

The right to Education of asylum-seeking and refugee children in the European Union

A brief overview from theory to practice

Filipa Aragão Homem*

KEYWORDS: refugee crisis; refugee children; asylum-seeking children; access to education; Greece; EU.

Abstract

The large influx of asylum-seekers to European shores since 2015 has brought about considerable challenges for the EU in what regards ensuring respect for human rights and protecting this vulnerable group of people. Among the hundred thousand people seeking asylum in Europe, it is estimated that at least one third are children. This has put a huge pressure on the EU, especially on the countries which serve as port of entry, such as Greece, to find adequate solutions in order to guarantee that asylum-seeking and refugee children have access to quality education. Against this scenario, I set out to explore the applicable international standards regarding the right to education of these children. Drawing from a personal experience on the ground, on the Greek island of Lesbos, in the summer of 2017, I shall then present the actual situation on the Greek Eastern Aegean Sea islands concerning access to education of asylum-seeking and refugee children. Finally, I shall conclude by identifying the main shortcomings in this regard.

91

I. Introduction

When one thinks about the ‘European refugee crisis’¹ these days, most of the images that come to mind are of destruction and misery, images of war, people wounded or fleeing, boat landings, wreckage, and empty life vests; images of situations where it is flagrant that basic human rights are not being respected and where elementary needs fail to be met.

Unfortunately, the media fail to show us another side of this crisis, which can become equally dramatic: the waiting, the uncertainty of living, not knowing what the future holds, for months and months on end, told to come back again, come another day, do another interview, wait for another card, put another dream on hold and another hope in the waiting line.

Not enough light is shed into this reality. The reality of children growing up calling homes to the containers where entire families live crammed inside, containers that, in the summer, can reach temperatures that make it impracticable to sleep in, and that, during winter, are heated up by highly inflammable outside gas heaters; using toilets or latrines constantly plugged, so dirty you have to walk on tiptoes and that are not safe to use at night; eating the same tasteless food every day, with no healthy or nutritious alternative; encountering their relatives’ permanently worried faces, a wrinkle per each day confronted with the possibility of being sent back to war, persecution or poverty.

* Doctoranda. Human Rights expert; former supervisor for Refugee Support Platform in a refugee camp.

1 Term that refers to the period beginning in 2015 when a large group of asylum-seeking people, mainly displaced people as a consequence from the Syrian conflict, started seeking refuge in the European Union.

The reality that children endure after fleeing and arriving in Europe shores, in this envisaged land of hopes and dreams, can be quite daunting. The waiting period has surmountable effects on the lives of the people stranded – still to be adequately measured. Among these effects, one can expect that depriving children of school age of the right to education will not only obviously hinder their intellectual development and achievement of their full potential, but also their integration and future prospects.

Volunteering in Lesvos in the summer of 2017, I had the opportunity to come close with the reality faced by children and teenagers, namely, the difficulties and challenges associated with accessing and exercising their rights, among which, the right to education. The organization I volunteered with² in the Kara Tepe Camp³, ran a Youth group where I met several teenagers who, despite their brief stories already filled with so much sorrow and struggling, were eager to study and restart their lives in Europe.

F. is a 17-year-old boy from Afghanistan who fled to Iran with his family where he lived for some time before making the trip to Greece. He is a regular teenage boy who speaks great English, loves rap and has a fierce dream: to become a doctor. Since he arrived in Greece, he was more than one year without attending school, months and months of non-formal education activities, which were clearly not enough to satiate his intellectual aspirations, making him grow more and more frustrate and demotivated each day. When someone in the group asked him to open the windows, he would almost always reply, joking it seemed, *‘open the borders!’*.

H. and I. are two very bright brothers, also from Afghanistan. H. is 17 and wants to study to be an engineer. I. is 16 and dreams of becoming a lawyer and be able to help other people in his situation. One of his idols is Malala Yousafzai of whom he talked about so much that the group nicknamed him after her.

G. and her sisters fled from the war in Syria with their parents and brothers. They dream of resuming their education and studying in European universities. They want to go back to Syria when the war is over and help rebuild the country. For them, when drafting up a constitution of an imaginary new state, equality was the first principle to be enshrined.

K., also from Afghanistan, had to flee after some members of his family were murdered by the Taliban. He is 15, extremely bright and ambitious and dreams of becoming a pilot. Once, we did a sort of energizer in the group, in which for every affirmative answer you had to take a step forward. The questions were very simple: do you want to study Math? Do you want to study English? History? Geography? Music? And so forth. At some point, he had to jump out of the container’s window, as the space wasn’t big enough for all the subjects he wanted to study.

W., 14, came all the way from Congo. One day, after we did a session on human rights in the group, he came back with the sheet of paper with the Universal Declaration on Human Rights (UDHR) that we had distributed. He had been studying it, it was all underlined and noted on the sides. But there was one article he could not quite understand: article 28, which reads *‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’*. As the world stands today, explaining this was not an easy task.

And then there were those overwhelmingly courageous and determined teens who came alone or with a distant relative, in hopes of reuniting with a closer member of their family somewhere in Europe. S., an 18-year old girl who ventured out alone towards northern Europe where she expected to find a good education. A., a poet and artist, who, when asked to draw something that reminded him of ‘hope’ and ‘dreams’, drew a girl breaking free through barbed wire and transforming into little birds flying away, but who, when mediating and guided to picture his future, could only see darkness. And F., the joker

2 A Portuguese NGO called *‘Plataforma de Apoio aos Refugiados’* – In English, *Refugee Support Platform* (RSP).

3 Officially named *Hospitality Centre for Refugees and Migrants Mavrovouni*, the Kara Tepe Camp is an Accommodation Centre intended to house families and vulnerable populations (unaccompanied minors, women, children).

of the group, whose face turned grim when talking about his expectations for the future to only lit up again when he found out that one of his favorite football players was also a refugee. And H., a martial-arts champion with an unwithering smile and joy that, unfortunately, finally broke after a few months in the camp.

All of them, while waiting for their applications to be processed in Greece, had only access to the non-formal education programs or informal educational activities offered in the camp. All of them felt their dreams were being put on hold because, after years out of school, they still could not access formal education and were not being taught a full curriculum like the other children and youth their age. All of them being held back, being denied basic knowledge and the power to determine their lives. Some, even having been in Greece for more than one year, could not identify it on a map of Europe; did not even know where they really were and less even understand why they could not move forward.

And then there are the hundreds of smaller children whose dreams still change every day. Children whose days are occupied running around and playing in overcrowded and unsafe playgrounds with loose joints and screws, threatening to fall apart; sorting and throwing rocks, the only toy that seems to always be available; climbing up to the top of containers and shading coverings and jumping from one to the other; picking up all sort of scrap from the camp, from rusty old screws to mattresses and entire pieces of furniture, refurnishing the camp at their will.

Children who spend most days waiting for the next 'kids' activities' scheduled, for the volunteers to come and play, new ones every day. Children who learn to count jumping rope and drawing the numbers in the dirt. Children who by age five can act as translators to their parents and grandparents and who, between each other, speak a mixture of three or more languages, combined with random words from many different languages that they cannot even identify.

Children who prove how much of a sponge a brain of a young child can be, quickly interiorizing everything they're taught. An amazing capacity which is unfortunately not being used to all its extent while access to formal schooling is delayed.

Dealing with children in a refugee camp setting can be quite disconcerting as the joy and energy which are universal, can hide trauma and experiences that we can hardly imagine and only sometimes are unveiled in fists of frustration and violence or rage and sadness. Providing a context of normality and tranquility to these children is of utmost importance and, in this regard, enrolling them in school can not only set the adequate structure and environment for learning, but function as a platform for psychological support and healing.

And finally, there are the stories of courage and determination of the mothers and fathers whose sole motivation for the perilous journey onto Europe shores was the hope that their children could have a better life, a better future, at the foundation of which access to a good education unquestionably stands. Parents whose main concern, in the summer 2017, with the beginning of the new school year approaching, was if their children would finally be able to enroll in school. Unfortunately, for the children stranded on the islands at Europe's doors, the answer was still negative.

Although the main drive for this article is, as can be drawn from the examples above, the situation of asylum seeking children living in camps on the Greek islands in the Eastern Aegean Sea⁴, including

4 I make reference to the islands who have been the main port of entry for asylum-seekers in the EU – Lesbos, Samos, Kos, Leros and Chios.

the *hotspots*⁵, I intend to also explore the status of refugee children⁶ in what regards access to education in the EU. This is a universal human right to which both asylum seekers and refugee children are self-evidently entitled. Moreover, as I will also try to demonstrate, access to education for these children, given their circumstances and vulnerability, can prove even more essential and its denial a greater injustice.

However, there are several serious challenges and obstacles to their full enjoyment of this right in the EU that demand new avenues to ensure that States obligations are complied with and that this right can effectively be exercised.

This article intends to shed some light on the situation on the ground and on the concrete challenges and difficulties faced by asylum-seeking and refugee children in the EU frontline states.

II. The Right to Education of Asylum-seeking and Refugee Children – From Theory...

A. *The right to Education*

1. *What education?*

In this study, I will mainly refer to *formal* education⁷. In fact, the right to education recognized in human rights treaties and of which concrete obligations falling upon the States stem from refers, essentially, to this form of education.

Notwithstanding, the concepts of *non-formal*⁸ and, more generally, *informal* education⁹ are also of great importance in this context. As a matter of fact, when States fail to fulfill the obligation to provide access to formal education, the vacuum left is usually filled by NGOs providing non-formal or informal educational activities.

5 Commonly used term to refer to the EU-run reception centers in frontline Member States, like Italy and Greece, to identify and fingerprint migrants and refugees.

6 I shall also sometimes make reference to the situation of migrant children in an irregular situation. In fact, these situations are intrinsically related as some asylum-seekers remain in European countries after their applications have been rejected and fall into an irregular situation.

Based on the definition by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the term '*irregular migrant*' refers to a person who enters a country or stays in a country without the necessary documents and permits. – Cf. UNESCO, *Protecting the right to education for refugees*, Working Papers on Education Policy no. 4 (2017), available at <http://unesdoc.unesco.org/images/0025/002510/251076E.pdf>, Appendix II: Terminology relating to refugees.

7 Formal education refers to institutionalized education, planned and delivered through public organizations and recognized private bodies which, in their totality, make up the formal education system. Formal education programs are normally certified and officially recognized by the relevant national educational authorities or equivalent and follow a structure defined by the responsible authorities, namely, in what regards curriculum, objectives, general methodology and learning time.

8 Non-formal education refers to education that is also intentional and planned by an education provider. However, it is mostly provided as an addition, alternative and/or a complement to formal education within the process of the lifelong learning of individuals. Non-formal education programs are normally limited in duration and may be set up in order to respond to specific needs. These programs are normally not certified nor its conclusion recognized as formal qualifications.

9 Informal learning refers to the natural lifelong learning process that results from daily life activities related to work, family or leisure, and is also often referred to as '*experience based*' or '*accidental learning*'.

Regarding this and the above-mentioned definitions, see UNESCO online glossary, available at: <http://uis.unesco.org/en/glossary>.

2. *Why does this matter?*

The crucial importance of education is undisputable. The impact of accessing and undergoing continuous school education for an individual can be profound and is an essential dimension for the full realization of human dignity.

In this regard, the right to education is also described as an empowering right as it functions as a key to access or exercise other human rights. In the formulation of the UN Committee on Economic, Social and Cultural Rights (CESCR), ‘*education is both a human right in itself and an indispensable means of realizing other human rights.*’¹⁰ In fact, education may produce a catalyzer effect in one’s life, providing some of the tools that will enable the individual to defy and overcome the circumstances which may have been imposed onto him or her at birth or by another later event.

Yet, the impact of education far exceeds this individual dimension, assuming also a universal and social vocation.

International human rights law recognizes the undeniable power of education in building a more just and fraternal world and that the personal benefits of education can translate to society as a whole by strengthening democracy and the rule of law¹¹. Education also plays a key role in shaping active and participative citizens and in increasing tolerance, providing a powerful instrument to fight racism, racial discrimination, xenophobia and related intolerance¹². In this connection, it may be asserted that education constitutes a type of public or social service.

More specifically, in the context of emergencies, such as conflict or in the aftermath of natural disasters, education has a crucial role that goes well beyond the teaching of numeracy or literacy skills. According to the former Special Rapporteur on the right to education, Vernor Muñoz, education provides safe spaces and physical, psychosocial and cognitive protection, helping to mitigate the ‘*impact of conflict and disasters by giving a sense of normality, stability, structure and hope during a time of crisis, and provides essential building blocks for social reconstruction and future economic stability*’. This proves even more relevant in situations where mental health care is not available or accessible. Educational structures can also protect children and youth from exploitation, harm and specific forms of violence¹³.

As for migrant, asylum-seeking and refugee children, accessing education in their host countries further contributes to the process of integration and to reduce the risk of marginalization and radicalization, helping to prevent that, particularly adolescents, develop negative coping behaviors. Education will also provide these children with the necessary tools for contributing positively to their host society, contradicting the idea that ‘*foreigners*’ are a weight to host countries¹⁴.

Concluding, in the words of the former Special Rapporteur identified above, ‘*the provision and exercise of inclusive education cannot alone meet the challenge to social justice inherent in migration. (...) Its*

10 Cf. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html>, par. 1.

11 See, for example, the UDHR (art. 26(2)), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (art. 13), and UNESCO’s Convention against Discrimination in Education (art. 5(1)(a)).

12 Cf. UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1, available at: <http://www.refworld.org/docid/4538834d2.html>, par. 11. See also, UNESCO, *Protecting the right to education for refugees*, op cit, p. 6.

13 Cf. UN Human Rights Council, *Right to education in emergency situations: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 20 May 2008, A/HRC/8/10, available at: <http://www.refworld.org/docid/48bf9d0d2.html>, pars. 34 and 35.

14 See, in this regard, UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 16 April 2010, A/HRC/14/25, available at: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_RTE_of_Migrants_Refugees_Asymlum-seekers_2010.pdf, pars. 30 and 32.

absence, however, ensures that social justice remains beyond our reach.¹⁵ It is almost self-evident that education will allow migrant and refugee children to not only survive, but to thrive.

Finally, it is important to also highlight that education is one of the main push factors for migration.

3. What does it imply?

The right to education is a human right. It is universal and inalienable, and it is enshrined in several human rights treaties¹⁶.

The right to education imposes three obligations on States: to *respect*, to *protect* and to *fulfill*¹⁷. The obligation to fulfill assumes two dimensions: to *facilitate*, which ‘requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education’, and to *provide*, which requires States’ action when ‘an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal’¹⁸.

The primordial undertaking demanded from the State in this context is the provision of free and compulsory elementary education. Under international law, States shall also endeavor to provide secondary education in its different forms, including technical and vocational, and to make it generally available and accessible to all, notably, by the progressive introduction of free education.

However, access to primary education is severely restricted by significant and multiple challenges and access to secondary education faces even more constraints. Particularly in what regards the latter, as it is not, in some states, compulsory, less attention tends to be drawn to the obligation of ensuring that secondary education is generally available and accessible to all, and, in that connection, also to asylum-seeking and refugee children. Furthermore, it has been identified that lack of sufficient resources leads States to prioritize compulsory primary education, thus neglecting secondary education.

96

Notwithstanding, secondary education ‘provides a safe space for personal development and positive social networks for adolescents whose transition to adulthood has been disrupted by instability and violence’¹⁹. This means that providing access to secondary education is particularly relevant in this context. Moreover, impediments to access secondary education contribute to perpetuating the cycle of disadvantage in education which may derive in further marginalization and social exclusion²⁰.

In international human rights law, these obligations are established as progressive undertakings, meaning that States, whatever their economic circumstances and to the maximum extent of their

15 Cf. UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 80.

16 Namely, the UDHR (article 26), the ICESCR (articles 13 and 14), and the UNESCO Convention against Discrimination in Education (preamble) already mentioned above; the UN Convention on the Rights of the Child (articles 28 and 29); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 30); the Geneva Convention relating to the Status of Refugees (article 22); the ECHR (article 2 of Protocol 1); and the Charter of Fundamental Rights of the European Union (CFREU) (article 14).

17 The right to education is one that defies the traditional dichotomy between civil and political rights and economic, social and cultural rights. – See, in this regard, CESCR, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, op cit, par. 2.

18 Cf. CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, op cit, par. 47.

19 Cf. UNESCO, *Protecting the right to education for refugees*, op cit, p. 8.

20 See, in this regard, UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, pars. 69 and ff.

available resources, shall adopt measures to make education, at all levels, accessible to all in equal conditions and free of charge, with a view to achieving the full realization of this right²¹.

Accordingly, not complying with these obligations constitutes a breach of the relevant treaties. Nonetheless, these obligations shall not be construed as impending on States alone. On the contrary, these must be understood as a shared responsibility of all States and of the international community²².

B. The universal dimension of the right to education

The principle of universality and the principles of equality and non-discrimination are basic principles of the human rights framework. Accordingly, respect for these principles constitutes an essential dimension of States' compliance with the obligations established in the human rights instruments of which they are parties.

In this connection, the concern towards inclusion and protection of vulnerable groups such as asylum-seekers and refugees constitutes an expression of these principles. As it is well known, the particular condition of being an asylum-seeker or a refugee may, in itself, severely restrict access to, or even, at cases, strip someone of their rights, making these population groups particularly vulnerable and at risk of marginalization.

Children in the context of international migration are especially vulnerable, even more if unaccompanied or separated. In fact, the migration process itself poses many challenges and obstacles in 'gaining access to education, adequate housing, sufficient safe food and water or health services' which 'can negatively affect the physical, mental, spiritual, moral and social development of migrant children and children of migrants'²³.

The universality of the right to education is recognized in several international human rights treaties, even though the formulation may vary between a positive or a negative formulation²⁴. Accordingly, and pursuant to the international standards which densify these provisions, refugee as well as asylum seeking children are entitled to the right to education and to access and exercise this right without discrimination.

21 As the CESCR rights explains 'Progressive realization means that States parties have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realization of article 13.' – Cf. CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, op cit, par. 44.

In this regard, see also CESCR, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, op cit, and UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, available at: <http://www.refworld.org/docid/4538834f11.html>, Introduction.

22 Expressly in this sense, art. 28(3) of the Convention on the Rights of the Child.

In this regard, see: UN General Assembly, *Right to education: report of the Special Rapporteur on the Right to Education, Koumbou Boly Barry*, 29 September 2017, A/72/496, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/303/24/PDF/N1730324.pdf?OpenElement>, par. 123; CESCR, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, op cit, par. 11; CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>, par. 43. See also: *World Declaration on Education for All: meeting basic learning needs*, adopted by the World Conference on Education for All, Jomtien, 1990, article X; *Dakar Framework for Action*, adopted at the World Conference on Education for All, Dakar, 2000, pars. 10 to 12.

23 Cf. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, available at: <http://www.refworld.org/docid/5a1293a24.html>, par. 40.

See also UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 34.

24 See, in the first case, UDHR (art. 26), ICESCR (art. 13), UN Convention on the Rights of the Child (art. 28); CFREU (article 14); and, in the second, ECHR (art. 2 of Protocol 1).

Concerning especially refugees, article 22 of the Convention relating to the Status of the Refugees establishes that the ‘Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education’ and ‘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’. The UNHCR has stated that the article applies broadly to refugees, referring no conditions as to residence or lawfulness of presence in territory (differently than other dispositions of the convention)²⁵.

More generally, the UN Convention on the Rights of the Child, in article 28, establishes that State Parties shall recognize the right of the child to education on the basis of equal opportunity. This article must be read together with article 2 which demands that States respect and ensure the rights set forth in the present Convention to *each child within their jurisdiction*²⁶ without discrimination of any kind, including based on race, colour, language, religion, national and ethnic origin, birth or other status.

The principle of non-discrimination is evidently central in the context of international migration and should be interpreted as to ensure that ‘all children involved or affected by international migration are entitled to the enjoyment of their rights’²⁷. Therefore, as the CRC reiterates, the ‘enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party’ and, accordingly, must be ‘available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness’²⁸.

In the particular context of education, the UNESCO’s Convention on discrimination in education defines ‘discrimination’ as including any distinction, exclusion, limitation or preference based, *inter alia*, on race, colour, language, religion, national or social origin and birth, which has the purpose or effect of nullifying or impairing equality of treatment in education, in particular ‘depriving any person or group of persons of access to education of any type or at any level’ (article 1, par. 1, (a)). For this effect, the Convention demands that States undertake the necessary measures, among which ‘to give foreign nationals resident within their territory the same access to education as that given to their own nationals.’ (article 3 (e))²⁹.

25 Cf. UN High Commissioner for Refugees (UNHCR), *Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html>, comments on article 22, (3).

26 For this effect, States’ jurisdiction must be construed broadly, encompassing children who come under States’ jurisdiction ‘while attempting to enter its territory’, as well as the ‘jurisdiction arising from a State exercising effective control outside its borders’ - Cf. CMW and CRC, *Joint general comment No. 3 (2017)*..., op cit, par. 12.

27 Cf. *Ibid*, par. 21.

28 Cf. CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, par. 12. See also, CMW and CRC, *Joint general comment No. 3 (2017)*..., op cit, pars. 9, 21 and 22;

Regard specifically the right to education, see: CMW and CRC, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: <http://www.refworld.org/docid/5a12942a2b.html>, par. 59; CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, op cit, par. 34; UN Human Rights Council, *Right to education in emergency situations : report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 37; UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 17.

Notwithstanding the above, the former Special Rapporteur on the Right to Education, Vernor Muñoz, alerts that the notion of the right to education has undergone a gradual reconceptualization towards a more restrictive notion, being sometimes replaced by the less binding reference to ‘access to education’, and that education ‘is being redefined as a commodity rather than a societal good’ and that ‘goodwill has become a substitute for entitlement’. He goes on to highlight that international law instruments pay ‘little attention to the particular situation of educational rights of migrants, refugees and asylum-seekers’. - Cf. *Ibid*, pars. 24, 25 and 26.

29 Also relevant in this regard: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 30); International Convention on the Elimination of All Forms of Racial Discrimination (art. 5, e), (v)); Convention on the Elimination of all Forms of Discrimination against Women (art. 10); and Convention on the Rights of Persons with Disabilities (art. 24).

In light of the above, it is clear that ‘*a child’s migration status should never represent a barrier to accessing essential services such as education*’³⁰ and that States shall ensure equal access to quality and inclusive education for all migrant children, including not only free and compulsory primary education, but also secondary education on the basis of equality with the nationals of the State concerned.

In compliance with this principle, States shall eliminate discriminatory policies and practices that deny or restrict the rights of these children, such as segregated schooling or the application of different standards, as well as eliminate direct costs, for example, school fees, and indirect costs, such as school materials and uniforms.

On the other hand, affirmative action is critical to achieve *de facto* equality by bridging existing inequalities and discrimination and ensuring equality of opportunities to a set group within a society in comparison with the majority of the population. However, positive discrimination measures should be closely monitored in order to make sure that they ‘*do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved*’³¹.

In this context, it is worth noting that, within the group of asylum-seeking and refugee children, particular attention should be drawn to *unaccompanied and separated children, girls and children with special needs, and children in detention*³² also in what regards access to education.

Further to the above, it should be highlighted that effective enforcement of the right to education demands that States ensure access to every child within their jurisdiction to ‘*uninterrupted education in conditions conducive to knowledge acquisition and character development*’³³, that is, *quality education*³⁴.

In the context of education in emergencies or international migration, access to quality education as it is evident, faces particular obstacles and challenges³⁵. In fact, in these situations, temporary solutions might be put in place without adequate consideration for the quality or adequacy of the curriculum and methodology, or the specific preparation of the teachers and staff to the challenges posed by teaching migrants and refugee children. Actually, shortage of teachers has been identified as a major obstacle to migrant and refugee children accessing quality education³⁶.

For asylum-seeking and refugee children fleeing emergency contexts, particularly considering that they might have been excluded from formal education for some time or never have been enrolled at all,

30 Cf. UNESCO, *Protecting the right to education for refugees*, op cit, p. 23.

31 Cf. CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, op cit, par. 32; also, UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <http://www.refworld.org/docid/453883fa8.html>, par. 10.

32 See CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, op cit, pars. 3, 41 and 63.

33 Cf. UN Human Rights Council, *Right to education in emergency situations: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 21.

34 For the effect of evaluating and measuring States’ compliance with their obligations in what regards the right to education, the former UN Special Rapporteur on the Right to Education, Katarina Tomasevski, developed the ‘4 A’s Framework’ by reference to the four main features of the right to education – availability, accessibility, acceptability, and adaptability – and the standards that quality education must meet in regards to each. – Cf. Preliminary report of the former Special Rapporteur on the Right to Education, Katarina Tomasevski, adopted by the Economic and Social Council’s Commission on Human Rights, on 13 January 1999, at its 55th session, and UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, op cit, par. 6.

35 In this regard, the former Special Rapporteur on the Right to Education alerts that education is ‘*frequently found to be interrupted, delayed or even denied during the reconstruction process and early responses to emergencies*’ and that the lack of adequate and timely response stems from an apparent general attitude of tolerance regarding the violation of the right to education in these situations, which translates into it not being given enough attention in the context of humanitarian response. – Cf. UN Human Rights Council, *Right to education in emergency situations: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, pars. 12 and 68.

36 Cf. UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 50.

ensuring access to quality education during the ‘stabilization phase’ is crucial to prevent exclusion and further learning gaps which can make integration an even bigger challenge.

In this context, the *equity* dimension of a quality education plays a vital role. Equity in accessing education means not only that every student shall have access to education, but that students, particularly disadvantaged groups, shall be provided with the support and assistance they need in order to succeed. This demands further affirmative action from States to ensure that all children access and enjoy the same opportunities and are not prejudiced by the existence of barriers which might exclude some from accessing education or impair their success, which is naturally the case of asylum-seeking and refugee children³⁷.

In order to ensure compliance with the aforementioned standards, the right to education for all has time and again been put in the global agenda, namely in the World Declaration on Education for all, adopted in 1990, Jomtien; the Dakar Framework for Action, adopted in 2000, at the World Conference on Education for All, Dakar; the UN Millennium Development Goals, adopted in 2000³⁸; and, more recently, the UN Sustainable Development Goals, adopted in 2015³⁹, and the Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 ‘*Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all*’.

Nevertheless, in spite of these efforts of the international community, ‘*the commitment to realizing the human right to education has been a signal failure, for the goals (...) are continually being put off or subordinated to the logic of economics, which sees education as nothing more than an instrument of the market*’⁴⁰.

This failure is also partly justified by the lack of effective international enforcement mechanisms of the obligations identified above.

C. *The right to education of asylum-seeking and refugee children in the EU*

At the regional European level, it is important to note that all EU Member States are parties to the ECHR and that the rights set forth in the Convention, including the right to education (established in article 2 of Protocol 1) apply to everyone within the jurisdiction of the Contracting Parties to the Convention (article 1), regardless of nationality.

In its landmark case on the right to education, the Belgian Linguistic Case, successively quoted in other cases, the European Court of Human Rights (ECtHR) clarified that, under article 2 of Protocol 1, Contracting Parties shall ensure that all persons subject to its jurisdiction are guaranteed the ‘*right of access to educational institutions existing at a given time*’^{41,42}.

37 See, in this regard, UN General Assembly, *Right to education: report of the Special Rapporteur on the Right to Education, Koumbou Boly Barry*, op cit.

38 Cf. General Assembly Resolution 55/2, *United Nations Millennium Declaration*, A/RES/55/2 (18 September 2000), available at: <http://www.un.org/millennium/declaration/ares552e.pdf>, par. 19.

39 Cf. General Assembly Resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E, Goal 4.

40 Cf. UN Human Rights Council, *Right to education in emergency situations: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 13.

41 Accordingly, this does not imply that Contracting Parties are bound to ‘*establish at their own expense, or to subsidise, education of any particular type or at any particular level*’. – Cf. Judgement of the Plenary Court on the case ‘*relating to certain aspects of the laws on the use of languages in education in Belgium*’ v. *Belgium* (23 July 1968), operative part, The Law, I. B., paras. 3 and 4.

42 Also in this sense, the European Committee on Social Rights – the European Social Charter (revised) monitoring body – clarified that the right to education as provided in the Charter applies to all children, *including children unlawfully residing in the territory of the State Party* – Cf. Report to the Committee of Ministers on case *Médecins du Monde – International v. France*, Complaint No. 67/2011 (11 September 2012), available at: <https://rm.coe.int/16805c9fd2>, paras. 127 and ff.

In order to fully comprehend the extent of the right to education, respect for article 2 of Protocol 1 must be analysed in conjunction with article 14 of the ECHR and Protocol 12, which prohibit discrimination. In this light, the Court has decided, for example, that children's access to education cannot be made conditional on the registration of their parent's place of residence⁴³ nor on the payment of specific fees on account of their nationality and immigration status⁴⁴. Further to this, I would also note that the Court has a very well-developed case-law regarding the prohibition of discrimination of minorities, especially in what concerns the right to education of Roma children⁴⁵.

As for the EU, article 14 of the Charter of Fundamental Right of the European Union (CFREU) consecrates the right to education in EU primary law, which includes the right to receive free compulsory education. This article should also be read together with Article 21 of the Charter that forbids discrimination based on any ground, including race, colour, ethnic origin, language, membership of a national minority, or birth.

The right to education of asylum-seeking and refugee children in the EU is further regulated in secondary law.

Under Article 27 of the Refugee Qualification Directive⁴⁶, '*Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals*'. The Directive on Family Reunification⁴⁷ also recognizes the right to education of the sponsor's family members in the same conditions as those applicable to the sponsor (article 14, par. 1, (a)).

As for *asylum seeking children*, under article 14 of the Reception Conditions Directive⁴⁸ they shall be granted access to the education system under *similar* conditions as the national children of the Member States. Asylum seeking children shall have access to the formal school system within a period of three months counting from the date on which the application for international protection was lodged by or on behalf of the minor (article 14, no. 2, par. 1) and for so long as an expulsion measure against them or their parents is not actually enforced (article 14, no. 1, par. 1). The Reception Conditions Directive further establishes that Member States shall provide, when necessary, preparatory classes to facilitate their integration in the school system (article 14, no. 2, par. 2) and offer alternatives when access to education is not possible in particular situations (article 14, no. 3).

Notwithstanding, it is important to note that the Reception Conditions Directive also foresees that education of asylum seeking children may be provided in accommodation centers, that is, apart from actual regular schools (article 14, no. 1, par. 1)⁴⁹.

As for asylum-seekers who have been refused international protection, the Return Directive⁵⁰ sets out that, pending return, minors shall be granted access to the basic education system subject to the length

43 Cf. Judgement of the Second Section on the case *Timishev v. Russia* (13 December 2005).

44 Cf. Judgement of the Fourth Section on the case *Ponomaryovi v. Bulgaria* (21 June 2011).

45 See, regarding segregation of Roma children, Judgement of the Grand Chamber on the case *D.H. and Others v. the Czech Republic* (13 November 2007), Judgement of the First Section on the case *Sampanis and Others v. Greece* (5 June 2008), Judgement of the Grand Chamber on the case *Oršuš and Others v. the Czech Republic* (16 March 2010), Judgement of the Second Section on the case *Horváth and Kiss v. Hungary* (29 January 2013).

46 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

47 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

48 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

49 See, regarding this issue, European Union Agency for Fundamental Rights, *Handbook on European Law relating to the rights of the child*, Luxembourg: Publications Office of the European Union, 2015, p. 147.

50 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

of their stay (article 14, par. 1, (c)) – limitation which should, however, be interpreted restrictively⁵¹. This shall also apply to *minors in detention* (article 17, par. 3)^{52,53}. Further to this, Member States shall extend the period for voluntary departure by an appropriate period when children are attending school (article 7, par. 2, of the same Directive)⁵⁴.

In the particular context of a crisis, the Temporary Protection Directive⁵⁵ determines that Member States shall grant minors access to education under the same conditions as nationals of the host State (article 14). Moreover, in cases where the children of families who have benefited from temporary protection are minors and are attending school, the relevant Member States may allow them to enjoy certain residence conditions so that those children are able to complete the school period (article 23, par. 2).

In light of the above, it is clear that, according to the international and European applicable standards, no asylum-seeking and refugee child shall be denied access to education and, in this regard, all efforts should be put in place to ensure that they are integrated in the school systems of the host State as early as possible.

Notwithstanding the above, as we will see below, these standards are, in practice, still not fully complied with.

III. The Right to Education of Asylum-seeking and Refugee Children – To Practice...

A. *The situation on the Greek islands: Lesvos*

102 In this point, I will briefly present the situation on the island of Lesvos, at the end of September 2017.

1. *Context*

In September 2017, the EU-Turkey Statement was already 1,5 years old⁵⁶. One of the consequences of the implementation of this deal was that the asylum-seekers arriving in Greece were geographically restricted to the island where they had arrived while their applications were processed.

After the entry into force of the EU-Turkey deal, the influx of people arriving on the Aegean Sea islands decreased abruptly and a very low number of arrivals was registered in the following months. However,

51 See, in this regard, European Union Agency for Fundamental Rights, *Current migration situation in the EU: Education*, May 2017, available at: <http://fra.europa.eu/en/publication/2017/current-migration-situation-eu-education>, p. 5.

52 Pursuant art. 17, par. 1, unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.

53 In this regard, it is worth to note that, according to the applicable international standards, education of detained children should be provided outside of the detention facility. See, in this regard, European Union Agency for Fundamental Rights, *Current migration situation in the EU: Education*, op cit, p. 6.

54 More generally, Member States may, at any moment, decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory (art. 6, par. 4, of the Return Directive). Access to education could, in abstract, constitute such a reason.

55 Council Directive 2001/55/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.

56 For more information on the Statement, see: <http://www.consilium.europa.eu/en/policies/migratory-pressures/countries-origin-transit/eu-turkey-statement/>; http://europa.eu/rapid/press-release_MEMO-16-963_en.htm; and the European Commission Progress Reports.

Regarding the consequences of this deal, NGO's have been very active in denouncing these. For example: Save the Children (2017), *A Tide of Self-Harm and Depression: The EU-Turkey Deal's devastating impact on child refugees and migrants*; Amnesty International (2017), *Greece: A Blue Print For Despair - Human Rights Impact Of The Eu-Turkey Deal*; Human Rights Watch (2016), *Q&A: Why the EU-Turkey Migration Deal is No Blueprint*.

in the summer of 2017, although the situation was not comparable to the one existing before the deal, the situation started to change again and there was a new tide of constant arrivals which has been increasing steadily since. In Lesbos, during the month of September, more than two thousand persons arrived.

At the same time, the pace of relocations⁵⁷ was extremely slow and the difficult and time-lengthy discussions aiming at reaching an agreement between EU Member States for a future plan and commitment on this issue, threatened to come to no result. Further to this, the asylum services on the ground were completely overwhelmed and not able to respond adequately and within a reasonable timeline to all requests, which meant that asylum-seekers stayed on the islands for much longer than expected. Still, the islands continued to be regarded as transit zones, meaning that the services provided were planned to cover only temporary situations.

All these circumstances combined gradually led to an obvious overcrowding of the islands and turned them into hellish places with deplorable or very poor living conditions.

In Lesbos, at the beginning of July, 3889 asylum-seekers or refugees lived on official sites on the island. In September, that number had already grown to 6302, of which around 40% were children⁵⁸. The situation in Moria Refugee Camp, the islands *hotspot*, worsened very rapidly: the camp, with capacity for 1800 people, mainly single men, was housing close to 5000 people at the end of September. As such, living in the camp quickly became quite dangerous and Moria became a pressure pot and the main stage for confrontation with the authorities. As for Kara Tepe, the camp's capacity increased from around 750 people to 1200. Children continued to make up for almost half of the population.

2. *The right to education for asylum-seeking and refugee children on the ground*

In September, with the new school year rapidly approaching, the prospects regarding the right to education for asylum-seeking children living in camps on the islands were dire, despite the fact that, under Greek law, they are entitled to enroll in public schools. In fact, the information divulged by the government was that these children would still not be able to enroll in formal education⁵⁹.

As the consequences of the recent entry into force of the EU-Turkey deal were still being assessed, the government decided to regard and plan the school year of 2016/2017 as a transitional year in what concerned access to education of asylum-seeking and refugee children.

In preparation of this school year, the Greek government approved a program aiming at the integration of these children. Under this program, asylum-seeking and refugee children aged 4 to 15 were offered preparatory/reception classes. For this effect, the government set out to implement Reception Facilities for Refugee Education (RFRE) which would mostly operate in public schools, preferably close to Reception Accommodation Centers (RAC). This meant that, for the *children living in camps*, they would be able to enroll in afternoon reception classes at the local public schools where they would be taught Greek, English, mathematics, sports, arts and computer science. As for *children living in urban settings*, they would be able to enroll in public schools and study alongside Greek children. The EU provided considerable funding for the program and the IOM, transportation.

57 Regarding the EU Relocation Program, see, for example: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171114_relocation_eu_solidarity_between_member_states_en.pdf; and on the difference with the resettlement program: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170613_factsheet_relocation_and_resettlement_en.pdf.

58 Official numbers divulged by the UNHCR to the organizations on the island.

59 The information presented in this section results from the observation of the situation on the ground, talks with asylum-seekers and staff on the island, and reports on the situation presented at meetings, as well as articles and reportages released by the media, confronted with the information divulged by the Greek government.

The program, on paper, was very welcome as it provided an alternative and the possibility, albeit restricted, for asylum-seeking children to attend school. In fact, the program even planned for the integration of refugee children in morning classes alongside Greek students, the operation of reception classes in junior high schools, and the setting up of kindergartens in reception accommodation centers. Unfortunately, these objectives were not accomplished.

In practice, the implementation of the program showed many deficiencies and insurmountable problems and several failures and delays made it practically inoperable⁶⁰.

One of the main obstacles to the program's success related to flawed projections which were essentially due to the constant and widespread mobility of the population of refugees, resulting in considerable hindrances to the government efforts to plan ahead and create the conditions for these children to be integrated into educational facilities. However, significant flaws detected were of an administrative or organizational nature and related to the structure and setting up of the program itself.

In addition, the following also constituted constraints to the smooth implementation of the program and achievement of the objectives envisaged: lack of evidence proving the completion of school grades and of adequate equivalence methods; lack of vaccination; continuous change of teachers and general inexperience and lack of training; and deficient planning of the reception classes and pedagogical support. This program was further criticized as it did not take into account the particular needs of these children who had been out of school for some time and required 'catch-up' programs, as well as psychological support.

According to UNICEF numbers, in the school year of 2016/2017, of the 12.000 refugees and migrant school-age children residing in Greece in June 2017, only about 3.500 were enrolled in formal education⁶¹. Obviously contributing to these numbers is the fact that this program did not cover the islands. In Lesbos, in the school year of 2016/2017, only about 40 of the ca. 530 school age children⁶² residing on the island were able to enroll in Greek public school⁶³ and mostly only due to the goodwill of the school directors.

Due to the significant problems encountered in the school year of 2016/2017 in implementing the government's program, the Scientific Committee in Support of Refugee Children of the Greek Ministry of Education proposed that the school year of 2017/2018 would also be considered and planned as a transitional year. The plan for 2017/2018 built on the previous year's experiences, proposing some alternatives and learning from the mistakes made in the past⁶⁴.

The concerns of the Scientific Committee plan for this year included a better understanding of the challenges of integrating asylum-seeking and refugee children who had been out of a school environment for two or more years and who were in transition from a war or emergency context to normality, many of whom psychologically scared. Furthermore, it was advised that the government put more investment towards finding and training adequate staff.

60 See, in this regard, Scientific Committee of the Ministry of Education Research and Religious Affairs in Support of Refugee Children, *Refugee Education Project*, April 2017, available at: <http://www.europarl.europa.eu/cmsdata/125422/refugee-education-project.pdf>.

61 Regarding the previous school year, see UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/098/41/PDF/G1709841.pdf?OpenElement>, par. 93.

62 These are official numbers divulged by UNHCR. The real number is estimated to be much higher.

63 Cf. Human Rights Watch piece 'No School for Many Asylum-Seeking Kids', published on 17 September 2017. The piece also makes reference to the situation in Samos and in Chios, which, in this regard, was even worse than in Lesbos.

64 Also, Scientific Committee of the Ministry of Education Research and Religious Affairs in Support of Refugee Children, *Refugee Education Project*, April 2017, available at: <http://www.europarl.europa.eu/cmsdata/125422/refugee-education-project.pdf>.

At the beginning of the school year of 2017/2018, the Greek government had set up the so-called 'Zones of Educational Priority' (ZEP) in around 700 schools which were mainly directed at the integration of asylum-seeking or refugee *children living in urban settings*, although not restricted to those.

Under the program for this academic year, asylum-seeking and refugee children would be able to study in Greek public schools, alongside the other students. Children who were already able to understand and speak some Greek would be integrated in regular classes, although benefitting from the help of specialized teachers and additional Greek language classes. Children who could not speak Greek would be offered special classes on Greek language, English, science and mathematics, in order to prepare them for full integration into Greek schools. As for the other subjects, they would join their peers. The ZEP program did not, officially, extend to secondary education.

Yet, access to this program for *children living in camps* would still be limited, one considerable hindrance thereto relating to the requirement to present a proof of address. Children living in camps *on the mainland* were eligible to enroll in the ZEP program provided that, in addition to already speaking some Greek, they lived close to a school which would offer this program or could guarantee transportation there.

As for children living in camps *on the islands*, although the situation at the end of September 2017 was still unclear, the prospects being that they would still be excluded from this program. In the meantime, the government announced the intention to open, at least, afternoon reception classes in public schools.

Unaccompanied minors living *in shelters* in Lesvos, as they were living in urban settings, were expected to be able to be enroll.

Notwithstanding, it should be noted that the aforementioned programs for the school year of 2017/2018, due to several constraints and delays, were estimated to start only by mid-October, at least one month after the beginning of the school year. This meant that children would start school without the necessary support and trained teachers.

Regarding children detained in the pre-removal center waiting to be deported back, they did not have access to formal education. The same applied to other children residing in Moria Camp who were still waiting for their applications to be processed. The situation has, in the meantime, improved and a few NGO's started implementing non-formal education programs or informal educational activities in this camp.

I have since received information from volunteers in Lesvos, reporting improvements in the status of access to education by asylum-seeking and refugee children and that different avenues are being experimented in order to ensure that these children can benefit and participate in formal education. Progress is, however, slow and these children are still largely dependent on the provision of non-formal education programs in order to benefit from some type of education. Furthermore, integration still poses a very significant challenge.

3. *Brief general appreciation*

Notwithstanding the above, it is important to highlight that, pursuant the applicable national and international law, asylum-seeking and refugee children can always, in theory, enroll in public school even if not under the aforementioned programs, that is, without supplementary support.

Yet, this has proven to be much more difficult in practice as it depends, to some extent, on the goodwill of school directors, who, many times pressured by the local communities, prefer to wait for direct instructions from the government. On the other hand, the experience of the 2016/2017 school year

showed that access without the adequate support led to poor results, which turned into high drop-out rates with an obvious negative impact on the children.

Regarding these integration programs set up by the Greek government, aiming at the integration of asylum-seeking and refugee children in Greek schools, it should be noted that these involve some type of segregation of this group of students from the majority and deserve, in that regard, careful analysis.

In fact, as shown above, segregating vulnerable groups in special classes must constitute a necessary and proportionate measure. In this regard, this type of measures shall be limited to the time deemed necessary for that effect and discontinued after the intended objectives are achieved. Otherwise, measures of this type may actually degenerate into negative discrimination and run the risk of deepening marginalization. As the former Special Rapporteur on the right to education, Vernor Muñoz, highlights, segregation, which might be based on early-ability grouping and tracking based, namely, on migration status, has negative impacts on school achievement and contributes to permanent segregation. Furthermore, this might result in the dissemination of low expectations and stereotypes that lead to further discrimination and may even push these children into special needs schools^{65,66}.

It is still too early to assess the impact of the integration programs implemented in Greece for asylum-seeking and refugee children. Notwithstanding, the situation should be carefully monitored in order to ensure that the segregation of these children does not become permanent or counterproductive.

As for the non-formal education programs or informal educational activities implemented by NGO's, it should be stressed that these programs are of very high value as a back-up and a complement to the education provided by the State. As a matter of fact, in general, the right to education of asylum-seeking children living in refugee camps relies on fallback solutions, such as informal education programs run by NGOs.

106 The value of these programs, particularly where there is no other offer, is undisputed. However, these programs face considerable limitations: they are not normally recognized as official education programs and the qualifications resulting from attending these programs are not certified or recognized as equivalent to official school degrees; they are often geographically and temporally limited which may lead to gaps and inconsistencies in the education provided; they are normally offered to asylum-seeking children separated from the national children of the host country, thus inhibiting integration; and not all of these programs are adequately monitored or funded, which impacts directly on the quality of the education⁶⁷.

Finally, further to the above, asylum-seeking and refugee children face other significant challenges and constraints in accessing and fully enjoying their right to education in Greece that must be addressed.

Some of these challenges relate to formal accessibility and enrollment requirements, such as mandatory vaccination. In Lesbos, Médecins du Monde (MDM) ran a tireless program in the summer 2017 to vaccinate all the children in the camp of Kara Tepe so that they could enroll in school at the beginning of the school year.

Others constitute material obstacles, such as the lack of certified translators and of especially trained and prepared teachers.

Others may run deeper, notably, cultural and language barriers, and also the psychological trauma and all associated consequences such as stress and poor performance. The conditions in which these children live, namely, making due with very low incomes, without adequate care or access to nutritious

65 Cf. UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, pars. 38 and 53.

66 See Footnote 45 above.

67 See, in this regard, UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, par. 64, 65, and 68.

meals, nor rooms or a safe and healthy environment to study, as well as the personal family situation can also have a negative impact on their learning capability and results. The high fluctuation and mobility of the population is also a major constraint which not only directly impacts the children's necessary stability, by pulling them out of the school where they were settling, as it may constitute an impediment to the completion of a school year owing to the impossibility to enroll in a new school where they have been relocated.

Further significant factors that contribute to low enrollment rates relate to the lack of information or its non-conveyance in a way that migrants and refugees can effectively understand. In addition, the reluctance of parents to enroll their children which can also be partly due to lack of information regarding the asylum system and the effective prospects of being able to carry on their journey to another EU country.

Finally, the political situation, in particular, the opposition of far-right movements with reports of protests and incidents targeting foreigners, also causes significant distress to the children and their families.

IV. Conclusions

The conclusions drawn from the above are not very encouraging. In fact, it is clear, from the analysis of the situation on the ground that the Greek State, with the complicity of the EU, has not been adequately complying with the applicable international standards in what regards the right to education of asylum-seeking and refugee children. In fact, in spite of the laudable efforts made by Greece, the situation is still far from ideal.

Disregard for the aforementioned applicable standards is not, self-evidently, restricted to Greece and the problems and challenges identified have echoes all around the globe. Unfortunately, as the former Special Rapporteur on the Right to Education, Vernor Muñoz, stated, '*the international community too easily tolerates the many violations of this right*'⁶⁸.

The lack of a quick and adequate response to guarantee access to education due to international migration leads to long-term gaps in education, which have a heavy toll on the children affected, psychologically and socially. Teenagers, especially, face a bigger risk of being prevented from continuing their education and being further marginalized.

Yet, the impact of depriving these children from access to formal school far exceeds the individual. Remembering the wise words of a Syrian student⁶⁹, the decision of host States to take in asylum-seeking and refugees and to incorporate them in education structures may create a butterfly effect and influence thousands of lives. That is, providing education to these children can have a multiplying effect and produce a much-needed driver for change.

The refugee crisis that hit Europe since 2015 should make us reflect thoroughly about migration and about the deficiencies or lack of adequate responses for actual and future challenges. In this connection, it is evident that host States, particularly frontline States, are easily overwhelmed and drained out of resources confronted with such large influx of people. However, these States should not be alone in this endeavor. In accordance, efforts should be put in finding a *global collective response* to these challenges, calling upon the international community to address these issues and to actively seek a common solution.

68 Cf. UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, op cit, par. 17.

69 Intervention at the RRM 2018 - International Conference on Higher Education in Emergencies, organized by the 'Global Platform 4 Syrian Students', in Lisbon, April 2018. This Syrian girl resumed her higher education studies in Portugal under the Global Platform program.

Actually, now may be the perfect opportunity to push for an actual change since the UN Members States are presently working towards the adoption of a global compact on refugees and a global compact for safe, orderly and regular migration⁷⁰. In fact, in the New York Declaration for Refugees and Migrants, States pledged *to leave no one behind*⁷¹. It is time to enforce this crucial, albeit greatly ambitious, commitment.

Concluding, it is time to truly recognize the fundamental value of the right to education and the moral imperative to ensure that every child can effectively access and exercise this right, including (maybe even, particularly) asylum-seeking and refugee children.

Let us not forget that the world is shrinking rapidly. The problems of far-away countries are now shared by all, the consequence thereof felt thousands of kilometers away. There is a lacking global solidarity, which should no longer be considered only a gesture of goodwill. It is time for States to commit to the future, not only within their borders, but globally.

Europe has been overwhelmed with the grace of receiving the hopes and dreams of thousands of children and teenagers eager to learn and strive for a better life. Fulfilling their expectations, providing adequate and proper certified education should not only be approached as an obligation and economic burden. It is essential to prevent generations from being neglected and sidelined. And it is an opportunity to paint our collective future with bright colors, instead of the darkness of frustration and undeveloped potential.

As the cardboard put up by the youth group on the wall of our container read: *'Education is hope; the most powerful weapon'*.

References

108

UN Documents

General Comments

- UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html>
- UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, 10 May 1999, E/1992/23, available at: <http://www.refworld.org/docid/4538838c0.html>
- UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1, available at: <http://www.refworld.org/docid/4538834d2.htm>
- UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, available at: <http://www.refworld.org/docid/4538834f11.html>
- UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>
- UN Human Rights Committee (HRC), *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <http://www.refworld.org/docid/453883fa8.html>
- UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context*

⁷⁰ UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html>.

⁷¹ Cf. *Ibid*, par. 16.

of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22, available at: <http://www.refworld.org/docid/5a1293a24.html>

- UN High Commissioner for Refugees (UNHCR), *Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html>

Reports

- UN Human Rights Council, *Right to education in emergency situations: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 20 May 2008, A/HRC/8/10, available at: <http://www.refworld.org/docid/48bf9d0d2.html>
- UN Human Rights Council, *The right to education of migrants, refugees and asylum-seekers: report of the Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos*, 16 April 2010, A/HRC/14/25, available at: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_RTE_of_Migrants_Refugees_Asylum-seekers_2010.pdf
- UN General Assembly, *Right to education: report of the Special Rapporteur on the Right to Education, Koumbou Boly Barry*, 29 September 2017, A/72/496, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/303/24/PDF/N1730324.pdf?OpenElement>
- UN, Commission on Human Rights, Economic and Social Council, *Preliminary report of the Special Rapporteur on the Right to Education, Katarina Tomasevski*, 13 January 1999, E/CN.4/1999/49, available at: http://digitallibrary.un.org/record/269197/files/E_CN-4_1999_49-EN.pdf
- UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/098/41/PDF/G1709841.pdf?OpenElement>

Other

- United Nations Educational, Scientific and Cultural Organization (UNESCO), *Protecting the right to education for refugees*, Working Papers on Education Policy no. 4 (2017), available at <http://unesdoc.unesco.org/images/0025/002510/251076E.pdf>

Other Documents

- European Union Agency for Fundamental Rights, *Current migration situation in the EU: Education*, May 2017, available at: <http://fra.europa.eu/en/publication/2017/current-migration-situation-eu-education>
- European Union Agency for Fundamental Rights, *Handbook on European Law relating to the rights of the child*, Luxembourg: Publications Office of the European Union, 2015
- European Union Agency for Fundamental Rights, *Handbook on European Law relating to asylum, borders and immigration– Edition 2014*, Luxembourg: Publications Office of the European Union, 2015
- Scientific Committee of the Ministry of Education Research and Religious Affairs in Support of Refugee Children, *Refugee Education Project*, April 2017, available at: <http://www.europarl.europa.eu/cmsdata/125422/refugee-education-project.pdf>