

Discussion paper¹: The rights to education for refugees, the actions undertaken by the Flemish government and policy issues for discussion

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I. International Context: Right to Education for Refugees

A. Introduction

1. The aim of this discussion note is threefold: (i) first we will describe the international framework as it applies to under aged refugees entering Belgian territory: to which extent do they have a right to education, and what specifically does this right to education entail. (ii) Second, we will describe the concrete steps the Flemish legislator has taken to integrate refugees (and more broadly: learners entering the territory that do not speak Dutch) into the Flemish school system. (iii) Third, we will highlight some elements of the current practice that might benefit from further discussion in an international context.

2. This third chapter at the same time functions as an invitation for further research. A number of discussion points will be given that are drawn from the Flemish legislation or the debates that took place prior to the adoption of the current legislation. Those discussion points are interesting from a policy point of view, as they indicate the different directions a government can take when adopting education legislation for refugees. We clustered a number of policy issues around 12 discussion points.

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B. *Do refugees have a legally guaranteed right to education, and to which extent is this right enforceable against the state?*

1. International framework

3. The right to education is a fundamental human right guaranteed by many international treaties. As a result, the impression may rise that everyone, not only legal citizens but also all those lacking legal documents, can easily refer to any of these texts in order to enforce access to education and every right attached to education (free admission, grants, access to special language courses etc.). The legal truth is however more complex. In the words of the special report of the United Nations on the right to education of migrants, refugees and asylumseekers: “*human rights law does not sufficiently address the question of binding obligations of States to take positive measures*” and “*it is largely unclear which distinctions between migrants and the citizens are admissible and which are not*” (United Nations Human Rights Council, 2010; Hemelsoet, 2012: 165). Overall, the material effects of international human rights legislation on improving (irregular) migrants’ access to social rights in the European countries have remained limited: due to the lack of guarantee on effective incorporation in the municipal legal

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1 This is a working paper aimed for discussion during a 2016 ELA conference in Budapest. As a result proper citations and references have not yet been included. The draft discussion paper has not been updated since September 2016, so that the authors cannot guarantee that all information is up to date. The working paper has since been updated and published as Willems K and Vernimmen J, (2017) The fundamental human right to education for refugees: Some legal remarks. *European Educational Research Journal* (17/2) 219 – 232.

order and due to the lack of effective enforcement mechanisms, often they are not much more than a statement of normative intent (Laubenthal, 2011: 1359).

4. Unlike the right to freedom of speech, freedom of religion etc. (usually called “liberties”), the right to education encompasses ‘social, economic and cultural rights’ which require positive action and funding from the states (compare Pas and Vandaele, 2000: 346). States, reluctant to provide these rights equally to migrants, interpret treaty-provisions in such a way as to limit their obligations. (Vandenhoe, 2011: 617-620; Pas and Vandaele, 2000: 333). Because these texts are often insufficiently precise, clear or unconditional, they cannot be invoked directly before judges in state-parties (the so-called direct effect). States are however bound by the “standstill effect”: it prohibits them from taking measures that would imply a significant deterioration of the protection of the right the state provided before entering into the treaty (Pas and Vandaele, 2000: 336).

a. *European Convention on human rights (ECHR): Article 2 of the First Protocol*²

5. The scope *ratione personae* of the article is very broad: this provision can be invoked by any legal subject who is within the jurisdiction of the contracting states (Veny, 2015: §21). Nationals as well as foreigners; stateless persons as well as illegal residing persons are bearers of this fundamental right (compare *Belgian Linguistic Case*, nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64: §3 and report of 24 June 1965: §388; *Catan and others vs Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06: §18). The parliamentary assembly of the Council of Europe made it clear that all children have a right to education, extending to primary school and secondary school levels, in those countries where such schooling is compulsory (Parliamentary Assembly, 2006: §13).

6. When assessing the rights of refugees under article 2 of the First Protocol of the ECHR, it should be noted that the right to education is not absolute and may be subject to limitations (*Belgian Linguistics Case*, nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64: §65) (Lauwers, 2005: 4; Veny, 2015: §18). Limitations must be foreseeable and proportionate in the relationship between its means and (legitimate) aim (*Leyla Şahin vs Turkey*, no. 44774/98: §154; *Ali vs the United Kingdom*, no. 40385/06: §53; *Catan and others vs Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06: §140; *Tarantino and others vs Italy*: §45).

7. The first sentence is considered to encompass a right to access to the existing education facilities at a given time (which is not the same as the right to demand the creation of certain types of education institutions from the state, see below), the right to education in the national language, and the right to official recognition of (finished) studies (Veny, 2015: §17).

8. The fact that refugees are due to their limited knowledge of the local language or due to the limited schooling they received at home unable to follow the normal curriculum in their current country of residence, is no excuse to deny them the right of access to the existing education facilities. Where it can be assumed that school authorities — given a limited number of places — may impose admission requirements or may refuse to admit learners in specific cases (for example because they lack the necessary skills or aptitude for a particular course of study), the regulatory power does not give the government the right, through the imposition of access conditions, to deny them their right to education (Veny, 2015: §25). The Flemish legislator has however opted to almost entirely restrict the right to refuse students (GOK-decreet), so that this option is not applicable in Flanders.

2 “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”

b. *Convention on the rights of the Child (CRC): article 2 and 28³*

9. States have to ensure these rights to any child within their jurisdiction (article 2 CRC): the enjoyment of rights stipulated in the CRC are not limited to children who are citizens of a state and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness (CRC General Comment no. 6, 2005: 6). States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, should have full access to education in the country that they have entered. (CRC General Comment no. 6, 2005: 13-14).

10. The potential direct effect or standstill effect of art. 2 and 28 CRC is mitigated, as many state parties have accompanied their ratification with reservation or interpretative declarations intended to limit the scope of their obligations, for example with a reservation regarding minors who do not have a right of legal residence in the country (Laubenthal, 2011: 1359). Belgium added the following interpretative declaration: “*With regard to article 2, paragraph 1, according to the interpretation of the Belgian Government non-discrimination on grounds of national origin does not necessarily imply the obligation for States automatically to guarantee foreigners the same rights as their nationals. This concept should be understood as designed to rule out all arbitrary conduct but not differences in treatment based on objective and reasonable considerations, in accordance with the principles prevailing in democratic societies.*”

c. *The International Covenant on Economic, Social and Cultural Rights (hereafter CESCR)⁴*

11. This Covenant encompasses the most far-reaching obligations for member states. States recognize the right of everyone to education: Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (CESCR General Comment no. 13, 1999: 3). “All” in the meaning of the Covenant means “To everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation” (CESCR General Comment no. 20, 2009: §30).

12. Despite those far reaching obligations, only one small part of those provisions is sufficiently clear to have direct effect: article 13, 2, a of the Convention clearly and unequivocally entails the obligation

3 “1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: a) Make primary education compulsory and available free to all; b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; c) Make higher education accessible to all on the basis of capacity by every appropriate means; d) Make educational and vocational information and guidance available and accessible to all children; e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.[...]”

4 “1. The States Parties to the present Covenant recognize the right of everyone to education. [...] 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 [...] shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free 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 1 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 State.”

for state to make sure that *primary* education is compulsory and available free to all (General Comment no. 13, 1999: 23).

13. For all other levels of education though, the obligations enshrined in the CDESCR-Treaty do not have direct effect, but only constitute a standstill effect. It must be noted however that article 2 CDESCR contains a prohibition of discrimination, and this provision *is* deemed to have direct effect: the prohibition of discrimination is subject to neither progressive realization nor the availability of resources (Vandenhoele et al, 2011: 620). Moreover, the prohibition of non-discrimination extends to refugees: “the principle of non-discrimination extends to all persons of school age residing in the territory of a state party, including non-nationals, and irrespective of their legal status” (CESCR General Comment no. 13, 1999: §§ 31 and 34).

d. *European Social Charter: article 17⁵*

14. At first sight, this article seems not to be applicable to refugees, as the European Social Charter describes its own scope of application as limited to nationals or other parties “lawfully resident or working regularly” within the territory of the country concerned. However, the European Committee of social rights has pointed out that the restriction of the personal scope should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity (ECSR *International Federation of Human Rights Leagues v. France*, Complaint No. 14/2003: §§ 30 and 31; ECSR *Defence for Children International v. the Netherlands*, Complaint No. 47/2008: § 19).

15. The ECSR has not yet had the opportunity to clarify explicitly if the right to education comes under the personal scope of application of the Charter. However, given the unqualified submission that “children, whatever their residence status, come within the personal scope of Article 17 of the Revised Charter” (ECSR *Defence for Children International v the Netherlands*, Complaint No. 47/2008: §66), it is most likely that the Committee would consider the right to primary and secondary education to be applicable to undocumented children (Vandenhoele et al, 2011: 619).

e. *Other documents:*

16. Several other texts contain relevant provisions. For an overview, see De Groof and Lauwers, 2005: 17-21.

f. *Conclusion*

17. In this discussion note, we will not go into the right of refugees to have access to education any further. It is clear from the above that refugees should have access to education. The Flemish government has never questioned this right. Rather, below we will discuss in more detail the practical implications of this right to education.

C. *Some legal questions concerning the concrete organization of the right to*

5 “With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed: to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; to protect children and young persons against negligence, violence or exploitation; to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support; to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”

education

1. Do refugees have a right to be taught in their own native language?

18. The importance of minority language instruction is widely recognized by legislators, both at the national level and at international level (De Groof and Lauwers, 2005: 21-30). A state does bear the obligation to make sure that education in the national languages is available. The ECtHR case law shows that "(...) the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be" (Belgian Linguistic Case: §3; Catan and others vs Moldova and Russia, nos. 43370/04, 8252/05 and 18454/06: §137). Other language rights cannot be derived from article 2 of the First Protocol. In other words, a person has the right to demand education in the national language or in one of the national languages.

19. Even though there is no definition of "minority" in the international texts, the common interpretation of those texts is that this right is limited to national languages, and does not extend to minority languages spoken by refugees entering the territory, if those languages are not national languages of the country they are entering (Veny, 2015: §39 and further). The ECHR does not contain an obligation for the government to establish or to subsidize specific educational facilities at the simple request of users; for example the creation of minority-speaking classes (Skender vs the Former Yugoslav Republic of Macedonia, no. 62059/00; Veny, 2015: §43).

20. There is however an increasing recognition within international and national law that significant minorities within the nation-state have a reasonable expectation to some form of state support (May, 2011:275) so the views of the courts on the question whether or not minority groups resulting from recent migration can/should enjoy language rights as part of universal human rights may evolve (see also Andrassy, 2012: 225 and further; Glenn CL, 1996: 75-78).

21. At the preliminary stage however it looks unlikely that the right to education in any language of origin of the refugee-learner, will soon become a basic, universal and fundamental right (Veny, 2015: §40, May, 2011: 275 and 266-269). From an advocacy point of view, the question if the lack of definition of the term "minority" can be used as a way to 'shaken things up', is interesting.

22. In the light of an effective realization of the right to education, it is a legitimate question to ask if special facilities need to be organized in the existing educational institutions for refugees who do not speak the language of instruction. After all, for those students, the right to education remains indefinitely illusive without such provision (Veny, 2015, §39). Several arguments can be put forward to support this claim. According to General comment no. 6 of the United Nations, all unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language (General Comment no. 6, 13-14). The United Nations report of 2010 on the right to education of migrants, refugees and asylumseekers adds that in accordance with article 28.1 CRC "equal opportunity" may justify differential treatment of migrant, refugee and asylumseekers' children, such as mother-tongue teaching, provided that non-discrimination measures are in place (United Nations Human Rights Council, 2010: 25).

2. Can refugees be placed in separate schools or separate classes?

23. Although the choice to create (mostly temporary) separate classes for minority groups is sometimes made for a justified pedagogic reason to make practical sense of the right to education (Hemseloet, 2012a) the dangers of segregated minority schooling are also highlighted by other scholars (Glenn CL, 1996: 79-84).

24. From a legal point of view attention needs to be paid to the question if such a separate treatment violates the principle of (direct or indirect) non-discrimination (Lauwers, 2005: 127 and further). The ECtHR has made it clear in the past that organizing separate schools or classes and amending the curriculum for certain minorities is not necessarily a breach of the principle of non-discrimination, depending on the legitimate goals the government wishes to achieve (for example preparatory classes for Roma pupils with the intention of helping them to attain the right level to enter ordinary classes) and the necessity, appropriateness and proportionality of the measures taken.

25. Temporary placement of children in a separate class on the grounds that they lack an adequate command of the language is not, as such, automatically contrary to article 14 of the Convention: It might be said that in certain circumstances, such placement would pursue the legitimate aim of adapting the education system to the specific needs of the children (Veny, 2015, §60).

26. If the available case law is extrapolated to the situation of refugees, it is clear that special preparatory classes or schools can be organized, but member states must be careful that – in spite of governments' legitimate willingness to organize special classes and courses to educate special groups – the conditions surrounding school enrolment, educational facilities and expected learning outcomes are appropriate, necessary and proportionate, meaning that they can reasonably be believed to effectively reach that legitimate goal of integration in the regular curriculum and school system, instead of ultimately resulting in discrimination. In other words, a state must be very careful when special classes are only organized for one specific ethnic group (for example Syrian refugees), as discrimination will always be lurking around the corner.

3. *Conclusion*

27. The right to (access to) education is applicable to refugee children. The Belgian Constitutional Court has declared that at least the Convention on the rights of the child and the educational rights included in the Belgian constitution (articles 24 and 191) can be called upon by any child within the Belgian territory (Cons. Court, 22 July 2003, 106/2003, b.6.2), even those who are undocumented. A similar reasoning can be applied to other treaties. However, due to the careful phrasing of how treaty rights can be achieved, the question of how they can effectively be invoked against states remains delicate. With regards to primary education, international treaties are clear that it should be available free for all. For other issues deeper consideration is required, as the case law on higher school fees or separate classes shows.

II. **Flemish Context: Flemish Education Policy for Refugees**

28. Flemish policymakers have always envisaged swift educational integration as the keystone to social integration. Through organizing adjusted tracks and providing individual attention upon entry, they hope to allow migrant children to catch up with classmates, participate in regular class and become independent students, thus facilitating their subsequent school career. An instant focus on acquiring Dutch language skills and operational school abilities needs to achieve this goal. Additionally, interaction with teachers and fellow students is vital (*Primary School*: Circular BaO/2006/03 - 30/06/2006; *Secondary school*: art. 135 §1 CSO, Circular SO 75 - 30/06/2006).

A. *Nursery school*

29. Even during the refugee crisis, no political consensus has been found for organizing specific tracks for non-Dutch-speaking preschoolers. However, since 2015, extra funds⁶ have been extricated to support nursery schools in their task of initiating children in the Dutch language. Schools receive these resources if their population of non-Dutch-speaking preschoolers increases; and with them, additional teachers can be hired. Additionally, because of the irregular influx, recalculation of student population on 01.06.2016 (first count on 01.02.2016) has been accepted. However, there are no guidelines on how to organize this initiation.

B. *Primary school*

30. Through the OKAN-track (“Onthaalonderwijs voor anderstalige nieuwkomers”), new non-Dutch-speaking pupils (“Anderstalige Nieuwkomers” – “AN”) are being prepared for regular classes. In primary school, two categories can enter the track:

- a) Pupils officially residing in an open refugee shelter if they are of primary school age. They will retain this statute as long as these two conditions are fulfilled.
- b) Pupils who I) were not raised in Dutch (“moedertaal”) or do not prevalingly speak Dutch at home (“thuis taal”)⁷, II) insufficiently master the Dutch language to participate in class, III) have been enrolled in a Dutch-speaking school no longer than nine months and IV) have resided in Belgium for a maximum of one year. They can remain AN for a maximum of one year and nine months⁸.

Under these conditions, pupils will be automatically eligible for the OKAN-track if they are aged five to twelve (which means preschoolers are excluded). An additional language screening (as described below) is not required. If a pupil no longer complies with the conditions, he will become a “former newcomer” (“Gewezen Anderstalige Nieuwkomer” – “GAN”). These are eligible for a follow-up year.

31. In shaping the OKAN-tracks, schools have great autonomy: they can either provide appropriate care within the regular class group, in separate sessions or combine both. Schools often decide to organize immersive programs (for a maximum of one year), which can be set up in cooperation with other schools. In that case, they have to cooperate regarding transport, communication and follow-up. The immersive programs are full-time (for a maximum of one year) and intensively focused on language skills. Nevertheless, as soon as the pupil is ready to return to regular class, the program ends. These OKAN-tracks cannot be refused by parents if a school decides to sign up certain pupils.

32. To allow schools to organize OKAN-education, they are provided with additional course hours and funds for both AN and GAN. For AN they receive additional hours if there I) is a sufficiently high number of AN⁹ within a school or community of schools, II) are individual targets, schedules and evaluations for every AN and if III) schools allow teachers to attend retraining regarding education on language proficiency and social integration. GAN-pupils are taken into account without a minimum: for every GAN-pupil one additional course hour is available. Schools can decide to transfer course

6 Funds are $950 \text{ EUR} \times (C+(D-C))$. C = number of preschoolers that on 31.12.15 I) have stayed in Belgium since 01.07.15 or later, II) were not raised in Dutch or do not prevalingly speak Dutch at home, III) insufficiently master the Dutch language, IV) have been enrolled for a maximum of 9 months. D = the growth of preschoolers who do not speak Dutch prevalingly at home, comparing 01.02.2016 with 2015.

7 These are established through available documents or based on solemn declarations.

8 A student can be enrolled for one year and nine months if he was enrolled on October, 1st or later. The OKAN-year ends the first year an AN was present and registered since September.

9 If calculated per school: Preschoolers - four or more; Primary school - six or more. In that case, 2 additional course hours will be awarded, plus 1.5 hours per AN enrolled. If 4 or more join after the moment of calculation, 1.5 hour will be awarded each. If the total number of AN goes under 2, OKAN-funds will be terminated. If calculated per school community: 12 or more, without schools that calculate individually. In that case, 1.5 course hours will be awarded per AN enrolled. If 4 or more join after the moment of calculation (September, 1st), 1.5 hour will be awarded each. If the total number of AN goes under 4, OKAN-funds will be terminated.

hours to other schools organizing immersive courses at any time during the school year (circular BaO/2005/09 and BaO/2014/01).

33. Schools receive additional funds or subsidies for AN: 12.50 EUR is paid monthly for every AN-pupil. Pupils attending an immersive course at another school than their school of enrollment, only provide the latter with subsidies. However, none of these funds are specific, and might be absorbed by the global finances of schools.

34. Since 01.09.2014, every pupil entering primary school will undergo language screening, whether transferring from Flemish nursery schools, French-speaking primary schools or a school abroad. Parents have no right to refuse this. Using information received from previous schools, the new school will determine pupils' language level regarding audition, speaking, reading, writing and linguistics. They are free to determine the procedure used, but the government does provide a list of approved methods. The results of the test cannot influence the enrollment of the child, nor can it automatically determine a pupil's referral to schools for children with special needs. It will however, encourage a school to design an individual language track, seek additional challenges or sign up children for immersive courses. The latter are however not targeting pupils with different dialects or with poor vocabulary; only those who do not master Dutch profoundly.

C. Secondary school

35. For a newcomer to be eligible for an OKAN-track in secondary school, he has to comply with conditions equal to those in primary school (see par. 34). In exceptional situations, schools' class councils can decide to deviate from the conditions on age, residence in Belgium or enrollment in school. However, the track is never accessible for students participating in an exchange program.

198 36. Upon enrollment, students are required to participate in an immersive class for one year, after which they can enter into regular classes. The curriculum (between 28 and 32 *hours-teacher*¹⁰) is primarily focused on acquiring language skills: aside from two hours of philosophical, religious or moral education and four hours free-to-spend, language education is dominant. Schools have to work towards specialized development goals ("Nederlands voor nieuwkomers in de onthaalklas"), but are allowed to diversify in individual treatment to do so. They can allow students to temporarily join courses in other schools or in their regular class, if that contributes to a student's progress. The resulting personalized tracks are closely monitored and recorded, allowing effective transaction of information if students change schools.

37. After completing the immersive course, students transfer to a regular class. If they remain in secondary school – rather than entering adult or other forms of education - transition is supervised by a school coach ("vervolgschoolcoach"). These coaches stay in touch with the students, monitor their progress and support regular teachers to achieve continuity and stability. They can advise organization of additional courses or construction of a flexible track, to allow extra language support. Since 2014, schools can also install additional language courses up to a maximum of three hours a week. These do not replace the regular curriculum and are accessible for all students with insufficient knowledge of the Dutch language (circular SO 64).

38. The OKAN-track can be organized by individual schools or by a group of schools within a school community. In the latter case, regular and extensive deliberation on the organization is vital. One school of this community ("contactschool") will be in charge of communication with the Flemish government. It has to apply for recognition (art. 179/3 CSO; circular SO 61) of their program, a process that has been made more flexible because of the recent crisis (Decree 13 November 2015).

10 In Flanders, lecturing time is organized in units of 50 minutes for secondary schools. They are called *uren-leraar*, which literally translates as *hours-teacher* (decision 31.07.1990 - circular SO 55).

All participating schools must guarantee access to additional training (on language and intercultural education) for its teachers.

39. For every AN-student, a school (group) receives 2.5 *hours-teacher*, which can only be assigned for OKAN-education. For every GAN-student, the school of enrolment receives 0.9 *hours-teacher*, reserved for coaching, monitoring and support. AN and GAN also generate non-specific teaching hours within the school of enrolment's general pool, which can be distributed freely.

D. Undocumented children

40. The Flemish government chose to explicitly endorse access to education for undocumented children (circular GD/2003/03). **Referring to these children's vulnerable position, they consider the right essential to a humane reception policy. Therefore, the circular defines that, in line with previous legislation on equal opportunities (decree 28 June 2002), schools cannot refuse children solely because their residence status** is uncertain. Schools should fulfill registration without the required identity or educational documents (BaO/2006/04) as long as the pupil is present at the moment of enrollment. Once registered – which parents are obliged to fulfill within 60 days after entering the country - pupils need to attend regularly, like any pupil of school age. Additionally, the school board needs to make every effort to encourage attendance.

41. Schools have no obligation to inform authorities on the presence of undocumented children, nor can these authorities track their families through school attendance. Schools' main focus should be the wellbeing of these children and they receive funds and subsidies (equal to that for other pupils) to do so. Moreover, undocumented children are equally insured as regular pupils. They are eligible for supportive programs (and related funding), like the OKAN-track or measures created by the **decree of 28 June 2002**. Their access to education does not however offer any guarantees in their (or their family's) application procedure. Nevertheless, on completion of a certain study level, undocumented children will receive a certificate or diploma.

E. Recommendations for flanders' legislation

42. The Flemish education system has gone through a paradoxical democratization process: quantitative democratization has been a success, but qualitative democratization has always lagged behind (Dupriez & Verhoeven, 2007). According to OECD (OESO), Belgium is one of the countries that struggle hardest with overcoming social inequality: students' social and economic backgrounds affect individual school performance, influencing pupils with an immigration background the most. They drop out more frequently, are in arrears more often and show higher scores for truancy. Inequality is additionally found in the type and quality of their school career and the percentage of students to start higher studies (Vandenhoele, 2007).

43. Many of the refugee children that enter our education system have experienced loss, developed trauma or are under psychosocial pressure (leading to uncertainty, anger and distress) because of their precarious situation. This issue is particularly problematic for undocumented children as their family's social isolation limits their access to social support like scholarships, reimbursement of medicine, social welfare, etc. Because they are under constant threat of being evicted, undocumented parents are also reluctant to bring their children to school. In addition, schools seem to struggle with their presence. Teachers, insecure about the way to handle this heterogenic group, often define it as problematic: these children have an uncertain future and struggle with learning difficulties, leaving the regular teaching methods inapplicable. Consequently, figures show that undocumented children are systematically over-oriented towards education for children with special needs. Some schools are even reluctant to accept them, out of fear of negative reactions or the administrative hassle. Finally, financing of this group also

proves difficult: because of its uncertain size, possible late enrolment and schools being misinformed, schools regularly end up paying for school supplies, field trips and medical costs themselves.

44. A first essential element in shaping an educational system capable of coping with these new groups is the proper training and equipment of teachers. A pedagogic framework based on psychological and sociological insights has to be designed and offered to both the active staff and teachers in training. To eliminate uncertainty and discrepancies in approach (e.g. an inclusive or exclusive policy), authorities need to finally provide clear guidelines for teachers to consult. In this way, an appropriate curriculum will no longer depend on their motivation or good-will to do own research. Additionally, a (digital) database can allow accessible sharing of concrete issues and solutions, best practices and know-how. In order to ensure quality teaching, schools may consider to offer OKAN-tracks only in specialized schools and concentrate AN-learners in those schools.

45. Secondly, a personalized track has to be construed for every student. As the VLOR (Vlaamse Onderwijsraad) concluded, more attention to the student's background is vital: distinction should be made based on age (especially the crucial ages of 5-7, 11-12 and 15-18), country of origin, language, psycho-social condition, (educational) background, socio-economic situation, personal ambition, and students' special needs. Appropriate orientation based on these characteristics is essential, but students perspectives should also matter: as only a small minority of refugee children will eventually remain in Belgium, certain skills in the offered curriculum, like knowledge of the Dutch language, should be reconsidered. The curriculum should anticipate a probable departure, in which case English can prove much more useful. However, in the assessment of children's perspective, teachers should never become first judge. They have neither the expertise nor the possibilities (insight in file etc.) to do so, and liability lurks. Nevertheless, a more profound knowledge of Belgian immigration law allows schools to answer basic questions of learners and their parents concerning their legal status.

46. Finally, schools should reassess the position of newcomers' social identity: students can benefit from profound knowledge of their country of origin and a well-considered policy on the use of native languages (on playgrounds, in private, in class). Especially for those who will be extradited, this is of fundamental importance as it can change their mindset towards departure.

47. Naturally, schools cannot offer a solution to all obstacles encountered by children entering our society. Social integration needs also be achieved through other organizations: youth movements, sports clubs and arts associations can play an important part. Participation might also intensify communication between newcomers and natives – a gap still unsatisfactorily bridged today. Involvement of parents is crucial as well: through social interpreters, they need to be convinced of the importance of education, the expectations of schools and should be updated regularly on their children's progress. If possible, children's and parents' education tracks should be aligned: especially for language courses, this can boost individual progress.

48. To conclude, immigration services should also consider education when shaping their policies. Being regularly transferred interferes with children's school career, especially when they have to cross the language boundary. More generally, capacity of and expertise available in schools should be considered when deciding where to send families with children. The question should be asked whether it is most efficient to gather students where experience is present (but then the capacity issues in cities need to be tackled) or spreading immigrants throughout the country contributes to their integration. Eventually, one should ask whether it is not justifiable to prolong children's right to stay until they completed their studies (around the age of 18). At present however, this does not appear to be a negotiable topic politically.

III. International Comparison: Discussion Points

The aim of this part of the paper is to discuss a number of important policy issues surrounding education for refugees, clustered around 12 discussion points. In order to do so, you are invited, each from the situation in your home country, to elaborate on the position your country has taken with regards to those discussion points. More specifically, you are invited to answer the following question:

1. Has this discussion been raised in your country?
2. Do the positive and negative points enumerated under the discussion points reflect the content of the discussion that took place in your country?
3. Which legislation has finally been adopted with regards to this discussion point?

Your answers will be used as data to take a comparative approach to education for refugees, from a legal and policy-oriented angle.

A. Organization of special programmes and funding

Discussion 1: a pedagogic framework should be designed, providing teachers with the proper insights and methods to teach a diverse group of refugees. These methods should diversify the approach to students based on age, country of origin, language, psychosocial condition, educational background, socio-economic situation, personal ambition and special needs.

- + Provides teachers with essential insights and methods
- + Offers teachers handhold, increasing their managing ability and reducing stress
- + Success of a specific track for refugees will depend less on teachers' motivation to develop own methods
- + the widespread practice of selecting new (sometimes unprepared) teachers who are given hours in specific tracks for refugees each schoolyear, based on the needs of both teacher and school, can be maintained while at the same time guaranteeing quality in teaching
- Development takes time
- Development might be costly
- There is discussion on the appropriate methods
- Might be difficult to find one method for all students, given their different background and knowledge.

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Discussion 2: Specific refugee tracks should start in nursery schools

- + Accelerates the learning process of national language by starting at the earliest possible moment
- + Accelerates social integration from the earliest stage
- Additional funding necessary to increase infrastructure and staff at nursery school level

Discussion 3: the funds appropriated for refugees should be “colored”, which means it can be tracked by the government and can solely be invested in infrastructure/staff for specific refugee tracks instead of being absorbed by schools' general funds

- + Provide teachers in specific tracks for refugees with the necessary infrastructure and means
- + Compensates lack of financial means for undocumented children
- Schools' general financial incentive to attract refugees might disappear
- Schools might be best placed to assess which investments will help refugee learners most, which does not necessarily needs to be an extra investment in (staff/infrastructure for) specified tracks

Discussion 4: Education should become a central part in our immigration policy. Capacity of and expertise available in schools should be considered when deciding on where to house families during their procedure. If a country has several language areas, transferal over one of these language borders is detrimental to the learning process of the refugee learners.

- + Stability in education is essential to the development of the child
- + Stability through education is essential to children's psychosocial wellbeing
- The learning process of underage refugees should not prevail over family reunification, holding together acquaintances, etc.
- Aligning immigration policy and education policy will only be successful if there are sufficient housing facilities close to schools that have the capacity to organize specific tracks for refugees

Discussion 5: Should specific tracks for refugees be limited to schools with special expertise (segregation during a transition period), or should refugee learners be placed together with other learners in all schools?

- + Allows teaching by experienced teachers in experienced learning environments
- + A rational and well thought-through composition of (possible temporary) specific class groups for refugees can improve the learning process
- Loss of autonomy, while system function sufficiently at the moment
- Need to align schools with specific tracks for refugees with migration policy and housing facilities
- Might impede quick(er) social integration
- If separate classes result in de facto segregation, rather than being a method of effective integration in the school system, it becomes unlawful

B. Teacher training

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Discussion 6: teachers who are teaching in specific refugee tracks should be trained in (some essential elements of) immigration law, thus allowing them to answer basic questions of learners and their parents concerning their legal status and the procedures that are relevant for them.

- + They can act as first contact point for families that often lack sufficient contact with national authorities or NGO's, especially after they have settled in a community
- + Allows teachers to adapt personalized tracks to the prospects of children (if such is needed), based on their expected stay in the country
- + Allows teachers to answer children's personal questions on their asylum track
- Teachers can never replace immigration lawyers
- Liability if wrong information is given
- Assessment a priori is difficult, and a teacher might be mistaken

Discussion 7: a (digital) database and/or forum should be created, allowing teachers in specific tracks for refugees to share best practices.

- + Easily accessible for all teachers
- + Allows transferal of practical tips & tricks, which are difficult to grasp in a methodical approach
- Development takes time
- Development might be costly

C. Content of special programmes

Discussion 8: If governments are not willing to promise that refugees will be able to stay in the country after the situation in their homeland has changed, the government should reconsider the position of certain skills in the curriculum designed for them, especially the predominant position of the national language in that curriculum, since that skill is almost certain to be rendered useless if they have to leave the territory.

- + Pupils acquire skills that are more universal, which might be useful upon extradition
- Knowledge of the national language is important in order to take part in society during their time on the welcoming country's soil
- Seems very unlikely that the national legislators would be willing to change the legislative framework and delete learning the national language as the core element of any subsidized specific track for refugees

Discussion 9: The position of mother tongue and language spoken at home in refugee families should be reassessed in a school context (in class, on playground, etc.)

- + Might have positive impact on general learning process if learners are acknowledged in their existing knowledge and identity.
- + Recognition of learners' identity is fundamental in their development and wellbeing
- Practical difficulties for teachers if they do not understand what is being said by learners
- Not everyone agrees that social integration benefits from this

Discussion 10: The specific curriculum for refugees should allow for discovery of and informing on the country of origin, culture of origin and education of the mother tongue.

- + Helps learners to develop their social identity in an informed way
- + Refugees remain in touch with their homeland, making potential extradition less stressful
- Challenging to organize
- Some disagree that this is the best way to reach social integration
- Some countries have a strict legislative framework that leaves little room for additional foreign languages in the curriculum

D. Outside of the school

Discussion 11: Communication between settled refugees and locals should be intensified. To do so, schools can construct a sustainable network of local youth organizations, sport clubs and arts associations that are willing to receive newcomers. The school can take a central role in this process.

- + Distributes burden of social integration over multiple organizations
- + Positive effects on social wellbeing of learners and their family are to be expected
- + Positive effects on the learning progress, especially that of the national language, are to be expected
- How are membership, outfits, instruments, etc. funded?

Discussion 12: Refugee parents should be intensely involved in their children's education, especially since they will be undergoing a similar learning track of the national language. Language education tracks should be aligned between learner and his/her family.

- + Parents' involvement reinforces children's learning process
- + Aligned language tracks improve progress for children & parents alike
- Challenging to organize, especially since the institutions that teach the national language to adult refugees or to underage refugees are often different

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