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**Protection of the Human Right to Education for Refugees.
Case study: Syrian Refugees in Turkey.**

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Introduction

This study aims to examine the protection of the human right to education for refugees, with a case study on Syrian refugees in Turkey. To fully comprehend the topic, it has been necessary to initially scrutinize the existing international legal framework concerning both the human right to education and international migration. With this foundation established, the research then narrowed its focus to the international legal instruments addressing refugees' right to education. The research seeks to confront the existing international legislation with the numerous challenges that refugees encounter in accessing their right to education. These obstacles emerge not solely from the requirement for implementation within national laws but also from the imperative to adapt to diverse country contexts. The entirety of this analysis has played a pivotal role in delving into the selected case study—the plight of Syrian refugees in Turkey.

The first chapter will explain that education, considered a fundamental human right recognized by international human rights law, entails several key principles. Firstly, its universal nature ensures that the right to education is legally safeguarded for all individuals, devoid of any form of discrimination. Secondly, it imposes upon states the duty to uphold, honor, and fulfill this right to education. Finally, it underscores the existence of mechanisms through which states can be held accountable for any breaches or denials of the right to education.

The analysis stems from the investigation of the most relevant international legal instruments. The Universal Declaration on Human Rights, established in 1948, articulates in Article 26 that everyone has the right to education. Subsequently, this right has gained broad recognition and elaboration through various international normative instruments crafted by the United Nations. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the UNESCO Convention against Discrimination in Education (CADE).

The entitlement to education has further been reiterated in International Treaties addressing distinct segments of the population such as women and girls, persons with disabilities, migrants, refugees, and Indigenous Peoples, among others, as well as in specific contexts like education amidst armed conflicts. Notably, this study will present the Convention on the Rights of Persons with Disabilities (CRPD), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Additionally, it has been integrated into numerous regional treaties and entrenched as a fundamental right in the majority of national constitutions.

The right to education serves as a cornerstone benefiting both individuals and society at large. Integral to human, social, and economic progress, it stands as a crucial component in attaining enduring peace and sustainable development. Serving as a potent instrument, education facilitates the realization of individual potential, upholding human dignity, and fostering both personal and communal welfare. In essence, it operates as an empowerment right, elevating marginalized communities from poverty, serving as an

indispensable vehicle for the fulfillment of other rights, and fostering the holistic development of the human persona.

The second chapter comprises two primary sections: the initial segment offers a comprehensive examination of the evolutionary trajectory of international law concerning migration, with due regard to contemporary migration trends. This section delves into the historical development of legal frameworks governing migration, tracing their evolution to accommodate shifting patterns and dynamics within global migration flows. Through an analysis of recent migration patterns, it seeks to elucidate how international law has adapted and responded to the complexities and challenges posed by contemporary migration phenomena. The reasoning takes as its foundation the 1951 Convention Relating the Status of Refugees and the definition of “Refugee” there provided in Article 1. Subsequently, it clarifies key migration terms invoking the relevant international legal instruments, such as the Convention on the Status of Stateless Persons and United Nations Guiding Principles on Internal Displacement.

The subsequent section of the chapter is dedicated to refining the focus of the research onto international legal instruments that specifically address the human right to education for refugees, while also highlighting the persistent challenges that endure in this domain. This section delves into a detailed examination of the various international legal frameworks and mechanisms established to safeguard refugees' right to education, scrutinizing their effectiveness and limitations. Additionally, it sheds light on the ongoing obstacles and hurdles that refugees encounter in accessing quality education, despite the existence of these legal instruments. Through a thorough exploration of these issues, this section aims to provide a comprehensive understanding of the complexities surrounding the realization of refugees' right to education within the realm of international law.

Serving as both a protective shield and an empowering force, education equips refugees with the necessary knowledge and skills to lead purposeful, self-reliant lives. By offering a pathway to employment and self-sufficiency, education paves the way for individuals to contribute meaningfully to society. Moreover, it plays a pivotal role in nurturing future generations, fostering the emergence of leaders, doctors, scientists, engineers, writers, historians, and advocates who will shape the course of tomorrow.

Overall, the chapter endeavors to offer a comprehensive examination of the international legal framework safeguarding the right to education for refugees globally, encompassing the responsibilities of States and addressing prominent contemporary issues. It accentuates the pivotal role of education throughout all phases of the refugee situation, particularly emphasizing the importance of attention to the stabilization phase. This phase encompasses structural considerations involving the educational policies and legal frameworks of host states, as well as issues related to adaptation and integration. This framework emphasizes the necessity of implementing robust legal and policy frameworks that prohibit discrimination or exclusion based on any grounds while safeguarding fundamental rights.

The international and regional instruments safeguarding the universal entitlement to education for all individuals, encompassing refugees and those in analogous circumstances, comprise several pivotal documents, analyzed in the second Chapter. Among these is the Universal Declaration of Human

Rights, which serves as the seminal global articulation of rights inherent to all human beings. Additionally, the framework encompasses the 1952 Convention Relating the Status of Refugees, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, Convention relating to the status of Stateless Persons, Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the New York Declaration for Refugees and Migrants, the Global Compact for Safe, Orderly and Regular Migration, and specific UNESCO Recommendation.

Exploring the international legal framework pertaining to this matter enables us to examine the corresponding national legal frameworks. The third and final chapter presents a case study focusing on safeguarding the Right to Education of Syrian Refugees in Turkey. The investigation operates on the premise that international legal standards need to be implemented within domestic settings and complemented where gaps exist. Recognizing that each nation faces distinct disruptions and crises, their respective legislations consequently differ.

Contemporary international legal frameworks and United Nations priorities, enshrined in the 17 Sustainable Development Goals (SDGs), currently recognize the critical importance of ensuring the right to education for refugee children, notably with SDG number 4, highlighting its significance from the beginning of any humanitarian crisis. This right to education is considered essential not only in the early stages of the emergency but throughout the entire refugee situation. The situation of Syrian Refugees in Turkey epitomizes the clear necessity for integration policies. When a large influx of refugees seeks asylum in neighboring countries, the initial temporary measure is to house them in camps, as seen in Turkey. However, in order to promote integration, there is an immediate need to set up new educational institutions, hire educators, supply educational resources, and provide psychosocial support.

The substantial influx of Syrian migrants into Turkey that started more than 13 years ago, prompted the nation to reassess its domestic laws to align with its international obligations. Turkey's case necessitates specific scrutiny as it highlights various significant aspects of this issue. To begin, despite Turkey is a signatory to the 1951 Convention and its Protocol, it imposed a geographical limitation on their application. This decision means that Turkey applies the Convention and its Protocol exclusively to individuals fleeing from Europe. Specifically, Article 1(3) of the 1967 Protocol allowed countries to express a specific declaration according to which they confine the refugee definition outlined in the 1951 Convention to individuals displaced by events within Europe. Consequently, migrants entering Turkey from Syria do not automatically activate Turkish obligations under the 1951 Convention.

This geographical restriction underscores the nuanced approach taken by Turkey towards its refugee policy, aligning with its historical and geopolitical context. While Turkey's adherence to the Convention demonstrates its commitment to international refugee law, the imposition of a geographical limitation highlights the complexities of refugee management within specific regional dynamics.

Moreover, Turkey's national asylum legislation before 2013 was unable to address the challenges posed by the influx of Syrian refugees into the country.

This legislative gap underscored the urgent need for comprehensive reforms to effectively manage and protect the rights of refugees within Turkey's borders.

Therefore, the final chapter will offer an extensive examination of the legal framework in Turkey concerning international protection, as set forth by the 2013 Law on Foreigners and International Protection (LFIP). Particularly noteworthy is the implementation of a "Temporary Protection" regime for Syrian migrants, initiated under Article 91 of LFIP and regulated by the Temporary Protection Regulation. Within this framework, the study will focus on the provisions aiming to safeguard the human right to education for Syrians. The Chapter will delve into the normative aspects of these provisions, their practical application, and the contemporary challenges they present.

1. Chapter 1: The human right to education

The first chapter of this study embarks on an in-depth analysis of the fundamental human right to education. To begin with, it elucidates the definition of the term “education”, steering the discussion toward the consideration of whether education should be regarded as a means or a process. The exploration then progresses to delineate the key features of the human right to education.

Starting from a comprehensive overview of the normative content inherent in the right to education, subsequent sections of the chapter delve into nuanced aspects. Noteworthy among these are dedicated segments addressing the overarching aims of education, the issues of discrimination and equality within educational spheres, and the protection of marginalized groups. This examination relies on the scrutiny of some of the United Nations’ core human rights treaties that hold relevance in safeguarding the right to education.

The last sections of this chapter focus on monitoring mechanisms, with a particular emphasis on the United Nations’ monitoring mechanisms, Treaty Bodies and Charter-Based bodies. By undertaking this multifaceted exploration, the study aims to depict the layers surrounding the human right to education, providing a robust foundation for subsequent chapters.

1.1 Definition of education

The concept of education encompasses more than just the formal education received in schools. It includes the entire process of developing one’s moral, intellectual, and physical capabilities. Education can be focused on one single aspect; however, its fullest and most meaningful expression involves nurturing moral, intellectual, and physical facets.

A definition of education can be deduced by examining the multitude of international instruments, articles, treatises, and national laws pertaining to the human right to education that have been formulated and published since World War I. A holistic approach is necessary to analyze these international instruments, taking into account treaties, international customs, general legal principles, cases, and soft law derived from reports and documents of various intergovernmental and non-governmental organizations¹. Domestic law, in the form of state laws and local ordinances, is also essential, given the variations in the application and implementation of the legal right to education among different states. The nuances at the local level contribute significantly to the overall landscape of education rights. However, despite the variety of human rights instruments, a clear and universally agreed-upon definition of education remains elusive². The interpretations and nuances in these instruments may vary, leaving the concept of education open to diverse perspectives and contextual understandings.

The Oxford Living Dictionary (OLD) defines education as: “the process of receiving or giving systematic instruction, especially at a school or university”. This definition recognizes education as a process. A similar

¹ JOOTAER (2020).

² *Ibid.*

connotation has been expressed in the decision of the European Court of Human Rights (ECtHR) in *Campbell and Cosans v. United Kingdom*, where education has been described as referable to “the whole process whereby, in any society, adults” endeavor to transmit their beliefs, culture and other values to the young³. In this regard, emerges the distinction between education and instruction, which refers in particular to the transmission of knowledge and to intellectual development. Furthermore, according to Article 26 of the Universal Declaration of Human Rights, education is viewed as a process that leads to specific outcomes and goals, such as the development of personality, capabilities, and dignity⁴. Differently, the US Supreme Court in *Brown v. Board of Education* defined education as a means, specifying that education is “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, [...] in helping him to adjust normally to his environment, and in enabling a child to succeed in life”⁵.

Whether education is considered a process or a means, these definitions agree on the fact that education encompasses lifelong learning that occurs in both formal and non-formal environments, including informal learning.

Formal education “is institutionalized, [...] through public organizations and recognized private bodies and constitutes the formal education system of a country. Formal education programs are thus recognized as such by the relevant national education or equivalent authorities”⁶.

Non-formal education is “institutionalized, intentional, and planned by an education provider. The defining characteristic of non-formal education is that it is an addition, alternative, and/or complement to formal education within the process of lifelong learning of individuals”⁷. Non-formal education varies based on national contexts and can encompass programs that address adult and youth literacy, provide education for out-of-school children, and offer training in life skills, work skills, and social or cultural development. It’s a flexible and adaptive approach to education that responds to diverse needs within a society.

Informal learning consists of “intentional or deliberate, but not institutionalized, forms of learning. It is less organized and less structured than either formal or non-formal education. It may include learning activities that occur in the family, workplace, local community, and daily life, on a self-directed, family-directed or socially directed basis”⁸.

The continuous process of acquiring knowledge and skills extends beyond traditional classrooms and involves diverse experiences throughout one’s life⁹. The UNESCO Convention against Discrimination in Education (1960) provides a definition of education in Article 1(2) that confirms this statement: “[f]or the purposes of this Convention, the term ‘education’ refers to all types

³ Judgment of the European Court of Human Rights, 25 February 1982, 7743/76, *Campbell and Cosans c. the United Kingdom*.

⁴ Resolution of the United Nations General Assembly, 10 December 1948, 217 (III) A, *Universal Declaration of Human Rights*.

⁵ Records of the Supreme Court of the United States, 17 May 1954, Record Group 267, *Brown v. Board of Education of Topeka*, Opinion.

⁶ Report UNESCO and UNESCO Institute for Statistics (2012).

⁷ *Ibid.*, p. 11.

⁸ *Ibid.*, p. 122.

⁹ Report UNESCO and Right to Education Initiative (2019: 24).

and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given”¹⁰. Furthermore, the Committee on the Rights of the Child, in its Comment to Article 29 of the Convention on the Rights of the Child (1959), clarifies that despite the Convention refers to primary, secondary, vocational, and higher education, “[e]ducation [...] goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society”¹¹.

Moreover, education serves as a powerful tool in reducing inequalities and promoting gender equality. It empowers individuals to lead healthier and more sustainable lives, contributing to overall well-being. Education plays a crucial role in fostering tolerance among people, laying the foundation for more peaceful and harmonious societies. The ripple effects of education extend far beyond individual knowledge, influencing social dynamics and creating a positive impact on a global scale. At the current time, projections show that around 84 million children and young people will remain without access to education by 2030, and approximately 300 million students will lack essential numeracy and literacy skills¹². This underscores the urgent need for action for improvements and investments in education. United Nations Sustainable Development Goal 4 aims to ensure free primary and secondary schooling for all by 2030, to offer equal access to affordable vocational training, eliminate gender and wealth disparities, and attain universal access to quality higher education¹³.

1.2 Education as a human right

Before the beginning of the twentieth century, education used to be a privilege reserved for specific social classes. The first example of legal provisions contemplating a nationwide education system can be traced back to the eighteenth century, when Frederick the Great implemented general school regulations in 1763, making education mandatory for both boys and girls aged 5 to 13 or 14 years. During the early 19th century, in the wake of the Enlightenment, Germany and France initiated the development of public education systems, driven by a blend of national aspirations and ideology¹⁴. In contrast, countries like Great Britain and the United States, influenced by laissez-faire principles, took a more cautious approach before permitting government intervention in educational matters. Indeed, despite the first regulations on education established by the English Parliament appearing in 1802 within acts of factory legislation (The Health and Morals of Apprentices Act), the requirement at stake often went unfulfilled. The Health and Morals of Apprentices Act mandated employers to provide apprentices with instruction in fundamental subjects like mathematics, writing, and reading. However, many employers were indifferent to providing such education¹⁵. Education was included in international law with the 1948 Universal

¹⁰ UNESCO, 14 December 1960, CL/3933, *Convention Against Discrimination in Education*, Art. 1.

¹¹ UN Committee on the Rights of the Child (CRC), 17 April 2001, CRC/GC/2001/1, *General comment No. 1 (2001) The aims of education*, Article 29(1).

¹² Report United Nations Statistics Division (2023).

¹³ *Ibid.*

¹⁴ Encyclopaedia Britannica, *Education during the Enlightenment*.

¹⁵ *Ibid.*

Declaration of Human Rights (UDHR), where the human right to education is specifically provided under Article 26.

Before going into detail in the following sections, some essential features of the human right to education will be provided. Education as a human right is universal, a key priority, and crucial in the exercise of other human rights.

Various institutions and actors share the responsibility for the right to education, but according to international law, states are the foremost duty-bearers in ensuring this right. The human right to education is not dependent on political or charitable decisions¹⁶.

The right to education is universal¹⁷ and extends to everyone, regardless of age, encompassing children, adolescents, youths, adults, and older individuals, without any form of discrimination¹⁸.

Education is considered a key priority both nationally and internationally. Thus, the safeguard of the right to education cannot be easily eluded, and states are accountable for violations or deprivations.

Education is a right multiplier, as it is necessary for the realization of social, cultural, economic, and political rights¹⁹. It is also described as an empowerment right, as it “is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities”²⁰.

The right to education displays elements of civil and political, economic, social, and cultural rights, as well as solidarity rights. Encompassing all three generations of human rights, it is often referred to as a "hybrid" right. This right includes traditional freedoms like ensuring that educational institutions do not promote biased or one-sided views, the right to establish private schools and academic freedom. Additionally, it involves the obligation of the state to establish and manage a comprehensive education system, through the provision of the necessary infrastructure and resources. The right to education serves as the foundation for human rights consciousness, it fosters enlightenment in civil and political matters, allows social and economic well-being, and enables participation in cultural and political life²¹.

The right to education has gained recognition as a fundamental human right and has been included in various human rights instruments across different contexts. The first chapter of this work will provide an analysis of the right to education, conducted through the study of the most relevant international instruments dealing with it:

International Covenant on Civil and Political Rights (ICCPR),

¹⁶ UN General Assembly, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, *Convention on the Rights of the Child*, Article 4(2).

¹⁷ United Nations General Assembly, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, *International Covenant on Economic, Social and Cultural Rights*, Art. 13.

¹⁸ Art. 29 UNCRC.

¹⁹ UNESCO and Right to Education Initiative (2019).

²⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), 8 December 1999, E/C.12/1999/10, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*.

²¹ BEITER(2006: 37-43).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

International Covenant on Economic, Social and Cultural Rights (ICESCR),

Convention on the Rights of the Child (CRC),

United Nations Educational, Scientific, and Cultural Organization (UNESCO)'s Convention Against Discrimination in Education,

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

Convention on the Rights of Persons with Disabilities (CRPD),

The Convention Relating to the Status of Refugees (1951 Refugee Convention).

These instruments contribute to defining the different features of the right to education. Broadly, they address its universal nature, protect parents' right to control the religious and moral education of their children and prohibit discrimination in terms of access to education, they ensure the standard and quality of education and the condition under which education is given, and they define it as a progressive right²². The following paragraphs will provide specific insights.

According to the Committee on Economic, Social and Cultural Rights, "education in all its forms and at all levels shall exhibit the following interrelated and essential features: availability, accessibility, acceptability, adaptability".

1.2.1 The normative content of the right to education: available, accessible, acceptable, adaptable

Before analyzing the international legal instruments dealing with the right to education, this paragraph will provide an overview of the normative content of the right to education, through the study of the 4-As of education: availability, accessibility, acceptability, and adaptability. The 4-A scheme has been developed starting from General Comment No. 13 of the Committee on Economic, Social, and Cultural Rights (CESCR), and it provides a common ground for all types and levels of education. According to this framework, the following sections will analyze the essential features of education.

Availability:

"Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental

²² Art. 28(1) UNCRC.

context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology²³.

Making education available implies the responsibility of states in ensuring the right to education, through the establishment, development, and management of an education system that provides schools in all areas and in adequate quantity. This is crucial to guarantee the availability of education at every level, committing to immediate and universal access to compulsory primary education and progressive and universal access to secondary education. This obligation refers to the creation and maintenance of the physical infrastructure necessary for effective education delivery. As emphasized by CESCR, this includes factors such as school and library buildings, sanitation facilities for all genders, adequately compensated teachers, teaching materials, computer and IT facilities, and more²⁴.

The availability of education recalls two distinct governmental obligations. On one hand, considering education as a civil and political right means that the government should allow educational institutions to be established and managed also by non-state actors. On the other hand, recognizing education as a social and economic right requires the government to take an active role in establishing or funding educational institutions. This dual connotation ensures that education is not only permitted but also actively provided and made accessible through various means. Indeed, different decisions are taken in different countries. Some of them only have public schools, some others have a prevalence of private schools, and, most often, there is a mixed composition²⁵.

To ensure effective and available education, the role of teachers is crucial. Their education and training are fundamental needs. Indeed, teachers play a pivotal role in shaping the learning experiences of students. Proper education and training equip them with the necessary pedagogical skills, subject knowledge, and classroom management techniques. In this regard, relevance is acquired by labor rights for teachers, like those for other professions, which are integral components of basic international labor standards. In various countries, teachers have faced denials of the right to form trade unions, dismissals for participating in strikes, anti-union discrimination, harassment, and even arrests or violence against trade union leaders. These challenges underscore the importance of upholding labor rights to ensure fair and just working conditions for teachers worldwide²⁶.

Accessibility:

“Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

²³ CESCR *General Comment No. 13* para. 2(a).

²⁴ CESCR *General Comment No. 13* para. 6(a).

²⁵ TOMASEVSKI (2001).

²⁶ *Ibid.*

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

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

Economic accessibility – education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available ‘free to all’, States parties are required to progressively introduce free secondary and higher education²⁷.

Thus, accessibility involves three dimensions: non-discrimination, physical accessibility and economic accessibility. Physical accessibility implies that there should be a primary school within a safe and reasonable distance for all children. In terms of economic accessibility, compulsory primary education must be free to all students. There is a commitment to progressively make all other levels and types of education free of charge, ensuring that economic barriers do not hinder access to education. This dual approach addresses both the geographical and financial aspects of ensuring education is truly accessible for everyone²⁸.

The fact that primary education must be free and compulsory is recognized as an international custom, meaning that it represents evidence of a general practice accepted as law²⁹. Therefore, states are bound by it regardless of their ratification status. However, while secondary and higher education are acknowledged as human rights³⁰, they are not mandated to be free or compulsory for everyone. The caveat regarding higher education being accessible on the basis of capacity³¹ introduces the notion that accessibility might be influenced by an individual's ability or qualifications. Although secondary and higher education should be generally available and accessible to all³², and although progressive commitment is in place, at the current time they are not universally provided free of charge.

The compulsory nature of education carries with it the fundamental principle that all school-aged children must have access to education without any form of discrimination. This involves two key dimensions. Firstly, as already mentioned, compulsory education must be financially feasible, ensuring that it is affordable for all families. Secondly, accessible education requires the elimination of every form of discrimination, such as sex, race, sexual orientation, gender, physical or mental ability, age, social or marital status, and family background discrimination³³. By addressing affordability and prohibiting discriminatory practices, the aim is to make education universally accessible, promoting equality and inclusivity in the educational system.

²⁷ CESCR *General Comment No. 13*, para. 2(b).

²⁸ UNESCO and Right to Education Initiative (2019).

²⁹ United Nations, 18 April 1946, *Statute of the International Court of Justice*, Art. 38(b).

³⁰ Art. 13(2)(b) ICESCR.

³¹ Art. 13(2)(c) ICESCR.

³² Art. 28(1)(b) UNCRC; Art. 13(2)(c) ICESCR.

³³ LOHRENSCHEIT (2010).

Furthermore, particular emphasis is dedicated to the needs of disadvantaged groups of learners. These individuals may require additional support to overcome challenges they might face within their families or communities. It's crucial to acknowledge and cater to the learning difficulties some children may have, ensuring that they are treated equally and not segregated into special institutions. Eliminating obstacles to access is a key aspect, including the conditions that force children, especially girls, to work instead of attending school due to financial constraints within the family. The goal is to create an inclusive and equitable educational environment that allows all children, regardless of their background, to enjoy their right to education³⁴.

Today, situations of armed conflict and violence represent significant barriers to accessing education for millions of people. The impact of conflict on education is multifaceted. Violence can physically damage educational infrastructure, create dangerous conditions for students traveling to and being present in school, and result in closures of schools³⁵. Additionally, there's often a loss of crucial education materials and personnel. Targeted attacks against education facilities, learners, and educators further exacerbate the challenges, creating an environment where the basic right to education is compromised. The consequences of such disruptions extend beyond the immediate period of conflict, affecting the long-term development and well-being of individuals and communities.

Acceptability:

“The form and substance of education, including curricula and teaching methods, have to be acceptable (e.g.: relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents”³⁶.

Education must meet standards of acceptability, in terms of content and methods, which need to be suitable and of high quality. State parties are responsible for overseeing both public and private education, ensuring that institutions of all kinds and levels adhere to the state's established minimum standards. Education should be culturally relevant and appropriate for the students it aims to benefit.

Furthermore, although children are the main recipients of the right to education, the concept of acceptability extends to the family sphere and to parental freedoms. This means that families should have the ability to enroll their children in schools that align with their religious, moral, or philosophical convictions. Ethical instruction should be delivered in a manner that is impartial and objective, while also incorporating non-discriminatory exemptions³⁷.

Providing acceptable education also means allowing every student to be educated in her or his mother tongue. Teaching in the mother tongue plays a crucial role in fostering inclusion and ensuring quality learning. It not only enhances learning outcomes but also positively impacts academic performance. This matter is particularly relevant, especially considering the

³⁴ *Ibid.*

³⁵ International Committee of The Red Cross website, *Access to Education*.

³⁶ CESCR *General Comment No. 13*, para 2(c).

³⁷ United Nations Human Rights Committee (CCPR), 30 July 1993, CCPR/C/21/Rev.1/Add.4, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, para. 6.

ongoing substantial obstacles that minority groups worldwide encounter in accessing quality education, that should contribute to the preservation of their language and identity. Safeguarding minority languages and acknowledging, respecting, and promoting the educational requirements of minority groups are integral aspects of protecting and preserving their cultural heritage. It also contributes to the diversity and development of society, playing a pivotal role in mitigating inter-ethnic tension and preventing conflicts³⁸.

Furthermore, acceptability acknowledges that children are rights-holders, meaning they should be able to attend schools with dignity and without any form of violence and corporal punishment.

Adaptability:

“Education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings”³⁹.

The 4th ‘A’ is adaptability, consisting of addressing the distinct needs of individual students. Specific approaches must be displayed for children with disabilities, indigenous peoples, minorities, and, in certain instances, working children. In general, teachers and schools need to adjust to the diverse capabilities and support needs of children. Moreover, considering the fact that students’ needs change and evolve constantly, teachers should be able to adapt to specific contexts and be flexible in the organization of classes and programs⁴⁰.

The notion of adaptability in education also relates to the principle of the best interests of the child⁴¹, according to which the well-being, safety, and development of the child “shall be a primary consideration”⁴². The principle of the best interests of the child is among the four overarching guiding principles on children's rights⁴³, which include the right to non-discrimination, the right to life, survival and development, and the right to participation or the right to express views and have them considered. This principle is enshrined in Article 3(1) of the Convention on the Rights of the Child (CRC).

Additionally, it becomes the responsibility of the state to ensure education reaches children wherever they are, whether in remote rural communities, juvenile detention, or amid conflict or emergencies. This last point has already been mentioned when dealing with accessibility, and this represents clear evidence of the fact that despite a distinction among the 4As being possible, respect for the human right to education requires a holistic approach, which must consider all the aspects mentioned in this paragraph.

1.2.2 Aims of Education: Convention on the Rights of the Child (1989, CRC)

³⁸ Human Right Council, Report of the Special Rapporteur on minority issues, 9 January 2020, A/HRC/43/47, *Education, language and the human rights of minorities*.

³⁹ CESCR *General Comment No. 13* para. 2(d).

⁴⁰ UNESCO and Right to Education Initiative (2019).

⁴¹ TOMASEVSKI (2001).

⁴² Art. 3(1) UNCRC.

⁴³ Articles 2, 3, 6, 12 UNCRC.

The aims of education are outlined most thoroughly in Article 29(1) of the Convention on the Rights of the Child (1989, CRC). This paragraph will provide an in-depth analysis of the provisions of Article 29(1), with main reference to General Comment No.1, adopted by the Committee on the Rights of the Child at the twenty-sixth session (2001). According to Article 29:

“States Parties agree that the education of the child shall be directed to:

- (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential”⁴⁴;

Article 29(1)(a) highlights the personal and subjective entitlement to a tailored standard of education. Aligned with the Convention’s principle of prioritizing the best interests of the child, this article underscores the need for child-centered education. It emphasizes that the primary aim of education should be the nurturing of the unique personality, talents, and abilities of each individual child⁴⁵. This recognizes that every child possesses distinct characteristics, interests, capabilities, and learning requirements.

- (b) “The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations”⁴⁶.

Article 29(1)(b) stresses that not only human rights education should cover the details of human rights treaties, but it is equally crucial for children to witness these principles in action in their homes, schools, and communities. This approach foresees education as a continuous, lifelong process. The starting point for the fulfillment of this Article is the commitment to integrating reflections on human rights values into the daily lives and experiences of children so that human rights awareness becomes a fundamental part of their education experience⁴⁷.

- (c) “The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”⁴⁸.

In General Comment No.1, the Committee is emphasizing the connection between Article 29(1) and the fight against racism, racial discrimination, xenophobia, and related intolerance⁴⁹. Indeed, one of the aims of education is to build up a system that not only instills an understanding and appreciation of the values expressed in Article 29(1)(c) – respect for cultural identity, parents, and language – but also actively confronts and challenges every form of discrimination and prejudice. Education, in this context, becomes a reliable and enduring remedy for discriminatory actions.

- (d) “The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship

⁴⁴ Art. 29(1)(a) UNCRC.

⁴⁵ United Nations Committee on the Rights of the Child, 17 April 2001, CRC/GC/2001/1, *General comment No. 1 (2001), Article 29 (1), The aims of education*, para. 9.

⁴⁶ Art. 29(1)(b) UNCRC.

⁴⁷ CRC *General comment No. 1*.

⁴⁸ Art. 29(1)(c) UNCRC.

⁴⁹ CRC *General comment No. 1*.

among all peoples, ethnic, national and religious groups and persons of indigenous origin”⁵⁰.

The aim of education expressed in Article 29(1)(d) refers to enhancing a child's capacity and opportunities for active and responsible participation in a free society. Thus, denying a child access to education directly hinders their ability to fully and responsibly engage in a free society⁵¹.

(e) “The development of respect for the natural environment”⁵².

Article 29(1)(e) highlights the significance of children acquiring a sense of respect for nature and natural resources. Reading this specific provision and coupling it with the right to play outlined in Article 31, according to which “States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts”⁵³, it is reasonable to argue that the Convention advocates for the benefits of outdoor education.

Overall, Article 29(1) contributes to outlining an educational approach that champions, upholds and safeguards the fundamental values of the Convention. Indeed, it mandates that the delivery of education must be rooted in the principles upon which the Convention is built. As specified by the Committee on the Rights of the Child in General Comment No.1, education must be “child-centered, child friendly and empowering”⁵⁴. The drafting of Article 29, and more broadly of the principles of the Convention, contributed to the acknowledgment of the fact that the educational vision described in Article 29 comes with substantial resource implications. Nevertheless, the Committee underscores that resources should be made available to the fullest extent feasible and cannot be used as a justification for neglecting to implement any of the necessary measures⁵⁵.

The mentioned objectives highlight the significance of education for both the individual and the state. According to international law, states can establish additional goals as long as they align with global standards, indeed, the aims expressed in Article 29 of the CRC do not preclude others. Mere acknowledgment of these educational aims is insufficient; it is crucial to emphasize how their implementation should permeate all facets of state education systems, including the curriculum, teacher training, pedagogies, and more⁵⁶. States must incorporate all stated aims into their education systems and while they can prioritize certain objectives based on context, they are not free to selectively adopt or omit them.

1.2.3 Nondiscrimination and equality in education

International human rights law is fundamentally grounded in the principles of non-discrimination and equality. They were first included in the Universal Declaration of Human Rights in Article 7, according to which:

⁵⁰ Art. 29(1)(d) UNCRC.

⁵¹ UNCRC *General comment No.1*, para. 14.

⁵² Art. 29 UNCRC.

⁵³ Art. 31(1) UNCRC.

⁵⁴ UNCRC *General comment No.1*, para. 2.

⁵⁵ UNCRC *General comment No.1*, para. 28.

⁵⁶ UNESCO and Right to Education Initiative (2019).

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”⁵⁷.

Furthermore, almost every significant human rights document kicks off with the principles of equality and non-discrimination, and this work will provide an overview of some of the most relevant to the human right to education. Prejudice is frequently the force driving other infringements on rights. Therefore, actions taken to prevent manifestations of prejudice end up shielding a wide spectrum of human rights⁵⁸.

Article 2 of the International Covenant on Civil and Political Rights encompasses a non-discrimination and equality clause that extends to the entire convention, which also includes provisions concerning the right to education⁵⁹. Additionally, Article 26 features a standalone non-discrimination and equality clause that independently prohibits discrimination across all legally guaranteed rights, not limited to those explicitly outlined in the ICCPR:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”⁶⁰.

Overall, the principle of non-discrimination asserts that for the sake of upholding and advancing human rights and fundamental freedoms universally, access to public services – and to education – should be granted to everyone. This means no distinctions based on race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, disability, or any other status.

Various notions of equality come into play in different situations. When asserting a breach of rights related to non-discrimination or equality before the law, it often prompts an assessment of one or more equality concepts⁶¹. This examination may involve overlapping perspectives on equality, namely: consistent treatment, opportunity equality, outcome equality, and transformative equality.

This paragraph will address the nexus between these principles and the human right to education, considering the fact that many children are denied education because of discrimination. The related issues confirm that non-discrimination and equality aren't just abstract ideas in international human rights law. These are well-defined human rights, shaped over decades to tackle daily discrimination issues. In the field of education, the principles of non-discrimination and equality have found application across various human rights treaties. Indeed, addressing discrimination and inequality in education requires targeted measures. At the same time, it is important to recognize that

⁵⁷ Art. 7 UDHR.

⁵⁸ FARRIOR (2015).

⁵⁹ United Nations General Assembly, 16 December 1966, Treaty Series, vol. 999, p. 171, *United Nations International Covenant on Civil and Political Rights* (ICCPR), Art. 18.

⁶⁰ Art. 26 ICCPR.

⁶¹ FARRIOR (2015).

these issues often have deep roots in societies, and states are required to tackle the underlying causes.

The following section of the work will address the application of non-discrimination and equality principles in the human right to education, through the analysis of two international legal instruments dealing with the topic: International Covenant on Economic, Social and Cultural Rights (1966, ICESCR) and UNESCO Recommendation against Discrimination in Education (1960).

1.2.3a International Covenant on Economic, Social and Cultural Rights (1966, ICESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is the international legal instrument that more comprehensively encompasses provisions on the right to education, specifically in Article 13. The normative content of Article 13, further expanded in General Comment No.13 of the Committee on Economic, Social and Cultural Rights, represents the basis of the 4As scheme, which has been already analyzed in paragraph 1.2.1 of this study. Therefore, the following section will briefly comment on Article 13, and it will then focus on how the Convention deals with the principles of non-discrimination and equality in education.

Article 13:

1. “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their

children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State⁶².

The provisions of Article 13 match those of Article 29 of CRC, however, some additional points are addressed by ICESCR. The Article delineates the responsibilities of states regarding primary, secondary, and tertiary education. It also clarifies the content of education, with explicit references to the social dimension of the right to education. Furthermore, it includes provisions for parents' right to make decisions on the education of their children so that it respects their religious and moral beliefs. The Article addresses the right to establish private schools, known as the freedom aspect of the right to education. The Article as a whole is linked to the principles of non-discrimination and equality, which are central to international human rights law in relation to both civil and political and economic, social, and cultural rights.

Article 13(1) begins with the acknowledgment of the universal entitlement to education. The exploration of this concept is connected to the insights provided in General Comment No. 1 of the Committee on the Rights of the Child, specifically addressing the educational objectives outlined in Article 29(1) of the Convention on the Rights of the Child. Article 13(2) safeguards the social dimension of the right to education. Article 13(3) and (4) delve into the protection of the freedom aspect. Paragraph (3) preserves parental rights in the educational realm and paragraph (4) ensures the right of individuals and entities to establish and oversee educational institutions.

The content of this Article is tied to the principles of non-discrimination and equality and is dependent on them. Indeed, in Article 2(3) of the ICESCR, equality and non-discrimination are assured concerning all economic, social, and cultural rights, including the right to education⁶³. Furthermore, the CESCR explicitly defines discrimination as “any distinction, exclusion, restriction or preference [...] which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”⁶⁴. In addition, according to Article 3 of the ICESCR, States are mandated to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”⁶⁵. Therefore, in order to fulfill their obligations under the ICESCR, respect for nondiscrimination and equal treatment in education is mandatory for state parties.

⁶² Art. 13 ICESCR.

⁶³ Art. 2(3) ICESCR.

⁶⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), 2 July 2009, E/C.12/GC/20, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*.

⁶⁵ Art. 3 ICESCR.

1.2.3b UNESCO Convention against Discrimination in Education (CADE, 1960)

The Convention against Discrimination in Education (CADE) was adopted by the General Conference of the United Nations Educational, Scientific, Cultural Organization (UNESCO) in Paris during its eleventh session from November 14 to December 15, 1960. It marked the first instance of a clear definition of discrimination, even though the UDHR had previously mentioned distinctions based on race. The Convention Against Discrimination in Education represents a standard-setting instrument, and it plays a crucial role in the realization of the right to education.

The UNESCO Convention against Discrimination in Education represents the first internationally binding agreement exclusively focused on the right to education. Acknowledged as a pivotal element of the Education 2030 Agenda⁶⁶, the Convention serves as a means to propel the cause of providing comprehensive and fair high-quality education for everyone. In contrast to various other human rights agreements, it prohibits any reservations, preventing ratifying states from selectively excluding certain elements or provisions from the Convention's legal impact⁶⁷. Consequently, upon ratification, the Convention becomes fully applicable to the 109 States part of it, mandating adherence to the specified rights and obligations.

The Convention stipulates that primary education shall be free and compulsory⁶⁸, secondary education available and accessible⁶⁹, and higher education accessible on the basis of individual capacity⁷⁰. It stresses the need to uniform quality standards for education across all public educational institutions of the same level, to ensure equivalent conditions⁷¹, and the need to guarantee opportunities for individuals who may have missed all or part of their primary education⁷². It also includes provisions relating to teachers, as it contemplates training opportunities for the teaching profession without discrimination⁷³.

Furthermore, education is seen as the means to foster the complete development of the human personality and cultivate a deep respect for human rights and fundamental freedoms. In order to protect the cultural identity of students, the Convention safeguards the freedom of parents to choose an education for their children in line with their moral and religious convictions⁷⁴. Additionally, there are provisions protecting members of national minorities⁷⁵, who enjoy the right to engage in their own educational pursuits.

The respect of the Convention is even more crucial in the post-Covid-19 pandemic era. Before the COVID-19 pandemic, global efforts to fulfill international education commitments were already falling short. The crisis has

⁶⁶ UNESCO global multi-stakeholder mechanism to accelerate progress towards Sustainable Development Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

⁶⁷ Art. 9 UNESCO CADE.

⁶⁸ Art. 4(a) UNESCO CADE.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Art. 4(b) UNESCO CADE.

⁷² Art. 4(c) UNESCO CADE.

⁷³ Art 4(d) UNESCO CADE.

⁷⁴ Art. 5(b) UNESCO CADE.

⁷⁵ Art. 5(c) UNESCO CADE.

worsened disparities, particularly impacting vulnerable students who are now at a greater risk of being marginalized as education heavily relies on distance learning solutions. Given the need to uphold the right to education across all circumstances, states must refocus on the rights and responsibilities outlined in the Convention, implementing legal and policy measures to eradicate discrimination and guarantee equal educational opportunities.

Thus, not only does the Convention address nondiscrimination and equality principles in education, but it also gives a significant legal basis to the human right to education, widening and complementing the provisions of the International Covenant of Economic, Social and Cultural Rights (ICESCR). Indeed, the two international instruments present similarities and differences. The following sections will describe them and focus on the unique provisions of each treaty.

For what concerns similarities, both treaties express the aims of education. They both address the universality of education, access to education, and continuity of education, in Article 4 of CADE and in Article 13 of ICESCR. However, Article 4 (CADE) frames them as State obligations, while clause 2 of Article 13 (ICESCR), places a stronger emphasis on actively achieving the complete realization of this right⁷⁶. Moreover, the liberty of parents to choose the education of their children is guaranteed in Article 5(1)(b) of CADE and in Article 13(3) of ICESCR.

When it comes to distinctions between the two instruments, it is worth noting that the CADE, in Article 5, clause (c), includes explicit provisions regarding the rights of members of national minorities. In contrast, Article 13 of the ICESCR does not have a specific provision on this matter, but its Article 2 (2) includes a broad provision that addresses the same issue.

Each of the two treaties presents some unique provisions. The most remarkable one of CADE is the prohibition of reservation foreseen in Article 9. Moreover, the CADE provides a definition of discrimination, considering as such “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”⁷⁷. Correspondingly, it also clarifies the meaning of education, which “refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given”⁷⁸.

The distinctive features of Article 13 of the ICESCR include provisions related to secondary and higher education, emphasizing their universal availability and accessibility on the basis of capacity, with a specific mention of the progressive introduction of free education (Article 13 (2) b & c). This underscores the focus of Article 13 on ensuring access to education; in contrast, the CADE prioritizes non-discrimination and equality of educational opportunities⁷⁹. Another unique aspect is the fellowship system outlined in the ICESCR, according to which states must actively pursue the development of

⁷⁶ UNESCO Document (2006: 16).

⁷⁷ Art. 1(1) UNESCO CADE.

⁷⁸ Art. 1(2) UNESCO CADE.

⁷⁹ UNESCO Document (2006: 17).

a system of schools at all levels, and continuously improve the material conditions of teaching staff⁸⁰. This compels states to ensure the existence of an educational fellowship system to support disadvantaged groups⁸¹. The active pursuit of the development of a school system at all levels reinforces the primary responsibility of states to directly provide the right to education in most circumstances.

1.2.4 Protection of the Right to Education of marginalized groups

The following paragraphs of this study will concentrate on the protection of the right to education of marginalized groups. First of all, it is necessary to clarify that the term 'marginalized groups' stands for those people who suffer prolonged and historical discrimination, on the basis of different factors, notably identity, characteristics, or circumstance⁸².

Another significant lexical observation is that while considering 'groups' can offer insights, it is crucial to recognize their inherent diversity. The heterogeneity within these groups should not overshadow the fact that each individual, whether or not belonging to one of the categories considered, possesses an equal right to education. To uphold this right, it is imperative for all stakeholders to collaborate in ensuring the inclusivity of the entire education system. Indeed, ensuring equal opportunities in education poses challenges for every country, and it is reasonable to constate that national educational policies often struggle to realize a truly inclusive system⁸³.

According to the international legal instruments studied in the previous sections, the right to education is universal and does not allow for any form of exclusion or discrimination. To gain a comprehensive understanding of the universal nature and extent of the right to education, it is crucial to delve into its inclusive dimensions. Notably, inclusivity refers to the entitlement of 'national minorities' to engage in their own educational endeavors⁸⁴, equal access to technical and vocational education rights and opportunities for individuals with disabilities and other disadvantaged groups to derive benefits from such education⁸⁵, and adult education and literacy, for wider access to education. Indeed, General Comment No. 13 on Article 13 of the ICESCR, as mentioned earlier, emphasizes that education should be accessible to everyone, particularly the most vulnerable groups, both in legal terms and in practice, devoid of discrimination based on any of the prohibited grounds (paragraph 6(b)).

Inclusive education operates on the principle that all children, regardless of differences, should learn together. Inclusive education encompasses more than just the learning experiences of individuals with disabilities; it extends to the education of all learners, with a specific focus on marginalized and disadvantaged groups⁸⁶. It values the learning capacity of every individual and understands that each person possesses distinct strengths, needs, and learning

⁸⁰ Art. 13(2)(e) ICESCR.

⁸¹ UNESCO (2006: 18).

⁸² UNESCO and Right to Education Initiative (2019: 86).

⁸³ Right to Education Initiative website, *Marginalised Groups*.

⁸⁴ Art. 5 (1)(c) UNESCO CADE.

⁸⁵ UN Educational, Scientific and Cultural Organisation (UNESCO), 10 November 1989, *Convention on Technical and Vocational Education*, Art. 2(4).

⁸⁶ BRODERICK (2014: 25-60).

styles. Inclusivity requires the adoption of personalized approaches, employing flexible and adaptable curricula, teaching methods, and learning strategies⁸⁷. Inclusive education cultivates appreciation for individual differences and strives to confront discriminatory attitudes, inside and outside the classroom.

Notably, the umbrella of marginalized groups gathers cultural, ethnic and linguistic minorities; Roma children; indigenous communities; women and girls; disabled and handicapped children; rural and illiterate populations; nomad populations; children from poor households; and migrant workers, refugees, internally displaced persons (IDPs), and asylum-seekers⁸⁸.

The following sections of this work will investigate how the human right to education is guaranteed to marginalized groups, focusing on people with disabilities, racial discrimination, migrant workers and members of their families, women, and girls⁸⁹. Therefore, the analysis will be conducted starting from the relative thematic human rights treaties: the Convention on the Rights of Persons with Disabilities (2006, CRPD), International Convention on the Elimination of All Forms of Racial Discrimination (1965, ICERD), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, ICRMW), and Convention on the Elimination of All Forms of Discrimination against Women (1979, CEDAW).

1.2.4a Convention on the Rights of Persons with Disabilities (2006, CRPD)

The Convention on the Rights of Persons with Disabilities (CRPD) of 2006 safeguards the human rights of individuals with disabilities. Disability is recognized by the Convention as an evolving concept, and it specifies that “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”⁹⁰. It incorporates a non-discrimination and equality provision⁹¹, mandating states to facilitate reasonable accommodation and employ measures essential for advancing equality among persons with disabilities. Furthermore, the CRPD acknowledges the distinction between the rights of women and children with disabilities, considering the multifaceted nature of the discrimination they encounter.

The right to education of people with disabilities is recognized in Article 24 of the Convention. The Convention emphasizes a non-discriminatory approach and imposes a responsibility on the state to ensure equal opportunities. It specifies that the education system shall be based on inclusivity at all levels. In alignment with this, Sustainable Development Goal (SDG) 4 underscores the importance of inclusive, quality, and equitable education. Indeed, inclusive education plays a pivotal role not only in ensuring

⁸⁷ UN Committee on the Rights of Persons with Disabilities (CRPD), 2 September 2016, CRPD/C/GC/, *General comment No. 4 (2016), Article 24: Right to inclusive education*.

⁸⁸ Report UNESCO (2008: 12-20).

⁸⁹ This list is not exhaustive.

⁹⁰ UN General Assembly, 24 January 2007, A/RES/61/106, *Convention on the Rights of Persons with Disabilities (CRPD)*, Art. 1.

⁹¹ Art. 5 CRPD.

equal educational opportunities but also in fostering the development of inclusive, peaceful, and just societies⁹².

This section will analyze Article 24, which encompasses the requirements to ensure that children with disabilities can fully exercise their right to education, deepening the content and the interpretation of each clause:

1. “States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
 - a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - c. Enabling persons with disabilities to participate effectively in a free society”⁹³.

The first part of Article 24 addresses provisions against discrimination. Indeed, it states that children with disabilities should have equal and non-discriminatory access to education, entailing the right to avoid segregation and to receive the necessary support. The article also foresees the elimination of all types of barriers, whether legal, physical, communication and language-related, social, financial, or attitudinal. It clarifies the aims of education, according to which education ought to facilitate the comprehensive development of the abilities and potential of children with disabilities. Overall, education represents the means to empower them to actively engage in society, fostering an understanding of human rights, diversity, tolerance, and respect for the environment⁹⁴.

2. “In realizing this right, States Parties shall ensure that:
 - a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - c. Reasonable accommodation of the individual’s requirements is provided;
 - d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion”⁹⁵.

Article 24(2) ensures that people with disabilities are not excluded from education and, consequently, from society. Thus, the Article establishes

⁹² UN Committee on the Rights of Persons with Disabilities (CRPD), 2 September 2016, CRPD/C/GC/4, *General comment No. 4 (2016), Article 24: Right to inclusive education*, para 3.

⁹³ Art. 24(1) CRPD.

⁹⁴ CRPD *General Comment No 4*, para 4.

⁹⁵ Art. 24(2) CRPD.

standards for access to primary and secondary education and for reasonable accommodation. Lastly, it mandates individualized support measures. Therefore, children with disabilities must be able to access inclusive, quality, and free education in their local communities. This entails ensuring an adequate number of schools nationwide. Accessibility must extend to all aspects, including buildings, transport, playgrounds, hygiene and toilet facilities, communications, curriculum, education materials, teaching methods, and assessment and support services. It is imperative that all new constructions adhere to accessibility standards.

Clause c recalls the concept of reasonable accommodation, further expanded in Article 2 of CRPD, in which reasonable accommodation (or reasonable adjustment) is described as the “appropriate modification and adjustments [...] to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”⁹⁶, to ensure people with disabilities have an education on an equal footing with their peers. Moreover, it is necessary to distinguish reasonable accommodation and specific measures. Both are geared towards achieving equality, but reasonable accommodation focuses on non-discrimination duties, while specific measures involve providing preferential treatment to individuals with disabilities, addressing historical or systematic exclusion⁹⁷. In order to determine whether an accommodation is reasonable, the student and, when appropriate, their parents or caregivers, shall be involved in the evaluation⁹⁸.

Furthermore, to make their education effective and to provide meaningful support, the education system shall provide an adequate number of trained and supported teaching staff, school counselors, psychologists, and other relevant health and social service professionals, and access to scholarships and financial resources. Support measures shall be individualized, on the basis of a tailored education plan, which needs to be collaboratively developed with the student, monitored regularly, and designed to facilitate their complete inclusion.

3. “States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - c. Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development”⁹⁹.

⁹⁶ Art. 2 CRPD.

⁹⁷ Committee on the Rights of Persons with Disabilities (CRPD), 9 March 2018, CRPD/C/GC/6, *General Comment on equality and non-discrimination*, para. 24(c).

⁹⁸ UNICEF (2017: 5).

⁹⁹ Art. 24(3) CRPD.

This section of Article 24 mandates States to evaluate the preferences of students facing significant learning challenges using alternative modes, means, and formats of communication. Depending on the severity and the kind of disability, students might need specialized services to develop the life, language, and social skills necessary for them to fully thrive in their educational pursuits. The implementation of suitable measures to impart life and social development skills aims to ensure their complete and equal engagement in education. For instance, this may include facilitating the learning of skills like Braille and sign language¹⁰⁰.

4. “In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities”¹⁰¹.

The Article includes a clause entirely dedicated to teachers. State Parties shall ensure qualified and trained teachers across all educational levels. On one hand, this encompasses eliminating any legislative or policy impediments that demand candidates to meet specific medical eligibility criteria and providing reasonable accommodations for their engagement as teachers. Having such educators, who include teachers with disabilities, is instrumental in advancing equal rights for individuals with disabilities to pursue teaching careers. On the other hand, their presence brings distinctive expertise and skills to learning environments, aids in dismantling barriers, and establishes crucial role models¹⁰². The Article also emphasizes the necessity to provide specific training to professionals, to make them able to adopt adequate and inclusive teaching methods.

5. “States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities”¹⁰³.

The fifth section necessitates states to guarantee that individuals with disabilities can access general tertiary education, vocational training, adult education, and lifelong learning without facing discrimination, on an equal basis with their peers. The access and inclusion in Technical and Vocational Education and Training imparts to people with disabilities skills essential for economic empowerment, reducing the marginalization of people with disabilities in the labor market.

In conclusion, The CRPD is founded on the principles of honoring the inherent dignity of individuals with disabilities, supporting individual autonomy, which includes the freedom to make one's own choices, and fostering respect for differences¹⁰⁴. It emphasizes the acceptance of persons with disabilities as integral components of human diversity.

¹⁰⁰ UNESCO and Right to Education Initiative (2019).

¹⁰¹ Art. 24(4) CRPD.

¹⁰² CRPD General Comment No. 4, para. 36.

¹⁰³ Art. 24(5) CRPD.

¹⁰⁴ BRODERICK (2018: 29-39).

1.2.4b International Convention on the Elimination of All Forms of Racial Discrimination (1965, ICERD)

International law prohibits any kind of racial discrimination, recognizing this rule as *jus cogens*, meaning that it “is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”¹⁰⁵. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1965 to protect and maintain the right to be free from any kind of racial discrimination.

The definition of racial discrimination is presented in Article 1 of the Convention:

“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”¹⁰⁶.

This definition clarifies that “race, color, descent or national or ethnic origin” represent the prohibited grounds for discrimination. Thus, ICERD’s provisions are addressed to those who suffer discriminatory treatment based on these factors. Article 1 also mentions the group of rights safeguarded against infringement by discriminatory actions, spanning human rights and fundamental freedoms across political, economic, social, cultural, or any other public life domain. Moreover, the adoption of the expression “the purpose or effect” specifies that actions are deemed discriminatory whether they are carried out deliberately (“on purpose”) or whether they result as an “effect” of unintentional violations. Overall, the formulation of Article 1 anticipates that ICERD adopts a standard of substantive equality, focusing on equality of outcomes rather than just procedural equality of opportunity¹⁰⁷.

The human right to education is addressed in Articles 5 and 7 of the Convention. Article 5 prohibits discrimination based on race, color, or national or ethnic origin in education, that is ensured for all individuals. Article 7 is more focused on the role of education in eliminating prejudice.

Article 5:

“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(v) The right to education and training”¹⁰⁸.

Article 5 mandates State Parties to eliminate racial discrimination in the enjoyment of different groups of rights, also detailing economic, social, and cultural rights, among which the right to education is encompassed. The

¹⁰⁵ United Nations, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, *Vienna Convention on the Law of Treaties*, Art. 5.

¹⁰⁶ UN General Assembly, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, *International Convention on the Elimination of All Forms of Racial Discrimination*, Art. 1.

¹⁰⁷ McDOUGALL (2021).

¹⁰⁸ Art. 5 ICERD.

Article invites States that ratify the Convention to commit to eradicating racial discrimination through various measures, which could include legislation, policies, and educational initiatives.

Article 7:

“States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups [...]”¹⁰⁹.

In accordance with Article 7, state parties must commit to implementing measures aimed at interrupting the development of prejudices before they become deeply ingrained in society. The Article confers a particular emphasis on the realms of "teaching, education, culture, and information" to address this provision. Indeed, strategies such as education campaigns can contribute to proactively hindering the formation of prejudices.

A further example of how the Convention protects the human right to education is detectable in one of the General Recommendations issued by the Committee on the Elimination of Racial Discrimination (CERD). The legal basis of the Committee lies in Article 8 of the Convention, which allows the establishment of an international committee of experts to oversee Member State compliance with the treaty¹¹⁰. State Parties shall regularly provide written reports outlining their country's advancements in achieving the objectives of ICERD¹¹¹, to be reviewed by the Committee. When deemed necessary, CERD may forward a set of recommendations (Concluding Recommendations) to the concerned State party. In addition, CERD possesses the authority to issue General Recommendations (GR), seeking to offer explanations and clarifications of the interpretation of the Convention's provisions. In its General Recommendation on discrimination against the Roma¹¹², CERD provided a detailed articulation of the responsibilities of State parties in preventing violations of the right to education. This includes attention to bilingual and mother-tongue instruction, endeavors to enhance academic performance among minority students, the recruitment of school personnel from minority communities, and the advocacy for intercultural education¹¹³.

1.2.4c International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990, ICRMW)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted in 1990. The Convention establishes basic guidelines for migrant workers and their families, to ensure fair treatment and prevent exploitation. This section will analyze the Articles of the Convention which address the human right to education, considering the fact that Migrant children might experience various types of discrimination, such as those based on race, ethnicity, gender, and disability, among other factors.

¹⁰⁹ Art. 7 ICERD.

¹¹⁰ Art. 8 ICERD.

¹¹¹ Art. 9 ICERD.

¹¹² UN Committee on the Elimination of Racial Discrimination (CERD), 16 August 2000, A/55/18, annex V, *CERD General Recommendation XXVII on Discrimination Against Roma*.

¹¹³ CERD General Recommendation XXVII on Discrimination Against Roma, paras. 17-26.

Several Articles of the Convention, mentioned in the following sections, deal with the human right to education. Overall, State parties are mandated to eradicate all forms of discrimination against migrant children within their educational systems, according to the principle of equality of treatment. They should commit to applying equal standards of treatment and eliminate segregation in schools. Specific measures, such as effective programs and policies, shall be taken to ensure that migrant children do not suffer discriminatory practices in the classroom environment.

In Article 12 the Convention States that:

“States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”¹¹⁴.

The Convention recalls the concept of educational freedom, which refers to the right of parents to provide religious and moral education to their children in accordance with their own convictions. This right is also included in Article 13 of ICESCR and Article 29 of the CRC, already analyzed in the previous paragraphs.

Article 30:

“Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment”¹¹⁵.

Article 30 of the ICRMW centers on education access. It underscores that public preschools and schools must be accessible to children of migrant workers and that the migration status of the child or their parents should not be a basis for discrimination. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in accordance with article 13 of the ICESCR, asserts that state parties should ensure free and mandatory primary education for everyone, including children of migrant workers, irrespective of their migration status. Therefore, State parties are obligated to remove all direct expenses related to schooling, like school fees, and also mitigate the negative effects of indirect costs, such as expenditures on school materials and uniforms¹¹⁶.

Article 43:

“Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

¹¹⁴ UN General Assembly, 18 December 1990, A/RES/45/158, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ICRMW), Art. 12.

¹¹⁵ Art. 30 ICRMW.

¹¹⁶ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CPRMW), 28 August 2013, CMW/C/GC/2, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, para. 75.

- (b) Access to vocational guidance and placement services;
- (c) Access to vocational training and retraining facilities and institutions”¹¹⁷.

The principle of equality of treatment with nationals guarantees that the same standards for access to all levels of education are equally applied to children of migrant workers and nationals. Therefore, if secondary education is free for nationals, according to this Article, children of migrant workers have the right to enjoy equal access, regardless of their migration status. The same rationale is applied to different forms of secondary education, such as vocational education and training¹¹⁸.

Article 45:

- 4. “States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin”¹¹⁹.

Article 45 of the Convention underscores the significance of offering education in the mother tongue of children of migrant workers. States are indeed required to establish specific schemes and educational methods to facilitate teaching in the mother tongue, aiming to preserve the cultural identity of these children. General Comment No. 2 by the Committee further connects Article 45 with Article 31 of the Convention, emphasizing the right to respect for one's cultural identity¹²⁰.

1.2.4d Convention on the Elimination of All Forms of Discrimination against Women (1979, CEDAW)

Gender-based discriminatory practices persist against women, intertwining with other factors like age, ethnicity, poverty, and disability. This intersectionality hampers the equal enjoyment of the right to quality education, leading to barriers to accessing such education. The provision concerning the human right to education in the Convention on the Elimination of All Forms of Discrimination Against Women is Article 10:

“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women”¹²¹.

This article centers on eradicating discrimination against women in accordance with the principle of equality of men and women.

Article 10 outlines specific measures that states should adopt to safeguard the right to education, including the revision of textbooks and teaching methods

¹¹⁷ Art. 43 ICRMW.

¹¹⁸ CPRMW, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, para. 75.

¹¹⁹ Art. 45 ICRMW.

¹²⁰ CPRMW, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, para. 75.

¹²¹ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 Art. 10.

to eradicate any stereotyped concepts regarding the roles of men and women¹²².

“(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods”¹²³.

In the same clause, the Conventions address the problem of gender stereotypes, which is “the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men”¹²⁴. Stereotypes become harmful when they restrict the capacity of women or men to cultivate their personal abilities, pursue professional careers, and make choices about their lives and life plans. Therefore, the Convention recommends state parties to “encourage coeducation” and other methods that could be beneficial for increasing gender equality.

Child marriage constitutes a barrier to the education of women and girls, embodying a discriminatory practice rooted in the adherence to gender stereotypes that propagate the belief in the inferiority of girls and women compared to men. The enjoyment of various human rights, notably the right to education, is compromised by child marriage, given that early unions frequently result in children discontinuing their education. Article 10 presents a specific provision for female school drop-outs:

“(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely”¹²⁵.

This clause applies not only in the context of child marriage but also in the case of early pregnancy and motherhood, both of which frequently affect girls' education. According to the website Girls Not Brides, 15 million underage girls find themselves in such unions each year. On a global scale, it is estimated that there are currently 720 million women who experienced early marriage¹²⁶.

Furthermore, general barriers related to the learning environment are numerous. These include discriminatory curricula, learning materials, and teaching methods that can adversely affect girls¹²⁷. A culture of bullying, along with school regulations and sexist dress codes, further compounds these challenges¹²⁸. Additionally, inadequate facilities such as the lack of toilets, gender-segregated toilets, changing facilities, and access to safe drinking water may discourage girls from attending school. The shortage of female teachers, stemming from historical inequalities in education for women, can contribute to a learning environment that does not adequately support girls' retention in schools. Article 10 of the Convention tries to comprehensively address these issues.

¹²² Art. 10(c) CEDAW.

¹²³ Art. 10(c) CEDAW.

¹²⁴ Women's Rights and Gender Section, Office of the High Commissioner for Human Rights (2014).

¹²⁵ Art. 10(f) CEDAW.

¹²⁶ See Girls Not Brides' website.

¹²⁷ CRC General Comment No.1, para. 10.

¹²⁸ CRC General Comment No.1, para. 19.

In conclusion, the study can argue that the CEDAW has been developed over the concept of substantive equality. What women need is equality of treatment, which needs to start from the acknowledgment that due to historical discrimination, women suffer from negative gender stereotypes and are not treated equally to men. Indeed, the paradigm of substantive equality extends beyond establishing formal legal equality, where everyone is equal under the law, instead, it entails governments taking responsibility for the effects of laws. This involves tailoring legislation to address the specific realities of women's lives. The pursuit of substantive equality also imposes on governments the responsibility to implement laws through gender-responsive governance and effective justice systems that cater to the needs of women.

1.3 Monitoring the right to education

This section of the study will focus on how the right to education is monitored. The legal instruments analyzed in the previous paragraphs clarified different aspects of the right to education, notably the normative content of the human right to education, the aims of education, the principle of non-discrimination and equality in education, and the protection of the right of marginalized groups. The following paragraphs will delve into the mechanisms through which the human right to education is appropriately enforced. To begin, a paragraph outlining the general obligations of states under the treaties examined will establish the framework for the discussion. Then, the study will identify the main tools and indicators adopted for monitoring processes. Finally, the third part of this section will concentrate on UN monitoring mechanisms, referring to the treaties analyzed in the previous sections.

Monitoring the right to education serves the primary goal of detecting issues in the application of this right, both in legal terms (*de jure*) and in practical terms (*de facto*)¹²⁹. The monitoring of the right to education can be performed by various actors, such as states, civil society, and intergovernmental organizations (e.g.: UNESCO and the World Bank)¹³⁰. States, being the primary duty-bearers of the right to education¹³¹, play a central role in its monitoring, making them the key actors in this process.

Indeed, states must perform monitoring activities over the right to education once they undertake a legal or political obligation to uphold it, whether through treaty ratification, constitutional inclusion, or enshrining it in laws and policies. The paragraph “General obligations” will further detail this aspect.

States’ legal obligations deriving from the ratification of a treaty or the inclusion of the right to education in national constitutions are monitored through systematic processes, defined at the moment of the ratification. The first element that characterizes monitoring processes is transparency: the monitoring activities conducted by states need to be transparent and therefore enable scrutiny. This aspect represents the basis for an accountable system of monitoring.

¹²⁹ Guide of the Right to Education Project (2016).

¹³⁰ UNESCO and Right to Education Initiative (2019: 201).

¹³¹ *Ivi*, para. 1.2.

The relevance of monitoring human rights, and more specifically the right to education, refers to the fact that it brings up the related problems and issues. Indeed, starting from the information collected and elaborated, effective and appropriate solutions can be devised.

1.3.1 General Obligations

When states ratify a human rights treaty, they are legally obligated to monitor its correct application. Indeed, as in the case of the right to education, and of the treaties previously analyzed, states must commit to domestically implementing this right on a continuative basis. This paragraph will present the general obligations of states when dealing with the protection of the right to education and will then delve into the distinction between the progressive and immediate realization of these obligations. An understanding of these elements will enable a more comprehensive analysis of the monitoring mechanisms in the next paragraphs.

Notably, states' obligations are expressed in Article 4 of CRC, Article 2 of ICESCR, Article 4 (2) of CRPD, and Article 2 (2) of ICCPR. These Conventions present common features in relation to states' obligations, according to which state parties are mandated to guarantee the full realization of the provisions expressed in the treaties "by all appropriate means"¹³² "without discrimination of any kind"¹³³. States Parties shall undertake such measures to the "maximum extent of their available resources"¹³⁴ and, where needed, "within the framework of international co-operation"¹³⁵.

Legal obligations can foresee progressive or immediate implementation of the provisions at stake. Progressive realization recognizes the fact that states may face limitations in resources or other constraints, but they are still obligated to take steps, even if gradual, to progressively achieve the full realization of rights over time. In contrast, immediate-effect obligations demand prompt and comprehensive actions to ensure the realization of rights without any delay. These obligations typically apply to certain rights that require immediate attention and protection.

Progressive realization is expressed in Article 2(1) of ICESCR, according to which the full realization of the rights shall be achieved "progressively". This acknowledgment explains that the realization of specific elements of the right to education may be realistically attainable gradually, especially in the case of states with limited resources¹³⁶. However, the CESCR, the body that monitors the implementation of the ICESCR, specifies in General Comment No.3 that interpreting progressive realization should not lead to the misconception that the obligation is devoid of any substantive content¹³⁷. Features of the right to education that are subject to progressive realization include free secondary education, free technical and vocational education and training (TVET), free higher education, and free fundamental education for all those who have

¹³² Art. 2 ICESCR.

¹³³ Art. 2 ICESCR.

¹³⁴ Art. 4 CRC; Art. 4(2) CRPD; Art. 2(1) ICESCR.

¹³⁵ Art. 4 CRC.

¹³⁶ UNESCO and Right to Education Initiative (2019: 138).

¹³⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), 14 December 1990, E/1991/23, *General Comment No. 3: The Nature of States Parties' Obligations*, para. 9.

missed the whole or part of their primary education, and improvement of the quality of education¹³⁸.

Thus, progressive realization requires the adoption of adequate resources. ICESCR, CRC, and CRPD in the related articles mention the need to employ “Maximum available – internal and external – resources” in the implementation of the human right to education. CESCR also points out that in case resources are particularly limited, states must “strive to ensure the widest possible enjoyment of [the right to education] under the prevailing conditions”¹³⁹. In this context, minimum core obligations (MCOs) shall be prioritized by states. These kinds of obligations involve some of the features of the right to education necessary to guarantee the basic enjoyment of the right. Notably, the following obligations have been recognized as MCOs: ensure the right of access to public educational institutions and programs without discrimination, secure access to education and the good quality of education, commit to the development of human personality, ensure that the teaching language is appropriate, prohibit corporal punishment, include provisions for secondary, higher and fundamental education in national strategies, ensure free choice of education without interference¹⁴⁰.

On the other hand, immediate effect obligations require states to take prompt and direct action without delay for the realization of certain elements of the right to education. Obligations of immediate effect refer to ensure the right to education is exercised free from discrimination of any kind and to taking deliberate, concrete and targeted steps towards the full realization of the right to education¹⁴¹. Article 2(2) of ICESCR, Article 26 of the ICCPR, and the entirety of the UNESCO CADE prohibit discrimination in education and require states to take immediate action for its elimination, irrespective of the resources at their disposal. Article 2(1) emphasizes the necessity of taking steps “by all appropriate means” and underscores the significance of legislative measures¹⁴². Furthermore, according to CESCR, this entails that states actively monitor the realization, or the lack thereof, of economic, social, and cultural rights¹⁴³. Additionally, they are expected to formulate strategies and programs to promote these rights¹⁴⁴.

1.3.2 Tools and Indicators

Monitoring mechanisms rely on tools and indicators. Human rights indicators are essential to monitor the right to education, as they facilitate the collection of necessary data. These indicators measure different facets of human rights. They not only contribute to monitoring domestic implementation but also inform public policy, program management, progress tracking, and ensure compliance with human rights standards. Overall, they become key instruments in evaluating performance and outcomes.

Data can be categorized as primary or secondary data, depending on the modality through which they are collected. Primary data involves researching

¹³⁸ UNESCO and Right to Education Initiative (2019: 138).

¹³⁹ CESCR General Comment 3, para. 11.

¹⁴⁰ SCHIELDS (2017).

¹⁴¹ UNESCO and Right to Education Initiative (2019: 139).

¹⁴² Article 2(1) ICESCR.

¹⁴³ CESCR General Comment No. 3, para. 11.

¹⁴⁴ CESCR General Comment No. 3, para. 11.

firsthand information through direct methods¹⁴⁵ like interviews or questionnaires, while secondary data refers to information previously gathered for purposes other than the current project¹⁴⁶.

Governments frequently employ surveys as a source of investigation. Notably, population surveys enable the collection of information concerning education aspects. Household surveys, for instance, can offer the data needed for monitoring mechanisms for the right to education, also considering that they are a flexible tool: they can be performed periodically or in ad-hoc situations. They can be used at the national, regional, or local level and they encompass key indicators like completion rate, out-of-school rate, and the percentage of children exceeding the appropriate age for a specific grade¹⁴⁷. However, carrying out such surveys demands a significant degree of technical proficiency in survey methodologies, including question design and sampling, as well as a substantial investment of time and resources.

States also can rely on interviews with children, parents, teachers, and head teachers. These kinds of investigations contribute to the recognition of barriers to educational achievement, and consequently support the development of *ad hoc* strategies. Their relevance emerges because interviews are useful for acquiring in-depth, qualitative insights, as they can give voice to different stakeholders at different levels.

After the collection of data, information must be disaggregated, meaning that they will be split into different categories so that they can expose deprivations and inequalities that might not be fully evident in aggregated data¹⁴⁸. This process facilitates the analysis and the identification of eventual issues and barriers to the implementation of the right to education. Data is then organized according to appropriate benchmarks. In the context of education, examples of benchmarks are international human rights standards, legal and policy commitments by states to the right to education, past performance, and comparison with other countries (when relevant).

Human rights indicators can be quantitative and qualitative. Quantitative indicators encompass information that can be measured and expressed numerically. Examples include the literacy rate, the rate of out-of-school children, and the ratio of teachers to pupils¹⁴⁹. Qualitative indicators capture information that describes aspects not easily measurable, such as categories or yes/no answers. They can also encompass perception-based information, reflecting the perspectives of rights-holders and duty-bearers¹⁵⁰. Qualitative information extends to non-written evidence, incorporating audio-visual materials such as photographs and videos. Overall, in order to present a comprehensive landscape for analyses, it is reasonable to collect both qualitative and quantitative information.

The Office of the High Commissioner for Human Rights (OHCHR) crafted a human rights monitoring framework in 2012. It is designed to be applicable to various issues in diverse contexts, including the human right to education.

¹⁴⁵ Cambridge Dictionary, *primary data*.

¹⁴⁶ Cambridge Dictionary, *secondary data*.

¹⁴⁷ Inter-Agency Group on Education Inequality Indicators (2016).

¹⁴⁸ Right to Education Project, glossary: *disaggregated data*.

¹⁴⁹ UNESCO and Right to Education Initiative (2019: 196).

¹⁵⁰ *Ibid.*

The related key publication “Human Rights Indicators: A Guide to Measurement and Implementation” addresses several suggestions and also advocates for the adoption of indicators related to structure, process, and outcomes for monitoring processes.

These three types of indicators are then used in the “Right to Education Monitoring Guide”, launched by the Right to Education Initiative (RTE) in 2016. The Guide offers a systematic approach to monitoring education using human rights indicators, aiming to facilitate the monitoring process¹⁵¹. The adoption of outcome, process, and structure indicators allows the monitoring and multiple aspects of the right to education.

Outcome indicators gauge the degree to which a population experiences the right to education. In other words, indicators of this type, such as primary completion rates, assess the effects of the State's endeavors to implement the right to education through laws, policies, and programs¹⁵². Structural indicators refer to the commitments undertaken by States to fulfill their obligations concerning the right to education. This is evidenced by the adoption of legal instruments and essential institutional mechanisms crucial for promoting and safeguarding the right to education. Assessing the ratification of relevant treaties and the incorporation in domestic law are examples of structural indicators¹⁵³. Process indicators evaluate the diverse efforts, such as education policies, inputs, budget allocation, and specific programs and measures addressing education issues, that the State, as the primary duty-bearer, is undertaking to fulfill its obligations regarding the right to education¹⁵⁴.

1.3.3 United Nations monitoring mechanisms

A definition of monitoring is provided by OHCHR, according to which it represents “the process of systematically tracking and assessing a state’s performance against its human rights obligations”¹⁵⁵.

In the context of this study, the primary aim of monitoring activities is the fulfillment of the right to education. Monitoring also serves as a best practice, enhancing education systems by fostering responsiveness, efficiency, and effectiveness. Overall, UN monitoring mechanisms depend on a variety of information from both State authorities and other stakeholders to identify potential solutions for addressing human rights violations. The monitoring cycle involves various steps to rectify human rights situations.

The United Nations, and particularly the OHCHR, actively endorse and engage in diverse forms of human rights monitoring, fact-finding, and investigations. Indeed, the United Nations system adopts two mechanisms for monitoring human rights: treaty-based bodies and charter-based bodies. The following paragraphs will describe them both. Treaty-based bodies (Treaty Bodies) “are committees of independent experts that monitor implementation of the core international human rights treaties”¹⁵⁶. At the current time, there

¹⁵¹ Guide of Right to Education Project (2016).

¹⁵² *Ibid.*, p. 10.

¹⁵³ *Ibid.*, p. 11.

¹⁵⁴ *Ibid.*

¹⁵⁵ Report of the Office of the High Commissioner for Human Rights (OHCHR) (2005: 57).

¹⁵⁶ OHCHR website, *Treaty bodies*.

are ten human rights Treaty Bodies, whose members are nominated and elected by State parties for fixed, renewable terms of four years. The charter-based bodies include the Human Rights Council, Universal Periodic Review, Special Procedures, the Complaint Procedures¹⁵⁷. They share some similarities, but there are also significant distinctions between them.

Overall, there are multiple ways to conduct monitoring activities. Treaty Bodies and Universal Periodic Review rely on reports, individual communications, and inquiries to allow the collection and analysis of human rights information. Other methods include field presences, over a protracted period, thanks to which information can be gathered for successive analysis, interviewing, protection of witnesses, victims and other sources, and reporting. Most aspects just mentioned are valid for fact-finding missions, commissions of inquiry, and country visits in special procedures.

1.3.3a Treaty Bodies

Treaty Bodies are committees of independent experts that monitor the core United Nations international human rights treaties. Each core treaty has a Treaty Body. This study has already analyzed the provisions concerning the right to education contained in some of the core treaties, and this section will delve into the role of Treaty Bodies in monitoring their implementation. The Treaty Bodies are:

Committee on the Elimination of Racial Discrimination (CERD),

Committee on Economic, Social and Cultural Rights (CESCR),

Human Rights Committee (CCPR),

Committee on the Elimination of Discrimination against Women (CEDAW),

Committee against Torture (CAT),

Committee on the Rights of the Child (CRC),

Committee on Migrant Workers (CMW), Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Committee on the Rights of Persons with Disabilities (CRPD),

Committee on Enforced Disappearances (CED).

Treaty Bodies engage states in reporting procedures, providing commentary on state reports regarding treaty compliance, and drafting concluding observations. Additionally, they offer opinions on individual communications, such as complaints about rights violations, and formulate General Comments/Recommendations aimed at clarifying aspects of the treaty and outlining the obligations of all state parties to uphold specific articles. All of these tasks result in the creation of normative content. Through their work, treaty bodies establish a form of jurisprudence, which consists of

¹⁵⁷ OHCHR website, *Instruments and mechanisms*.

a set of norms and guidelines outlining how state parties should behave to fully adhere to the treaties. Treaty bodies' main functions, generally supported by OHCHR, are the consideration of State parties' reports, of individual complaints or communications, and the conduction of country inquiries.

a) Country Reports

When states ratify, accede to, or succeed in a core international human rights treaty, they undertake the legal obligation to enforce the rights outlined in the treaty. Among these commitments, states are mandated to regularly submit reports to the appropriate treaty body, detailing the measures taken to implement and uphold these rights¹⁵⁸. ICESCR, CRC, and their two optional protocols, establish a two-year timeframe to submit their periodic reports. For all other treaties, the reporting deadline is one year¹⁵⁹. Treaty bodies can also gather relevant information from other sources, in order to guarantee a comprehensive and objective assessment. Notably, the actors eventually involved are national human rights institutions, United Nations agencies, other intergovernmental organizations, national, regional, and international civil society organizations, academia, and the media¹⁶⁰. The information collected is then reviewed by the various Committees through examination and discussion with state representatives. This step aims to develop concluding observations. Generally, concluding observations are public documents encompassing the progress of the country at stake in the implementation of a specific treaty. They also include practical advice and encouragement on further steps to implement the rights contained in the respective treaties. The Treaty Bodies typically strive to formulate recommendations that are specific and applicable, emphasizing practical measures for implementation.

Country reports and relative concluding observations can directly address issues concerning the human right to education. This study will adopt the example of the concluding observations issued by the Committee on the Rights of the Child in 2012 on Turkey's periodic report¹⁶¹.

The document reserves paragraph G. for "Education, leisure and cultural activities", with reference to arts. 28, 29 and 31 of the CRC. The first part of the section recognizes and encompasses the improvements in the education system, especially in light of previous reports. The Committee then expresses its concerns over other specific aspects, such as gender inequalities, violence in schools, lack of a system for monitoring access to education by all ethnic groups, unavailability of education in languages other than Turkish, and poor quality of education¹⁶². On this basis, the Committee enumerates a set of recommendations to the State party, which aim to address the concerns. For instance, it stresses the need to monitor school attendance, improve the quality of education, reduce gender inequalities and violence in schools, make school

¹⁵⁸ E.g.: Art. 40 ICCPR.

¹⁵⁹ Report of the Office of the United Nations High Commissioner for Human Rights (2005), para. 14.

¹⁶⁰ OHCHR website, *Treaty bodies*.

¹⁶¹ Committee on the Rights of the Child, 20 July 2012, CRC/C/TUR/CO/2-3, *Consideration of reports submitted by States parties under article 44 of the Convention - Concluding observations: Turkey 2012*.

¹⁶² *Ibid.*, para. 58.

affordable, and protect minorities, firstly through the provision of education in languages other than Turkish¹⁶³.

b) Individual Complaints

Grievances of individuals can also be directly brought to the treaty bodies by submitting complaints or communications. In these cases, individuals claim that their rights, as defined by the instrument, have been violated by a State party that has acknowledged the competence of the treaty body to address such matters. It represents a direct channel for individuals to seek recourse and address alleged human rights violations¹⁶⁴. Indeed, the process unfolds in two stages. First comes the "admissibility" stage, where the committee assesses whether the case meets the formal requirements. Once deemed admissible, the case proceeds to the "merits" stage, where the Committee delves into the substance of the matter, considering the details and circumstances surrounding the alleged human rights violations.

Complaints against States can be presented to a Treaty Body if the State is a party to the treaty in question and if it recognized the competence of the Committee.

Not all treaty bodies consider individual complaints, and there are different circumstances according to which treaty bodies can act in this regard. For instance, the Human Rights Committee (CCPR) can accept individual complaints alleging violation of the rights of ICCPR only if the State concerned is a party to the First Optional Protocol to the ICCPR, where the complaints mechanism is established¹⁶⁵. Correspondingly, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women allows the CEDAW to consider individual communication only against States who are parties to Protocol¹⁶⁶. The same principle is applied to CESC, CRPD, and CRC and their Optional Protocols. Some Conventions, such as ICERD, ICMW, Committee on Enforced Disappearances (CED), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), allow the relative Committees to consider individual complaints only if the concerned states declared that "that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction"¹⁶⁷. These provisions are included under Article 14 of ICERD, Article 77 of ICMW, and Article 22 of CAT.

c) Confidential Inquiries

If the CAT, CEDAW, CRPD, CED, CESC, and CRC receive credible information that provides well-founded indications of serious or systematic violations of the treaties within a state party, they have the authority to initiate inquiries on their own initiative. The initiation of inquiries is limited to States

¹⁶³ *Ibid.*, para. 59.

¹⁶⁴ OHCHR website, *Treaty bodies*.

¹⁶⁵ UN General Assembly, 19 December 1966, United Nations, Treaty Series, vol. 999, p. 171, *Optional Protocol to the International Covenant on Civil and Political Rights*, Arts. 1-5.

¹⁶⁶ UN General Assembly, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83 *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*.

¹⁶⁷ Art. 14 CERD.

parties that have explicitly recognized this competence to the relevant Committee¹⁶⁸. In cases where it is deemed necessary, an inquiry may involve a visit to the territory of the concerned state. Inquiries, which remain confidential, suppose a collaborative approach, conducted with the consent of the State party.

The inquiry procedure is established in Article 20 of the CAT, Articles 8 to 10 of the Optional Protocol to CEDAW, Article 6 of the Optional Protocol to the CRPD, Article 33 of CEPD, Article 11 Optional Protocol to the ICESCR, and Article 13 of the Optional Protocol to the CRC on a communications procedure.

1.3.3b Charter-based Bodies

The Human Rights Council and its forerunner, the Commission on Human Rights, are termed "Charter-based" due to their establishment through resolutions of UN organs, deriving authority directly from the UN Charter.

The existing Charter-based bodies encompass the Human Rights Council (HRC) and its subsidiaries branches, notably, according to Resolution 5/1 of the human Rights Council (2007), the Universal Periodic Review Mechanism, Special Procedures, HRC Advisory Committee and the Complaint Procedures.

a) Human Rights Council

The General Assembly, during its 60th session in September 2005, adopted the World Summit Outcome, represented by resolution 60/1. This resolution highlighted various objectives, including the strengthening of the UN's human rights mechanisms¹⁶⁹. In alignment with this goal, the Human Rights Council was established in 2006 with resolution 60/251. Functioning as an intergovernmental body within the United Nations system, it consists of 47 member states tasked with the promotion and protection of human rights on a global scale¹⁷⁰. It addresses thematic human rights issues and identifies the situations that require specific attention on this matter, and it consequently makes ad hoc recommendations¹⁷¹. The HRC meets in Geneva three times every year, with the possibility of organizing special sessions to respond to urgent human rights situations.

The 47 members are elected by the General Assembly (GA) following the principles of equitable geographical distribution. The President of the HRC annually reports its activities to the plenary of the GA, and according to resolution 60/251, the HRC has the faculty to "make recommendations to the General Assembly for the further development of international law in the field of human rights"¹⁷².

b) Universal Periodic Review Mechanism

¹⁶⁸ OHCHR website, *Treaty bodies*.

¹⁶⁹ Resolution of the United Nations General Assembly, 24 October 2005, A/RES/60/1, *2005 World Summit Outcome*, para. 157.

¹⁷⁰ Resolution 60/1, *2005 World Summit Outcome*, para. 158.

¹⁷¹ Resolution 60/1, *2005 World Summit Outcome*, para. 159.

¹⁷² Resolution of the United Nations General Assembly, 3 April 2006, A/RES/60/251, *Human Rights Council*, para. 5(c).

The same resolution that established the HRC in 2006 (60/251) included clauses concerning Universal Periodic Review. It states that Universal Periodic Review monitors the “fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”¹⁷³. It is intended to be a cooperative mechanism, in which the country concerned is fully involved. This kind of commitment does not aim to replace the work of Treaty Bodies, but to complement it¹⁷⁴.

The main elements of UPR are then designed with the Human Rights Council resolution 5/1 of 18 June 2007 “Institution-building of the United Nations Human Rights Council”¹⁷⁵. According to the resolution, the UPR Working Group performs the reviews during three sessions per year. Considering the fact that each session covers sixteen countries, a four-year cycle is needed to complete the review of all 193 Member States of the UN.

c) Special Procedures

According to GA resolution 60/251, the Human Rights Council also manages Special Procedures, which were already in place under the Commission on Human Rights. The main aspects of Special Procedures are described in the Human Rights Council resolution 5/1 (2007)¹⁷⁶. It is composed of independent experts committed to reporting and advising on human rights by adopting a thematic or country-specific perspective. The OHCHR supports the activities of the Special Procedures mandate holders, which include country visits, examination of reported violations and eventual submission of communications to States, discussion on international human rights standards, advocacy, and public awareness of human rights. At the current time, there are 46 thematic mandates and 14 country mandates.

d) Human Rights Council Advisory Committee

The HRC Advisory Committee (referred to as Advisory Committee) is described in resolution 5/1 as the think-tank of the HRC, it is composed of 18 experts, who are involved according to their personal capacity¹⁷⁷. Indeed, the Advisory Committee does not adopt resolution or decisions, as its main function is to provide expertise on different areas requested by the Council¹⁷⁸.

Experts of the Advisory Committee are nominated under proposal of Member States. In order to ensure the best possible expertise, candidates must reflect a predefined geographic distribution and present competence and experience in the field of human rights, high moral standing, independence and impartiality¹⁷⁹.

e) Complaint Procedure

¹⁷³ Resolution 60/251, Human Rights Council, para. 5(e).

¹⁷⁴ *Ibid.*

¹⁷⁵ Resolution of the Human Rights Council, 18 June 2007, A/HRC/RES/5/1, *Institution-building of the United Nations Human Rights Council*.

¹⁷⁶ *Ibid.*, paras. 39-64.

¹⁷⁷ *Ibid.*, para. 65.

¹⁷⁸ *Ibid.*, para. 75.

¹⁷⁹ *Ibid.*, para. 67.

The Human Rights Council resolution 5/1 of 2007 also established the HRC Complaint Procedure. This procedure tackles recurring patterns of severe and consistently verified breaches of human rights and essential freedoms, happening anywhere in the world and under any conditions¹⁸⁰. It is the only universal mechanism addressing human rights and fundamental freedoms across all United Nations Member States. Anyone — be it an individual, a group, or a non-governmental organization — holds the right to submit a complaint¹⁸¹. Complaints can be made against any of the 193 Member States, regardless of whether the country has ratified a specific treaty or made reservations under a particular instrument, and they must remain confidential¹⁸². Communications are examined by two working groups, identified and selected by the Advisory Committee¹⁸³. These groups shall decide on the basis of consensus, or, eventually, by simple majority¹⁸⁴, and guarantee that the procedure is victim oriented¹⁸⁵.

¹⁸⁰ *Ibid.*, para. 85.

¹⁸¹ *Ibid.*, para. 87(d).

¹⁸² *Ibid.*, para. 100.

¹⁸³ *Ibid.*, para. 89.

¹⁸⁴ *Ibid.*, para. 90.

¹⁸⁵ *Ibid.*, para. 100.

2. Chapter 2: Protection of the Right to Education of Refugees

The overview of the human right to education within the framework of international law, furnished in the first chapter, serves as a functional precursor for a detailed examination of its application to refugees and migrant populations in the second one. This chapter is structured into two principal sections: the first section delves into international protection law, providing a groundwork for comprehending how the human right to education is assured for refugees and migrant individuals in the subsequent section.

Primarily, the chapter introduces a comprehensive perspective on the definition of refugees, who covers a central position in the entire study. Subsequently, it offers insights into the historical underpinnings of international protection law and contemporary migration trends, elucidating pertinent international legal instruments in this context and the principles of *non-refoulement* and non-discrimination.

The second segment serves as the focal point of the overall study, encompassing the normative essence of the human right to education for refugees and presenting the imperative and advantageous aspects for them. Concurrently, it addresses the associated challenges, particularly in terms of ensuring access to education and maintaining its quality. The concluding part presents international legal instruments, both binding and non-binding, that specifically incorporate provisions related to this matter. Analyzing these instruments facilitates an understanding of the evolutionary trajectory of this right.

Undoubtedly, the second chapter of this study establishes the legal framework essential for scrutinizing the case study on the protection of the human right to education for Syrian refugees in Turkey.

2.1 International Protection law

2.1.1 Definition of Refugees: the 1951 Convention Relating to the Status of Refugees

The first section of the study aims to provide an insight into the definition of refugee provided by the 1951 Convention Relating to the Status of Refugees, as well as an introduction to the Convention and its 1967 Protocol.

The 1951 Convention Relating the Status of Refugees is the cornerstone of international protection for refugees. It was ratified by 146 countries, and it comes with its 1967 Additional Protocol. The Convention represents the main instrument for international refugee protection, compelling participating States to acknowledge and safeguard individuals escaping their native lands due to persecution or conflict. The 1951 Convention Relating the Status of Refugees has left a lasting impact on international legal frameworks concerning refugee rights, introducing a unified, universal definition of refugee and is underpinned by fundamental principles like non-discrimination, non-penalization, and *non-refoulement*.

This Convention brings together earlier international agreements on refugees and serves as the most extensive formalization of refugee rights on the

international stage¹⁸⁶. The Convention establishes minimum benchmarks for the treatment of refugees while allowing States the flexibility to provide even more favorable conditions. These rights encompass access to legal recourse, primary education, employment, and the issuance of documentation, including a refugee travel document designed in passport format¹⁸⁷.

The definition of “refugee” is provided in Art. 1 A(2) of the Convention Relating to the Status of Refugees (1951):

“(2) 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, membership of a particular social group or political opinion, 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁸⁸.

The Article identifies as a refugee an individual who “is outside the country of his nationality and is unable [...] or is unwilling to avail himself of the protection of that country”¹⁸⁹ because there is a significant risk that the individual may be persecuted. The grounds of persecution encompassed in Article 1 are “race, religion, nationality, or membership of a particular social group or political opinion”¹⁹⁰.

Notably, the concept of race entails the acknowledgment of diverse ethnic groups, making any form of persecution in this regard impermissible. The protection of freedom of religion is expressly safeguarded by Article 1, aligning with the right to freedom of thought, conscience, and religion enshrined in the Universal Declaration of Human Rights¹⁹¹. The Article also incorporates nationality among the proscribed grounds of persecution, referring not only to citizenship but also affiliation with an ethnic or linguistic group. Political opinions are mentioned in the Article, as, whether accurately or inaccurately attributed to the individual, they may consequently constitute a basis for persecution.

The rationale for the extension of international protection and the recognition of the status of refugees lies in the absence of national safeguards against persecution. This situation can occur when the persecution is committed, encouraged, or tolerated by the State concerned, or when the State concerned is unable to provide the necessary protection¹⁹².

Persecution may also manifest in situations of war or internal armed conflict. Individuals seeking refuge from such circumstances should not be summarily denied refugee status, as the prevalence of widespread violence does not negate the potential existence of a legitimate fear of persecution on an individual or collective basis¹⁹³. Indeed, in a context characterized by widespread violence, asylum eligibility is reserved for individuals who can

¹⁸⁶ Introductory note, 1951 Convention Relating to the Status of Refugees.

¹⁸⁷ *Ibid.*

¹⁸⁸, Art.1(a)(2), 1951 Convention Relating to the Status of Refugees.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Art. 18 UDHR.

¹⁹² European Council on Refugees and Exiles (2000).

¹⁹³ *Ibid.*

substantiate a credible risk of severe harm attributable to a Convention-protected reason.

Originally, the scope of the 1951 Convention primarily aimed at safeguarding European refugees in the aftermath of the Second World War. The inclusion of the phrase “events occurring before 1 January 1951” has been conventionally interpreted to denote occurrences within Europe preceding the specified date. The 1967 Protocol, ratified on 4 October 1967¹⁹⁴, intervened on these geographic and temporal restrictions, thereby broadening the applicability of the Convention to encompass a universal scope and provide protection for all individuals fleeing conflict and persecution¹⁹⁵. Accession to the 1967 Protocol entails the obligation for the acceding State to implement the regulations of the 1951 Convention without temporal or geographical restrictions, except in cases where they uphold a declaration under paragraph (a) of Article 1B(1) of the 1951 Convention.

In every circumstance, the adjudication of refugee status necessitates a meticulous evaluation of the particular condition presented in the applicant’s claim. Refugee status is inherently individual, requiring a case-by-case assessment and acknowledgment by the host State. International law does not confer collective recognition or acquisition of refugee status within a group. Even in the case of situations in which entire groups have been displaced, members of the group shall be considered individually as refugees¹⁹⁶.

The conditions for the mandate of Refugees are established by the High Commissioner for Refugees (UNHCR), and subsequent resolutions from the General Assembly elucidating whether UNHCR’s jurisdiction applies. This rationale is adopted irrespective of the individual’s presence in a country that is a signatory to the 1951 Convention, the 1967 Protocol, or a pertinent regional refugee instrument. Additionally, these resolutions apply regardless of whether the individual has received recognition as a refugee from their host country under any of these instruments¹⁹⁷.

2.1.2 Key migration terms

For the sake of this study, and notably for the understanding of this chapter, the following paragraphs will clarify the definitions of some key migration terms: migrant, asylum seeker, environmental migrant, immigrant, and Internally Displaced Persons. Categorizing migrants can pose theoretical challenges due to the fluid nature of their motivations for moving, coupled with the potential changes in their legal status and corresponding rights over time¹⁹⁸. Despite there being cases in which individual circumstances can defy clear categorization, some situations can potentially align with multiple categories simultaneously. For example, internal migrants encompass those compelled to relocate because of adverse situations in their habitual place of residence (Internally Displaced Persons, IDPs), as well as individuals opting for a new residence for economic purposes (internal migrant workers), and those moving for cultural reasons (nomadic and pastoral communities).

¹⁹⁴ UN General Assembly, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, *Protocol Relating to the Status of Refugees*.

¹⁹⁵ Art. 1(2) 1967 Protocol relating to the Status of Refugees.

¹⁹⁶ MOUSALLI (1992), para 44.

¹⁹⁷ Adapted from United Nations High Commissioner for Refugees, 2011, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, 3, 7, para. 16.

¹⁹⁸ Right to Education Initiative (2018).

Forced (national and international) migration refers to individuals compelled to leave their residences because of external factors like environmental disasters or development projects.

a) Migrant

The first point to highlight is that the terms “migrant” and “refugee” carry distinct meanings and should not be employed interchangeably. Refugees reside outside their country of origin as a result of a direct threat to their lives or freedom, and they are explicitly recognized and protected by a specialized international legal framework.

In contrast, despite international law does not offer a specific definition of “migrant”, the term can refer to an individual who relocates from their habitual place of residence, whether within a nation or across international borders, either temporarily or permanently, and for diverse reasons¹⁹⁹. This umbrella term encompasses several legally acknowledged categories, including migrant workers and individuals whose movements are legally defined, such as smuggled migrants²⁰⁰. Furthermore, it encompasses those individuals whose status or mode of movement lacks specific international legal definitions (e.g. international students).

Traditionally, individuals are labeled as migrants when they undertake movement by choice, typically across international borders (“international migrants”), for reasons such as reuniting with family members already residing abroad, pursuing livelihood opportunities, or other varied purposes unrelated to escaping conflict or persecution. However, the term has been progressively employed to identify any individual who relocates from their customary place of residence, irrespective of whether the movement is deemed forced or voluntary²⁰¹.

b) Asylum Seeker

The definition of an asylum seeker is not expressed in the 1951 Convention, however, the UNHCR defined an asylum seeker as an individual in the process of seeking international protection, whose claim has not yet reached a final decision by the host country²⁰². It is important to note that not every individual seeking asylum will ultimately be granted refugee status, but every recognized refugee begins the process as an asylum seeker.

The European Union aligns with the UNHCR’s perspective, as reflected in the European Directive that establishes basic standards for accommodating asylum seekers. According to the directive, an applicant (or asylum seeker) is defined as “a third-country national or stateless person who has submitted an asylum application awaiting a final decision”²⁰³. This definition is consistently reiterated across various European directives addressing asylum-related matters.

¹⁹⁹ IOM website, *key migration terms*.

²⁰⁰ The smuggling of migrants, as defined in Article 3(a) of the Smuggling of Migrants Protocol, involves the facilitation of a person’s illegal entry into a State, for a financial or other material benefit.

²⁰¹ UNHCR (2019).

²⁰² UNHCR, *Master Glossary of Terms*.

²⁰³ Directive of the European Parliament and of the Council of Europe, 2013/33/EU, art. 2(c).

c) Environmental Migrant

An environmental migrant is an individual who is compelled to depart from his or her habitual place of residence, due to abrupt or gradual alterations in the environment that detrimentally impact his or her life or living conditions. This migration may be either temporary or permanent, involving movement within or outside their country of origin or habitual residence²⁰⁴.

The International Organization on Migration published a discussion note on migration and the environment, where the definition of environmental migrant is provided. The discussion note acknowledges the fact that “global warming is accelerating the degradation of drylands and other ecosystems prone to deforestation, salinization, soil erosion, and desertification”²⁰⁵, and therefore “in affected areas of the globe both lives and productivity levels are increasingly at risk, with devastating extreme events such as heat waves, floods and droughts taking place, and with sea levels rising along low-lying coastal areas”²⁰⁶.

d) Immigrant

An immigrant, from the standpoint of the country of arrival, is an individual who relocates to a country different from their nationality or habitual residence. Consequently, the country of destination becomes their new customary place of residence²⁰⁷.

e) Internally Displaced Persons (IDPs)

Internally Displaced Persons (IDPs) are individuals or groups of individuals who have been compelled or required to leave their homes or habitual places of residence. This displacement is often a consequence of armed conflict, instances of widespread violence, human rights violations, or natural or human-induced disasters. These individuals are “internally displaced” as they have not crossed an internationally recognized State border²⁰⁸. The definition finds its origin in the United Nations Guiding Principles on Internal Displacement, adopted in 1998.

The Guiding Principles consist of 30 standards delineating the protections afforded to internally displaced people (IDPs). They comprehensively outline the rights and assurances pertinent to safeguarding IDPs, covering aspects from preventing forced displacement to ensuring their protection and assistance throughout displacement until the attainment of lasting solutions²⁰⁹. The Guiding Principles are organized into four main categories, addressing protection against displacement (Principles 5 to 9), protection during displacement (Principles 10 to 23), the framework for humanitarian assistance (Principles 24 to 27), and protection during return, local integration in the locations of displacement, and resettlement in another part of the country (Principles 28 to 30). These principles serve as a guide for various

²⁰⁴ Council of the International Organization for Migration (IOM),

²⁰⁵ IOM Discussion note (2007).

²⁰⁶ *Ibid.*

²⁰⁷ United Nations Department of Economic and Social Affairs, Recommendations on Statistics of International Migration, *Definition of “long-term migrants”*, Revision 1 (1998) p. 10.

²⁰⁸ United Nations Commission on Human Rights (1998).

²⁰⁹ Internal Displacement Monitoring Centre website, *Guiding Principle on Internal Displacement*.

stakeholders, including the UN Special Rapporteur in executing their mandate, states managing internal displacement situations, all relevant authorities, groups, and individuals in their interactions with IDPs, as well as inter-governmental and non-governmental organizations.

The Guiding Principles are not legally binding, but they have been of substantial influence in international protection law. Therefore, the UN General Assembly remarked on their relevance and prominence, inviting relevant actors to employ them in the face of internal displacement situations. Regional organizations and States have likewise recognized the principles as a valuable tool, with some even integrating them into their laws and policies²¹⁰.

f) Stateless Persons

Article 1 of the United Nations Convention on the Status of Stateless Persons²¹¹ defines a stateless individual as someone not recognized as a national by any State according to its laws. In this case, the individual does not enjoy the rights associated with national diplomatic protection, possesses no inherent right to reside in the country of residence, and has no entitlement to return in case of travel. The condition of statelessness can originate from various scenarios, including migratory situations, such as expatriates losing or being deprived of nationality without acquiring the nationality of their habitual residence. Under the umbrella of stateless persons, there are also those individuals who, despite having never crossed borders, may find themselves without a recognized nationality (for various reasons) even in their country of habitual residence²¹².

The status of refugee and statelessness are separate concepts; however, it is conceivable for an individual to be identified as both a refugee and stateless. This is possible because if stateless persons fall within the criteria outlined in Article 1 of the 1951 Refugee Convention, they are considered refugees under international law.

The status outlined for stateless individuals in the 1954 Convention is patterned after the framework established for refugees in the 1951 Convention. Despite sharing a similar overall approach, the 1954 Convention does exhibit notable differences from its 1951 counterpart. Notably, there is no explicit prohibition against *refoulement* (Article 33, 1951 Convention) and no safeguard against penalties for illegal entry (Article 31, 1951 Convention). Additionally, both the right to employment and the right of association are subjected to a lower standard of treatment compared to the corresponding provisions in the 1951 Convention. The 1954 Convention establishes a comprehensive array of civil, economic, social, and cultural rights for states to grant to stateless persons.

2.1.3 Historical roots of international protection law and recent patterns of migration

²¹⁰ *Ibid.*

²¹¹ UN General Assembly, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, *Convention Relating to the Status of Stateless Persons*.

²¹² UNHCR (2014).

Efforts to establish an international legal instrument for the status and protection of refugees were initiated during the era of the League of Nations²¹³. The primary objective was to confer legal status to refugees, establish appropriate conduct towards them, and safeguard their human rights. With the escalation of the refugee crisis post-World War II, the United Nations (UN) General Assembly established the International Refugee Organization (IRO)²¹⁴, which served as a resettlement agency. However, in the following years, the UN General Assembly decided to “convene in Geneva a conference of plenipotentiaries to complete the drafting of and to sign [...] the Convention relating to the Status of Refugees”²¹⁵. With that resolution, the UNGA committed to developing the Statute of the UNHCR on December 14, 1950²¹⁶. Following the establishment of the UNHCR office, a Convention delineating standards for the treatment of refugees was adopted in 1951²¹⁷.

The 1951 Convention, which defines the category of “refugees” and outlines their rights along with the corresponding obligations of States, became effective on April 22, 1954. Subsequently, a Protocol concerning the status of refugees, signed on January 31, 1967, and enforced on October 4, 1967, expanded the scope of the 1951 Convention by removing temporal and geographical restrictions. It is relevant to point out that a Contracting State may uphold a declaration on geographical limitation under Article 1/B (1) of the 1951 Convention.

International legal instruments for the protection of refugees appeared essential to cope with the new migration flows of the second half of the 20th century. However, migration routes have demonstrated a historical pattern of constant change and shifts. The evolution and alteration of these routes over time signify a continuity within change, and the concept of change itself is not novel in this context²¹⁸. Notably, this study will mention some geopolitical junctures that originated massive movements in the last century.

Examples are Chinese refugees who fled to Hong Kong in 1962, migrants who fled from other parts of Nigeria to Biafra after persecutions and mass killings in 1967, and the war between India and Pakistan in 1971, which prompted millions of people to be displaced from Pakistan (Bangladesh) to India²¹⁹. Between the 1970s and 1980s, a significant exodus has been observed from Southeast Asian countries due to political and social disruptions. The migration flows from Vietnam, Laos, and Cambodia, were driven by apprehension and distress over the precarious situation in their home countries marked by armed conflicts²²⁰.

Furthermore, the civil war in Syria, that began in 2011, led to a significant flow of people to neighboring countries, particularly Turkey, which shares the longest border with Syria. As a result, Turkey received millions of Syrian citizens. Turkey ratified the 1951 Convention relating to the Status of

²¹³ ZENGINKUZUCU (2018).

²¹⁴ Resolution 62 (I) of the UN General Assembly.

²¹⁵ UN General Assembly, 14 December 1950, A/RES/429, *Draft Convention relating to the Status of Refugees*.

²¹⁶ UN General Assembly, 3 December 1949, A/RES/319(IV), *Refugees and stateless persons*.

²¹⁷ UN General Assembly, 14 December 1950, A/RES/428(V), *Statute of the Office of the United Nations High Commissioner for Refugees*, Annex.

²¹⁸ SCHROVER (2022).

²¹⁹ *Ibid.*

²²⁰ ZENGINKUZUCU (2018).

Refugees and its 1967 Protocol. By making declarations under Article 1(B) of the 1951 Convention and upon accession to the 1967 Protocol, Turkey has endorsed the Convention with a geographical limitation, which it continues to uphold²²¹. In this context, Turkey permitted the large-scale arrival of Syrian refugees under the umbrella of temporary protection and implemented the Temporary Protection Regulation (TPR) in 2014.

Focusing on Europe, different migration patterns of recent history can be detected in four periods: from the 1950s to 1974, from 1974 to the end of the 1980s, from the 1990s to 2012²²², and from 2012 to the contemporary context.

The first period under examination (1950s-1974) was marked by guest worker programs and migration patterns resulting from decolonization. In this context, international migration garnered widespread approval due to its economic advantages for both sending and receiving nations²²³. The economic boom in North-Western Europe created a demand for labor that local workers couldn't fulfill, leading these countries to recruit workers from peripheral nations. Key destination countries included Belgium, France, Germany, Luxembourg, the Netherlands, Sweden, and Switzerland. Geographical proximity played a crucial role, with specific migration flows developing, such as Sweden recruiting labor from Finland, the UK from Ireland, and Switzerland from Italy²²⁴. The countries of origin comprised Italy, Spain, Greece, and Portugal. Simultaneously, the process of decolonization resulted in substantial migration toward Europe's former colonial powers. Notably, Belgium, France, the Netherlands, the UK, and Portugal experienced a significant influx of people from their former colonies, particularly during the 1970s²²⁵.

During the oil crisis of 1973, confidence in unrestrained economic expansion declined. Switzerland and Sweden took the lead in implementing migration halts, with Germany following suit in 1973, and the Benelux countries and France in 1974²²⁶. Additionally, those migrants from non-European countries initially brought in through labor recruitment programs, progressively established permanent residence in Europe. Returning to their home countries for extended periods now posed a significant risk of losing their residence permit. Indeed, a growing number of migrants began relocating to Europe with their families, and asylum applications across the continent increased²²⁷. Starting in the mid-1980s, migration flows from non-European countries shifted more prominently toward Southern Europe, as Greece, Italy, Portugal, and Spain, which had historically been emigration countries, began experiencing increased immigration.

In the early 1990s, European States faced an unprecedented influx from former Yugoslavia towards their borders. Responding to this migration crisis, European countries opted for temporary protection instead of granting refugee status and durable asylum. Many nations introduced temporary protection policies and instruments in light of the situation²²⁸. Simultaneously, entry into

²²¹ UNHCR, 2014, *Universal Periodic Review, The Republic of Turkey*.

²²² VAN MOL and DE VALK (2016).

²²³ BONIFAZI (2008).

²²⁴ VAN MOL and DE VALK (2016:35).

²²⁵ *Ibid.*

²²⁶ VAN MOL and DE VALK (2016:36).

²²⁷ Art. 19 European Social Charter of 1961.

²²⁸ MANSOURI et al. (2009).

the EU became more constrained as the European market unified, leading to stringent border controls and visa regulations. This heightened scrutiny on foreign entry coincided with a rise in irregular migration²²⁹. Overall, the reasons prompting migrants to approach Europe had different natures²³⁰. Starting from 2010, with the uprising of the Arab Spring, numerous asylum applications were submitted to the EU-25 Member States, along with Norway and Switzerland, mainly to France, Germany, Sweden, the UK, and Belgium²³¹.

The number of migrants legally and illegally entering European Countries and the inability to manage such flows made Europe experience its refugee crisis. During the last decade, the migrants started their journeys mainly from Syria, Afghanistan, Iraq, and other countries marked by violence and armed conflicts, mostly as a result of the Arab Spring. The various reasons behind their movements concern economic opportunities and disparities between countries, political instability and conflict, climate change and environmental factors, and advancements in technology and communication, which facilitated movements.

To further contextualize this study, this paragraph will present the main routes crossed by international migrants, focusing on the Eastern Mediterranean route, the Mediterranean Sea route, the Central American route and the Central American route.

The Eastern Mediterranean route has been traditionally utilized by migrants traveling through Turkey to reach the European Union. It has experienced increased congestion since the onset of the Syrian war in 2011. Moreover, Syrian pathways have started to converge with the easternmost points below the Mediterranean Sea, merging with an East African migratory route commonly taken by individuals escaping conflict in Somalia, the Democratic Republic of the Congo, and South Sudan²³².

Those individuals attempting to reach Europe through the sea follow the Mediterranean Sea route, which include both central Mediterranean and western Mediterranean. The countries of departure are mainly Morocco, Tunisia, Syria, Afghanistan, Eritrea, Nigeria, Pakistan, Iraq, Somalia, Sudan, Gambia, and Bangladesh²³³.

The combination of poverty and violence in Mexico and Central America has forced millions to migrate. A significant number moved towards the north of the continent, with the ultimate destination being the U.S. border. Indeed, in Colombia, the conflict has led to the displacement of over six million people, while an escalating and violent drug trade in Honduras and El Salvador has exacerbated destabilization in the region²³⁴.

The Southeast Asian route is crossed by migrants escaping from situations characterized by political turmoil, including the escape of Muslim Rohingya refugees fleeing political oppression in Myanmar. Restrictive migration

²²⁹ VAN MOL and DE VALK (2016:37).

²³⁰ PENNIX et al. (2006).

²³¹ OECD (2011).

²³² CONTANT (2015).

²³³ *Ibid.*

²³⁴ VAN MOL and DE VALK (2016:39).

policies and the absence of regional legal frameworks for refugees further contribute to the increasing dangers in the region. The UN reports that human trafficking, forced labor, and various abuses are prevalent in this area²³⁵.

2.1.4 Principle of *non-refoulement*

According to international human rights law, the principle of *non-refoulement* ensures that individuals cannot be sent back to a country where they might experience torture, cruel treatment, inhuman punishment, or other severe harm²³⁶. This safeguard extends to all migrants, regardless of their migration status, and it addresses the condition of refugees or asylum seekers coming from a State where their life or freedom is at risk due to factors like race, religion, nationality, membership in a social group, or political beliefs²³⁷.

For what concerns refugees, the principle of *non-refoulement* is established in Art. 33 of the Geneva Convention (1951):

This rule forms a fundamental part of the 1951 Convention, and no reservations are allowed for this provision. Additionally, it is a binding obligation outlined in the 1967 Protocol, as specified in Article I (1) of that document.

Article 33:

“Prohibition of expulsion or return (*«refoulement»*)

- (1) No Contracting State shall expel or return (*«refouler»*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.
- (2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”²³⁸.

Unlike certain aspects of the Convention that may hinge on a refugee’s lawful residence in a Contracting State’s territory, this particular provision is not contingent upon such lawful residence²³⁹.

The drafters of the Convention deliberately chose to include the French words “*refoulement*” and “*refouler*” in brackets. Despite the two terms can be seen as synonymous with the English words “expulsion” or “return”, they aimed to clarify that the obligation of non-return should be interpreted with a specific scope, no broader than the French expression. Notably, the understanding was that this duty wouldn't apply if there were genuine threats to national security or public order due to a mass influx²⁴⁰.

Indeed, Art. 33(2) addresses the security interests of the receiving State, allowing for the possibility of *refoulement* in cases where there are genuine

²³⁵ *Ibid.*

²³⁶ UNHCR (2018).

²³⁷ UNHCR and OSCE Office for Democratic Institutions and Human Rights (2007).

²³⁸ Art. 33 1951 Convention Relating to the Status of Refugees.

²³⁹ UNHCR, (1997).

²⁴⁰ HATHAWAY (2005).

concerns about national security. It is important to note that despite being an exception, Article 33(2) doesn't serve as an exclusion provision, meaning it doesn't completely exclude the application of the *non-refoulement* obligation. Instead, it provides a specific circumstance under which the principle may be set aside in the interest of the receiving State's security.

The 1951 Refugee Convention, and its Article 33, applies only to individuals officially recognized as refugees. Nevertheless, the principle of *non-refoulement* extends beyond individuals with refugee status, as compliance to the principle of *non-refoulement* is ensured in further instruments that safeguard all migrants. Indeed, States are bound by other treaty obligations. Notably, Article 3 of the Convention Against Torture explicitly outlines *non-refoulement*, and other core Human Rights Treaties imply these provisions²⁴¹.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)²⁴² represents the only case among international treaties, aside from the Refugee Convention, that explicitly mandates *non-refoulement*. The article concerned is Article 3, which unequivocally prohibits the repatriation of an individual to a nation where there are compelling reasons to believe they will face torture:

“1. No State Party shall expel, return («*refouler*») or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”²⁴³.

Unlike the Refugee Convention, there are no circumstances that allow for exceptions to a State's non-refoulement obligation under Article 3 of the CAT.

The principle can also be detected in the formulation of other Articles within ICCPR and CRC. Notably, the Articles of ICCPR at stake are Article 6 and Article 7, for which no reservations are possible. Article 6 safeguards an individual's “inherent right to life”, asserting that “no one shall be arbitrarily deprived of his [or her] life”²⁴⁴. According to Article 7 “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”²⁴⁵. The two Articles do not mention explicitly the principle of *non-refoulement*; however, they influenced the interpretation of Article 2 presented by the Human Rights Committee (HRC), which has asserted that it imposes the obligation to not extradite a person when there are substantial grounds to believe there is a real risk of irreparable harm, akin to that contemplated by Articles 6 and 7²⁴⁶.

Similar provisions are considered within CRC. The Committee on the Rights

²⁴¹ UNHCR and OSCE Office for Democratic Institutions and Human Rights (2007).

²⁴² UN General Assembly, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

²⁴³ Art. 3 CAT.

²⁴⁴ Art. 6 ICCPR.

²⁴⁵ Art. 7 ICCPR.

²⁴⁶ UN Human Rights Committee (HRC), 26 May 2004, CCPR/C/21/Rev.1/Add.13, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*.

of the Child has construed Articles 6 and 37 of the CRC to encompass, at the very least, a *non-refoulement* obligation²⁴⁷. Indeed, Article 6 of the Convention on the Rights of the Child (CRC) safeguards the inherent right to life, while Article 37 addresses protection against torture and other cruel, inhuman, or degrading treatment or punishment.

The analysis of these Articles implies that the expansive *non-refoulement* obligations, most of which admit no exceptions, have been designed to be beneficial for the individuals explicitly excluded from the Convention refugee status²⁴⁸. The most extensive evolution of the *non-refoulement* principle is not explicitly outlined in treaties but stems from the interpretations by judicial and quasi-judicial bodies. These entities have determined that the norm is implied within the overarching prohibition of torture and other cruel, inhuman, and degrading treatment or punishment, and potentially within other fundamental rules of international human rights law²⁴⁹.

Overall, for individuals formally recognized as refugees under the 1951 Convention and/or the 1967 Protocol, adhering to the *non-refoulement* principle typically poses no legal challenges. However, when dealing with asylum seekers, upholding the principle of *non-refoulement* necessitates safeguarding them from being returned to a place where their life or freedom might be at risk until it is reliably established that such threats do not exist. Since every refugee starts as an asylum applicant, treating asylum seekers with the assumption that they may be refugees is essential to ensure their protection until their status is determined²⁵⁰.

Therefore, under international human rights law, States are legally obligated to uphold the principle of non-refoulement. This includes the responsibility to establish practical and human rights-based protection mechanisms. States should implement these mechanisms and allocate resources to assess the individual protection needs of all migrants with due process, serving as a complement to asylum determination processes²⁵¹.

2.1.5 Principle of equality and non-discrimination

The principle of equality and non-discrimination has been already analyzed in this study; however, it acquires particular relevance in the context of international protection law. As already pointed out, States are required by this principle not to discriminate against individuals. Discrimination, in this context, refers to any form of differentiation, exclusion, limitation, or favoritism based on factors like race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status. The goal is to prevent any actions that nullify or hinder the acknowledgment,

²⁴⁷ Committee on the Rights of the Child, 1 September 2005, 39th sess, UN Doc CRC/GC/2005/6, *General Comment No 6: Treatment of Unaccompanied and Separated Children outside Their Country of Origin*, paras. 27–28.

²⁴⁸ POBJOY (2010).

²⁴⁹ UNHCR and OSCE Office for Democratic Institutions and Human Rights (2007).

²⁵⁰ UNHCR (1997).

²⁵¹ UN Committee Against Torture (CAT), 9 February 2018, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*.

enjoyment, or exercise of rights and freedoms by all individuals on an equal basis²⁵².

Most Human Rights Conventions, as already seen, include a non-discrimination clause detailing the prohibited grounds for discrimination. However, in some cases, there is no reference to nationality, and in others, the term adopted is “national origin”²⁵³, which presents a broad possibility of interpretation. Therefore, to better orientate the interpretation and to provide a term that is more precise and pertinent to migration, the most recent human rights Conventions, such as the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted on December 18, 1990, entered into force on July 1, 2003), explicitly include "nationality" as one of the prohibited grounds for discrimination.

Equality (and inequality) is a recurring concept when dealing with migration. Indeed, migration represents a manifestation of global disparities, encompassing factors like wages, opportunities in the labor market, and lifestyles. A significant number of individuals choose to relocate with the belief that a more favorable life awaits them elsewhere, the so-called economic migrants, offering a potential reduction in the discrepancies between their current circumstances and those in more prosperous regions. However, the capacity to migrate is not distributed evenly. Various individual attributes and resources, including citizenship, financial resources, internet access, and language proficiency, play a crucial role in determining people's ability to embark on migration journeys.

Furthermore, migration itself can contribute to bringing out inequalities. Individuals who undertake migration may encounter uneven access to rights and social resources, including the right to seek protection, particularly for those fleeing conflict, violence, and persecution. Indeed, ongoing developmental differences, combined with distinct migration patterns within nations and communities, require careful examination of how migration either adds to or offsets the concentration of individuals and resources in particular areas of a country or region.

Enhancing the situation for everyone in a society, whether citizens or non-citizens, including migrants and refugees, involves granting meaningful access to rights. The fundamental UN human rights treaties incorporate a clause that prohibits discrimination, emphasizing the universal application of human rights to every individual. This prohibition extends to factors such as race, color, sex, language, religion, political opinion, national and social origin, birth, and other status. Adopting a rights-based approach, rooted in the obligation to protect, respect, and fulfill human rights, provides a potential framework for aligning the interests of both the State and refugees²⁵⁴, particularly regarding occupation and employment. Promoting equality and rights for every member of society, regardless of citizenship, not only fosters social inclusion but also enriches the capabilities of everyone²⁵⁵.

²⁵² United Nations Human Rights Committee, 10 November 1989, HRI/GEN/1/Rev.1, *General Comment 18: Non-Discrimination*, para. 7.

²⁵³ International Covenant on Civil and Political Rights

²⁵⁴ CRAWLEY (2017).

²⁵⁵ *Ibid.*

The principle of equality and non-discrimination requires necessary application when dealing with the employment and occupation of migrants. This focus is geared towards achieving equal opportunities in various aspects, including access to employment, vocational training, education, job promotion, job security, and equitable compensation for work of comparable value and working conditions. The goal is to ensure that workers are rewarded based on productivity and merit, considering objective job characteristics like skills, knowledge, and responsibilities, while eliminating influences unrelated to merit, such as sex, race, or religion. ILO Convention No. 97²⁵⁶ and Recommendation No. 86²⁵⁷ aim to achieve several related objectives: guaranteeing migrant workers in regular situations receive no less favorable treatment than nationals; facilitating cooperation between Member States to enhance overall protection measures; and providing guidance on the conditions under which labor migration should occur.

Gender inequalities play a significant role in shaping the conditions of migrants. Despite the universal application of the right to social protection to all migrants, regardless of their migration status, women often face exclusion. This exclusion represents a discriminatory practice, intensifying challenges for women, especially during economic downturns and crises. Sustainable Development Goal (SDG) 5 is dedicated to achieving gender equality and women's empowerment. In the realm of migration policy, SDG5 serves as a reminder to policymakers and practitioners about the critical importance of adopting gender-sensitive approaches for effective migration governance²⁵⁸.

For what concerns refugee law, the 1951 Convention incorporates the principle of equality and non-discrimination starting from the definition of refugee. Indeed, discrimination operates both as an element of persecution and as a factor influencing States' responses to movements of refugees and other displaced populations. This recognition underscores the importance of addressing discrimination as a crucial aspect of safeguarding the rights and well-being of refugees on a global scale. The preamble of the 1951 Convention specifies that "human beings shall enjoy fundamental human rights and freedoms without discrimination"²⁵⁹, and Article 3 is dedicated to non-discrimination: "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin"²⁶⁰.

The non-discrimination clause within the Convention is specifically tied to its provisions. Furthermore, Article 7 of the Convention states that, unless more favorable provisions are present in the Convention, a Contracting State should provide refugees with the same treatment given to aliens in general²⁶¹. This implies that the rights granted to aliens in general are deemed to be included for refugees. This obligation is not exclusive to the State where the refugee is located but applies to all Contracting States²⁶².

²⁵⁶ International Labour Organization (ILO), 1 July 1949, C97, *Migration for Employment Convention*.

²⁵⁷ International Labour Organization (ILO), 1949, R086, *Migration for Employment Recommendation*.

²⁵⁸ IOM (2017).

²⁵⁹ Preamble 1951 convention

²⁶⁰ Art. 3 1951 Convention Relating to the Status of Refugees.

²⁶¹ Art. 7 para. 1 1951 Convention Relating to the Status of Refugees.

²⁶² UNHCR (1990).

However, the obligations of Contracting States go beyond the specific provisions of the Convention. They may be obligated to adhere to the principle of non-discrimination through other international instruments to which they are parties. Examples include the United Nations Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. The universal principle of non-discrimination, articulated in Article 2 of the Universal Declaration of Human Rights, has a broad and general application, underscoring the global commitment to ensuring equality and protection of human rights for all individuals.

Other international legal instruments, and notably the Committee on the Rights of the Child, further expand the principle. In its general comment No. 6, the Committee on the Rights of the Child (CRC) emphasized that “the enjoyment of the rights stipulated in the Convention [must] be available to all children, irrespective of their nationality, immigration status or statelessness”²⁶³. Additionally, General Comment No. 22, adopted in 2017, specifies 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”, and included in the paragraph specific categories, among which, *inter alia*, are listed “migrants in regular or irregular situations, asylum seekers, refugees, stateless and/or victims of trafficking, [...] irrespective of the child’s or parents’ or legal guardians’ nationality, immigration status or statelessness”²⁶⁴.

Overall, the principle of equality stands as the norm, however, the ICJ specified that there are cases in which different treatments can be contemplated as exceptions²⁶⁵. In these cases, those advocating for distinct treatment must substantiate its justification and reasonableness. Unlawful discrimination is defined as any act of exclusion, preference, or privilege that results in the nullification of a particular right. This underscores the importance of justifying and demonstrating the reasonableness of any deviation from the principle of equality.

2.2 Protection of the Right to Education for Refugees

International legal frameworks on refugees, mostly exemplified by the 1951 Convention concerning the Status of Refugees and the subsequent 1967 Protocol, affirm the entitlement of every child to access fundamental education. Therefore, nations are mandated to provide basic education to all children and young individuals within their jurisdiction, irrespective of their immigration status. This section of the study will examine the educational needs of refugees and migrant people and the obstacles encountered by States in providing them education, particularly concerning issues of access and quality. The primary objective of these passages is to identify the impediments that States confront when implementing the international human right to education.

²⁶³ CRC, General Comment No. 6.

²⁶⁴ CRC, General Comment No. 22.

²⁶⁵ International Court of Justice (ICJ), 18 July 1966, *South-West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa); Second Phase*.

As per the data provided by the United Nations High Commissioner for Refugees (UNHCR), the gross enrolment rates²⁶⁶ for refugees exhibit figures of 65%, 41%, and 6% for primary-age children, secondary, and tertiary levels, respectively²⁶⁷. Overall, the obstacles arise from considerations such as nationality, legal status, and documentation. Dismantling them would allow refugees to pursue an accredited curriculum within duly registered educational institutions staffed by qualified teachers. Therefore, the formulation and implementation of additional policies respecting international law on education are essential to guarantee an educational experience that is neither superior nor inferior to that provided to the general populace.

The fundamental relevance of education for refugees, migrants, and forcibly displaced people, lies in the fact that education facilitates the social integration of refugee and migrant children into host communities. Furthermore, education is deemed an indispensable conduit for the complete fulfillment of other fundamental human rights. Indeed, it furnishes refugees with the intellectual acumen necessary to influence the trajectory of their respective nations or to contribute meaningfully to their societies extending them refuge, protection, and a forward-looking perspective²⁶⁸. As an empowering entitlement and a public asset, education serves as the foremost avenue through which economically and socially marginalized individuals, can elevate themselves from poverty and acquire the resources essential for complete participation in their respective societies²⁶⁹, providing persistent, reliable, and safe environments. Education also plays a crucial role in enabling refugees to comprehend their rights, effectively assert them, and advocate for suitable protection. Failure to fulfill the right to education for refugees may lead to social tensions and heightened marginalization.

Furthermore, education serves as a crucial instrument in fostering peaceful societies. The provision of quality education stands as a pivotal method to counteract intolerance at the individual level and contribute to the development of a more inclusive society. It serves as an initial measure in preventing instances of racism, xenophobia, and other forms of discrimination²⁷⁰. Consequently, heightened endeavors are imperative in host countries to instill teachings on human rights, promote respect, nurture tolerance, and emphasize the value of diversity. Prioritizing quality inclusive education is essential as it plays a significant role in cultivating open-mindedness and fostering tolerance among individuals.

The need for universal education is urgent and the international community is actively engaging through its realization. Among the 17 Sustainable Development Goals set by the UN General Assembly, SDG number 4 concerns education for all by 2030. The needs of refugees and migrant people are recalled multiple times within the main policy documents associated with SDG4. Notably, paragraph 11 of the Incheon Declaration²⁷¹ explicitly delineates a dedication to addressing educational challenges during crises and

²⁶⁶ It expresses the total enrolment in a specific level of education, regardless of age, expressed as a percentage of the eligible official school-age population corresponding to the same level of education in a given school year.

²⁶⁷ UNHCR (2023).

²⁶⁸ UNHCR (2016).

²⁶⁹ CESCR, 1999, E/C.12/1999/10, General Comment No. 13: *The right to education (Article 13)*.

²⁷⁰ UN News (2023).

²⁷¹ UNESCO (2015).

for refugees and migrant people, expressing the commitment “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”²⁷².

The Declaration was adopted in 2015 by the World Education Forum (WEF)²⁷³, and it represents the dedication of the education community to Education 2030 and the 2030 Agenda for Sustainable Development, acknowledging the crucial role of education as a primary catalyst for development. Overall, it emphasizes the crucial need for inclusion and equity within and through educational systems, aiming to prevent anyone from being left behind. As a declaration, as opposed to a convention or treaty, it lacks legal binding on member states and doesn’t necessitate ratification by their legislatures. Instead, it sets forth norms and expectations.

More broadly, in order to fully realize the right to education, especially for refugees, States, as primary duty-bearers, must actively uphold the fundamental aspects of this right. This involves prompt actions on key elements, such as ensuring access to education without discrimination, guaranteeing that education systems align with international standards and are free from interference by the State or third parties, and developing and implementing a national educational strategy covering basic, secondary, and higher education, with a specific focus on refugees. In this context, according to the Conventions studied in the first Chapter of this work, and the principles analyzed in the second, governments are obligated to adhere to the principles of non-retrogression and allocate the highest level of resources at their disposal²⁷⁴, aiming to steadily attain the complete realization of the universal right to education.

The inclusion of children and youth into national systems can be regarded as an international obligation, as underscored by the reaffirmation within the framework of Sustainable Development Goal 4 – Education 2030²⁷⁵. Inclusion, in this context, entails prioritizing efforts to ensure access to diverse forms and tiers of education. Furthermore, the inclusion of refugees and migrants lies in the assistance they receive in acquiring proficiency in the language of the host country promptly upon their arrival and the provision of cultural orientation.

2.2.1 Context and main challenges

Achieving the goals outlined in Education 2030 and upholding the obligations set forth by pertinent International Conventions demand unwavering dedication, considering the numerous challenges and obstacles involved. This paragraph will present some of them and will then focus on guaranteeing access to education and quality education for refugees and migrant people.

The Education 2030 Framework for Action underscores the critical importance of addressing the educational requirements of internally displaced

²⁷² Incheon Declaration para. 11.

²⁷³ The World Education Forum is a premium body comprising representatives of major organizations involved in education and related activities across the world. Major organizations involved in the forum in 2015 include: UNESCO, the World Bank, UNHCR, UNFPA, UNDP, ILO, UNWOMEN.

²⁷⁴ Under the ICESCR.

²⁷⁵ United Nations General Assembly (2016:16), para. 64.

persons and refugees. The attainment of Sustainable Development Goal 4 (SDG4) by 2030 is contingent upon meeting the educational needs of vulnerable populations, encompassing refugees, stateless individuals, and others forcibly displaced, and therefore upon addressing the related challenges. In this regard, the pivotal factors of equity and inclusion necessitate careful consideration. Among the barriers encountered by refugees and migrants in enjoying their human right to education, this paragraph will delve into legal and administrative barriers, discrimination issues, financial resources, and social inclusion.

Firstly, legal barriers, such as the absence of explicit provisions mandating compulsory education for children in reception centers, those lacking residence permits or international protection status, or the absence of legal mandates for compulsory education, can pose constraints on enjoying the right to education. This may particularly impact children outside specific age brackets, for instance, those below 5 or above 15 years old²⁷⁶. Correspondingly, there are administrative issues that frequently arise, such as rigid registration deadlines and stringent requirements related to residence and personal documentation. These challenges become particularly conspicuous in the domains of early childhood education, upper secondary education, and vocational training.

Further challenges are represented by intolerance, xenophobia, and aggression, as well as national and ethnic tensions and conflicts, which have widespread repercussions across various groups and locations. Notably, displaced individuals may find themselves subject to prolonged and unjustified detention in certain instances²⁷⁷. Stereotypes and judgement based on perceptions in educational settings have the potential to result in discrimination, prejudice, and bullying, particularly when refugee and migrant children are perceived as distinct. What is more, teachers may not always possess adequate preparation to foster multiculturalism and embrace diversity effectively²⁷⁸.

Moreover, education authorities often grapple with inadequate human and financial resources, including limited capacity in schools and pre-schools, a dearth of catch-up classes, budgetary constraints, and insufficient guidance and training for teachers and education practitioners engaged with refugee and migrant students. In many cases, it is possible to argue that the reluctance and resistance exhibited by certain countries in allocating financial resources or committing to refugee resettlement frequently appear connected to the apprehension that an influx of people may pose a threat to their national security²⁷⁹.

These factors just mentioned hinder the proper inclusion of refugees into societies. Furthermore, it also underlines that refugees enjoy fewer opportunities to be involved in secondary education and vocational training, which would be a pivotal progression within educational pathways, leading towards sustainable livelihoods, professional development, and higher education.

²⁷⁶ UNHCR, IOM, UNICEF (2019).

²⁷⁷ UNESCO (2017).

²⁷⁸ UNHCR, IOM, UNICEF (2019).

²⁷⁹ World Education News & Reviews (2015).

2.2.1a Ensuring access to education for refugees

The most recent UNHCR report titled “The Right to Education and Opportunity” highlights evident disparities in access rates between refugees and national averages, particularly at the primary and secondary education levels²⁸⁰. The right to access essential services, including education, is a fundamental right for migrants. However, discrimination and other barriers, which will be analyzed in the following sections, frequently prevent many migrants from taking part in these programs in practice. Indeed, the subsequent paragraphs will outline the challenges and issues that refugees face in accessing education, particularly in host countries. The examination will start with the hindrances refugees encounter in accessing primary, secondary, and higher education. Subsequently, the distinctions in legal barriers to education for refugees, asylum seekers, and irregular migrants will be explored through a comprehensive analysis of these cases within the European Union.

The most useful indicator to start such analysis is the gross enrollment ratio (GER), as it illustrates the comprehensive extent of an educational system concerning the population eligible for participation in said system. The UNESCO Institute for Statistics gathers education-related data through its annual education survey, relying on official responses for information collection. While acknowledging certain limitations and exceptions, such as variations in the duration of primary education or the age of enrollment, this indicator provides a sufficiently comprehensive overview of the global scenario.

Despite the right to primary education being universal and explicitly deemed compulsory in the Core International Human Rights Conventions²⁸¹, the issue of out-of-school refugee children and adolescents raises substantial concerns. Indeed, the gross enrollment rate of refugees in primary education is 65%²⁸². Various factors contribute to the barriers to accessing education, including the treatment of refugees in schools, the quality and affordability of education, overcrowded educational institutions, transportation challenges, geographical distance, educational discontinuity, curriculum and language disparities, and instances of discrimination and bullying. These obstacles reduce access to primary education for refugee children, as they make families unable to (economically and physically) afford education. Furthermore, specific attention shall be oriented towards the access to education of young girls, which is even more limited. This situation not only undermines their human right to education, but also makes them more likely to experience early marriage, early pregnancy, and the risks of sexual exploitation. Therefore, promoting girls’ education, as foreseen by the Convention on the Elimination of All Forms of Discrimination against Women²⁸³, would serve as a protective measure.

Anyway, it is fundamental to expand educational opportunities at all levels, encompassing secondary education and beyond, to ensure accessibility for all refugee children²⁸⁴. According to the last UNHCR Report on Education, only

²⁸⁰ UNHCR (2023).

²⁸¹ Art. 13 ICESCR; Art. 28 CRC; Art. 5 CERD.

²⁸² UNHCR (2023).

²⁸³ Art. 10 CEDAW.

²⁸⁴ United Nations General Assembly (2016).

41% of refugees have access to secondary education²⁸⁵. The hardships linked to access to secondary education make refugee children and adolescents susceptible to child labor, exploitation, and negative coping behaviors, such as involvement in drugs and petty crime, often associated with idleness and a sense of hopelessness²⁸⁶.

Secondary education offers a secure environment for the personal development and establishment of positive social networks for adolescents whose progression into adulthood has been hindered by instability and violence. On a global scale, a substantial number of young refugees, particularly girls, find themselves excluded from secondary educational opportunities. This circumstance can be attributed to the prevailing practice, in situations of resource constraints, of prioritizing support for primary education, leading to a persistent oversight of secondary education services for refugees²⁸⁷. In the international instruments examined in this study, secondary education, including technical and vocational education and training, is considered available and accessible, and Articles promote its gradual provision, however, secondary education is not explicitly mandated as compulsory. The relatively less stringent obligations related to secondary education may inadvertently result in states and governments neglecting the advancement of refugees' rights to access secondary education.

Refugees often encounter exclusion from national secondary schools, either as a result of explicit exclusion policies or due to the absence of negotiated access, including issues related to registration capacity and available spaces, with national authorities. Compounding these challenges is the fact that refugees frequently lack the necessary identity papers, such as birth certificates, or educational documents required for school enrollment. This issue is further exacerbated by the absence of cross-border recognition for certificates and equivalences. In this regard, the New York Declaration, adopted by the General Assembly in 2016, there is a commitment to finalize the “recognition of foreign qualifications, education and skills and cooperation in access to and portability of earned benefits”²⁸⁸.

Moreover, secondary schools typically incur higher costs, necessitating specialized infrastructure and equipment such as science and computer laboratories or libraries. In addition, transportation options may not be readily available or affordable, particularly in remote and rural areas²⁸⁹. Furthermore, amid the strain and challenges posed by displacement, numerous adolescents and/or families may prioritize the immediate advantages of early marriage, engagement in domestic labor either within their residences or externally, or involvement in income-generating activities. Additionally, boys may face pressures compelling them to discontinue their education in favor of entering the workforce.

For what concerns the access of refugees to higher education, the primary obstacle pertains to financial considerations. A minimal proportion of aid is allocated towards fortifying higher education systems in the recipient nations.

²⁸⁵ UNHCR (2023).

²⁸⁶ UNHRC (2015).

²⁸⁷ *Ibid.*

²⁸⁸ UN General Assembly, 3 October 2016, A/RES/71/1, *New York Declaration for Refugees and Migrants: resolution/adopted by the General Assembly*, Annex 1, para 6(w).

²⁸⁹ UNHCR (2013).

Higher education constitutes a crucial avenue for acquiring employment skills, as it serves to stimulate critical and creative thinking, while also facilitating the generation and dissemination of knowledge for social, cultural, ecological, and economic development²⁹⁰.

Overall, the difficulty in collecting comprehensive information concerning enrollment procedures and transportation logistics to and from distant asylum facilities may constitute a significant impediment to the conduct of a complete analysis. The recurrent relocations of refugees and migrants between different types of accommodations, notably observed in Greece and Italy, alongside challenges related to the geographical distance and transportation to educational institutions, the associated expenses for school materials, and the inadequate dissemination of information to children and their families regarding available procedures and services, collectively contribute to a substantial impact on school enrollment and attendance²⁹¹.

A further essential aspect to consider is that while the fundamental right of all children to receive basic education is acknowledged within international and regional human rights frameworks, the actual provision of schooling for children of migrants born in the host states, refugees, asylum-seekers, and migrant children tends to be contingent upon their specific stage within the asylum or migration process²⁹². In order to practically explain the differences, this paragraph will consider the legislation of the EU.

Children of migrants born in the European Union typically possess the entitlement to access educational, apprenticeship, and vocational training programs within their host member state under equivalent conditions as the respective nationals²⁹³.

Individuals recognized as refugees under the scope of the 1951 Convention on Refugees, as well as those holding long-term residence status and those lawfully reunited with family members residing in the European Union, possess the right to avail themselves of educational opportunities under conditions equivalent to nationals. However, it is crucial to note that such individuals do not automatically enjoy entitlement to associated benefits and may suffer discrimination, potentially impeding their access to quality education²⁹⁴.

Children in the process of seeking asylum also hold a legal entitlement to access the education system of the host State under terms identical to those applicable to nationals. It is noteworthy that in many cases formal education may be administered within accommodation centers, and not in national schools²⁹⁵.

Children in an irregular migrant situation, such as those who have not pursued asylum or lack legal documentation, face a heightened risk of being excluded

²⁹⁰ UNESCO (2016), target 4.3, para. 41.

²⁹¹ UNHCR, IOM, UNICEF (2019).

²⁹² *Ibid.*

²⁹³ Regulation of the European Parliament and of the Council, 5 April 2011, No. 492/2011, OJ 2011 L 141/*on freedom of movement for workers within the Union*, 1, pp. 1–12, Article 10.

²⁹⁴ Council Directive, 22 September 2003, 2003/86/EC, *on the right to family reunification*, Article 14(1).

²⁹⁵ Directive of the European Parliament and of the Council, 29 June 2013, 2013/33/EU, *laying down standards for the reception of applicants for international protection (recast)*.

from educational opportunities. Despite across most Member States the right to education is extended to all children within the country, thereby implicitly encompassing those residing irregularly²⁹⁶, local procedural requisites can impede or dissuade access because of the lack of systematic assurance or facilitation of this right. For instance, schools may impose requirements such as the submission of birth certificates, prior educational credentials, national identification papers, or proof of residency for enrollment.

2.2.1b Quality education

Considering the rate of enrollment and therefore access to education is the first step for the evaluation of the efficiency of the education system for refugees; however, in assessing the educational status of refugees within school premises, it becomes imperative to scrutinize the quality of education they are receiving. Numerous factors influence the learning process, among which the quality of teaching takes a prominent position.

The delivery of education in refugee settings consistently grapples with the challenge of ensuring both quality and relevance. In this regard, governments are compelled not only to secure or establish educational facilities but also to furnish qualified educators and educational resources for newcomers. These individuals, frequently unfamiliar with the language of instruction and having eventually missed years of schooling, require particular attention for these reasons²⁹⁷. Furthermore, children who are refugees residing in conflict zones and camps often face challenges in accessing quality education, and they may not always have the opportunity to attend national schools in certain host countries.

In every circumstance, the economic and geopolitical situation of host states, coupled with their non-signatory or non-party status regarding certain (or all) articles of the 1951 Refugee Convention Relating to the Status of Refugees or the International Covenant on Economic, Social, and Cultural Rights, play a role in shaping their dedication to ensuring the right to education for children.

Ensuring quality education for refugees represents a significant step in fostering their self-reliance. Moreover, it constitutes a fundamental aspect of the development of host communities and at the same time may contribute significantly to the prosperity of the refugees' home countries, in the cases when conducive conditions for their return are established. Indeed, the function of educational institutions is to establish conducive conditions and a suitable atmosphere to facilitate the learning process for all students. The following paragraphs will describe some of the main aspects to consider in order to provide quality education for refugees: the presence of a supportive school environment, the role of teachers, the language of teaching, the inclusion of refugees in the school environment, the integration of refugees in society, and the issue of funding education.

Firstly, the enhancement of learning outcomes for children, particularly refugees and migrants, hinges upon the presence of a supportive school environment and the delivery of high-quality teaching. This can be achieved through the implementation of mentoring and cultural mediation programs, allocation of sufficient resources to mitigate socio-economic disparities,

²⁹⁶ In practice this is subject to interpretation and national, regional or local procedures.

²⁹⁷ UNESCO (2017).

dissemination of information regarding the school environment, active engagement with parents, provision of additional language support, and fortification of anti-discrimination legislation. Indeed, the Committee on the Rights of the Child highlights the fact that encouraging children's engagement in school activities, fostering the formation of school communities and student councils, and promoting peer education and counseling should be advocated as integral components of the learning journey, contributing to the practical realization of their rights²⁹⁸. This is especially applicable to refugees.

Teachers play a pivotal role in establishing a secure environment that safeguards a child's entitlement to an effective education. The provision of quality education for refugee children poses challenges, as schools frequently encounter deficiencies in essential infrastructure and teaching resources, contend with elevated student–teacher ratios, and often experience a shortage of teachers²⁹⁹. Frequently, the existing pool of educators lacks adequate training to address the distinct requirements of refugee children, and among teachers, there is a notable absence of proficiency in the first language of these children. Insufficiencies in school capacity, encompassing both resources and staff with appropriate training to cater to the needs of refugee and migrant children, coupled with language barriers, psychosocial challenges, and a shortage of catch-up classes, constitute prevalent challenges encountered by these children seeking education. The challenges related to teachers manifest in the form of a scarcity of highly qualified professionals and inadequacies in their preparation. Additionally, there exists a deficit in resources essential for teacher retention, encompassing issues related to remuneration. Furthermore, deficiencies are observed in training and teaching materials crucial for the education of vulnerable children, including those grappling with trauma. There is a pressing necessity to equip teachers with knowledge about the historical backgrounds and experiences of refugee children, enabling a better understanding of their behaviors within the school environment.

A further aspect to consider for the provision of quality education is language. Proficiency in language stands as a determining factor that can either facilitate or impede the integration of refugee children. Language skills not only play a crucial role in academic success but are also imperative for students with immigrant and refugee backgrounds to cultivate a sense of belonging within the school community³⁰⁰. Linguistic challenges pose a significant hurdle in the enrollment and placement of refugee children in age-appropriate grades, given that they frequently do not possess proficiency in the language of the host country. The inability to communicate in the language of instruction can impede the academic progress of refugee children, increasing the likelihood of dropout. The language barrier substantially diminishes the participation of refugees in educational courses. Supplementary assistance in language acquisition and cultural mediation is indispensable in mitigating language barriers and communication difficulties. Refugee and migrant children frequently lack adequate proficiency in the language of instruction, or they may exhibit a limited interest in acquiring proficiency in the host country's language. Therefore, it is imperative to provide support to refugee children for the development of proficiency in the host country's language, however, at the same time it is crucial to practice their mother tongue as well, to preserve

²⁹⁸ UN Committee on the Rights of the Child (CRC), 17 April 2001, CRC/GC/2001/1, *General comment No. 1 (2001), Article 29 (1), The aims of education*, para. 8.

²⁹⁹ PALIK et al. (2023:227-247).

³⁰⁰ OECD (2019).

their identity and culture. Indeed, Article 29 of the CRC reads that “the development of respect for the child's parents, his or her own cultural identity, language and values”³⁰¹.

Migrant and refugee students are more susceptible to bullying and perceived inequitable treatment by educators in comparison to their native-born counterparts. These experiences potentially contribute to discernible disparities in academic performance and overall well-being between native-born students and their migrant or refugee peers. Therefore, it is imperative to impart education within the school community regarding the detrimental impacts of bullying, particularly considering the heightened vulnerability of refugee children who may already be grappling with traumatic experiences. In this regard, educational systems must support the development of the capability to recognize, address, and prevent bullying targeting refugee students. The commitment of educational institutions should be oriented toward the implementation of measures aimed at preventing bullying, the creation of an environment where children can engage in learning without the apprehension of ridicule, humiliation, or physical assault³⁰². Education should be delivered in a manner that upholds the inherent dignity of the child, facilitating the child's unrestricted expression of views and active participation in school activities³⁰³.

Upon arriving in host nations, refugees frequently exhibit a range of diverse national, cultural, linguistic, ethnic, and racial backgrounds, each accompanied by unique circumstances, including their educational histories in countries of asylum. The responses of refugees to their new scholastic environment are contingent upon an array of individual and contextual factors, such as country of origin, race, ethnicity, religion, culture, as well as socio-economic and educational backgrounds before migration. Indeed, refugee students encompass a heterogeneous collective characterized by varying skills, experiences, and backgrounds. The concept of educational integration is defined as “a dynamic approach of responding positively to pupil diversity and of seeing individual differences not as problems, but as opportunities for enriching learning”³⁰⁴. In order to eliminate racial discrimination and discriminatory practices, and to foster integration in schools, the delivery of education shall emphasize the significance of respecting differences and confronting all forms of discrimination and prejudice. Therefore, education should be granted utmost priority in any initiatives combating the scourge of racism and its associated phenomena³⁰⁵.

Furthermore, education institutions encounter an additional impediment in delivering quality education, as refugee education predominantly relies on emergency funds, limiting opportunities for comprehensive long-term planning. While States are mandated to provide education with the utmost available resources³⁰⁶, the integration of refugee education into national development plans or education sector strategies is rarely realized.

Therefore, it is crucial to furnish migrant children with an inclusive and equitable education of high quality, encompassing early childhood

³⁰¹ Art. 29 CRC.

³⁰² THOMAS (2016:193–201).

³⁰³ CRC General Comment No.1 para. 8.

³⁰⁴ UNESCO (2005).

³⁰⁵ CRC General Comment No.1 para. 11.

³⁰⁶ ICESCR.

development, formal and non-formal schooling, vocational training, and other related services³⁰⁷. Most international Human Rights Conventions analyzed in this study include a provision ensuring the right to quality education and the relative obligation of states. Moreover, there are also non-binding instruments, such as the New York Declaration on Refugees and Migrants and the Global Compact for Safe, Orderly, and Regular Migration that express the commitment of the International Community to enhancing the quality of education furnished to refugees.

2.2.2 International legal instruments

Various international and regional agreements and instruments safeguard the universal right to education for all individuals, encompassing refugees and those in analogous circumstances. These include Article 13 of the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and, concerning women's education and their access to it, the Convention on the Elimination of all Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. Additionally, the Convention on the Rights of the Child reaffirms the right to education for every child. According to its General Comment No. 6 regarding the treatment of unaccompanied and separated children outside their country of origin, it is emphasized that States must guarantee the continuity of access to education throughout every stage of the displacement cycle³⁰⁸.

As a universal human right, refugees and migrant people and migrant people have the right to access quality education. Given their vulnerable circumstances, they are entitled to additional safeguards. In addition to the Conventions just mentioned, specific provisions exist in binding instruments, such as those outlined in Article 22 of the Convention on the Rights of the Child, in the 1951 Convention relating to the Status of Refugees, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Convention relating to the Status of Stateless Persons, and the Convention on the Protection of the Rights of All Migrant Workers and Member of their Families, and in non-binding instruments, such as the New York Declaration for Refugees and Migrants, Global Compact for Safe, Orderly, and Regular Migration and specific UNESCO Recommendations.

a) Convention on the Rights of the Child

The Convention on the Rights of the Child comprises 54 articles that delineate the obligations of governments in safeguarding, promoting, and fulfilling the rights of all children within their jurisdictions. The Convention has 196 State parties, which, in absence of reservations, are legally bound by it. This study already delved into Articles 28 and 29 of the Convention, dealing with the human right to education for all children. These Articles detail the aims of education and State parties' obligation in this regard.

³⁰⁷ UN General Assembly, 19 December 2018, A/RES/73/195, *The Global Compact for Safe, Orderly and Regular Migration*, Objective 15.

³⁰⁸ UN Committee on the Rights of the Child (CRC), 1 September 2005, CRC/GC/2005/6, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*.

Despite Article 22 does not contain a list of specific rights or categories of rights, it ensures the preservation of all rights established by the Convention for refugee and asylum-seeking children, among which the right to education is included. Concurrently it reiterates the obligations and safeguards of other pertinent international human rights or humanitarian instruments applicable to the relevant State Party. This paragraph will analyze Article 22 of the CRC, which emphasizes the duty of states to uphold, protect, and ensure the right to education for refugees:

- 1) “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee [...] receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties”³⁰⁹.

The Article mandates States to provide “appropriate protection and humanitarian assistance” to young refugees, in order to clarify that children in this context must be regarded primarily as minors rather than strictly migrants, emphasizing that child rights take precedence over national immigration policies. Therefore, the Article aims to ensure the safeguarding of fundamental rights such as education, health, and child welfare for these children, so that they can enjoy a level of protection comparable to that provided to children who are citizens of the host country.

Indeed, in Article 2, the Convention establishes the principle of non-discrimination, which is universally applicable to all children, irrespective of their background. This overarching principle is equally applicable to Article 22, wherein it is affirmed that refugee and asylum-seeking children are entitled to identical rights as their non-displaced counterparts.

- 2) “States Parties shall provide co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations [...] to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family”³¹⁰.

This second paragraph of the article, together with the formulation of the first one, underlines that each endeavor involving refugee children should adhere to two fundamental principles: prioritizing the best interests of the child and upholding the principle of family unity.

To sum up, the Article establishes that refugee children are entitled to suitable protection and humanitarian aid and that their rights, outlined in the Convention, along with those granted by other international human rights treaties and humanitarian law, among which is included the human right to education, must be upheld. According to the Article, State parties are required to collaborate with the United Nations and affiliated agencies to ensure the protection and assistance of these children, prioritizing family reunification, thereby serving the best interests of refugee children, with special attention given to the circumstances of unaccompanied and separated children.

³⁰⁹ Art. 22(1) CRC.

³¹⁰ Art. 22(2) CRC.

The binding nature of the convention applies to all State parties, except Thailand, which made a Reservation on this specific article: “The application of articles 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand”³¹¹.

b) 1951 Convention Relating to the Status of Refugees

The 1951 Convention provides the definition of “refugee” and delineates the criteria for refugee status. It enumerates the rights afforded to refugees and outlines the legal obligations imposed upon States that have ratified the Convention.

For what concerns education, the Convention emphasizes the equitable treatment of refugees in comparison to nationals, particularly in the realms of elementary education and, to the greatest extent feasible, higher education.

The relevant Article of the 1951 Convention is Article 22 on public education:

“1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees 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”³¹².

The Article pertains to individuals classified as “refugees”, without imposing conditions related to residence, the legality of presence in the territory, or similar factors. The Article concerns both elementary and secondary education in its two paragraphs. The first one reaffirms that elementary is universally compulsory and that in the host country, refugees must have the same access opportunities of nationals. The second paragraph specifies the obligations of the Contracting States with regard to secondary education. It is noteworthy to underline the reference to “the same circumstances”, which is used in multiple Articles of the Convention, whose meaning is delineated in Article 6³¹³. Indeed, Article 6, which has an interpretative nature, implies the application of equitable treatment for refugees and other people in similar conditions. The expression defines the kind of obligations State parties have towards refugees in the realm of secondary education.

The Article addresses the issue of access to studies and the recognition of foreign school certificates, to not compromise the provision of education to refugees. This aligns with the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families³¹⁴ and of the Convention of the Rights of the Child³¹⁵. It is also

³¹¹ On 20 July 1993 the Secretary-General received from the Government of Sweden the communication of the reservations made upon accession by Thailand concerning Articles 7, 22 and 29. The Government of Thailand subsequently withdrawn its reservation with regard to Articles 7 and 29.

³¹² Art. 22 1951 Convention relating to the Status of Refugees.

³¹³ The term “in the same circumstances” is used in the following articles of the Convention: 13, 15, 17, 18, 19, 21, 22.

³¹⁴ UN General Assembly, 18 December 1990, A/RES/45/158, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, Artt. 30, 40, 45.

³¹⁵ Artt. 28, 29, 30, 31 CRC.

crucial to emphasize that Article 22(2) holds significance for refugees defined in Article 1, however, its relevance extends even further, particularly for the offspring of refugees.

However, as observed in previous Conventions, a distinction is made between elementary education and secondary education. Paragraph 1 of this Article reiterates the universal nature of elementary education, implying the existence of more tangible efforts to secure access, as the provision leaves little room for interpretation. Conversely, the imperative and urgency associated with implementing measures to ensure access to secondary education appear to be comparatively weaker.

c) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)

Further provisions aiming to guarantee the right to education for children in conflict situations, that may become refugees, are observable in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). The Convention was adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva in the same year. The 1949 Geneva Conventions IV apply in all cases of declared war, or in any other armed conflict between nations. It mandates that States ensure the provision of education for children and orphans separated from their families due to conflict, in accordance with Article 24 of the 1949 Geneva Convention IV. The Article reads:

“Children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition”³¹⁶.

Moreover, during periods of belligerent occupation, the occupying powers are obligated, under Article 50 of the Geneva Convention IV, to facilitate the functioning of educational institutions and strive to ensure that education is delivered by individuals of the learner’s own nationality, language, and religion, wherever possible. Indeed, when “local institutions [are] inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education”³¹⁷.

Overall, education during emergencies should yield practical outcomes and educate individuals on addressing challenges unique to crises, such as health promotion or awareness about landmines³¹⁸. Moreover, it should be promptly accessible at the onset of a crisis, providing psychological and social support, especially during times of upheaval³¹⁹.

³¹⁶ International Committee of the Red Cross (ICRC), 12 August 1949, 75 UNTS 287, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, Art. 24.

³¹⁷ Art. 50 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

³¹⁸ UNESCO (2017).

³¹⁹ *Ibid.*

The international community is constantly involved in improving emergency education capabilities. Under Target 4.5 outlined in the Education 2030 Framework for Action, the approach involves incorporating risk assessment, preparedness, and response measures for emergencies in education within education policies, sector plans, and budget planning³²⁰. Additionally, there should be initiatives addressing the educational requirements of individuals, including children, youth, and adults affected by disasters, conflicts, displacement, and epidemics, with a particular focus on refugees³²¹.

d) Convention relating to the Status of Stateless Persons

In 1951, the United Nations General Assembly gathered a Conference of Plenipotentiaries to formulate an international treaty addressing refugees and stateless persons. Although the Convention relating to the Status of Refugees was ratified that year, discussions on safeguarding the rights of stateless individuals persisted³²². The Convention relating to the Status of Stateless Persons was officially adopted on September 28, 1954, and came into effect on June 6, 1960. This convention serves as a comprehensive framework for the global protection of stateless persons, representing the most extensive effort to codify their rights at the international level.

The Convention establishes essential minimum standards of treatment for individuals meeting the criteria of statelessness. It mandates equal rights for stateless persons in terms of freedom of religion and the education of their children, comparable to those enjoyed by citizens. The Convention adopted in its Article 22 the same text formulated for the correspondent Article on Public Education in the 1951 Convention Relating the Status of Refugees.

e) Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

The Convention on the Protection of the Rights of All Migrant Workers and Member of their Families was adopted in the 69th plenary session of the General Assembly in 1990. After 13 years, and after the first 20 States ratified the Convention, it entered into force. Today there are 59 State parties who are legally bound by the provisions of the Convention.

The Convention does not establish novel rights for migrants; instead, its objective is to ensure parity in treatment and uniform working conditions for both migrants and nationals³²³. The Convention is grounded in the fundamental principle that every migrant should be entitled to a basic level of protection. It acknowledges the legitimacy of legal migrants to assert additional rights compared to undocumented migrants. However, it underscores the importance of ensuring that the fundamental human rights of undocumented migrants are upheld, in line with the rights afforded to all individuals.

Child domestic workers face an elevated risk of abuse, often constituting a substantial portion of the domestic workforce. Factors such as their tender age,

³²⁰ UNESCO (2016).

³²¹ *Ibid.*

³²² UN General Assembly, 28 September 1954, United Nations, Treaty Series, vol. 360, p.117, *Convention Relating to the Status of Stateless Persons*, Introductory Note.

³²³ UNESCO, 2005, *United Nations Convention on Migrants' Rights*.

isolation, detachment from families and peers, and a high degree of dependence on employers collectively intensify their susceptibility to infringements upon their rights outlined within the Convention³²⁴. This includes the fundamental right to access education.

The Convention was interpreted by the Committee on Migrant Workers in two General Comments, both addressing the right to education. These are General Comment 1, focusing on Migrant Domestic Workers, and General Comment 2, addressing the rights of migrant workers in irregular situations and their families.

Education is widely discussed within the Convention, notably in part III and part IV.

It first appears in Article 12 paragraph 4, which establishes that:

“States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”³²⁵.

This provision upholds the freedom of parents to select educational frameworks consonant with their moral and religious beliefs. Similar entitlements have been previously recognized in other treaties, most notably in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The incorporation of this article into the present Convention emphasizes and underscores its relevance to migrants.

Article 30 further expands the aims of the Convention in the realm of education:

“Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public preschool educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child’s stay in the State of employment”³²⁶.

According to the Article, state parties must guarantee that every migrant child, irrespective of their migration status, is provided with unrestricted access to both free and mandatory primary education. Additionally, equal treatment with the nationals of the respective State should be ensured for their access to secondary education. Furthermore, schools should not be obligated to furnish immigration authorities with information regarding the regular or irregular status of pupils³²⁷.

In adherence to Articles 28 and 30, States parties are obligated to eradicate discriminatory policies and practices that impede the rights of children of

³²⁴ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 23 February 2011, CMW/C/GC/1, *General comment no. 1 on migrant domestic workers*.

³²⁵ UN General Assembly, 18 December 1990, A/RES/45/158, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, Art. 12(4).

³²⁶ Art. 30 Convention on the Protection of the Rights of All Migrant Workers and Member of their Families.

³²⁷ CMW General Comment 1 on Migrant Domestic Workers.

migrant domestic workers, particularly in relation to their entitlements to health and education.

Specifically, Article 30 stipulates that admission to public preschool educational institutions or schools should not be affected by the migration status of the child or the child's parents. In its General Comment No.2, addressing the rights of migrant workers in irregular situations and their families, the Committee asserts that States parties are obligated to furnish free and mandatory primary education to all, including children of migrant workers, regardless of their migration status³²⁸.

Consequently, state parties are under the obligation to eliminate all direct costs associated with schooling, such as school fees, and mitigate the adverse impact of indirect costs, including expenses for school materials and uniforms. Equal access to secondary education for children of migrant workers must be guaranteed, ensuring parity with nationals³²⁹. Thus, when nationals have access to free secondary education, State parties must ensure equivalent access for children of migrant workers, irrespective of their migration status.

Likewise, when State parties offer various forms of secondary education, including vocational education, they should make them accessible to children of migrant workers. This principle extends to free preschool education and scholarship schemes. Consequently, whenever children who are nationals have access to free preschool education or scholarships, States parties must ensure equal access for children of migrant workers, regardless of their migration status³³⁰.

Articles 43 and 45 are focused on “equality of treatment with nationals of the State” for what concerns “access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned; access to vocational guidance and placement services; access to vocational training and retraining facilities and institutions”³³¹.

The Committee observes that migrant children may be subjected to various manifestations of discrimination based on factors such as race, ethnicity, gender, and disability. In accordance with the principle of equality of treatment, it is incumbent upon States parties to eradicate any discriminatory practices targeting migrant children within their educational frameworks. Consequently, States parties are obligated to refrain from endorsing segregated educational practices and the imposition of disparate standards of treatment on children of migrant workers³³². Moreover, it is imperative for States parties to eradicate any discriminatory measures directed at children of migrant workers within educational settings. Additionally, States parties are required to establish and maintain effective programs, policies, and

³²⁸ In alignment with Article 13 of the International Covenant on Economic, Social, and Cultural Rights.

³²⁹ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 28 August 2013, CMW/C/GC/2, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*.

³³⁰ *Ibid.*

³³¹ Artt. 43(1) 45(1)(e) Convention on the Protection of the Rights of All Migrant Workers and Member of their Families.

³³² General Comment 2, addressing the rights of migrant workers in irregular situations and their families, para 76.

mechanisms designed to proactively prevent discrimination against these children³³³.

f) The New York Declaration for Refugees and Migrants

In September 2016, the United Nations endorsed the New York Declaration for Refugees and Migrants, aimed at addressing the challenges confronting the international community in response to the escalating global occurrence of extensive refugee and migrant movements. The Declaration aims to ensure the safeguarding of the human rights of migrant children and refugees, especially those who are unaccompanied, acknowledging their vulnerability, and guaranteeing their access to essential health, education, and psychosocial services, with a commitment to prioritizing the best interests of the child in all relevant policies³³⁴. This sets the stage for the creation of two global compacts—one addressing a comprehensive refugee response framework and the other focusing on safe, orderly, and regular migration.

The New York Declaration contains bold commitments, which include “ensuring that all refugee and migrant children are receiving education within a few months of arrival”³³⁵ and the prioritization of “provision to facilitate this, including support for host countries as required”³³⁶. Further commitments address “combating xenophobia, racism, and discrimination in societies against refugees and migrants”, through “measures to improve integration and inclusion, as appropriate, and with particular reference to access to education”³³⁷. It also extends the opportunity of private sponsorships for education, such as scholarships and student visas³³⁸. Private sponsorship initiatives enable individuals, groups, or organizations to designate refugees for admission and residence in their respective countries, and they represent a concrete tool to support refugees; the inclusion of such a provision in the New York Declaration does not constitute any obligation for States or individual, however, it facilitates and encourages refugees’ support measures.

Moreover, paragraph 81 of the Declaration expresses the commitment to:

“Provide quality primary and secondary education in safe learning environments for all refugee children, and to do so within a few months of the initial displacement. We commit to providing host countries with support in this regard. Access to quality education, including for host communities, gives fundamental protection to children and youth in displacement contexts, particularly in situations of conflict and crisis”³³⁹.

Several segments of the aforementioned text warrant particular attention. Firstly, there is a notable emphasis on the quality of both primary and secondary education. This recognition underscores the imperative for educational institutions not only to ensure accessibility but also to actively strive for a satisfactory standard of education³⁴⁰ within environments that are secure for children who may have undergone traumatic experiences. Notably, the formulation of the paragraph conveys an equal commitment to both

³³³ CMW, General Comment No. 2, para. 76

³³⁴ New York Declaration for Refugees and Migrants, para 59.

³³⁵ *Ibid.*, para 32.

³³⁶ *Ibid.*, para 32.

³³⁷ *Ibid.*, para 38.

³³⁸ *Ibid.*, para 79.

³³⁹ *Ibid.*, para 79.

³⁴⁰ See para. 2.2.1b of this study.

primary and secondary education. Throughout this study, the analysis of the fundamental International Human Rights Conventions has revealed a heightened significance attributed to primary education, which, for instance, is universally compulsory. The juxtaposition of primary and secondary education at an equivalent level within this paragraph, formulated in 2016, illustrates the evolving nature of the international commitment to the human right to education. This evolution is characterized by a heightened recognition of the significance of secondary education, resulting in an increased allocation of attention and acknowledgment of its importance in comparison to earlier perspectives.

Furthermore, the temporal limitation of “a few months” is already explicitly referenced in paragraph 59 of the Declaration, and its recurrence serves the purpose of amplifying its importance. Paragraph 81 also underscores the involvement and role of the international community, delineating its support for host nations in accommodating refugees within their national educational systems and concurrently ensuring that the rights of refugees are duly protected. The concluding remarks of the paragraph reiterate the importance of educational quality, placing specific emphasis on children experiencing conflict and crises.

With the New York Declaration, the General Assembly also commits to “promote tertiary education, skills training, and vocational education”³⁴¹. It promotes inclusivity, discourages discrimination, and serves as a driving force for the recovery and reconstruction of nations in the aftermath of conflicts³⁴². Indeed, especially during periods of conflict and crisis, higher education emerges as a potent catalyst for transformation. It also safeguards and sustains a vital demographic of young individuals, preserving their aspirations for the future.

The New York Declaration has been adopted unanimously by 193 Member States with the General Assembly Resolution 71/1 of 2016. As a declaration it is not binding for those who adopted it, as it operates more as a manifestation of political intent and as a commitment to political actions. It marks a significant development by serving as a purposeful demonstration of international involvement. According to the Declaration, international collaboration serves as a fundamental component in the establishment of responsibility-sharing.

g) Global Compact for Safe, Orderly, and Regular Migration

Annex II of the New York Declaration initiated a series of intergovernmental consultations and negotiations aimed at formulating a Global Compact for Safe, Orderly, and Regular Migration³⁴³. This deliberative process reached its culmination on December 10, 2018, with the majority of UN Member States endorsing the Global Compact during an Intergovernmental Conference held in Marrakesh, Morocco. Subsequently, the UN General Assembly formally endorsed the Compact on December 19.

³⁴¹ New York Declaration for Refugees and Migrants, para 82.

³⁴² *Ibid.*

³⁴³ UN General Assembly, The Global Compact for Safe, Orderly and Regular Migration (GCM).

Distinguished as the inaugural intergovernmental negotiated agreement conducted under the United Nations auspices, the Global Compact encompasses all facets of international migration comprehensively. It is a non-binding document, and as such it upholds the sovereign right of states to determine the admission and residency of individuals within their territories. Moreover, the Compact signifies a dedication to international collaboration on migration, presenting a notable opportunity to enhance migration governance, address contemporary migration challenges, and fortify the positive impact of migrants and migration on sustainable development³⁴⁴.

The Global Compact, which is divided into objectives addressing different aspects of migration, recalls multiple times the issues related to education in the event of migration. Objective one calls for the “development and use of country-specific migration profiles, which include disaggregated data on [...] education”³⁴⁵, to enhance States awareness and encourage effective national interventions. The second objective of the GCM aims to reduce the negative influences and underlying factors that force individuals to depart from their country of origin, highlighting education as one of the longstanding development goals³⁴⁶.

Objective 15 discusses access to basic services for migrants and highlights the necessity to ensure migrant children and youth have access to inclusive and equitable quality education, while also facilitating their entry into lifelong learning opportunities³⁴⁷, and it emphasizes the relevance of specialized training of teachers and the dedicated allocation of resources to effectively deliver education to refugees³⁴⁸. The Global Compact further recognizes the potential of education for the positive integration of migrants in societies³⁴⁹ and it expresses the commitment to “invest in human capital development by promoting entrepreneurship, education, vocational training and skills development programs”³⁵⁰.

h) UNESCO Recommendations

Certain UNESCO Recommendations in the education sector also acknowledge the significance of the right to education and the refugee concern. Examples include the 1974 Recommendation on Education for International Understanding, Cooperation, and Peace, as well as Education related to Human Rights and Fundamental Freedoms. Additionally, the 2015 Recommendation on Adult Learning and Education, the 2015 Recommendation on Technical and Vocational Education and Training, and the 1997 Recommendation on the Status of Higher-Education Teaching Personnel all address these issues.

All these Recommendations represent significant commitment towards the achievement of a satisfying level of education for everyone. In the context of this study, it is noteworthy to delve into those are most relevant for the education of refugees, notably 1974 Recommendation on Education for International Understanding, Cooperation, and Peace and the regional

³⁴⁴ IOM website, *The Global Compact on Migration*.

³⁴⁵ GCM, Objective 1, para. J.

³⁴⁶ *Ibid.*, Objective 3, para. B.

³⁴⁷ *Ibid.*, Objective 15, para. H.

³⁴⁸ *Ibid.*, Objective 16 para. i.

³⁴⁹ *Ibid.*, Objective 16, para. C.

³⁵⁰ *Ibid.*, Objective 3, para. e.

instruments regarding the recognition of qualifications in higher education which UNESCO supported, such as the Revised Convention on the Recognition of Qualifications concerning Higher Education in the European Region (1997).

The 1974 Recommendation on Education for International Understanding, Cooperation, and Peace stands as the inaugural global document that consolidates and expresses the role of education in fostering peace, international understanding, human rights, and fundamental freedoms³⁵¹.

It proposes a course of action without enforcing legal obligations. Education guided by the principles of the 1974 Recommendation seeks to establish societies characterized by peace and justice, eliminate poverty, advance gender equality, improve health and well-being, tackle climate change, and foster mutual understanding between nations and peoples³⁵². These objectives and principles are particularly relevant when aiming to ensure the human right to education for refugees and migrant people.

The Recommendation serves as a source of inspiration for nations as they formulate and update their national laws, policies, and practices. For instance, it can serve as a guiding framework for the establishment of school policies aimed at combating all forms of discrimination in education, especially for newcomers. It may also be used to initiate mentorship programs or provide vocational training opportunities, ensuring equal opportunities for everyone, including refugees.

Furthermore, UNESCO has formulated regional instruments regarding the recognition of qualifications in higher education, specifically applicable to refugees and those in a refugee-like situation³⁵³, such as Article 7 of the Revised Convention on the Recognition of Qualifications concerning Higher Education in the European Region (1997):

“Each Party shall take all feasible and reasonable steps within the framework of its education system and in conformity with its constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether refugees, displaced persons and persons in a refugee-like situation fulfil the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties cannot be proven through documentary evidence”³⁵⁴.

Similar provisions are formulated in Article 7 of the Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education (2011)¹⁴⁹ and Article III.2, paragraph 5, of the Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States (2014).

³⁵¹ UNESCO, 19 November 1974, *Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms*,

³⁵² *Ibid.*

³⁵³ UNHCR (2006): this category includes those “who are stateless or denied protection of the government in their countries of citizenship or habitual residence, but who have not been recognized as refugees”.

³⁵⁴ Council of Europe and UNESCO, 11 April 1997, ETS No. 165, *Convention on the Recognition of Qualifications concerning Higher Education in the European Region*, Article 7.

3. Chapter 3: Case study: Protection of the Right to Education of Syrian Refugees in Turkey

Prolonged conflicts precipitate significant disruptions to educational systems. The standard of education diminishes notably for youths residing within conflict zones, attributable to factors such as compromised infrastructure, inadequate security provisions, and insufficient financial resources³⁵⁵. The situation can become increasingly complex for individuals seeking refuge in foreign countries. Contemporary international legal frameworks and initiatives now acknowledge the imperative right to education for refugee children, emphasizing its primacy from the outset of any humanitarian crisis. This entitlement to education is not only deemed indispensable in the initial phases of the emergency but throughout the entirety of the refugee predicament. For instance, in scenarios where significant numbers of refugees seek asylum from neighboring nations and are housed in camps, such as in Turkey, there arises a pressing need to establish new educational institutions, enlist educators, and furnish educational resources alongside psychosocial assistance.

The preceding chapters of this study sought to construct a comprehensive examination of international legal instruments aimed at safeguarding the human right to education for refugees. By delving into the international legal framework concerning this issue, it becomes feasible to comprehend the corresponding national legal frameworks. This concluding chapter offers a case study on the Protection of the Right to Education of Syrian Refugees in Turkey. The inquiry is predicated on the recognition that international legal instruments must be implemented within national contexts and complemented in instances of gaps. Given that each country may encounter unique disruptions and emergencies, national legislations consequently vary from one another.

The significant influx of Syrian migrants into Turkey prompted the nation to revise its domestic laws to meet its international obligations. Turkey's case warrants specific examination as it presents various noteworthy aspects of this issue. Firstly, despite being a signatory to the 1951 Convention and its Protocol, Turkey imposed a geographical limitation on their application. This means that the country applies the Convention and its Protocol only to individuals fleeing from Europe. Indeed, according to Article 1(3) of the 1967 Protocol, countries that had stipulated their adherence to confining the refugee definition outlined in the 1951 Convention to individuals displaced by events within Europe (referred to as European refugees) were permitted to uphold this geographical restriction. Consequently, migrants crossing into Turkey from Syria do not directly trigger Turkish obligations under the 1951 Convention. Additionally, Turkey's national asylum legislation before 2013 was inadequate to address the challenges stemming from the influx of Syrians into the country.

Hence, the nation implemented a new institutional framework for international protection through the 2013 Law on Foreigners and International Protection (LFIP). In accordance, it acknowledged varying levels and classifications of protection determined by the migrants' origin, the nature of threats they are fleeing, and the immediacy of required action. Syrian migrants

³⁵⁵ UNICEF (2023).

are placed under the “Temporary Protection” regime instituted by the LFIP and governed by the “Temporary Protection Regulation” (TPR).

In order to understand the normative content of LFIP and TPR, and its provision on the human right to education, this Chapter is developed in three main sections. The first one presents the current situation of education of Syrian Refugees in Turkey, detailing how the Turkish education system works, and the measures undertaken to ensure the integration of Syrian children. The second one encompasses the legal framework for Refugees in Turkey, with a focus on education, stemming the legislative evolution of the matter and the relevant instruments. Finally, the last section delineates a comparison between international refugee law and Turkish “Temporary Protection”.

3.1 Education of Syrian Refugees in Turkey: Current Situation

As of 2024, the Syria crisis had entered its thirteenth year, evolving into a humanitarian catastrophe marked by more than 5 million Syrians requiring diverse forms of humanitarian aid³⁵⁶. The international community grapples with responding effectively to the crisis both within Syria and in other nations hosting Syrian refugees, such as Turkey, Lebanon, and Jordan. Following the outbreak of the civil war in Syria in March 2011, Syrian citizens fleeing the conflict began seeking refuge in neighboring countries, particularly Turkey, prompting significant adjustments, among others, in Turkey’s educational policies. While Turkey has historically accommodated substantial numbers of migrants, the unprecedented influx of Syrian nationals in recent years has posed considerable challenges in meeting the educational requirements of a large population of school-age Syrian children. One such measure undertaken was to ensure the continuity of education for these migrants through temporary educational facilities in their residing areas or integration into public or private schools. Despite these proactive measures, the influx of migrants has brought forth numerous educational challenges³⁵⁷.

Turkey has instituted a “Temporary Protection regime” for Syrians, encompassing an open-border approach and prohibiting forcible returns (*non-refoulement*). Renowned for its geographical, political, strategic, and cultural position, as well as its relatively economic robustness, Turkey has emerged as an appealing destination for migration. Serving as both a transit route and a primary destination, Turkey receives primarily Syrian refugees along with refugees from various other nations. Adhering to its “open-door policy”, Turkey has granted “Temporary Protection” status to Syrian migrants in accordance with international refugee laws and customary practices. In contrast to Jordan and Lebanon, which have imposed limitations on Syrian refugee entry, the Turkish government has steadfastly maintained its open-door policy. Notably, since October 2013, there has been observable enhancement in collaboration between the Turkish government and international aid entities such as the UN High Commissioner for Refugees (UNHCR), the World Food Program, UNICEF, and other international non-governmental organizations (INGOs).

³⁵⁶ UNHCR data (2024).

³⁵⁷ DOLAPCIOGLU, BOLAT (2021).

According to the latest data from UNHCR³⁵⁸, Turkey currently accommodates approximately 3.2 million (62.6 percent) of the 5.1 million Syrians who sought refuge outside Syria. Nonetheless, it is reasonable to assume that the actual number of refugees in Turkey exceeds the official registrations due to irregular entry into the country, violations of entry conditions, and the expiration of refugees' legal status. Indeed, Turkey has been compelled to formulate and implement appropriate policies and initiatives to ensure the provision of high-quality education services to more than one million Syrian children residing within its borders. It is noteworthy that during the same period, Turkey has also extended its hospitality to a substantial number of refugees from other nations such as Afghanistan, Iraq, and Iran³⁵⁹.

In the course of the last 13 years, Turkey's initial atmosphere of hospitality and solidarity towards refugees from Syria has gradually diminished, giving way to heightened resentment and public tension. The proportion of Turkish citizens advocating for the repatriation of refugees has surged from under 49% in 2017 to 82% in 2021³⁶⁰. The devastation wrought by the earthquakes is exacerbating feelings of hostility as anti-refugee narratives proliferate on social media platforms. Concurrently, Syrian refugees are gradually establishing roots within the community.

The education sector in Turkey faces diverse challenges stemming from the influx of these numbers. To assess the degree to which Syrian children can access their human right to education and evaluate the current progress in integrating Syrian refugees into the Turkish national education system, the subsequent section explores a range of factors. A first part providing the background on the Turkish Education system is functional to understand the rest of the study. Notably, the attention is focused on the Turkish response to the barriers that Syrian children face in accessing education in Turkey, and the involvement of external actors.

3.1.1 The Turkish system

In accordance with the Constitution of the Republic of Turkey, every individual possesses the right to access education. Public schooling is provided free of charge, and it is obligatory for individuals aged 5/6 to 17, encompassing primary and secondary education³⁶¹. While preschool education is presently discretionary, there are intentions and concrete step forward to mandate its provision and availability in both public and private institutions³⁶². Turkey's educational structure follows a 4+4+4 model, consisting of four years of primary school, four years of lower secondary school, and four years of upper secondary school³⁶³. Every child in Turkey has the right to access essential educational services provided by public schools. Apart from public schools, there are also private schools under the supervision of the Ministry of National Education. Unlike public schools, these private institutions charge education fees, with the tuition determined by the respective school.

³⁵⁸ UNHCR data (2024).

³⁵⁹ UNICEF (2023).

³⁶⁰ Mülkiye Migration Research Center (2021).

³⁶¹ Ministry of Interior Directorate General of Migration Management (2022).

³⁶² UNICEF Turkey (2022).

³⁶³ *Ibid.*

The Ministry of National Education establishes the curriculum for primary schools and grants approval for textbooks and educational materials. Turkish serves as the primary language of instruction in schools, although certain programs are conducted in English, German, or French.

For what concerns elementary and lower secondary school, students are assigned to their preferred school based on their residential address registration. However, upon completion of lower secondary school, students have the option to take a nationwide competitive examination (The Merkezi Sınav Central Exam [CE] - Transition Exam to upper secondary school) and can subsequently be placed in one of their selected schools based on their exam scores³⁶⁴. The upper secondary schools available to students after completing lower secondary education encompass a range of domains, including science, social sciences, fine arts, sports, and vocational and technical schools.

Therefore, the selection of a secondary school is contingent upon the performance in the central examination. Given that the examinations are conducted in Turkish, Syrian refugees possessing an intermediate proficiency in the language may face reduced prospects of attaining satisfactory outcomes and securing admission to their preferred schools.

In Turkey, higher education typically comprises four years of university study or two years of vocational school education at the tertiary level. Certain programs may entail an additional year of language instruction. Generally, a master's degree requires two years of study, while a doctorate degree necessitates three and a half to five years. This umbrella term encompasses all institutions offering post-secondary education. Oversight of higher education programs falls under the purview of the Higher Education Council (HEC).

Higher education serves as a potent instrument in the transformative journey of refugees, individuals compelled to relinquish their familiar surroundings, including their educational bedrock. Higher education offers myriad refugee youths the opportunity to cultivate competencies and acquire credentials, thereby fostering their capacity to assume leadership roles in addressing the challenges affecting both their trajectories and the welfare of their communities³⁶⁵.

The Turkish education system operates under the oversight and authority of the Ministry of National Education (MoNE), functioning within a centralized framework wherein educational policies and administrative directives, encompassing the appointment of personnel, selection of instructional materials, and curriculum design, are determined. The integration of newly arrived refugees from diverse cultural backgrounds, speaking different languages, into this centralized system, has presented novel experiences and confronted numerous challenges related to policy adaptation, infrastructural adjustments, and the cultural dynamics within Turkish schools.

3.1.2 Turkish education response for Syrian children

³⁶⁴ ERTEM (2021: 194-96).

³⁶⁵ UNHCR Turkey (2023).

Education serves as a vital component in the process of restoring stability for displaced children. It plays a crucial role in societal reconstruction and the socioeconomic advancement essential in post-conflict emergency scenarios. Not only does education preserve lives during crises, but it also mitigates the psychological impact of violence on children. Moreover, education fosters a sense of normalcy, crucial in alleviating the disruptive effects of displacement on individuals and communities, while also providing a clearer path for the future³⁶⁶.

Türkiye's Ministry of National Education (MoNE) acknowledges the fundamental right to education. Pertinent documents emphasize the imperative for all children, irrespective of nationality, socio-economic background, health status, or cultural heritage, to acquire knowledge and skills essential for their future learning endeavors (Convention and Protocol Relating to the Status of Refugees [CPRSR], 1951). With the collaboration of national and international entities such as the Turkish Red Crescent Association (Kızılay), the United Nations High Commissioner for Refugees (UNHCR), and the United Nations Children's Fund (UNICEF), MoNE facilitates the enrollment of refugee children and implements policies aimed at establishing inclusive learning environments for all children. This proactive approach could also serve as a model for other nations grappling with similar large-scale refugee influxes³⁶⁷.

Moreover, international aid facilitated through collaboration between the government, the United Nations' Regional Refugee and Resilience Plan (3RP)³⁶⁸, and the EU Facility for Refugees in Turkey (FRIT)³⁶⁹ endeavors to address their fundamental requirements. Financial assistance programs such as the Emergency Social Safety Net and Conditional Cash Transfers for Education, funded under FRIT, offer support to eligible refugee households. Nonetheless, these initiatives do not encompass all refugees and often fall short of covering all household expenses³⁷⁰.

Turkey embarked on mitigating these challenges during the acute phase of the crisis spanning from 2011 to 2013, employing tent, container, and prefabricated schools within refugee camps. Subsequently, a transition phase ensued from 2014 to 2015, during which Temporary Education Centers (TECs-GEMs) became pivotal establishments for the education of Syrian students³⁷¹. Throughout this period, an adjusted rendition of the Syrian curriculum in Arabic was adopted and facilitated by Syrian Volunteer Education Personnel (SVEP)³⁷². As the situation evolved from an emergency

³⁶⁶ DOLAPCIOGLU, BOLAT (2021).

³⁶⁷ UNICEF (2023).

³⁶⁸ The Regional Refugee and Resilience Plan (3RP) integrates both humanitarian and developmental interventions into a unified framework, coordinated by UNHCR and UNDP. This comprehensive plan aims to address not only the protection and immediate humanitarian requirements of refugees but also the resilience-building, stabilization, and developmental needs of affected individuals and institutions.

³⁶⁹ The EU Facility for Refugees in Turkey responds to the urgent appeal from EU Member States for substantial additional funding to aid refugees within the country. It oversees a total allocation of €6 billion, earmarked until mid-2025. The primary focal points include humanitarian aid, education, healthcare, municipal infrastructure, and socio-economic assistance.

³⁷⁰ KIRISCI (2023).

³⁷¹ UNICEF (2023).

³⁷² The SVEP incentive programme has been working to increase children enrolment in education. Starting with 2,500 SVEP since 2014, expanding to meet the growing demand in refugee education in Turkey.

to a prolonged crisis with no definitive resolution to the Syrian conflict in sight, the Government of Türkiye confronted the challenge of integrating the Syrian population, recognizing the diminishing likelihood of significant returns to Syria. Consequently, policy shifted towards facilitating the integration of Syrian children into Turkish society, primarily through their gradual inclusion in Turkish Public Schools (TPSs). Since 2016, Türkiye's education policy has progressively embraced inclusivity towards refugees. Subsequently, Syrian students have been accorded equal rights to their Turkish counterparts and are entitled to the same range of services, including psychosocial support and assistance tailored to address special educational needs.

The Ministry of Education has been undertaking a policy initiative aimed at integrating all informal Syrian schools, typically overseen by Syrian non-governmental organizations (NGOs), under its regulatory framework. Concurrently, it seeks to enhance accessibility for Syrian children to enroll in Turkish schools, potentially through the implementation of additional shifts. Considering the widespread absence of formal education among Syrian children within Syria, the educational attainment of Syrian children residing outside the nation may significantly influence the trajectory of the country's future³⁷³. However, education transcends being merely a pivotal concern for Syria's future; it also constitutes a security imperative. Indeed, the absence of educational opportunities exposes individuals to the peril of becoming targets for radical and terrorist factions.

In circumstances of this nature, both the host country's government and external stakeholders must acknowledge the significance of education. The certification and accreditation procedures for non-formal education initiatives conducted by the government play a critical role in facilitating the seamless integration of out-of-school refugee children into the formal education system of the host country. Additionally, the development of comprehensive programs that cater to the diverse needs of vulnerable learners is essential. This involves identifying and remedying obstacles to enhance attendance, retention, and academic achievement within the educational framework.

Furthermore, children are vulnerable to the impact of natural disasters, epidemics, and conflicts. Turkey experienced turmoil after the onset of Covid-19 and the earthquake in February 2023. Refugee children frequently endure poverty, substandard living conditions, limited access to essential amenities such as safe drinking water, healthcare, and adequate nutrition. Additionally, economic hardships often compel them to engage in labor activities, contributing to the neglect of their educational pursuits.

In order to comprehend Syrians' educational access beyond camps, it is imperative to grasp their legal status within the country, further explored in the section 3.2. The Government of Turkey (GoT) extends "Temporary Protection" to Syrians residing in Turkey. Syrian refugees are placed under a "Temporary Protection" regime, affording them unrestricted access to essential Turkish public services, including education and healthcare. However, significant barriers persist.

³⁷³ FERRIS, KIRISCI (2015).

3.1.3 Barriers hindering Syrian children's access to education in Turkey

The primary factor preventing Syrian children from attending school relates to mobility. The unstable living conditions experienced by numerous Syrian refugees often prompt them to seek stability by relocating to other countries or cities in search of improved living standards³⁷⁴. This circumstance postpones the enrollment of young individuals into the education system, as they can solely avail themselves of services within provinces where they are officially registered³⁷⁵. The relocation results in educational disparities among Syrian children compared to their counterparts, potentially constraining their academic progress in the long term. Furthermore, nearly all study participants have noted that this mobility poses challenges to outreach efforts, as despite concerted endeavors, reaching students becomes increasingly.

Secondly, language barriers and the absence of formal documentation hinder Syrians from enrolling in Turkish schools within host communities. The limited proficiency in Turkish among Syrian students and the challenges in adapting to a new curriculum and unfamiliar language of instruction pose a significant obstacle to their effective assimilation into the Turkish education framework.

Challenges also arise from inadequate facilities and resources for learning, transportation constraints to schools, and a scarcity of qualified Syrian educators, many of whom offer their services voluntarily. Moreover, the absence of certification for school attendance and accreditation diminishes the motivation to pursue education³⁷⁶. Residence permits and legal status complexities represent the foremost barriers to accessing education. Moreover, expenses related to schooling, placement examinations, and documentation, along with the quality and appropriateness of education, and concerns regarding overcrowding, certification, and accreditation, collectively influence low rates of enrollment and attendance.

A further barrier derives from the fact that numerous parents hesitate to allow their children, especially their daughters, to leave home due to apprehensions about potential harassment and discrimination within and around school premises³⁷⁷. Overall, young Syrian individuals face pressures to engage in work, with boys often compelled to enter the informal labor sector, while girls are frequently tasked with unpaid domestic responsibilities³⁷⁸. The most economically marginalized Syrian families frequently find themselves torn between ensuring financial stability and meeting the educational requirements of their children. Consequently, many children opt to leave school and engage in employment to support their families' basic needs.

Additionally, adherence to cultural norms among refugees leads to a decrease in the educational enrollment rate of Syrian adolescent girls as they mature. Indeed, some Syrian families endorse early marriage for their daughters and exhibit reluctance towards enrolling them in mixed classes³⁷⁹, or they endorse early marriage for their daughters. These factors contribute to the

³⁷⁴ UNICEF (2023).

³⁷⁵ *Ibid.*

³⁷⁶ SMITH (2018).

³⁷⁷ UNHCR (2014).

³⁷⁸ UNICEF (2023).

³⁷⁹ *Ibid.*

discontinuing of education for girls, whereas boys often leave school to contribute to their families' financial support through employment.

When children's lives are upended by migration, they often endure numerous traumatic experiences. These may encompass instances of rape, abduction, forced child marriage, homicides, and the loss of contact with certain family members. Traumas deriving from these experiences require further attention in designing educational solutions for refugees, also considering that education issues can be exacerbated by social injustices, feelings of displacement, alienation, exclusion, and disparities between past and present living conditions³⁸⁰, antisocial behavior, and peer rejection³⁸¹. As a result of the unstable environment, their access to education is often delayed. Consequently, they may receive education in insufficient facilities, impeding their capacity to fully realize and develop their potential³⁸².

Educators and other facilitators must proactively foster awareness among children in the host community that behaviors such as discrimination, racism, bullying, and related actions are unacceptable. It is equally important to sensitize citizens or parents of host community students to eliminate discriminatory treatment towards refugee children and instill in their children a culture of respect towards their peers. Equipping refugee children with basic language skills would facilitate rudimentary interaction between both groups. Failure to do so will perpetuate the persistent problem of exclusion and marginalization faced by refugees. The host nation must actively strive to understand the challenges encountered by refugees within the educational setting, addressing issues such as bullying, discrimination, language barriers, and similar concerns³⁸³. These factors influence the importance of establishing connections and nurturing a feeling of belonging.

On Monday 6 February 2023, Turkey and Syria have been struck by a 7.8 magnitude earthquake, which in Turkey mostly affected the provinces next to the Syrian borders. The event has compounded the challenges confronting refugees, rendering basic resources like education inaccessible for children. Numerous schools are being repurposed to serve as shelters for those impacted by the earthquake. UNICEF has assisted 140,000 children in gaining access to formal or non-formal education and has extended mental health and psychosocial support to over 260,000 children³⁸⁴. Collaborating with the Turkish ministry of interior Disaster and Emergency management presidency (AFAD), UNICEF has actively supported the Ministry of National Education by implementing temporary education measures, such as providing tents for catch-up classes and exam preparation³⁸⁵. However, UNICEF acknowledges the necessity for long-term support to aid in rebuilding and restoring the lives of these children and their families. The restoration of public institutions affected by the earthquakes is imperative to ensure that refugees and host communities have continued access to essential services such as healthcare, education, waste management, and employment³⁸⁶.

³⁸⁰ DOLAPCIOGLU, BOLAT (2021).

³⁸¹ *Ibid.*

³⁸² THOMAS (2023).

³⁸³ *Ibid.*

³⁸⁴ UNICEF USA (2023).

³⁸⁵ THOMAS (2023).

³⁸⁶ 3RP Regional Refugee & Resilience Plan Syria, *Regional Strategic Overview 2024*.

In the aftermath of the earthquake, numerous educators and students found themselves displaced, with schools suffering damage or being repurposed temporarily to provide aid to earthquake survivors, resulting in class suspensions. By April 2023, classes had resumed across all affected regions, yet attendance remained low in provinces hardest hit by the disaster³⁸⁷. The Ministry of National Education (MoNE) swiftly reopened schools, utilizing various means such as tents, containers, and online platforms. Nonetheless, the education of hundreds of thousands of children was significantly disrupted. Beyond the earthquake challenges, ongoing rises in the cost of living and worsening economic conditions for refugee households exacerbate difficulties in sending children to school. Particularly vulnerable refugee families, already impacted economically by the earthquakes, are likely to face heightened obstacles to education participation due to these compounding factors.

3.1.4 External actors

The European Union (EU) remains steadfast in its commitment to assisting Turkey in addressing the refugee challenge. Since 2011, the EU has allocated nearly €10 billion to support refugees and host communities in Turkey. In 2016, the EU-Turkey Deal was concluded. This was an agreement based on several points including the fact that Turkey would have taken any necessary measures to stop refugees heading to the Greek islands. Moreover, anyone who would have arrived in Greece without permission would be returned to Turkey. The EU Facility for Refugees in Turkey was established in response to the call from EU Member States for substantial additional funding to aid refugees in the country, managing a total of €6 billion, distributed in two installments. The first installment finances projects that concluded by mid-2021, with some exceptions for extensions. The second installment supports projects scheduled to run until mid-2025, although most projects are expected to conclude earlier. Key areas of focus include humanitarian aid, education, healthcare, municipal infrastructure, and socio-economic assistance³⁸⁸. The funding under the EU Facility for Refugees in Turkey aims to comprehensively address the needs of refugees and host communities in the country. The EU's support to refugees in Turkey, as outlined in the 2023 Monitoring Report, has yielded positive outcomes³⁸⁹. Notably, the program has facilitated access to upper secondary vocational and higher education for nearly 55,000 students, along with providing free transportation services for refugee students residing near educational institutions.³⁹⁰

In order to guarantee the coordination, complementarity, and efficacy of the aid provided, the Facility Steering Committee furnishes strategic direction regarding the nature, extent, and allocation of actions to be funded, as well as the financing mechanisms through which they are to be implemented³⁹¹. Chaired by the European Commission, the Steering Committee comprises representatives from EU Member States, with Turkey participating in an advisory role. Decisions are made following a comprehensive evaluation of

³⁸⁷ UNOCHA (2023).

³⁸⁸ European Commission, DG NEAR, *The EU Facility for Refugees in Turkey*, updated June 2023.

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*

requirements and in accordance with the procedures governing the activated financing instruments.

One of the projects funded by the European Union and executed by the Ministry of National Education (MoNE) of the Republic of Turkey is PIKTES (Project for Promoting Integration of Syrian Children into the Turkish Education System)³⁹². PIKTES receives funding through a direct EU grant under the auspices of the “Facility for Refugees in Turkey (FRIT)” agreement. In addition to its targeted objective of assisting the Ministry of National Education (MoNE) in enhancing the integration of Syrian children and facilitating their access to high-quality education, the project encompasses a broader aim of augmenting the enrollment and attendance rates of Syrian children and adolescents in formal education of exemplary standards.

PIKTES, executed across 26 provinces in Turkey selected according to the population of school-aged Syrian children, serves as an exemplary model for comprehensive education tailored to the needs of Syrian students³⁹³. During the initial phase of implementation, the project successfully addressed the fundamental educational requirements of Syrian students, spanning from primary to high school levels. In response to the vision outlined by the Ministry of National Education (MoNE) to deliver inclusive and comprehensive educational opportunities for Syrian children, the project’s scope has been expanded to encompass early childhood education and social cohesion, thereby offering a holistic array of opportunities.

In various capacities, UNICEF has aided Turkey’s Ministry of National Education (MoNE) in its pursuit of inclusive policies. The National Conditional Cash Transfer for Education (CCTE) initiative, overseen by UNICEF with operational assistance from the Turkish Red Crescent and financed by the European Commission Humanitarian Aid department (ECHO), underwent expansion in mid-2017 to encompass all refugee students³⁹⁴. The facility consists of cash assistance that families receive every two months via the Kızılaycard, contingent upon the child’s consistent school attendance (minimum of 80%) in the preceding months. Students enrolled in Turkish public schools, temporary education centers, and Accelerated Learning Programs (see below) are all eligible to participate in the program. The eligibility criteria and transfer amounts utilized for Turkish children under the national CCTE program are also extended to Syrian and other refugee recipients enrolled in the CCTE for Refugees³⁹⁵.

UNICEF also supports the Accelerated Learning Programme, an accredited initiative offering a second chance at education for Syrian and other forcibly displaced non-Turkish-speaking children and adolescents who are out of school. This program delivers condensed, multi-grade, age-appropriate, competency-based essential curricula, supplemented by psychosocial support, educational and career counseling for learners, and additional extracurricular activities³⁹⁶. It emphasizes literacy and numeracy skills as the cornerstone of education, providing instructors with in-service training in areas such as

³⁹² Project on Promoting Integration on Syrian Kids into the Turkish Education System (PIKTES) website.

³⁹³ *Ibid.*

³⁹⁴ UNICEF (2021).

³⁹⁵ The Conditional Cash Transfer for Education (CCTE) Programme, UNICEF website.

³⁹⁶ UNICEF (2021).

Teaching Turkish as a Foreign Language. Moreover, it contributes to addressing the educational needs of young individuals in conflict-affected and fragile contexts.

UNHCR collaborates with its partners to ensure refugees are informed about their rights and receive support in navigating enrollment procedures for their children. Given the importance of Turkish proficiency for academic achievement, UNHCR closely cooperates with the Ministry of National Education to provide additional assistance for children learning Turkish. Moreover, UNHCR works in close conjunction with MoNE to disseminate information to refugees regarding available education opportunities. By actively engaging with refugee communities, UNHCR identifies the challenges refugees encounter in accessing education and collaborates with the Ministry and other education stakeholders to explore potential solutions³⁹⁷.

The education strategy of UNHCR aims to facilitate refugee access to a diverse range of educational options, encompassing formal education, higher education, and non-formal learning opportunities. This includes provisions for adult education, focusing on acquiring proficiency in the Turkish language and developing new skills³⁹⁸. Central to this strategy is the promotion of refugees' effective integration into the national education system, acknowledging the national policy framework and collaborative efforts of education sector stakeholders. In Turkey, a significant aspect of UNHCR's education initiatives targets individuals aged 18 and above, necessitating robust connections with livelihood programs and facilitating seamless transitions from education to employment.

UNHCR closely collaborates with the Higher Education Council and the Presidency for Turks Abroad and Related Communities (YTB) to streamline refugee youth's access to higher education³⁹⁹. The UNHCR-YTB higher education preparation program offers a nine-month intensive Turkish language course, enabling refugee youth to fulfill the language proficiency criteria necessary for admission to Turkish universities. Additionally, refugee students receive scholarships to pursue studies at Turkish universities with the assistance of UNHCR. Turkey hosts the largest DAFI program globally, which is UNHCR's scholarship initiative⁴⁰⁰, introduced in the country in 2014.

3.2 Legal Framework for Syrian Refugees in Turkey

The Republic of Turkey is a signatory to the 1951 Refugee Convention and the 1967 Protocol. The country, through an explicit declaration, maintains the geographical limitation to the 1951 Convention and its 1967 Protocol. According to its declaration falling under Article 1(3) of the 1967 Protocol, Turkey prioritizes resettlement to a third country as the most favored durable solution for refugees stemming from events occurring outside of Europe. However, in response to the increased influx of non-European refugees, Turkey has embarked on legislative and institutional reforms aimed at

³⁹⁷ UNHCR Turkey (2019).

³⁹⁸ UNICEF Turkey website, *Education*.

³⁹⁹ *Ibid.*

⁴⁰⁰ The DAFI (Albert Einstein German Academic Refugee Initiative) scholarship programme offers qualified refugee and returnee students the possibility to earn an undergraduate degree in their country of asylum or home country.

establishing a robust national asylum system in accordance with international standards.

In April 2013, Turkey enacted its current asylum legislation, the Law on Foreigners and International Protection, which was ratified by the Parliament and came into effect on April 11, 2014. This legislation, known as the 2013 Law on Foreigners and International Protection (LFIP)⁴⁰¹, established a comprehensive legal framework for Turkey's international protection system and instituted a new specialized institution, the Directorate General of Migration Management (DGMM), operating under the purview of the Ministry of Interior. The DGMM is entrusted with the responsibilities of formulating migration and asylum policies and overseeing related procedures. On October 29, 2021, pursuant to Turkish Presidential Decree No. 85⁴⁰², the DGMM was reorganized into the Presidency for Migration Management (PMM), while remaining within the administrative structure of the Ministry of Interior.

Prior to the enactment of the Law on Foreigners and International Protection (LFIP), asylum-related affairs in Turkey were primarily governed by Regulation No 1994/6169 concerning Procedures and Principles concerning Potential Population Movements and Arrival of Aliens in Turkey⁴⁰³. This regulation imposed a stringent deadline for asylum seekers to submit their claims for international protection, lacking any mention of the fundamental human rights of asylum seekers and refugees.

The Law on Foreigners and International Protection comprises three primary segments focusing on the regulation of foreigners, encompassing both regular and irregular migration, international protection, which includes different forms of protection such as "Refugee" status, "Conditional Refugee" status, "Subsidiary Protection", "Temporary Protection", and oversight of the Presidency of Migration Management.

A refugee status is granted to an individual seeking international protection from Europe and recognized as a refugee under Article 1(A)(2) of the 1951 Convention, following an assessment by the DGMM⁴⁰⁴. As per Article 3 of the LFIP, Europe encompasses Council of Europe members and other States designated by the Turkish Presidency. Conditional Refugees, according to LFIP, are those individuals falling under the definition of Refugee of the 1951 Convention, but not coming from Europe. Article 63 of the LFIP defines a beneficiary of "Subsidiary Protection" as a foreign individual or stateless person who cannot be classified as either a Refugee or a Conditional Refugee, as returning to their country of origin or former habitual residence would result in persecution, and they are unable to seek protection from that country⁴⁰⁵. Temporary Protection, established by Article 91 of LFIP, has been addressed to those individuals who cross Turkish borders "in a mass influx situation

⁴⁰¹ Turkey Law 6458, 2013, Law on Foreigners and International Protection (LFIP).

⁴⁰² Turkey, 29 October 2021, Presidential Decree No 85.

⁴⁰³ Turkey, Regulation, 19 January 1994 (last amended 2006), No. 1994/6169 on the *Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From another Country*.

⁴⁰⁴ Art. 3 LFIP.

⁴⁰⁵ Art. 63 LFIP.

seeking immediate and «Temporary Protection»⁴⁰⁶. The latter, which will be the focus of this case study, is the case of Syrian migrants.

For what concerns the right to education for international migrants in general, LFIP has dedicated to the matter multiple Articles. Notably, Art. 89 ensures that “the applicant or international protection beneficiary and family members shall have access to primary and secondary education”⁴⁰⁷. Further, “the right of education in primary and secondary educational institutions until the age of 18 without obtaining a student residence permit”⁴⁰⁸ is ensured by Article 34(4) to those who have family residence permits. Because of the geographical limitation Turkey applies to the 1951 Convention and its 1967 Protocol, a non-European international protection applicant acknowledged as a refugee under the 1951 Convention is granted provisional refugee status. This offers a lower level of protection compared to refugees originating from Europe.

The most significant Article of the LFIP to this study is Article 91, which delineates the comprehensive framework governing the reception, stay, rights, including the right to education, and obligations of Syrians entering Turkey, as well as their departure from the country. This legal provision outlines measures to address mass influxes, emphasizing the relevance of cooperation and coordination among national and international entities. Furthermore, it specifies the roles and responsibilities of central and provincial institutions and organizations. Notably, this legislation constitutes a landmark development within Turkish law by introducing the concept of “temporary protection” for individuals fleeing conflict and arriving *en masse* in Turkey for the first time.

Within the framework of LFIP, on the 22nd of October 2014, Turkey implemented the Temporary Protection Regulation, delineating the entitlements, duties, and procedural guidelines for individuals accorded temporary protection within the country. The temporary protection system was established under Article 91 of the Law on Foreigners and International Protection (LFIP), foreseeing PMM as the responsible authority for related decisions.

Therefore, Article 91 of LFIP provides the framework definition of temporary protection:

“(1) Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection.

(2) The actions to be carried out for the reception of such foreigners into Turkey; their stay in Turkey and rights and obligations; their exit from Turkey; measures to be taken to prevent mass influxes; cooperation and coordination among national and international institutions and organisations; determination of the duties and mandate of the central and provincial institutions and organisations shall be stipulated in a Directive to be issued by the Council of Ministers”⁴⁰⁹.

⁴⁰⁶ Art. 91 LFIP.

⁴⁰⁷ Art. 89 LFIP.

⁴⁰⁸ Art. 34 LFIP.

⁴⁰⁹ Art. 91 LFIP.

In the Turkish context, temporary protection is extended, on prima facie, on a collective basis, to Syrian citizens and stateless Palestinians who originate from Syria. It is worth highlighting the substantial difference between the recognition of refugee status and the concession of temporary protection, being the former uniquely established on an individual basis. The following paragraphs will delve into temporary protection to detail its legal content and its legal application.

3.2.1 Temporary Protection

3.2.1a Temporary protection definition

The temporary protection regime lacks a universally accepted definition in international law and exhibits varied interpretations and applications contingent upon contextual factors and national jurisdictions. Primarily, it is commonly perceived as a short-term emergency measure deployed in response to a mass influx of asylum seekers, aiming to mitigate the severity of circumstances wherein managing the large-scale movement becomes challenging and distinguishing between asylum seekers and other individuals becomes problematic. The absence of a universally agreed-upon definition creates room for questioning which is the threshold at which an influx is deemed “massive” and warrants a coherent justification for temporary protection.

On one hand, the concept of temporary protection serves as a mechanism to provide emergency humanitarian aid to those who fall outside the purview of the 1951 Convention⁴¹⁰. On the other hand, the rationale behind temporary protection may be subject to interpretation, as some nations might exploit it as a means to circumvent their obligations under international refugee law and evade corresponding responsibilities.

Possible definitions have been formulated by the Council of the European Union, which adopted a Directive on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof (2001)⁴¹¹, and by UNHCR, with the publication of “Guideline on Temporary Protection or Stay Arrangements (TPSA)”⁴¹² in 2014, and by Turkish National Legislation.

Article 2 of the EC Directive identifies the subjects of the temporary protection regime.

“[T]hird-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Art 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: persons who have fled areas of armed conflict or endemic violence; persons at serious risk

⁴¹⁰ ZENGINKUZUKU (2021: 389).

⁴¹¹ Council of the European Union, *Council Directive 20 01/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof*.

⁴¹² UN High Commissioner for Refugees (UNHCR), February 2014, *Guidelines on Temporary Protection or Stay Arrangements*.

of, or who have been the victims of, systematic or generalised violations of their human rights”⁴¹³.

According to the Directive, eligible people are those individuals who have been forced to leave their country or region and who are unable to return safely due to conflict or human rights violations. They may fall under the definition of refugees of the 1951 Convention, but this does not represent a necessary condition to enjoy the regime of temporary protection.

Paragraph 9 of the UNHCR’s “Guideline on Temporary Protection or Stay Arrangements (TPSA)” outlines a series of circumstances where the implementation of temporary protection (or stay arrangements) could be deemed appropriate:

“TPSA’s particularly as a suitable response to:

- (i) large-scale influxes of asylum-seekers or other similar humanitarian crises;
- (ii) complex or mixed cross-border population movements, including boat arrivals and rescue at sea scenarios;
- (iii) fluid or transitional contexts [e.g., at the beginning of a crisis where the exact cause and character of the movement may be uncertain, or at the end of a crisis, when the motivation for departure may need further assessment]; and
- (iv) other exceptional and temporary conditions in the country of origin necessitating international protection and which prevent return in safety and dignity”⁴¹⁴.

Both international instruments characterize temporary protection as a mechanism capable of providing prompt measures in the event of a substantial influx of individuals who may potentially meet the criteria for protection under the 1951 Convention, but not yet formally recognized as refugees, with the objective of stabilizing the situation until the risk to their lives and human dignity diminishes. Nevertheless, the EU Directive lacks provisions to address emerging threats not encompassed by the 1951 Convention, such as those arising from climate change and potential environmental disasters impacting individuals⁴¹⁵. On the contrary, the UNHCR recognizes the potential for displacement resulting from climate change and calls upon all pertinent stakeholders to engage in collaborative and coordinated endeavors to tackle displacement related to climate change. This underscores the significance of adhering to fundamental principles of humanity, human dignity, human rights, and international cooperation⁴¹⁶.

For what concerns *non-refoulement*, Article 3 of the EC Directive stipulates that Member States shall implement temporary protection while upholding human rights and fundamental freedoms, as well as their obligations concerning non-refoulement⁴¹⁷. The UNHCR Guidelines emphasize that Temporary Protection Status (TPSA) constitutes “a form of protection that offers an immediate safeguard against *refoulement* and ensures basic minimum treatment”⁴¹⁸. Therefore, in the case of the mass influx of migrants towards the borders of a country, the Guideline establishes that the host nation

⁴¹³ EU Council Directive 20 01/55/EC, Art. 2.

⁴¹⁴ UN High Commissioner for Refugees (UNHCR), February 2014, *Guidelines on Temporary Protection or Stay Arrangements*, para. 9.

⁴¹⁵ ZENGINKUZUKU (2021).

⁴¹⁶ UNHCR (2011).

⁴¹⁷ Art. 3, EU Council Directive 20 01/55/EC.

⁴¹⁸ UNHCR Guidelines on Temporary Protection or Stay Arrangements, para 5(13).

shall allow entry of the affected populations into its territory, granting them access and safeguarding them against *refoulement*⁴¹⁹.

Turkish national legislation includes a definition of Temporary Protection in Article 91/1 of the Law on Foreigners and International Protection in Turkish national legislation, temporary protection is delineated as follows:

“Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection”⁴²⁰.

The Turkish Regulation on Temporary Protection (TPR) delineates “temporary protection” as a status conferred to foreign individuals compelled to depart from their homeland, unable to return to their country of origin, who have arrived at or crossed our borders either collectively or individually during a period of mass influx, seeking immediate and provisional asylum, and whose individual claims for international protection cannot be feasibly assessed⁴²¹. To gain a deep understating of this definition, it will be necessary to clarify that in this context, a mass influx is characterized as the substantial arrival of individuals from the same country or geographic region within a brief timeframe, rendering the individual determination of refugee status impracticable due to their collective numbers.

3.2.1b Temporary Protection Regulation (TPR)

Overall, The Turkish Temporary Protection Regulation (TPR) safeguards against *refoulement* and grants specific entitlements concerning health, education, the labor market, and additional services. Indeed, under the temporary protection framework implemented by the Government of Turkey, Syrian nationals, refugees, and stateless individuals from Syria seeking international refuge are welcomed into Turkey and will not be repatriated to Syria against their will⁴²². Nevertheless, it does not include the option to acquire a long-term residency permit.

According to the Regulation, it is acknowledged that the parameters defining the reasons and circumstances compelling individuals to depart from their home countries *en masse* and seek immediate protection are broad. Environmental or natural disasters, among other factors, may be deemed valid and justifiable grounds for a significant influx of migrants to enter or traverse the Turkish border⁴²³. The responsibility for determining whether a mass influx situation warrants immediate protection and for declaring a decision on temporary protection rests with the Council of Ministers, based on the recommendation put forth by the Ministry of Interior Affairs (TPR, Art. 9)⁴²⁴. Consequently, Article 10 of the TPR establishes that the Council of Ministers holds the jurisdiction to determine the individuals eligible for temporary protection, along with decisions regarding the initiation, duration, extension, or conclusion of temporary protection⁴²⁵.

⁴¹⁹ Art. 3(2), EU Council Directive 20 01/55/EC.

⁴²⁰ Art. 91/1 LFIP.

⁴²¹ Turkey Temporary Protection Regulation, 22 October 2014.

⁴²² UNHCR (2017).

⁴²³ ZENGINKUZUKU (2021).

⁴²⁴ Art. 9 TPR.

⁴²⁵ Art 10 TPR.

According to Articles 9 and 10 of the TPR, the management of Syrian refugees' access to Turkey falls under the purview of Turkish authorities. Notably, The Directorate General of Migration Management (DGMM) serves as the primary authority responsible for registering all individuals under the "temporary protection" framework. Nevertheless, the specific registration locations may vary. For example, in certain provinces, the DGMM collaborates with branches of the Foreigners' Police, thereby enabling individuals to approach these entities for registration purposes.

In response to a rapid surge in new arrivals and the challenges associated with expanding camp capacities to accommodate the influx, Turkish authorities have implemented a system of regulated arrivals at the border. Syrian passport holders are legally permitted to enter Turkey without visas through designated official border crossings, where entry restrictions are not enforced⁴²⁶.

The temporary protection framework extends to all Syrian nationals, stateless individuals, and refugees originating from Syria who require international refuge, inclusive of those lacking proper identification documentation. According to Article 5 of the TPR, Syrian refugees will not be subject to administrative fines for their unlawful entry into Turkey, provided they present themselves to the authorities for registration within a reasonable timeframe. Indeed, the Turkish Passport Control Police oversees the admission of Syrians lacking passports at official border crossings. However, at border points supervised by the Gendarmerie or the Turkish Land Forces, the entry of Syrians is typically limited to cases of medical emergencies. Due to these border restrictions, numerous Syrians lacking valid passports opt for irregular entry into Turkey, often with the aid of smugglers. UNHCR persists in advocating with the Government for unrestricted access to territory and endeavors to highlight to authorities the protection risks confronted by Syrians compelled to resort to irregular entry⁴²⁷.

The Temporary Protection Regulation delineates the rights applicable to Syrian refugees, regardless of whether they reside within or outside of designated camps. These rights encompass various aspects, notably access to healthcare, education, social assistance, and the labor market⁴²⁸. However, the precise implementation of certain entitlements, such as access to social assistance and the labor market remains subject to further deliberations by pertinent ministries, including the Ministry of Labor and the Ministry of Family and Social Policies.

In this context, it is noteworthy to highlight that Turkish legislation does not explicitly mention an international mandate for the declaration of temporary protection. However, Article 92 of the Law on Foreigners and International Protection (LFIP) grants the Ministry of Internal Affairs the authority to collaborate with entities, such as the UNHCR, the International Organization for Migration, other international organizations, and non-governmental organizations, concerning matters on the procedures and execution of temporary protection⁴²⁹.

⁴²⁶ UNHCR (2017).

⁴²⁷ *Ibid.*

⁴²⁸ Art. 26-32 TPR.

⁴²⁹ Art. 92 LFIP.

Non-refoulement is established under Article 6 of the Temporary Protection Regulation. However, Turkish national legislation foresees an exception to this provision. Firstly, it has been introduced as emergency decree in 2016⁴³⁰, then it has been given permanent status by Law No. 7070 of 2018. This exception has been introduced by and emergency decree in October 2016, and it specifies that a decision of *refoulement* may be taken at any time during the protection proceedings against an applicant under certain circumstances. The specific circumstances are linked to national security reasons, including the involvement in leadership, membership, or support of a terrorist organization or a profit-oriented criminal group, posing a threat to public order or public health, or having connections with terrorist organizations as defined by international institutions and organizations⁴³¹. The exception has been further consolidated and institutionalized through Law No. 7070 of 1 February 2018, reflecting apprehensions regarding the illicit entry of Foreign Terrorist Fighters.

3.2.1c Temporary Protection Identification Document

The recipients of temporary protection, according to Article 22(1) of TPR, shall receive temporary protection identification documents, issued by the relevant authority upon completion of registration procedures governorates are mandated to issue. This card acts as the official document confirming the individual's status as a recipient of temporary protection. The registration process and plans for issuing Temporary Protection Identification Documents (*Geçici Koruma Kimlik Belgesi*) to beneficiaries upon registration is outlined within the Temporary Protection Regulation (TPR)⁴³². Furthermore, the document indicates the validity period, which may be either for a specific duration or indefinitely, at the discretion of the Directorate General⁴³³.

The temporary protection identification document will be provided to eligible individuals following inquiries. The document contains the identification photo and basic identity details, and it is issued free of charge. It specifies the foreigner identification number (YKN), in accordance with the Turkish Law on the Civil Registration Services 5490, dated 25/4/2006.

Foreigners Identification Number (YKN) assigned to each beneficiary by the Directorate General of Population and Citizenship Affairs. In Turkey, all legally residing foreign nationals are allocated a YKN to streamline their access to government services. Likewise, international protection applicants and status holders under the framework of the Law on Foreigners and International Protection (LFIP) are also assigned YKNs. Presently, YKNs are uniformly assigned to all categories of legally residing foreign nationals, including temporary protection beneficiaries, and invariably begin with the digits "99"⁴³⁴.

The document is distinct from a residence permit or equivalent documents and does not grant the right to apply for a long-term residence permit or Turkish citizenship. However, it enables foreigners to enter into subscription agreements for various services, including electronic communication. Indeed,

⁴³⁰ Turkish Presidential Decree No. 676, 29 October 2016.

⁴³¹ Art. 54(2) LFIP, as amended by Article 36 Emergency Decree 676 of 29 October 2016.

⁴³² Art. 2 TPR.

⁴³³ Art. 22 TPR.

⁴³⁴ *AsylumEurope* website, *Temporary Protection Identification Document, Turkey*.

Article 25 of the Temporary Protection Regulation (TPR) clearly States that beneficiaries of temporary protection in Turkey are expressly excluded from the opportunity for long-term legal integration. Pursuant to Article 25, the Temporary Protection Identification Document issued to beneficiaries does not constitute a residence permit and consequently cannot facilitate the acquisition of a “long-term residence permit” in Turkey as outlined in Articles 42 and 43 of the Law on Foreigners and International Protection (LFIP).

The International Protection Applicant Identification Cards, which contain the Foreigners Identification Number (YKN) assigned by the General Directorate of Population Affairs to each family member, is also necessary for a parent to enroll their child in a public school. The inclusion of this YKN on the identification cards is therefore essential as it serves as a prerequisite for access to many public services, including processing the child’s enrollment in schools⁴³⁵.

3.2.2 Education under Temporary Protection

Articles 26, 28, 35, and 38 of TPR provide individuals under temporary protection with the right to education. The Ministry of National Education administers educational services for Syrian asylum seekers under temporary protection status, both within and outside of temporary accommodation centers. Notably, Article 28 of the Temporary Protection Regulation (TPR) outlines specific provisions concerning educational services. As per these regulations, children are provided with preschool, primary, and secondary education, as well as vocational training. Additionally, children of all ages are allowed to access courses aimed at acquiring vocational skills and learning foreign languages should they desire.

All children enrolled as beneficiaries of Temporary Protection possess the entitlement to be registered in public schools for the provision of primary education. Primary education can be pursued in public schools, Syrian private schools, or, until 2020, temporary education centers within refugee camps. Despite the existence of this entitlement to primary education, various obstacles impede the access of Syrian children to this fundamental educational level, resulting in incomplete enrollment rates. Nonetheless, at present, there persist challenges and deficiencies regarding the access of school-aged Syrian children to educational services.

Public schools in Turkey offer tuition-free education. They deliver instruction in Turkish and follow a standardized curriculum established by the Turkish Ministry of Education. These schools are authorized to confer certificates and diplomas to foreign national children, which hold full validity. To enroll in public schools, children and their parents must have completed their registration for “temporary protection” and obtained Temporary Protection Beneficiary Identification Cards. Children who have not yet completed registration can be provisionally enrolled as “guest students”, enabling them to attend classes without receiving any documentation or diploma until they fulfill their “temporary protection” registration requirements and are formally admitted by the school⁴³⁶.

⁴³⁵ The specifics of the registration procedure are governed by a 23 September 2014 dated Ministry of National Education Circular No: 2014/21 regarding the Provision of Education and Training Services to Foreign Nationals.

⁴³⁶ Art 28 of TPR; AFAD Circular No: 2014/4, 18 December 2014.

Beneficiaries of Temporary Protection, according to the TPR, are entitled to pursue higher education in Turkey. To apply and enroll in a higher education institution, students must have completed either the standard 12 years of Turkish “basic education” or an equivalent educational program⁴³⁷. Children who have completed their education at an accredited temporary education center (closed down in 2020), may also be deemed to have satisfied this criterion through an equivalence assessment conducted by the relevant Provincial Directorate of Education⁴³⁸. In Turkey, admission to universities is contingent upon the necessity of sitting for a standardized university entrance examination, alongside additional prerequisites set forth by each university.

Beneficiaries of Temporary Protection, irrespective of their age, are eligible to participate in language education courses and vocational training programs provided by “Public Education Centers” established under the auspices of each Provincial Directorate of Education, free of charge⁴³⁹. In certain areas, various non-governmental organizations (NGOs) offer complimentary language and vocational training programs to beneficiaries under Temporary Protection.

As per Article 28/3 of the Temporary Protection Regulation (TPR), asylum seekers who have received education under a different curriculum, documented accordingly, shall have their documents evaluated by the relevant units of the Ministry of National Education or the Presidency of the Council of Higher Education. Equivalence procedures will be undertaken for grades deemed suitable. Consequently, asylum seekers granted equivalence possess the right to engage in their respective professions. Nonetheless, refugees frequently encounter challenges as their qualifications are frequently unrecognized, their educational backgrounds are often underestimated, and they encounter difficulties in gaining admission to or re-entering universities in Turkey⁴⁴⁰.

The Ministry of National Education Circular 2014/21, issued on 23 September 2014, introduced the concept of Temporary Education Centre (TEC or Geçici Eğitim Merkezi, GEM). This circular established a legal framework for the oversight and regulation of private schools operated by Syrian charities, which had previously operated outside the regulatory purview of the Ministry of National Education (MoNA) and were thus considered unauthorized but tolerated by provincial authorities. GEMs are specifically defined as educational institutions established and operated to provide educational services to individuals arriving in Turkey for temporary stays as part of mass migration. The MoNA has been in the process of gradually phasing out GEMs. Since September 2016, it has been mandated that all Syrian children entering kindergarten or first grade must be enrolled in Turkish schools, as the decision to gradually close down GEMs was made. Since 2016, migrants under Temporary Protection Status (TPS) have been eligible to attend Turkish schools, including universities. In the academic year 2020–2021, there were

on *Administration of Services to Foreigners under the Temporary Protection Regime* and the Turkish Ministry of Education Circular No:2014/21, 23 September 2014, on *Education Services for Foreign Nationals*.

⁴³⁷ European Council on Refugees and Exiles (2015).

⁴³⁸ Art 28 of TPR.

⁴³⁹ European Council on Refugees and Exiles (2015).

⁴⁴⁰ MENCUTEK et al. (2023: 46).

1,197,124 schooling-age Syrians, with 768,839 pupils (64.22% of the schooling-age Syrian population) enrolled in school⁴⁴¹.

Despite the provision of 15 hours of Turkish language instruction in GEMs for Syrian students, several Ministry of National Education (MoNE) officials and Turkish instructors, previously engaged in teaching Turkish in GEMs, have noted challenges hindering the acquisition of the Turkish language, predominantly due to the prevailing social environment. It is observed that these students predominantly communicate in Arabic both at home and within their educational institutions. According to MoNE, GEMs presented a significant barrier to the assimilation of Syrian children into Turkish society, primarily due to their exclusive focus on Syrian children. Moreover, some MoNE officials in Ankara have justified the complete closure of GEMs by highlighting that Syrian children attending Turkish Public Schools (TPSs) tend to achieve better academic performance compared to their counterparts enrolled in Turkish national schools.

In recent times, the issue of refugee access to higher education has gained prominence on the global refugee agenda, notably being addressed in the New York Declaration for Refugees and Migrants adopted by the United Nations General Assembly on September 19, 2016. By acknowledging the significance of higher education within the refugee context, the Declaration reaffirms the promotion of higher education as one of the commitments outlined.

3.2.2a Steps to access education

Syrian children arriving in Turkey can have access to formal education in Turkish schools, and, before their closure in 2020, in Temporary Education Centers. The enrollment process is governed by the Provincial Education Commissions, established under the Provincial Directorates of Education in each province. However, procedures may slightly vary depending on the locality. Foreign students aspiring to join Turkish schools shall approach the Provincial Education Directorate in their respective provinces of residence, as it is the responsibility of the Provincial Education Commissions to place children in suitable schools and determine the appropriate grade level for admission. This determination is typically based on documentation indicating the level of education attained in the students' countries of origin. In cases where such documentation is unavailable, grade placement may be decided through interviews or the completion of a brief written assessment⁴⁴².

To secure enrollment in either a Turkish school or, until 2020, in a Temporary Education Center, students must be officially registered with Turkish authorities and possess either a residence permit (*Ikamet*), a Temporary Protection Identification document, or the Foreigners Identification Card (*Yabancı Tanıtma Belgesi*). In instances where an application for a Temporary Protection Identification Document has been submitted but the document is pending issuance, students may be admitted as "guest" students. Subsequently, upon receipt of their identification document, their enrollment status will be adjusted accordingly.

⁴⁴¹ MoNE (2019).

⁴⁴² UNHCR (2017).

The Pre-Registration Document, which provisionally replaces the temporary protection identification document waiting for it to be issued, serves to validate the legal presence of the student in Turkey. However, it is important to note that completion of pre-registration alone does not automatically grant entitlements associated with temporary protection status. Such rights are conferred only upon completion of the registration process⁴⁴³.

In order to complete the enrollment process and to allow the Provincial Education Commission to place the student in the most appropriate grade, parents (or legal representatives) must provide the documentation indicating the level of education of the child, such as school report cards. All foreign school certificates, university transcripts, degrees, diplomas, or other credentials must undergo validation by the Provincial Education Directorate. If these documents are utilized for admission to schools or institutions of higher education. In case this documentation is not available, the Provincial Education Commission will ascertain the appropriate grade placement through consultation with the parents⁴⁴⁴. Additionally, as already mentioned, they may conduct oral interviews with the children and organize brief written tests to evaluate their proficiency.

Turkish language evaluation tests are the main part of these examinations, considering that it is the language of instruction in public schools. Indeed, Syrian students shall be able to follow the Turkish curriculum proposed by the MoNE. The Turkish education system, as already specified in paragraph 3.1.1 of this study, allows students to be enrolled in eight years of compulsory education (primary and middle school), and four years of high school free of charge⁴⁴⁵.

Those students who have satisfactorily fulfilled the mandatory 8 years of primary and middle education are eligible for admission to high schools. Hence, their attendance to compulsory education must be demonstrated by furnishing the relevant documentation to the Provincial Directorate of Education in the registered city, which also validates the certificates acquired from temporary education centers, or by passing through the substitutive examinations⁴⁴⁶. The Provincial Directorate of Education evaluates the documentation and, if regular, validates it. Upon completion of this assessment, eligible children take part in the national examination for high school placement (The Merkezi Sınav Central Exam [CE] - Transition Exam to Upper Secondary School)⁴⁴⁷. Once the results of the transition exam are communicated, parents or guardians may proceed to enroll their child in the designated school corresponding to their placement.

Students who successfully complete public high school years are eligible to obtain a diploma. Nonetheless, individuals who have completed their high school education at a temporary education center or another institution are mandated to undergo an examination referred to as the High School Proficiency and Equivalency Examination for International Students (YÖLYDS)⁴⁴⁸. The examination is held on a yearly basis, with scheduled sessions organized in designated provinces. In order to be considered eligible

⁴⁴³ Refugee Rights Turkey (2017).

⁴⁴⁴ *Ibid.*

⁴⁴⁵ See para. 3.1.1 of this study.

⁴⁴⁶ Refugee Rights Turkey (2017).

⁴⁴⁷ See para. 3.1.1 of this study

⁴⁴⁸ Refugee Rights Turkey (2017).

to apply for this examination, individuals must complete their temporary protection registration and ensure that their profile on the Foreign Students Information Operation System (YÖBİS)⁴⁴⁹ is regularly updated.

Students interested in studying in Turkish universities must demonstrate their ability to pass the foreign students' examination (YOS), which each university conducts. Universities may impose fees for applicants wishing to take the YOS examination. Moreover, universities reserve the right to request additional documents about the applicant's prior education. All foreign school certificates, records of university achievement, degrees, diplomas, or other qualifications must be validated by the Provincial Education Directorate if these documents are used to gain access to schools or higher education institutions⁴⁵⁰.

Syrian students seeking a scholarship to pursue studies at Turkish universities should submit their applications through the official website of Turkish national scholarship system. Considering that obtaining a scholarship program requires a very competitive process, and there is no guarantee of receiving an award. Additionally, the UN Refugee Agency (UNHCR) provides a limited number of scholarships for studying at Turkish universities through the DAFI scholarship program⁴⁵¹.

Syrian students can also benefit from additional Turkish language training within Public Education Centers, which host projects internationally funded⁴⁵². Individuals also have the option to pursue vocational training through Public Education Centers, where these courses are offered free of charge. However, it should be noted that the presentation of the Temporary Protection Identity Card is a mandatory requirement for enrollment in these courses. Alternatively, various vocational courses are administered by the Turkish Employment Agency (İŞKUR), and inquiries regarding course availability can be made at İŞKUR offices located in the registered city⁴⁵³. Additionally, several civil society organizations provide complimentary skills training, hobby, and vocational courses.

3.2.2b Best practices

In this context, the Turkish government, the Ministry of National Education (MoNE) and other international actors set up tools and adopted specific measures to facilitate the enrollment of Syrian students in Turkish public schools and to enhance the quality of their learning. The following paragraphs present some of the best practices in this regard.

The first good practice is to mention is the activation of the EIN Language Learning Portal. The global COVID-19 pandemic presented significant educational hurdles in 2020. During this crisis, the Education Information Network (Eğitim Bilişim Ağı – EBA), traditionally utilized for distance learning within the Turkish education framework, has been leveraged to offer

⁴⁴⁹ This portal has been established by the MoNE in 2014 originally to to keep track of Syrian students in Temporary Education Centers. The system has been maintained and updated in order to facilitate the electronic education management system.

⁴⁵⁰ Refugee Rights Turkey (2017).

⁴⁵¹ See para. 3.1.4 of this study.

⁴⁵² E.g.: Turkey Resilience Project in Response to the Syria Crisis (TRP) implemented by UNDP and funded by the EU.

⁴⁵³ Turkish Ministry of Labour and Social Security website.

additional assistance to Syrian students⁴⁵⁴. The activation of the EIN Language Learning Portal ensures accessibility of course materials to all students. Furthermore, educational videos from EIN TV courses are disseminated on the PIKTES⁴⁵⁵ YouTube institutional page.

In order to face the obstacles of equivalency procedures for school certificates, in 2019, the Board of Education in the MoNE introduced a new regulation regarding equivalency procedures. This regulation ushered in a novel e-equivalency module designed to speed up the equivalency process for applicants. By allocating appointments based on the chosen province or district with lower density, this digital platform aimed to streamline the process and eliminate the lengthy queues and waiting periods commonly experienced at equivalence centers.

Furthermore, numerous initiatives have been established to offer academic assistance to Syrian students. Notably, joint efforts from national authorities and civil society organizations set up catch-up programs, tailored for students who either missed schooling or experienced temporary interruptions in their education. These kinds of programs aim to equip students with proficiency in the Turkish language, mathematics, science, and social sciences to facilitate their ongoing education. Additionally, students are provided with Arabic and English courses, along with a range of elective modules such as fine arts and physical education. Moreover, specific attention has been dedicated to supporting students who are already enrolled in the Temporary Protection System (TPS) but exhibit academic deficiencies.

The presence and support of international organization, such as UNICEF, resulted crucial to develop beneficial programs. In September 2020, the Ministry of National Education (MoNE), in collaboration with UNICEF, initiated the Schooling Adolescents through Vocational Education (SAVE) Programme to address the educational discontinuity faced by adolescents aged 14 to 17⁴⁵⁶. These individuals, due to various circumstances such as engagement in child labor, found themselves unable to pursue further education upon completing their basic schooling. The objective of the SAVE program is to ensure the enrollment of such adolescents in Vocational Education Centers (VECs). By participating in the SAVE program, adolescents who previously had to balance familial financial responsibilities alongside their education were provided with the opportunity to concurrently attend school and work, thus averting the necessity of discontinuing their education entirely⁴⁵⁷. Field teams deployed in 10 VECs across 10 provinces undertook home and workplace visits to disseminate information about the SAVE program. The Social and Vocational Education Specialists (SVEPs) within these teams played a pivotal role in engaging and communicating with families during these home visits⁴⁵⁸.

Within the PIKTES program, summer school classes were made available to Syrian children, marking another crucial stride in the integration of Syrian students into the Turkish education system as recognized by MoNE officials. During the summer of 2019, free summer language courses were provided for

⁴⁵⁴ *Turkeystopscovid* website.

⁴⁵⁵ See para. 3.1.4 of this study.

⁴⁵⁶ UNICEF Turkey (2022).

⁴⁵⁷ UNICEF (2023).

⁴⁵⁸ *Ibid.*

Syrian children through PIKTES. These courses, totaling 20 hours per week, were complemented by Arabic language and counseling sessions. As a component of the PIKTES initiative, MoNE enlisted several Turkish language teachers and school counselors to facilitate the enhancement of Turkish language proficiency among Syrian children.

3.3 Final considerations: Temporary Protection and International Refugee Law

The objective of this chapter was to examine the legal framework governing the access of Syrian refugees to education in Turkey. To achieve this, it was imperative to offer a thorough overview of the relevant Turkish legislation. This chapter covers the LFIP and the TPR of Turkey, which implemented a geographical reservation to the 1951 Convention and its 1967 Protocol. The final section of this chapter will explore the rationale behind Turkey's reliance on the Temporary Protection mechanism to address the gaps left by international legal instruments applicable to the country.

Overall, there are two primary circumstances in which the inapplicability of the international refugee regime could emerge. Firstly, international refugee law does not encompass categories beyond the traditional five grounds of persecution expressed in Article 1 of the 1951 Convention (race, religion, nationality, membership of a social group, and political opinion), such as climate change and environmental disasters. Secondly, host States may find it impossible to undertake necessary actions under refugee law due to the urgency and complexity of the situation⁴⁵⁹. This is evident in the case of Turkey welcoming a mass influx of migrants from Syria, as examined in this study.

The “Temporary Protection” regime emerged as a response to analogous circumstances. However, there is no universal understanding of the temporary protection regime; rather, it relies on the individual regulations of each state. Efforts towards establishing international common standards for “Temporary Protection” regimes have been noted since the early 2000s. Two notable examples are the EC Directive of 2001 and the UNHCR Guideline for Temporary Protection Status Agreements (TPSAs) of 2014. Turkey incorporated an international protection regime into the LFIP of 2013, which includes a “Temporary protection” regime (Article 91) and adopted the principles and procedures of its “Temporary protection” regime in the TPR of 2014.

Temporary protection aims to promptly address the challenges resulting from mass influxes and urgent circumstances. It is intended to be solution-oriented and not designed to supplant international refugee law and international protection measures⁴⁶⁰. Rather, it complements international protection. Accordingly, a “Temporary protection” regime should encompass the pillars of international protection law to the greatest extent possible, with two exceptions. The first one is a negative exception, because a “Temporary Protection” regime may include certain limitations, particularly concerning national security and order, the demographic and economic landscape of the host country, and similar factors⁴⁶¹. The second exception is a positive one,

⁴⁵⁹ ZENGINKUZUKU (2021).

⁴⁶⁰ *Ibid.*

⁴⁶¹ *Ibid.*

considering that “Temporary Protection” is expected to bridge gaps in international refugee law by broadening the scope of individuals eligible for international protection, such as those compelled to flee their home countries due to environmental disasters⁴⁶².

Despite the Turkish Constitution’s adoption of a monist approach regarding the protection of fundamental human rights, meaning that international law and national law constitute two facets or distinct expressions of a singular legal system⁴⁶³, and the precedence of the 1951 Convention in instances of gaps or contradictions in domestic law—though such gaps do not currently exist—it would be advisable for the LFIP to expressly codify the rights and freedoms of refugees. These rights and freedoms should be on par with those afforded to nationals, encompassing freedoms from discrimination and religion, intellectual property rights, the right to fundamental education, and other pertinent regulations, such as exemption from prosecution for unlawful entry and the transfer of assets for refugees, as delineated in the 1951 Convention⁴⁶⁴.

Within this context, some revisions on international protection and “Temporary Protection” could enhance Turkish legislation, aiming at alignment with the UNHCR Guideline, the EU Directive, and international human rights law. These adaptations include eliminating Turkey’s geographical reservation to the 1951 Convention and broadening the spectrum of rights and freedoms encompassed within the “Temporary Protection” Regulation (TPR) to encompass all dimensions of international protection law. Further measures could encompass permitting individual applications for pertinent international protection statuses for individuals under “Temporary Protection” and establishing naturalization procedures while facilitating citizenship applications for those under “Temporary protection”.

⁴⁶² *Ibid.*

⁴⁶³ European Commission for Democracy Through Law, Venice Commission (2014).

⁴⁶⁴ ZENGINKUZUKU (2021).

Conclusions

This study offers a comprehensive exploration of the various international legal instruments concerning the human right to education for refugees. It delves deeply into these instruments, examining their historical development, their underlying principles, and their specific provisions related to refugee education. By thoroughly analyzing each instrument within the broader framework of international law, this study provided a nuanced understanding of the legal landscape surrounding refugee education rights.

Moreover, this research takes the case study of Syrian Refugees in Turkey as a focal point for its analysis. By focusing on a specific context, it allows for a more in-depth examination of the practical implications and challenges faced in implementing these international legal instruments in national legislation. Through this case study, the study uncovered the complexities and nuances involved in ensuring the right to education for refugees within a specific national context.

Furthermore, this study goes beyond merely listing and summarizing international legal instruments. It critically evaluated these instruments, considering their effectiveness, gaps, and areas for improvement. By conducting a comparative analysis of these instruments, it aims to identify trends, common themes, and divergent approaches in international law regarding refugee education rights. This approach not only enhances the understanding of the legal framework but also contributes to the ongoing discourse on how to better protect and promote the right to education for refugees worldwide.

The inaugural chapter of this study delved into the intricate task of defining education, a concept depicted as either a process or a means across a spectrum of legal instruments. By analyzing and comparing these instruments, it became apparent that education's multifaceted nature allows it to embody aspects of both a process and a means. Notably, education emerges as a fundamental right, serving as a catalyst for the enjoyment of other rights and fostering individuals' integration and advancement within society.

Furthermore, the study explored the overarching aims of education outlined in the Convention on the Rights of the Child, which provides a foundational framework for understanding the right to education. It examined the normative content of the right to education across various legal instruments, utilizing the 4As scheme as a guiding principle. According to this framework, education must be available, accessible, adaptable, and acceptable to all individuals, irrespective of their backgrounds or circumstances.

Moreover, the study dedicated considerable attention to the issues of discrimination and equality within educational contexts. It scrutinized the challenges faced by marginalized groups in accessing quality education and explored strategies for enhancing inclusivity and protection within educational settings. By addressing these key themes, the study aimed to shed light on the complexities surrounding the realization of the right to education and to identify avenues for fostering greater equity and justice within educational systems.

The second chapter serves as the central component of this study, delving into a comprehensive investigation of the human right to education for refugees.

Following the extensive groundwork laid in the initial chapter regarding the universal essence of the human right to education, the second chapter transitions to a more focused examination of its application within the realm of refugee rights. It commences by providing a detailed overview of international protection law, tracing its development from pivotal documents such as the 1951 Convention on the Status of Refugees to contemporary frameworks like the 2016 New York Declaration.

Furthermore, this chapter delves into the evolving landscape of international migration, dedicating sections to analyzing recent patterns and trends. By exploring the shifting dynamics of global migration, the study aims to contextualize the challenges and opportunities surrounding the protection and fulfillment of refugee education rights.

In addition to its primary focus, the second chapter of this study sheds light on the myriad challenges confronting refugees in their quest for education, as well as the critical issue of ensuring access to quality education. Furthermore, it delves into the nuanced variations in the extent of compulsory education provision across different educational levels, ranging from primary to secondary and higher education, which directly impacts school enrollment rates among refugee populations.

Of particular significance is the study's observation regarding the evolving landscape of international legal instruments pertaining to refugee education. These instruments are progressively incorporating secondary education as a compulsory component, thus elevating its status to that of primary education. This shift reflects a growing recognition of the crucial role that secondary education plays in the holistic development and empowerment of refugee populations. By highlighting this evolution, the study underscores the importance of ensuring comprehensive educational opportunities for refugees at all levels, thereby facilitating their integration and advancement within host communities.

However, various factors that have been presented throughout the second Chapter contribute to the barriers to accessing education for Refugees, including the treatment of refugees in schools, the quality and affordability of education, overcrowded educational institutions, transportation challenges, geographical distance, educational discontinuity, curriculum and language disparities, and instances of discrimination and bullying. Therefore, it is fundamental to address these issues in order to expand educational opportunities at all levels, encompassing secondary education and beyond, to ensure accessibility and quality education for all refugee children.

The examination of the human right to education for refugees represents a nuanced facet that intersects various domains of international law. This study endeavors to present this aspect comprehensively, aiming to provide a robust foundation for understanding its implementation and integration into national legal frameworks. Notably, the final chapter of this study delves into the case of Syrian Refugees in Turkey, serving as a compelling illustration of how this right is implemented and complemented within a specific national context.

The primary objective of the third chapter is to scrutinize the legal framework governing the educational access of Syrian refugees in Turkey. To achieve this aim, it is imperative to conduct a thorough analysis of the relevant Turkish legislation pertaining to this issue. This section meticulously examines the

Law on Foreigners and International Protection (LFIP), which plays a pivotal role in filling the gaps existing in Turkish national legislation concerning asylum regulation. Furthermore, significant attention is devoted to the regime of protection covering Syrian migrants in Turkey, regulated by Temporary Protection Regulation (TPR) of Turkey, established under Article 91 of LFIP.

It is essential to emphasize the significance of national legislation in this context, particularly considering Turkey's implementation of a geographical reservation to the 1951 Convention and its 1967 Protocol. This reservation effectively limits the application of these international legal instruments solely to individuals fleeing from Europe. As a result, the mass influx of Syrian Refugees does not trigger Turkey's international obligations under the 1951 Convention. The Chapter aims to unravel the intricacies of Turkey's legal framework concerning refugee education rights, shedding light on the mechanisms in place to address the educational needs of Syrian refugees within its borders.

This exploration seeks to shed light on Turkey's approach to managing the influx of Syrian refugees and providing them with access to education within its borders. Through an in-depth analysis of the legal framework and policy considerations, this chapter offered insights into the complexities surrounding the education of Syrian refugees in Turkey and the measures taken to address the challenges therein.

In this context, revising aspects of international protection and the "Temporary Protection" framework within Turkish legislation could bring it into closer alignment with guidelines set forth by the UNHCR, the EU Directive, and broader principles of international human rights law. These adjustments are crucial for ensuring that Turkey's legal framework adequately protects the rights of refugees and aligns with international standards.

Firstly, one key revision involves reconsidering Turkey's geographical reservation to the 1951 Convention. Eliminating this reservation would expand the scope of protection offered to refugees, ensuring that individuals from regions outside of Europe are also afforded the rights and safeguards outlined in the Convention.

Additionally, broadening the range of rights and freedoms guaranteed under the "Temporary Protection" Regulation (TPR) is essential. This expansion would ensure that all aspects of international protection law are encompassed within the framework, providing comprehensive support and assistance to individuals under temporary protection status.

Furthermore, the current system for individuals currently under "Temporary Protection." does not allow for individual applications for relevant international protection statuses. A reconsideration of this point would enable refugees to access appropriate legal mechanisms for seeking protection and asylum status tailored to their specific circumstances.

Moreover, establishing clear procedures for naturalization and facilitating citizenship applications for individuals under "Temporary Protection" is crucial for their long-term integration and stability. By providing pathways to citizenship, Turkey can offer refugees a sense of belonging and security, promoting their successful integration into society.

In summary, these proposed revisions to Turkish legislation aim to enhance the protection and rights of refugees, ensuring that the legal framework aligns with international standards and principles of human rights, and facilitating the integration of Syrian migrants in Turkish society. In this view, Turkey can strengthen its commitment to providing effective and comprehensive protection for refugees within its borders.

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