tribunal of Versailles, Interim Decision, 19 October 2006, n° 1306559.

<sup>279</sup> Decision of the *Défenseur des droits* n° 2017-023, 30 January 2017.

<sup>280</sup> Article L. 2122-34 of the General Code of Local Authorities.

<sup>281</sup> Or by an association regularly declared for at least five years at the date of the facts, whose statutes are aimed at combating discrimination or assisting victims of discrimination.

<sup>282</sup> Organic Law n° 2011-333 of 29 March 2011 on the *Défenseur des droits*.

<sup>283</sup> France: Defender of rights, European Directory of Equality Bodies, Equinet European Network of Equality Bodies.

<sup>284</sup> Decision of the *Défenseur des droits* n° MDE-2013-92, 7 May 2013 on the primary schooling of children residing in illegal settlements.

<sup>285</sup> Administrative Tribunal of Paris, 1 February 2002, n° 0114244/7 cited in *Refus de scolarisation*, Refusal of school enrolment, Immigrant Information and Support Group (GISTI), 5 September 2013.

*Petition for suspension (référé suspension)*<sup>286</sup> : To be admissible, this petition must be filed before or simultaneously with an action for annulment. For the suspension to be granted, two conditions must be met: there must be a serious doubt as to the lawfulness of the challenged decision and the petition must be driven by urgent need. In that respect, courts consider that the delay in a child's schooling constitutes an urgent situation.<sup>287</sup> If the petition is granted, the interim order will stay the effects of the contested decision until a decision is reached on its merits. [SEP] A court can also grant an injunction, where necessary under financial compulsion. For instance, in September 2016, a Lille court granted an interim relief order in which it ordered the mayor to enrol a child at school subject to a fine of 1,500 euros per day for non- execution.<sup>288</sup>

*Criminal claim*: A mayor may be prosecuted for discrimination under Article 225-1 of the Criminal Code. In that respect, heavier sentences are imposed when the perpetrator of discrimination is a public officer.<sup>289</sup>

### Ensuring that all children attend school

Every year, mayors are asked to provide a list of French and foreign children living in their municipalities who are subject to compulsory education.<sup>290</sup> If they find out that children subject to compulsory education are not enrolled, they have to report it immediately to the Department of Education. [SEP] However, in practice, assessing whether a pupil is entitled to education may be difficult, especially when children arrive in France without their parents. Migrants under 18 with no legal representatives are called "*unaccompanied foreign minors*". Because of their specific vulnerability, the Child welfare service (*Aide sociale à l'enfance*) is in charge of supporting them, finding them accommodation, and looking after their school enrolment.<sup>291</sup> In order to benefit from the support of the Child welfare service, children must prove that they are under 18. However, they do not always have the necessary official documents showing their age. When they do have these documents, their validity is sometimes put into question. In addition, medical assessment may not accurately assess the precise age of a teenager. According to studies made by associations helping migrants, the Child welfare service denies assistance to more than half of unaccompanied minors who request it.<sup>292</sup> Children can appeal decisions that do not recognize them as a minor. However, this is a lengthy process during which they are left with no assistance.<sup>293</sup> Schools used to enrol these children despite doubts as to their real age. In Paris, this has not been the case since January 2015. A stricter assessment of any children arriving in Paris now takes place before they can attend school.<sup>294</sup>

### Communication issues

Limited command of French, or isolated living conditions (camps, squat, etc.) also account for migrants' limited awareness of administrative procedures needed to enrol their children in school. School mediators (employees of the Department of Education [*Education Nationale*] who support student integration and fight

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<sup>286</sup> Article L. 521-1 of the Code of Administrative Justice.

<sup>287</sup> Administrative Tribunal of Paris, 5 October 2001, cited in *Journal du droit des jeunes*, October 2002, n° 220, pages 52-54.

<sup>288</sup> Administrative Tribunal of Lille, 6 September 2016, n° 1606500.

<sup>289</sup> Article 432-7 of the Criminal Code, *see also* Paris Regional Court decision of February 25, 1988 and in Paris Court of Appeal Decision of March 12, 1992, cited in *Plein droit*, January 2009, n° 64, pp. 3-6.

<sup>290</sup> Article L. 131-6 of the Education code.

<sup>291</sup> Article L. 221-1<sup>1</sup> of Social Action and Family Code.

<sup>292</sup> "*La Mairie de Paris délaisse des dizaines de Mineurs Isolés Etrangers*", Paris-Luttes.info, 30 April 2016.

<sup>293</sup> Ibid.

<sup>294</sup> Welcoming and supporting unaccompanied foreign minors in Paris, Paris City Hall, April 2015, p. 19.

against school absenteeism) and associations provide assistance to explain the administrative steps of the process. A 2012 circular on the schooling of newly arrived non-French speakers stresses the importance of a clear and accessible information presenting the French schooling system, rights and duties of families and pupils and principles governing school organization.<sup>295</sup> This circular requires the education centres for the children of new arrivals and travellers (CASNAV)<sup>296</sup> to draft a document containing all relevant information on administrative provisions, school conditions and other useful resources (establishment's names, registration process, practical advices, etc.)<sup>297</sup>

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<sup>295</sup> Circular n° 2012-141 of October 2, 2012 regarding the organization of allophone children.

<sup>296</sup> CASNAV have been created under the Ministry of education. Their role is to provide information and support in relation to the education of foreign children and children belonging to the travelling community. CANSNAV staff consists of employees from the sub-regional branch of the Education Ministry (*Inspection Académique*) and teachers with specific training. There is one CASNAV in each subdivision of the Ministry of Education (*académie*).

<sup>297</sup> Circular n° 2012-141 of October 2, 2012 regarding the organization of children whose native language is not French.

## RECOMMENDATIONS

- 1. States that have not yet done so should be encouraged to ratify or accede to:**
  - The International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - The Convention on the Rights of Child (UNCRC)
  - The UNESCO Convention against Discrimination in Education (CADE)
  - The Convention relating to the Status of Refugees (CSR or 1951 Refugee Convention)
  - The Protocol to the Convention relating to the Status of Refugees (PCSR)
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW)
- 2. States should be encouraged to review, modify and/or withdraw reservations made upon ratification or accession, in order to ensure that children involved in international migration fully enjoy their right to education under all the above mentioned treaties.**
- 3. States should be encouraged to implement the UN Human Rights Committees' recommendations related to the right to education of migrants.**
- 4. States should be encouraged to implement and enforce national laws and policies related to the right to education of migrants.**
- 5. In light of recent developments at international level, including the reflection on the Global Compact for migrants, States should take all necessary step to better implement the provisions related to the right to education enshrined in international and regional treaties, and to comply with all their obligations in this regard, including:**
  - Removing discriminatory laws or discriminatory provisions preventing migrants from accessing education;
  - Removing administrative barriers to accessing education, such as documentation requirements;
  - Adopting targeted measures to ensure the effective enjoyment of migrants' right to education and their integration in the host states, including additional language education, additional staff and other intercultural support, without discrimination of any kind;
  - Providing formal and non-formal learning opportunities, teacher training and life skills classes;

- Developing concrete measures to foster intercultural dialogue between migrant and host communities and to address and prevent xenophobia or any type of discrimination or intolerance against migrant children;
  - Integrating human rights education (including on non-discrimination, migrants' rights and children's rights) within education curricula, in order to help prevent xenophobic or other discriminatory attitudes that could affect migrants' integration in the long term.
- 6. States should put in place adequate measures to recognize a child's previous education by acknowledging previously obtained school certificates and/or issuing new certification based on the child's capacities and capabilities, to avoid creating stigmatization or penalization. This is equally applicable to countries of origin or third countries in the case of return.**
- 7. States should monitor the right to education of migrants and collect improved disaggregated data in order to better respond to migrants' specific educational needs.**

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## ANNEXES

### Annex 1 – Ratifications table of the main treaties guaranteeing the right to education

The table below presents the status of ratifications of the main international treaties guaranteeing the right to education of migrants:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of Child (UNCRC)
- UNESCO Convention against Discrimination in Education (CADE)
- Convention relating to the Status of Refugees (CSR or 1951 Refugee Convention)
- Protocol to the Convention relating to the Status of Refugees (PCSR)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW)

The table shows the number of ratifications by treaties and indicates for each state which treaties are ratified. The most ratified are the ICESCR and the UNCRC, followed by the CSR and its Protocol.

The table also proposes a classification by level of commitment:

- In red, the highest commitment, the states that have ratified the six treaties (31 states, 16 per cent)
- In orange, the states that have ratified the UNCRC and either the ICESCR or the CADE plus the CSR and the ICPRMW (10 states, 5 per cent)
- In dark yellow, the states that have ratified the UNCRC and either the ICESCR or the CADE plus the CSR (95 states, 48 per cent)
- In pale yellow, the states that have ratified the UNCRC and either the ICESCR or the CADE plus the ICPRMW (6 states, 3 per cent)
- In white, the lowest commitment, the rest of the states (55 states, 28 per cent)

Only 21 per cent of the states (red and orange) are highly committed to the right to education of migrants.

About half of the states (48 per cent, dark yellow) have ratified at least two main treaties guaranteeing the right to education and also the CSR.

Still 28 per cent of states have a very low level of commitment.

	Ratifications of international general provisions			Ratifications of specific international provisions			Total of ratifications
	ICESCR	UNCRC	CADE	CSR	PCSR	ICPRMW	
Total	167	196	101	145	146	51	
Afghanistan	1	1	1	1	1	0	5
Albania	1	1	1	1	1	1	6
Algeria	1	1	1	1	1	1	6
Andorra	0	1	1	0	0	0	2
Angola	1	1	0	1	1	0	4
Antigua and Barbuda	0	1	0	1	1	0	3
Argentina	1	1	1	1	1	1	6
Armenia	1	1	1	1	1	0	5
Australia	1	1	1	1	1	0	5
Austria	1	1	0	1	1	0	4
Azerbaijan	1	1	0	1	1	1	5
Bahamas	1	1	0	1	1	0	4
Bahrain	1	1	0	0	0	0	2
Bangladesh	1	1	0	0	0	1	3
Barbados	1	1	1	0	0	0	3
Belarus	1	1	1	1	1	0	5
Belgium	1	1	0	1	1	0	4
Belize	1	1	1	1	1	1	6
Benin	1	1	1	1	1	0	5
Bhutan	0	1	0	0	0	0	1
Bolivia (Plurinational State of)	1	1	1	1	1	1	6
Bosnia and Herzegovina	1	1	1	1	1	1	6
Botswana	0	1	0	1	1	0	3
Brazil	1	1	1	1	1	0	5
Brunei Darussalam	0	1	1	0	0	0	2
Bulgaria	1	1	1	1	1	0	5

Burkina Faso	1	1	1	1	1	1	6
Burundi	1	1	0	1	1	0	4
Cape Verde	1	1	0	0	1	1	4
Cambodia	1	1	0	1	1	0	4
Cameroon	1	1	0	1	1	0	4
Canada	1	1	0	1	1	0	4
Central African Republic	1	1	1	1	1	0	5
Chad	1	1	0	1	1	0	4
Chile	1	1	1	1	1	1	6
China	1	1	0	1	1	0	4
Colombia	1	1	0	1	1	1	5
Comoros	0	1	0	0	0	0	1
Congo	1	1	1	1	1	1	6
Cook Island	0	1	0	0	0	0	1
Costa Rica	1	1	1	1	1	0	5
Cote d'Ivoire	1	1	1	1	1	0	5
Croatia	1	1	1	1	1	0	5
Cuba	0	1	1	0	0	0	2
Cyprus	1	1	1	1	1	0	5
Czech Republic	1	1	1	1	1	0	5
Democratic People's Republic of Korea	1	1	0	0	0	0	2
Democratic Republic of the Congo	1	1	0	1	1	0	4
Denmark	1	1	1	1	1	0	5
Djibouti	1	1	0	1	1	0	4
Dominica	1	1	1	1	1	0	5
Dominican Republic	1	1	1	1	1	0	5
Ecuador	1	1	1	1	1	1	6
Egypt	1	1	1	1	1	1	6
El Salvador	1	1	0	1	1	1	5



Equatorial Guinea	1	1	0	1	1	0	4
Eritrea	1	1	0	0	0	0	2
Estonia	1	1	0	1	1	0	4
Ethiopia	1	1	0	1	1	0	4
Fiji	0	1	0	1	1	0	3
Finland	1	1	1	1	1	0	5
France	1	1	1	1	1	0	5
Gabon	1	1	0	1	1	0	4
Gambia	1	1	0	1	1	0	4
Georgia	1	1	1	1	1	0	5
Germany	1	1	1	1	1	0	5
Ghana	1	1	0	1	1	1	5
Greece	1	1	0	1	1	0	4
Grenada	1	1	0	0	0	0	2
Guatemala	1	1	1	1	1	1	6
Guinea	1	1	1	1	1	1	6
Guinea-Bissau	1	1	0	1	1	0	4
Guyana	1	1	0	0	0	1	3
Haiti	1	1	0	1	1	0	4
Holy See	0	1	0	1	1	0	3
Honduras	1	1	1	1	1	1	6
Hungary	1	1	1	1	1	0	5
Iceland	1	1	0	1	1	0	4
India	1	1	0	0	0	0	2
Indonesia	1	1	1	0	0	1	4
Iran (Islamic Republic of)	1	1	1	1	1	0	5
Iraq	1	1	1	0	0	0	3
Ireland	1	1	0	1	1	0	4
Israel	1	1	1	1	1	0	5
Italy	1	1	1	1	1	0	5

Jamaica	1	1	1	1	1	1	6
Japan	1	1	0	1	1	0	4
Jordan	1	1	1	0	0	0	3
Kazakhstan	1	1	1	1	1	0	5
Kenya	1	1	0	1	1	0	4
Kiribati	0	1	0	0	0	0	1
Kuwait	1	1	1	0	0	0	3
Kyrgyzstan	1	1	1	1	1	1	6
Laos People's Democratic Republic	1	1	0	0	0	0	2
Latvia	1	1	1	1	1	0	5
Lebanon	1	1	1	0	0	0	3
Lesotho	1	1	0	1	1	1	5
Liberia	1	1	1	1	1	0	5
Libya	1	1	1	0	0	1	4
Liechtenstein	1	1	0	1	1	0	4
Lithuania	1	1	0	1	1	0	4
Luxembourg	1	1	1	1	1	0	5
Madagascar	1	1	1	1	0	1	5
Malawi	1	1	0	1	1	0	4
Malaysia	0	1	0	0	0	0	1
Maldives	1	1	0	0	0	0	2
Mali	1	1	1	1	1	1	6
Malta	1	1	1	1	1	0	5
Marshall Islands	1	1	0	0	0	0	2
Mauritania	1	1	0	1	1	1	5
Mauritius	1	1	1	0	0	0	3
Mexico	1	1	0	1	1	1	5
Micronesia (Federated States of)	0	1	0	0	0	0	1
Monaco	1	1	1	1	1	0	5

Mongolia	1	1	1	0	0	0	3
Montenegro	1	1	1	1	1	0	5
Morocco	1	1	1	1	1	1	6
Mozambique	0	1	0	1	1	1	4
Myanmar	1	1	0	0	0	0	2
Namibia	1	1	0	1	1	0	4
Nauru	0	1	0	1	1	0	3
Nepal	1	1	0	0	0	0	2
Netherlands	1	1	1	1	1	0	5
New Zealand	1	1	1	1	1	0	5
Nicaragua	1	1	1	1	1	1	6
Niger	1	1	1	1	1	1	6
Nigeria	1	1	1	1	1	1	6
Niue	0	1	0	0	0	0	1
Norway	1	1	1	1	1	0	5
Oman	0	1	0	0	0	0	1
Pakistan	1	1	0	0	0	0	2
Palau	0	1	0	0	0	0	1
Panama	1	1	1	1	1	0	5
Papua New Guinea	1	1	0	1	1	0	4
Paraguay	1	1	0	1	1	1	5
Peru	1	1	1	1	1	1	6
Philippines	1	1	1	1	1	1	6
Poland	1	1	1	1	1	0	5
Portugal	1	1	1	1	1	0	5
Qatar	0	1	0	0	0	0	1
Republic of Korea	1	1	0	1	1	0	4
Republic of Moldova	1	1	1	1	1	0	5
Romania	1	1	1	1	1	0	5
Russian Federation	1	1	1	1	1	0	5

Rwanda	1	1	1	1	1	1	6
Saint Kitts and Nevis	0	1	0	1	0	0	2
Saint Lucia	0	1	0	0	1	0	2
Saint Vincent and the Grenadines	1	1	1	1	1	1	6
Samoa	0	1	0	1	1	0	3
San Marino	1	1	0	0	0	0	2
Sao Tome and Principe	1	1	0	1	1	1	5
Saudi Arabia	0	1	1	0	0	0	2
Senegal	1	1	1	1	1	1	6
Serbia	1	1	1	1	1	0	5
Seychelles	1	1	1	1	1	1	6
Sierra Leone	1	1	1	1	1	0	5
Singapore	0	1	0	0	0	0	1
Slovakia	1	1	1	1	1	1	6
Slovenia	1	1	1	1	1	0	5
Solomon Islands	1	1	1	1	1	0	5
Somalia	1	1	0	1	1	0	4
South Africa	1	1	1	1	1	0	5
South Sudan	0	1	0	0	1	0	2
Spain	1	1	1	1	1	0	5
Sri Lanka	1	1	1	0	0	1	4
State of Palestine	1	1	0	0	0	0	2
Sudan	1	1	0	1	1	0	4
Suriname	1	1	0	1	1	0	4
Swaziland	1	1	1	1	1	0	5
Sweden	1	1	1	1	1	0	5
Switzerland	1	1	0	1	1	0	4
Syrian Arab Republic	1	1	0	0	0	1	3
Tajikistan	1	1	1	1	1	1	6

Thailand	1	1	0	0	0	0	2
The former Yugoslavia Republic of Macedonia	1	1	1	1	1	0	5
Timor-Leste	1	1	0	1	1	1	5
Togo	1	1	1	1	1	0	5
Tonga	0	1	0	0	0	0	1
Trinidad and Tobago	1	1	0	1	1	0	4
Tunisia	1	1	1	1	1	0	5
Turkey	1	1	0	1	1	1	4
Turkmenistan	1	1	0	1	1	0	4
Tuvalu	0	1	0	1	1	0	3
Uganda	1	1	1	1	1	1	6
Ukraine	1	1	1	1	1	0	5
United Arab Emirates	0	1	0	0	0	0	1
United Kingdom of Great Britain and Northern Ireland	1	1	1	1	1	0	5
United Republic of Tanzania	1	1	1	1	1	0	5
United States of America	0	0	0	0	1	0	1
Uruguay	1	1	1	1	1	1	6
Uzbekistan	1	1	1	0	0	0	3
Vanuatu	0	1	0	0	0	0	1
Venezuela (Bolivarian Republic of )	1	1	1	0	1	1	5
Vietnam	1	1	0	0	0	0	2
Yemen	1	1	0	1	1	0	4
Zambia	1	1	0	1	1	0	4
Zimbabwe	1	1	1	1	1	0	5
Total	167	196	101	145	146	51	

## Annex 2 – Abbreviations

Committee on Economic, Social and Cultural Rights	CESCR
Committee on the Elimination of Racial Discrimination	CERD
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	CMW
Committee on the Rights of the Child	CRC
Convention on the Rights of Child	UNCRC
Convention relating to the Status of Refugees	CSR or 1951 Refugee Convention
Convention relating to the Status of Stateless Persons	-
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ICPRMW
International Covenant on Economic, Social and Cultural Rights	ICESCR
Protocol to the Convention relating to the Status of Refugees	PCSR
UN High Commissioner for Refugees	UNHCR
UN Office of the High Commissioner for Human Rights	OHCHR
UNESCO Convention against Discrimination in Education	CADE