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INTERNATIONAL LEGAL
PROTECTION OF THE RIGHT TO
EDUCATION FOR REFUGEES AND
ASYLUM-SEEKERS
DEVELOPMENTS AND CHALLENGES

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ABSTRACT

Purpose – The highest refugees and asylum-seekers crisis was reached in 2015. Their right to education constitutes a relevant tool to lift their lives. The present work examines the state of development of this right and specifically the most recent developments which are taking place as significant number of refugees do not benefit from this right as they do not access or they are at risk to abandon or fail in school.

Research question – This work is related to how the state of development of the right of refugees to education can fully ensure the enjoyment of this right to all refugees and asylum-seekers.

Main findings – States recognized and are highly committed to ensure the right to education to all refugees and asylum-seekers. Significant advancements of the framework continue to advance the enjoyment of this refugees' right. The major difficulties do not lie in the development of the law, but in the implementation. More efforts are needed between many actors beyond primary education to ensure secondary education and vocational training. There are many challenges ahead (cultures, languages, bureaucracy, etc.). But, countries seem to be highly polarized on the issue and sometimes spread very different messages as well as policy solutions.

1. INTRODUCTION

1.1. GENERAL BACKGROUND

Education is the basis for growth and development at both levels of the individual as well as of the society. Indeed, “[t]here is no more powerful transformative force than education – to promote human rights and dignity, to eradicate poverty and deepen sustainability, to build a better future for all, founded on equal rights and social justice, respect for cultural diversity, and international solidarity and shared responsibility, all of which are fundamental aspects of our common humanity.”¹ The importance and essential role of education has been constantly admitted throughout the history and it is the road to personal and social transformation. From its transformative force for all human beings and communities, it is recognized as a human right in itself.

Education allows instruction in the values underpinning human rights. The fact for children to receive education in human rights can positively impact in the future projection of achieving a world that is more consistent and respectful of human rights, and making a more just and peaceful world possible. Recognizing this essential role of education for all human beings and communities, requires to afford particular attention to specific vulnerable groups of people. Education has undeniable importance for those in dire need, more particularly the refugees and asylum-seekers.

The highest level of forcibly displaced people since the end of the Second World War (WWII) was reached in 2015.² At present, it is estimated that 65.3 million people are either asylum seekers, internally displaced persons and refugees.³ Children represent half of the total number of these displaced people⁴. Refugees are estimated at 16.1 million including 6 million children and adolescents worldwide, under UNHCR mandate.⁵ Consequently, a significant portion of refugee children and adolescents do not benefit from their right to education.

¹ Bokova, I & Tang, Q. 2015, p.4.

² UNESCO & UNHCR. 2016. p.2.

³ UNESCO. 2017. p.6.

⁴ *Ibid.*

⁵ UNHCR. 2016. p.3.

In 2015, among six million refugee children and adolescents of school age under UNHCR's mandate less than 50 % of them had access to school.⁶ Only 2.3 million were in school.⁷ 3.7 million were out-of-school (with 1.75 million refugee children out of primary school and 1.95 million refugee adolescents out of secondary school).⁸ Among those with access to school, *"1.75 million refugee children in primary school and the 550,000 refugee adolescents in secondary education were in need of increased support to help them stay and succeed in school"*.⁹

Therefore, refugees, education is increasingly viewed as the "fourth pillar" or a "central pillar" of humanitarian response¹⁰ intended to empower refugees (especially children and adolescents among them) in order to cope with vulnerable situations and build better future. Other pillars are food, shelter and health. Beyond this recognition, refugees and asylum-seekers themselves have a high consideration for their education.¹¹ Seven important reasons about why the right of education is of critical significance and relevance for them can be enumerated:

1. In a context of hardship, education is the way forward for them to look into the future. It could be a fruitful way for rebuilding refugee's children and adolescent lives through social interaction, the desire to learn or the enjoyment of obtaining new skills and competences for their future.
 2. Quality education could be a way to rebuild their broken histories, their interrupted individual and collective lives for prosperous and peaceful future.¹²
- C. Power writes: *"An empowering education is one that builds the human resources we need to be productive, to continue to learn, to solve problems, to be creative, and to live together and with nature in peace and harmony. When nations ensure that such an education is accessible to all throughout their lives,*

⁶ UNHCR. 2016. p.8.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Lubbers, R. & others. 2001, pp. 2, 75

¹¹ See Midttun, E. 2000, and Lubbers, R. 2001.

¹² UNESCO. 2017. p. 6

a quiet revolution is set in motion: education becomes the engine of sustainable development and the key to a better world.”¹³

3. Education in the context of a camp or a settlement could be a very efficient way of passing on messages about positive feelings, sense of belonging, about conflict resolution or citizenship, health or landmines, community based approaches or capacity building exercises.¹⁴
4. Education could be an important way to tackle a relevant needs and values for refugees as clearly put forward by the Special Rapporteur for the Right to Education that: *“Resources, like language and cultural and social ties, do not always move easily; they have value, and can be culturally and socially leveraged to secure social mobility and social justice in one community, but not in another. Such differently valued linguistic and cultural knowledge and resources make it difficult for those who move over borders — in this case migrants, refugees and asylum-seekers”*¹⁵
5. Education is the most powerful element in one of the critical issues connected with these groups. The period of their stay should be a time of interaction with the receiving culture and a time of a certain level of integration of the two cultures, often developing the seeds for a richer and fuller culture. Education can turn isolated, marginalized groups into exchange and interaction, building strong societies even in the case of being transient, which could be otherwise seen as quite normal for very mobile and changing societies but where inclusion is a strong drive for success.
6. Ruud Lubbers magisterially stresses that: *“It is impossible to calculate the immense costs that are incurred by depriving refugees of education. A refugee who goes without education cannot look forward to a more productive and prosperous future. A refugee who is unable to attend school or a vocational training course is more likely to become frustrated and involved in illegitimate*

¹³ Power, C. 2015. p. 7.

¹⁴ Lubbers, R & others. 2001, p 6.

¹⁵ Muñoz Villalobos, V. 2004, point 13.

or military activities. A refugee who remains illiterate and inarticulate will be at a serious disadvantage in defending his or her human rights. The education of refugees is an important but neglected humanitarian issue."¹⁶ This author work was instrumental in bringing new ideas, information and resources to the challenge of providing education to the world's refugees.

7. For the present research, the strongest reason appears to be the desire to learn from the own refugees and asylum seekers. As expressed by Michael Møller, Director-General of the United Nations Office at Geneva, with regard to the present Syrian refugee crises: according to the feedback from people working in refugee camps, the main reason people are leaving Syria is not the crippling violence in the country. *"The number one reason why people leave Syria is not [only] the bombs or the food or the cold, it's because they want to find educational opportunities for their children"*¹⁷ This is also in total accordance with the testimony of the High Commissioner for Refugees: *"Contrary to popular opinion, (...) while refugees undoubtedly suffer a great deal of hardship and trauma, they also show tremendous determination to make the best of a bad situation and to prepare for the day when they can resume a normal way of life. This determination is to be seen most clearly in the very high value which refugees place on all forms of education. Indeed, experience shows that once refugees have met their basic need for food, water and shelter, their primary concern is to ensure that their children can go to school"*¹⁸

In a moment when societies have the capacity of being more connected, it is ironic that there is significant evidence that the gap between tolerance and lack of is clearly growing. Huge pocket for intolerance and conflict remains. Still education seems to be the key of these different turning points. In this context the asylum-seekers and the refugees stand in the middle as a force which can turn either way. They stand either as a potential for development and peace or as a source of disintegration, isolation, frustration and conflict. The key issue is how the right to education is exercised and

¹⁶ Lubbers, R. 2001. p.3.

¹⁷ Ridley, Louise. UK: The Huffington Post, 2016. Available in: http://www.huffingtonpost.co.uk/entry/refugee-crisis-facts-un-michael-moller_uk_5734277ee4b01359f6866db0

¹⁸ Lubbers, R. 2001. p.3

developed for them, especially with regard to provide access to those who do not attend school.

1.2. RATIONALE OF THE STUDY

The rationale behind the present study is based on three motivations. The *first motivation* behind the choice of topic of this thesis is the acceptance that: *“Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that the son of a mineworker can become the head of the mine, that a child of farm worker can become the president of a great nation. It is what we make out of what we have, not what we are given, that separates one person from another.”*¹⁹ As from above, education is the tool for change and is the main power for transformation of societies. There is nothing so strong and powerful as education to bring silently but profoundly a change of possibilities in the individuals and in the social order.

In the current development context, the present thesis also appears relevant given the growing regard for the capacity of education in terms of transformation. According to the main concepts embraced in *Envisioning the Post 2015 Development Agenda*, education beyond being a fundamental right in itself, it is also “an enabling right” and emerges as a catalyst for individual empowerment, the development of equitable societies and the promotion of social justice. It is seeing as the bedrock of sustainable development, creating growth for individuals and stable societies, playing a crucial role in shaping personal and collective identities, promoting social capital and cohesiveness and the formation of responsible citizenship. Summing up on the concepts in the 2030 Sustainable Development Agenda, the provision of education contributes to the eradication of poverty, the promotion of social cohesion, good governance and participatory citizenship, and improves health and gender equality while having a key role to play in conflict prevention and peace building as well as in disaster preparedness and risk reduction.

¹⁹ Dieter, K. 2006. p.1

Education is the tool which requires patience and dedication, it requires conviction and commitment but also support and structures. That is why the right to education is a key concept, a way forward and a necessary line of action to bring about, sometimes even creating an element of pressure, responsibilities and accountability on this right for those who need to exercise it.

The *second motivation* comes from the critical moment the global society is at, in relation to refugees and asylum-seekers. There an important increase in the volume and the dimension of refugees and asylum-seekers in some of the countries of Europe, making them places of transit or destination. This research is timely and necessary to contribute to this right of education coming to the front line in the current situation. It is important to understand the legal nature of the right and its potential in order to use it to the limits of its capacity.

The *third motivation* comes from the approach. It is not enough to look at the phenomenon as an event, an emergency but from the point of view of reinforcing the law and developing the instruments to deal with a right which is of the greatest importance for the development of the individuals and for their integration in the receiving societies. It is vital for Europe to grow in inclusion and to develop the tools which would help to achieve it. The enjoyment of the right to education cannot be least accessible to those who need it most: the people who move from conflict areas or situations of emergency such as refugees or asylum seekers.

The international legal protection or the effective enforcement of the right to education is one of the issues which is currently of the highest importance. This right has been achieved progressively, acquiring more and more importance. The growing need for the protection of this right derived in the creation of the international normative framework which is increasingly of greater acceptance by the States. It is based on the cornerstone which is the Universal Declaration on Human Rights (UDHR), particularly in its Article 26 where it states expressly the right to education.

This international framework is also re-strengthened by the adoption of the right to education in the different State's Constitutions, its application and development as a fundamental right integrating it in the positive Law of every country. The study also

takes into consideration the most recent decisions of some regional and national courts in relation to the right to education of these vulnerable groups.

This work relates, therefore, to the explanation of the most fundamental aspects of the right to education, conceiving it as one of the instruments of justice and equality for the case of refugees and asylum-seekers. It tries to recover the essential prominence that in the whole society education has for the development and the auto-determination of every human being, overcoming the lacks of the historical past.

1.3. RESEARCH QUESTION

The *main research question* of this work is related to the enjoyment of the right to education of refugees and asylum-seekers as a tool to lift their lives independently of whether they are in places of transit or destination. While the world has adopted the Sustainable Development Goals (SDGs) to eradicate poverty by the year 2030, a huge number of children (50 % among 6 million children refugees and 75 % adolescents' refugees²⁰) are at risk to *be left behind* because of their refugee condition. Refugee children are five times more likely to be out of school²¹ compared to other children. The situation is even worse for girls²² to have access, stay and succeed in school. In this regard, the present work analyses how the state of development of the right of all refugees to education and specifically the most recent developments which are taking place in this field can ensure the enjoyment of the right to education to all refugees.

A *first specific question* is related to how the right to education for refugees is applied and whether it can benefit all of them and have an impact in their real lives. The *second specific research question* relates to analysing how the challenges affecting this right may be undergoing at a time of unprecedented crisis and in the different stages of the displacement from home country through temporary to a more permanent residence abroad. This will also imply that the present study examines the roads ahead for the right of refugees to education. It will intend to understand the legal nature of the

²⁰ UNESCO & UNHCR. 2016. p. 3

²¹ UNHCR. 2016. p 4.

²² Van Esveld, Bill, Martinez Elin & Khawaja, Bassam. New York: Human Rights Watch, 2017. Available at <https://www.hrw.org/world-report/2017/country-chapters/global-0>; see also UNESCO & UNHCR. 2016. p. 7.

challenges, the major milestones while highlighting points where further research and development may be required.

1.4. SOURCES OF INFORMATION AND STRUCTURE OF THE STUDY

Regarding the sources of information used, the present study has been carried out through documents analysis. Diverse bibliography, mainly from authors such as Dieter K. and Singh K. as well as from (official) documents and websites of UN agencies and particularly UNESCO, UNHCR, OHCHR and UNICEF. The study's information is completed with different legal instruments, doctrinal articles, jurisprudence, some informal interviews with experts and statistics (e.g.: Eurostat, UNICEF and UNHCR).

This thesis is structured in six sections, including the present section (introduction). The second section intends to define the concept of the right to education for refugees and asylum-seekers from a legal and sociological perspectives. The third section is dedicated to the legal framework that sustains this right emanating from the UDHR. The fourth section examines the implementation of the right to education putting emphasis on the different state obligations under the international law and the capacity to make effective the enforcement and implementation of the right to education for refugees and asylum-seekers. The fifth section deals with the developments realized by the international community in the last three decades in order to improve the access and equality of opportunities in education for refugees and asylum-seekers. The sixth section is dedicated to the analysis of current and future challenges, as they relate, for instance in the Incheon Declaration: Education 2030 and the post-2015 Education Agenda as well as an analysis of the most problematic aspects for the implementation of this right to education nowadays.

2. CONCEPTUAL FRAMEWORK: THE RIGHT TO EDUCATION OF REFUGEES AS PART OF INTERNATIONAL HUMAN RIGHTS LAW

Four definitions which constitute the backbone of this work. They are the pillars where the entire foundation rests. These are: the concepts of irregular migrant, refugee and asylum-seekers and the concept of the right to education. These latter will be

defined according to legal terms although they could have different interpretations according to the interest of specific bodies to restrict or extend the limits of some of these definitions in order to afford the protection to vulnerable individuals or groups.

2.1. THE CONCEPT OF REFUGEE

Refugees, as in the chapter 1 of the Convention related to the Status of Refugee (1951), refer to all persons who are in a host country and are not able to find protection in their countries of nationality. The Convention states that the people that shall be considered as refugees are those who are “*under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2.*”²³ This latter Paragraph 2 establishes three different ways to be considered as a refugee under international law:

The *first* is the person who is staying in a country different from the country of his or her nationality because of not being able of seeking its protection for different reasons such as race, religion, political ideas, nationality etc. and left own country because of the consequent founded fear to live in it.

The *second* relates to those who do not have a nationality and are living in a host country without the necessary documents and being outside of the country of their habitual residence, due to the fact that the events which caused their exit have not changed, and they are without the intention to come back to it.

Finally, the person that has two or more nationalities, in this case, this person can be considered as a refugee under this Convention if one of his or her countries of nationality denied their protection without a well-founded reason.

This article 1 A (2) has been completed by the Protocol of 1967. In addition, there is also the definition of the Organization of African Unity (OAU) Refugee Convention (1969) that stated in its article 2: “*a refugee as any person compelled to leave his or her country "owing to external aggression, occupation, foreign domination*

²³ See Article 1 (A) 1 Convention related to the Status of Refugee (1951)

or events seriously disturbing public order in either part or the whole of his country or origin or nationality." ²⁴Also, the Cartagena Declaration in the third conclusion defines refugees including *"persons who flee their country "because their lives, security or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order."*²⁵ These legal instruments remain the cornerstone of modern refugee protection. The legal principles that they proclaim are (being) incorporated in large number of international, regional and national legislations and practices.

Thus, refugees may be defined as persons that get away of persecution or violence contexts. They cross boundaries to a host or transit country, leaving their home countries, seeking for protection and safety. Their situation is so intolerable in relation to the respect of their human rights. Therefore, it is impossible their return to their countries of nationality because it would have fateful consequences for their lives and welfare. Thus, they become internationality recognized with the status of refugees and they get the correspondent protection of States and international organizations all over the world.

The international legal instruments and mainly the 1951 Refugee Convention established the basic rights which States should provide to refugees. The fundamental guarantee of protection is that States should assume a commitment of not returning refugees to situations where their lives and welfare would be in danger or risk. State primary responsibility for this protection of refugees comprises among others: *"safety from being returned to the dangers they have fled from; access to asylum procedures that are fair and efficient; and measures to ensure that their basic human rights are respected to allow them to live in dignity and safety while helping them to find a longer-term solution."*²⁶ The international organizations assist the States to implement their responsibilities working closely with governments, advising and supporting them.

²⁴ International Organization for Migration, 2011, available at: <https://www.iom.int/key-migration-terms>

²⁵ *Ibid.*

²⁶ UNHCR, 2015, available at <http://www.unhcr.org/55df0e556.html>

2.2.THE CONCEPT OF ASYLUM-SEEKER

An asylum-seeker can be defined as a person who submits a request for being granted refugee status. They are those who seek international legal protection and their claims are in process to be determined by the State in which the claim is made. In this sense, all refugees are initially asylum seekers after submitting their request. The International Organization for Migration (IOM) defines an asylum seeker as *“A person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments.”*²⁷

If the application for refugee status is rejected, the person has to leave the territory of the State. If he stays, he may become irregular migrant. And the host country would have the right to oust him or her as any other person in an irregular or unlawful situation of citizenship, with the exception of those who have the necessary permission to remain under humanitarian or other correlated grounds.²⁸

An interesting element in relation to asylum seekers is the availability in terms of data. While the other two categories are difficult to record and have a clear definition of their dimension, the data in relation to the demands of asylum and those denied or granted are easily to follow and analyse. An analysis of the statistics of EUROSTAT shows that there is an increase in 2015 (Figure 1)²⁹ in relation to the previous year with a very marked seasonal element, while 2016 (Figure 2)³⁰ starts almost at the same point where the previous year has left it. In both 2015 and 2016 there is a significant variety according to the months, with predominance of a high in summer and an important drop in the winter months. It is also remarkable that the 2016 curb remains in the level of 100,000 with a peak around 130.000 and a significant drop to 60.000 at the end of the year. This is much lower than in 2015.

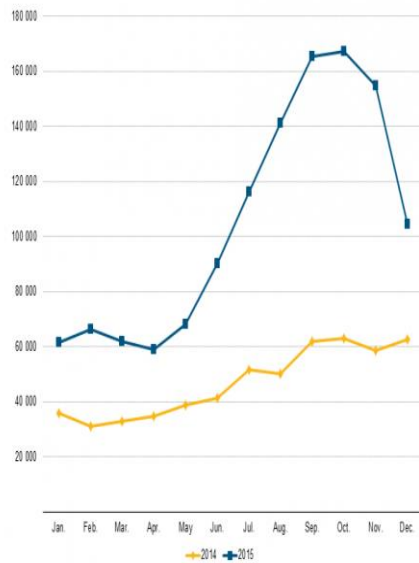
²⁷ International Organization for Migration, 2011, available at <https://www.iom.int/key-migration-terms>

²⁸ Analysis below in the next section (Point 2.3), examines the concept of irregular migrants.

²⁹ EUROSTAT, 2016. Available at http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_time_asylum_applicants_EU-28_January_2014_%E2%80%93_December_2015.png.

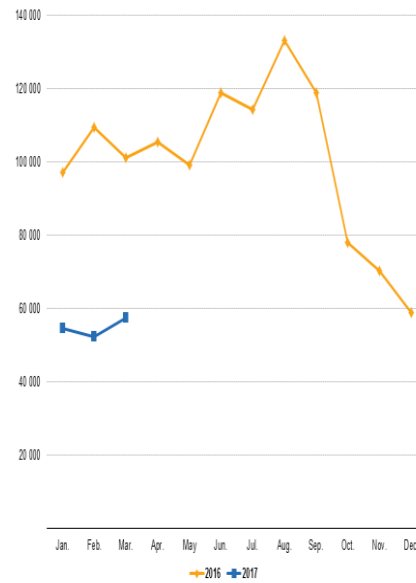
³⁰ EUROSTAT, 2017. Available at http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_time_asylum_applicants_EU-28_January_2016_%E2%80%93_March_2017_V2.png.

FIGURE 1



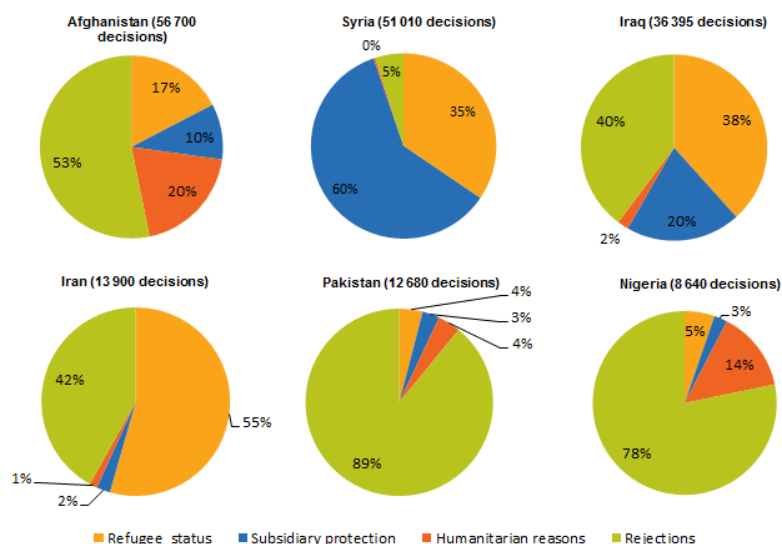
Source: Eurostat (online data code migr_asyapqctzm)

FIGURE 2



EU total, excluding March 2017 data for Austria which are not available

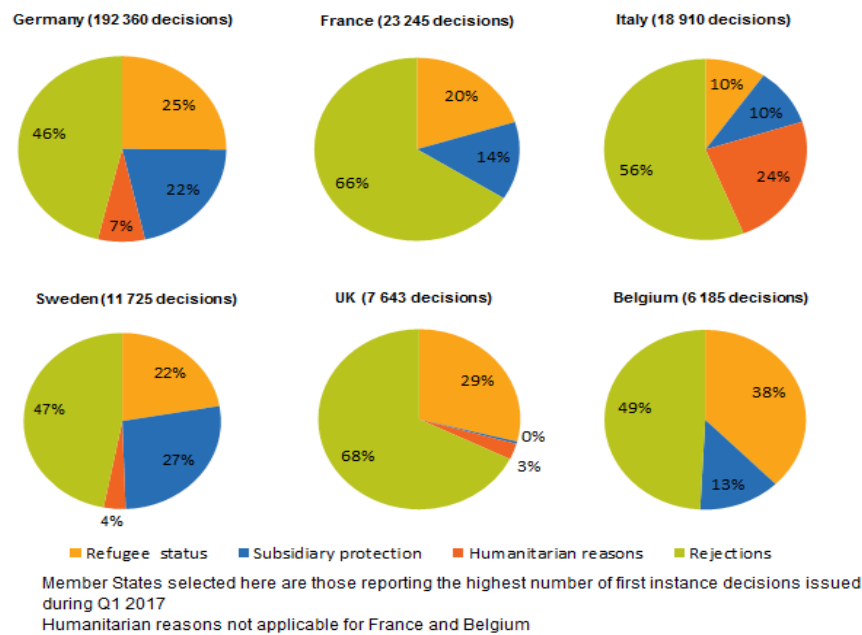
Figure 3 shows the countries where asylum-seekers have highest level of success in EU. These countries were Syria with 35% and 60% with subsidiary protection, Iraq 38% and 20% with subsidy and Iran with 55%. On the contrary, those with lowest rate of success were Pakistan with 89% of rejections and Nigeria 78%. Afghanistan records a better position than in the past with 17% acquiring status and 10% more subsidies.³¹



Citizenships selected here are those for which the highest number of first instance decisions was issued during Q1 2017
Data for Austria are not available for March 2017; EU aggregates and other indicators are based on available data

³¹ EUROSTAT, 2017. Available at [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First instance decisions in the EU-28 by outcome, selected citizenships, 1st quarter 2017 V2.PNG](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_in_the_EU-28_by_outcome_selected_citizenships_1st_quarter_2017_V2.PNG).

On the other side of the coin, looking at the receiving countries it is Germany with 54 % and Sweden with 53% of the applications accepted who are at the head of the rest of the countries of Europe in 2016 followed by Belgium with 51%. Italy has a degree of acceptance of 44% with the highest percentage for humanitarian reasons, followed by France with only 34%. The most impressive figures come from UK-The lowest percentage 31% and 0% with subsidiary protection and only 3% humanitarian protection. It is almost also the lowest in terms of decisions taken. Thus Germany and UK stand at each extreme.³²



2.3. THE CONCEPT OF IRREGULAR MIGRANT

The International Council on Human Rights Policy defines an irregular migrant as “a person who lacks legal status in a transit or host country; one who entered a state without authorisation, or entered a country legally but then lost permission to remain. Also undocumented migrant.”³³ Thus, for the receiving or transit countries an irregular migrant is a person who moves away from his or her country of origin to cross an international border to enter, stay or work in its territory without a valid authorization or

³² EUROSTAT, 2017. Available at http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_by_outcome_selected_Member_States_1st_quarter_2017_update.PNG.

³³ The International Council on Human Rights Policy, 2010, p.2.

the necessary documents that are mandatory under their domestic law. In this sense, *“where, among a flow of migrants moving for ostensibly economic reasons, there may also be many individuals who have needed to leave their countries of origin because of the risk of persecution or other human rights abuses to which they risk being subjected if they remain and therefore have international protection needs.”*³⁴

Commonly, the term irregular or illegal migrant is used indistinctively, but in this work, the last term will be avoided. It must be bore in mind that acts of people can be legal or illegal but the own person cannot be illegal. This consideration would deny a person his or her humanity and as international human rights law stated, migrants as every human being have the right to be recognised everywhere they go before the law. Moreover, the entry, stay or work in a country without regular status is not a crime; it is an infraction of administrative laws. Thus, the term illegal carries a connotation of criminality that is the reason why the IOM and other international organisations restrict the use of the term “illegal migration” to cases of smuggling of migrants and trafficking with human beings.

The Special Rapporteur on the rights of non-citizen emphasises that the State’s powers to require the departure of those who are without the necessary documents in their territory is not limitless: *“There is significant scope for States to enforce their immigration policies and to require departure of unlawfully present persons. That discretion is, however, not unlimited and may not be exercised arbitrarily. (...) Immigrants and asylum seekers, even those who are in a country illegally and whose claims are not considered valid by the authorities, should not be treated as criminals.”*³⁵

2.4. RELATIVE USE OF REFUGEE DEFINITION DEPENDING ON REGIONAL AND STATES REGULATIONS

The relative clarity in the legal terms has a level of evolution through time and adequacy to the different contexts. They are difficult in practice to connect to reality. Besides, there are the varying interests of countries. It is also enlightening, in this

³⁴ Council of Europe. 2008. p.11.

³⁵ Cholewinski, Ryszard, 2005. p. 9.

respect, to look at the different regional regulations and conventions that have also addressed the definition and conditions of refugees. This is the case with the European Union. Its member States adopted the common European asylum system through the adoption of the Dublin III Regulation in July 2013-16. In Africa, among the most important conventions is the 1969 Convention Governing the Specific Aspects of Refugees in Africa. Latin American countries adopted the Cartagena Declaration on Refugees in 1984. The Cartagena Declaration, like the 1969 OAU Convention, broadened the definition of the term “refugee” as found in the 1951 Convention to include persons who have fled their country because their lives, safety or freedom were threatened by generalized violence, foreign aggression, internal conflicts or massive violation of human rights.

According to UN Department of Economic and Social Affairs, in recent years, it has become increasingly difficult to find countries willing to accept substantial numbers of refugees. Moreover, some who seek asylum or claim refugee status may have migrated to escape poverty and may not qualify for refugee status. In fact, some countries have established separate humanitarian categories for those who do not fit in the 1951 UN Convention. The relative and different use of refugee definition depending on regional and states regulations can result in divergent treatment of refugees, especially with regards to their right to education.

2.5. THE RIGHT TO EDUCATION

The definition of the term “education” is fundamental. *“Only once the meaning of this term has been outlined, will it become clearer what it means to say that somebody is the holder of a right to education.”*³⁶ In relation to the great importance of education, the Supreme Court of the United States of America, in the case of *Brown v. Board of Education of Topeka*,³⁷ held that: *“Today, education is perhaps the most important function of state and local governments. (...) It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally*

³⁶ Dieter, 2006. P. 17.

³⁷ *Brown v. Board of Education of Topeka* 347 U.S. 483 (1954).

to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”³⁸

Thus, the US Supreme Court held that education is a core requirement for the proper exercise of the rights and duties derived from citizenship. *“Education is also seen to encompass making persons aware of the cultural and spiritual values of their community. It is seen as a process of transmitting those values from one generation to the next.”*³⁹ Furthermore, education confers knowledge and abilities which allow individuals to undertake vocational and professional training and to earn a living. The court also stresses education as a tool to deal with the circumstances of everyday life. Thus, education offers the individuals the skills *“to adjust normally to their environment.”*⁴⁰ Accordingly, education can be defined as: *“all activities by which a human group transmits to its descendants a body of knowledge and skills and moral code which enable that group to subsist.”*⁴¹

Since the right to education is one of the human rights recognised by the UN as *“an essential guarantee that makes possible to life as human beings. Without them we could not cultivate neither exercise completely our qualities, our intelligence, talent and spirituality”*⁴². They are inherent rights of all human beings, without any kind of distinction of gender, ethnic origins, nationality, place of residence, religion, language or any other condition. As Caballero Vasques says: *“Human rights have a high ethical content that helps the coexistence of the human beings, through a mutual respect and a full development.”*⁴³ From a historical perspective, the UDHR marked a milestone in the history of humanity. There is still a great deal of development to take place but the idea of having common agreements as well as being able to verbalise them marks a landmark and stand for a great achievement.

Regarding the right to education, it could be defined as *“a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom*

³⁸ *Brown v. Board of Education of Topeka* 347 U.S. 483 (1954).

³⁹ Dieter, K. 2006. p. 18.

⁴⁰ *Ibid.*

⁴¹ M’Bow. A. & Mialaret G. 1979. p. 11

⁴² UN, 2013. Available at <http://www.un.org/es/rights/overview/>

⁴³ Caballero Vazques, Á. 2009, p.40.

and empowerment and yields important development benefits.”⁴⁴ From the adoption of the UDHR, the international community has been aware of this right being a fundamental right gaining more and more recognition and better implementation through time.

This right is considered in the “*Global Education first initiative*” of the former UN General Secretary, Ban Ki-moon, where its multifaceted and enveloping character is also recognised. However, the international community has yet to recognize the full potential of education as a catalyst for development.

With regard to its scope, the application of the right to education varies according to different moments of a person’s lifetime: from the basic education, to the secondary, the professional training and the higher education as well as the formation throughout life. Thus, as Márquez Carrasco mentions: “As a right in the field of the person’s autonomy, education is a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens.”⁴⁵ It is expressly recognized and guaranteed to all people as right-holder, regardless of nationality, into the normative texts of international law.⁴⁶

In this regard, the right to education is clearly protected within the constitutions of majority of States. However, some other constitutions do not have explicit mention to this right. In any case, education has a fundamental importance in the exercise of the State’s public function. Although the Supreme Court of the United States, in the case of *San Antonio Independent School District v. Rodriguez*,⁴⁷ denied the right to education as a fundamental constitutional right; in the case *Plyler v. Doe*,⁴⁸ this same court latterly held that: “*Public education is not a “right” granted to individuals by the Constitution. But neither is it merely some governmental “benefit” indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction (...) public schools [is] a most vital civic institution for the preservation*

⁴⁴UNESCO, 2016, available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/browse/1/>

⁴⁵ Márquez Carrasco, C. 2008, p. 120.

⁴⁶ Asis, R. & Others. 2006, p.113. See also Spreen, Carol A. and Vally, S. 2012, pp. 71-89

⁴⁷ *San Antonio Independent School District v. Rodriguez* 411 U.S. 1 (1973)

⁴⁸*Plyler v. Doe* 457 U.S. 202 (1982)

of a democratic system of government, and (...) the primary vehicle for transmitting the values on which our society rests (...)."⁴⁹

2.6. RELATIONSHIP BETWEEN THE RIGHT TO EDUCATION AND OTHER HUMAN RIGHTS

The understanding and the doctrine on human rights clearly defend that the human rights are all inter-related, they belong to a particular way of understanding the human beings, relations among themselves as well as growth and development of society. This could be seen as an emanation of their character of universality and inalienability as they jointly belong to all the people in the world. The consideration of how the right to education or its violation can affect asylum seekers or refugees is an issue of crucial importance, it is part of a system of behaviour with other elements interconnected.

The interrelationship between categories of human rights is well recognised in the principles of indivisibility: *"Human rights are indivisible. Whether civil, cultural, economic, political or social, they are all inherent to the dignity of every person. Consequently, they all have equal status as rights and cannot be ranked in a hierarchy."*⁵⁰ The principles of interdependence and interrelatedness involve that: *"The realization of one right often depends, wholly or in part, on the realization of others"*⁵¹ This is also acknowledged by the UN General Assembly emphasizing that: *"(...) democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing".*⁵²

Interaction between the right to education and other human rights is indeed clear. The right to education often makes possible to exercise other human rights. Issues of democracy and development are rooted in the way these concepts and values are understood and developed by a person and a collectively. This is the same with terms of fundamental freedoms that carry with them ways of understanding and educational systems that cultivate them. Even the issue of respect is clearly one of the attitude which

⁴⁹*Plyler v. Doe* 457 U.S. 221 (1982).

⁵⁰ UNICEF & UNESCO, 2007, p.10.

⁵¹ *Ibid.*

⁵² UN World Summit, 2005, Point 135.

is clearly identified by the Council of Europe as one of the basic elements in relation to proposing a model for education⁵³.

The right to education for refugees will be key for the development of an understanding and the acquisition of the competences *which need to be acquired by [them as] learners if they are to participate effectively in a culture of democracy and live peacefully together with others in culturally diverse democratic societies.*⁵⁴ It would be difficult to understand how this learning and growing and participating could take place in the case of violation of their right to education and what the consequences and the impact could be.

A reference to different human rights can give clear evidences of this interconnection. As examples: at the level of legal defence of the right to education is not independent of other human rights. Therefore, "*(...) in the case that a national legal framework stipulates no specific constitutional protection of the right to education, it can be actioned by invoking other constitutional rights which are affected by a violation of the right to education. The interdependence of human rights clearly shows us that the cited violation also involves the violation of the right to equality, to the honour of the person in terms of his self-image, psychological integrity, (...) among others.*"⁵⁵ How could a refugee use the right of the legal defense if s/he cannot talk the language or understand the society s/he lives in?

There is a utilitarian character of the role of education in this sense. Education has to serve for the promotion and consolidation of other human rights. Any education contrary to respect for human rights has to be considered, as not a true education but rather as a false education. Implications for the vulnerable groups (especially refugees) are clear from a utilitarian view. It is evident that peace and sustainable solutions for their conditions are intimately related to the full enjoyment of their right to education.

The relationship between the right to education and other human rights may also be seen reflecting, for example, in the human right to equality (Article 7, UDHR).

⁵³Council of Europe, 2016, p.5

⁵⁴ *Ibid.* p.9.

⁵⁵Cisternas, M.S. 2010. p. 51.

Moreover, in the right to education itself, the right to equality prevails as expressly set forth in international standards. Thus, there are instruments such as the Convention against Discrimination in Education (CDE (Article 1)).⁵⁶ This interconnection between the right to education is often referred to as the right to access to education⁵⁷ or in a more specific way as it relates to the refugees, equality and non-discrimination.

The same could be mentioned about the interrelation with the right to freedom of opinion and expression (Article 19 UDHR). Without proper education, for example, reading, writing, proper understanding of language or scientific or mathematical skill would be impossible to ensure enjoyment of these rights and others such as freedom of association or meeting (Article 20 UDHR).

Furthermore, it must also be raised that the right to education is developed in an environment of freedom in which many other rights inherent to any person are exercised. The Special Rapporteur on the Right to Education mentions: "*that education should constitute an area of freedom for the exercise and learning of all human rights, responsibilities and capabilities*".⁵⁸ The right to education is the key to the enjoyment of all human rights. The realization of the right to education would enable the enjoyment of, inter alia, the right to freedom of opinion and expression and the right to participate⁵⁹ in the community life.

The above mentioned report also declares that "*the exercise of democratic citizenship, for example, is not a matter arising from orders or instructions of school supervision, but the atmosphere of the classroom and the school, which is the field where it promotes and enables students to express their ideas, value the freedom of thinking on their own and respect the opinions of others. The right to education includes the practice of freedom.*"⁶⁰ The capacity to be free relates to several other conditions such as the possibility of being able to express own opinions in a language and form which is understood, the capacity to relate to others, to understand the elements of a culture and how they relate to each other, the capacity to create ties with other people,

⁵⁶ Article 1 Convention against Discrimination in Education, 1960.

⁵⁷ UNICEF & UNESCO, 2007, p. 29.

⁵⁸ Muñoz Villalobos, V. 2004, point 44.

⁵⁹ *Ibid*, point 66.

⁶⁰ *Ibid*. point 117.

among others. All these elements require education and denying the right to education automatically implies denying any other human rights, as a consequence.

In addition, it is also recognized that education, as a means of social and economic promotion, establishes the basis for achieving economic and social freedom, necessary for many economic and social rights. It is through education that competences and skills that people need are obtained for their jobs and professions to be enhanced. It is with education that they will develop their full potential and exercise any other human rights, such as the right to life and health ⁶¹ Education can only fulfill that promise if it is of high quality, which means that it must be available and accessible, acceptable and adaptable (Tomaševski, K. 2001).⁶²

3. THE LEGAL FRAMEWORK OF THE RIGHT OF REFUGEES TO EDUCATION

Adequate fulfilment of the right to education for refugees requires that several provisions of international law be articulated and respected in transit and host countries. Although legal provisions protecting the right of refugees to education are from different nature and sources, in accordance with Article 38 of the ICJ Statutes, the present study considers that they all form part of one legal framework intended to the benefit of refugees in their vulnerable situation. Therefore, refugees benefit from the right to education whether it is guarantee by international conventions, international custom, general principles of law, jurisprudence, legal doctrine or as emanating from equity (*ex aequo et bono*). However, analysis below mainly focus on conventional and customary nature and sources of the right to education for refugees.

3.1. CONVENTIONAL NATURE OF THE RIGHT TO EDUCATION FOR REFUGEES.

International treaties and declarations of human rights form a statute which meets the minimum human rights which must be guaranteed to all human beings. In this way, these minimum rights are taken into account as a basis in State legal systems.

⁶¹ INEE, 2010, p.7.

⁶² Tomasevski, K. 2006, pp. 29–30.

Thus, the greatest geographic scope where these human rights and in particular the right to education have been configured is within the UN framework. Several normative texts that promote and develop the right to education exist. Within international law these regulatory bodies are considered as norms of a general nature, i.e. rules valid for the entire international community.

Therefore, the treaties and declarations issued at the heart of the UN set the universal legal core of human rights. Thus, object of this study are the most important treaties adopted by this Organization: The UDHR and the ICESCR. Articles 28 and 29 of the Convention on the Rights of the Child (1989) will also be taken into consideration and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) in its articles 43 and 45. Specific to refugee concerns, the Convention relating to the Status of Refugees (1951) will be examined as well as its 1967 Protocol in Articles 4 and 22 and the Convention against Discrimination in Education (1960) in its Article 4.

3.1.1. GENERAL INTERNATIONAL CONVENTIONS:

3.1.1.1 THE UDHR AS THE CENTRAL AXIS OF THE RIGHT TO EDUCATION. ARTICLE 26.

All human rights and in particular the right to education, are internationally emanation of the UDHR from which they historically depart from. UDHR was adopted and proclaimed in Resolution 217 A (III) of 10 December 1948 by the UN General Assembly, in Paris. Being adopted in a forum made by representatives of the majority of States, it is regarded as the common ideal for which peoples and nations must jointly strive.

Although this is a declaration whose legal nature is not part of compulsory application or binding international law, in the strict sense, thanks to its acceptance by States around the world, it has acquired a great moral weight as a normative source inspiring various States' constitutions. Therefore, the UDHR binding force is acknowledged: *"from its realization in other texts of undoubted normative nature (the international covenants of 1966) until its incorporation via jurisprudence into the legal*

acquis of national systems."⁶³In this way, the UDHR has been considered since its enactment as the source for the creation of a large number of international legally binding human rights treaties and the steady progress of those rights in States. In addition, *"It continues to be an inspiration (...) in addressing injustices, in times of conflicts, in societies suffering repression, and in our efforts towards achieving universal enjoyment of human rights."*⁶⁴

The UDHR is a universal recognition of basic rights and fundamental freedoms inherent to any human being. Through this statement, *"Governments accepted the obligation to ensure that all human beings, rich and poor, strong and weak, male and female, of all races and religions, are treated equally."*⁶⁵

The right to education is specifically recognized through the three paragraphs of Article 26 of the UDHR.⁶⁶ The first paragraph of this article refers to the minimum content that the right to education should guarantee. This precept enshrines the universality of the right to education, and establishes the essential conditions for its development in line with the principle of equality. In addition, it can be said that: universality and equality, are based on the common essence of the rest of human rights, which is the dignity of each person from the moment of birth until death.

In addition to these formal elements of the right to education in this same section, other aspects such as the compulsory and free nature of basic or elementary education may be found. Meix Cereceda P. describes the content of this article as: "a pyramidal structure with: the base (Elementary) will be as wide as possible, that is, universal; the intermediate section (technical and vocational training) should tend to generalization and, finally, the peak (higher education) should be accessible in accordance with the merit of each and without unlawful discrimination."⁶⁷

Paragraph 1 of Article 26 can be developed, and thus, what this precept defines as elementary and fundamental instruction, is what in the legal system of every State is

⁶³ Meix Cereceda. P. 2014, p. 32.

⁶⁴ UN, 2016, Available at <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>.

⁶⁵ UN Department of Public Information, 2008. p 53.

⁶⁶ See Universal Declaration of Human Rights art. 26.

⁶⁷ Meix Cereceda. P., 2014, page 33.

qualified as basic or primary education. In this respect, *"primary education is the most important component of basic education."*⁶⁸

The second element, is technical and professional instruction that should be generalized, i.e. accessible to the great mass of people requiring it. It may be added that *"we would consider as technical and vocational education, higher vocational training studies, although, as indicated by the expression, in this case they are already higher studies, a concept that is broader than university studies."*⁶⁹

The third element refers to higher education. In this case, access to this level has to be restricted based only on the merits of the students, and excluding any other method of discrimination (equal access for everyone). The inability of States, in the current situation, to establish a universal and generalized system at this stage of education may be seen here.

The political orientation of education as referred to in the second paragraph of Article 26, mentions the full development of the personality and its socializing capacity. It also strengthens the ability to inculcate in children values of democratic coexistence and respect for human rights, values that are mentioned in this article: understanding, tolerance and friendship; as well as to encourage the initiatives of the UN for the achievement of peace. However, Meix Cereceda P. points out that this proliferation of targets within the educational system *"runs the risk of being exaggerated and even proving ineffective if they are expected to resolve all the problems of society"* ⁷⁰, advocating a balance between all these aspects of the same.

In the third paragraph, the excessively abstract and indeterminate terms of the formulation of the right of parents can be criticized. Thus, the fact that their right to decide on the education of their children is declared as "preferential" imposes restrictions of action on other subjects which assume educational tasks, notably the State which has to carry out its duties, while always respecting the will of the parents in a certain degree. However, other international normative texts have saved the vagueness

⁶⁸ UNICEF, 1999, p. 1.

⁶⁹ Meix Cereceda P., 2014, p. 34.

⁷⁰ *Ibid.* p. 35.

of the formulation of the educational authority of parents in the UDHR, making it clear that it is far from being unlimited.

3.1.1.2. ARTICLES 13 AND 14 OF THE ICESCR (1966).

Articles 13 and 14 of the ICESCR are two articles intended to provide regulatory effectiveness to the postulates of the UDHR, but from a different perspective. The International Covenant on Civil and Political Rights (ICCPR) is very brief on the right to education, to which it devotes only Article 18.4 which only mentions *the right of parents to choose the kind of religious and moral education that they wish for their children*. However, the ICESCR is much more extensive, and in Articles 13 and 14 it presents probably the broadest and most ambitious design of human right to education within the international legal documents.

For a comprehensive review of these important articles, it can be noticed that *“Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law.”*⁷¹ Beginning with the first paragraph of this Article 13, it can be seen that the universal recognition of the right to education was already contained, with almost the same formulation, in Article 26.2 of the UDHR that determined the political values that should inspire the education.

Point 2 of this article also includes the three types of teaching in article 26.1 of the UDHR, but with an important difference, which is the commitment of the States to secondary and higher education to also implement progressively free education at these stages. Also other principles are considered, such as the effort to get a basic education for people who have not received or completed primary education and implement an adequate system of scholarships, and to improve the conditions of teachers. In this regard, *“the obligations of States parties in relation to primary, secondary, higher and fundamental education are not identical. Given the wording of Article 13 (2), States parties are obliged to prioritize the introduction of compulsory, free primary education.”*⁷²

⁷¹ UN, 2003, p.7

⁷² Singh, Kishore & UNESCO, 2006, p. 14.

Point 3 of the article considers parental rights with regard to the education of their children, specifying the generic proclamation of Article 26.3 of the UDHR, in two faculties: first, the choice of non-public schools, in this respect States must “*provide the institutions conform to the educational objectives set out in article 13 (1) and certain minimum standards*”⁷³ and secondly, the decision on the type of religious and moral education they want for their children, thus, “*public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.*”⁷⁴

Finally, paragraph 4 of the Covenant recognizes the right of individuals to establish and run educational establishments. However, they must respect the principles set forth in paragraph 1 of the article and the minimum standards prescribed by the State, which shall be responsible for ensuring this respect. Logically these minimum State standards must not serve for the State to impose certain moral or religious standards but merely require a minimum quality and qualification of teachers, otherwise it would violate the principle established in the preceding paragraph.

It is important to also take into account the General Comment No. 13 of the Committee on Economic, Social and Cultural Rights published in interpretation of this same article 13 of the Covenant. So, it may also be relevant to examine the four characteristics that should be in education "in all its forms and at all levels", namely the "availability", "accessibility", "acceptability" and "adaptability". The first, availability, implies that there are "teaching institutions and programs of sufficient quantity in the context of the Member State"; accessibility demands that these programs and institutions be accessible to everyone physically, economically and without discrimination; acceptability requires that the methods and programs have to be relevant, culturally appropriate (in avoidance of indoctrination and discrimination) and of good quality; and, finally, adaptability would involve educational flexibility so that teaching is suited to the social changes and the needs of students in different social and cultural environments. The overlapping and indissoluble unity of these features implies that they cannot be considered separately but as an expression of the complexity of the

⁷³ UN, 2003. p.15

⁷⁴ *Ibid.*

reality of education and it is thus necessary to interpret them all, therefore, for “*the appropriate application of these “interrelated and essential features”, the best interests of the learner shall be a primary consideration.*”⁷⁵, as established in paragraph 7 of General Comment 13, a principle that has already been used by the courts of human rights and the constitutional laws of the States.

The second article of this Covenant that deals with education is number 14 which, considering the situation of Member States, which at the time of their accession to the Covenant have not yet established compulsory and free primary education in their metropolitan territory or other territories under their jurisdiction, imposed a two-year period “*to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.*”⁷⁶

3.1.1.3. THE CONVENTION ON THE RIGHTS OF THE CHILD (1989): ARTICLES 28 AND 29.

In the Convention on the Right of the Child (CRC) the explicit recognition of the right to education of the child is formulated in Article 28. States should achieve it progressively and in the basis of equal opportunities to all children. Article 28 specifies that primary education must be compulsory and free for all children; high school, funded by the State if necessary but optional; and higher education, accessible according to individual capacity.

This article also refers to the right of school students to have adequate educational information and guidance. With regards to school discipline the above mentioned article asks that it be administered in a manner consistent with the human dignity of the child. “*Therefore, governments must ensure that school administrators review their discipline policies and eliminate any discipline practices involving physical or mental violence, abuse or neglect.*”⁷⁷ Thus, this Convention contains fundamental values in the protection of the right to education. Youth are stimulated to achieve the

⁷⁵ Kishore, Singh & UNESCO, 2006, p. 12

⁷⁶ See article 14 International Covenant on Economic, Social and Cultural Rights (1966)

⁷⁷ UNICEF, “Fact sheet”. p.3.

greatest level in education according to their capacities. Also, this would contribute to the reduction of the drop-out rates and increase the attendance at educational institutions.

Pursuant to this article *“States parties assume the obligation to promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world”*⁷⁸ In this sense, it should be pay particular attention to developing countries.

Furthermore, the convention also adds that *“article 29 pertaining to the aims of education in its first paragraph and the freedom of individuals and bodies to establish educational institutions in its second paragraph, is the CRC’S other core provision on education.”*⁷⁹ These two provisions are interrelated and ought to be read together.

Thus, Article 29 gives an extensive list of objectives that should inspire the education of the child, such as the full development of the personality, talents and personal skills or respect for human rights, tolerance, respect for their parents and their own cultural identity, as well as the values of other cultures. *“It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect, the rights of the parents and education should aim to develop respect for the values and culture of their parents.”*⁸⁰

The point 2 of this article stated that, both provisions should guarantee the liberty of individuals and governments to determine and lead their own educational institutions as long as they respect the fundamental principles set forth in the paragraph 1 of this provision *“and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”*⁸¹ This Convention constitutes a full legal statute of the rights of the child, which include in a broad manner, the right to education. Therein lies its great importance.

⁷⁸ Detrick, S., 1999 p. 493.

⁷⁹ Verheyde M. 2006, p.1.

⁸⁰ UNICEF, “Fact sheet” p.3.

⁸¹ See Article 29.2 Convention on the Rights to the Child. (1989)

3.1.1.4. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (1990). ARTICLES 43 AND 45.

In this Convention the first article dealing with education, although it refers only to the children of migrant workers, is Article 30.⁸² It is worth emphasizing that the children's right to education is expressly disconnected from the question of whether the residence of parents in the State concerned is regular or irregular. In any case and without restrictions the child's right to education will be always protected.

Other articles of this Convention relating to the right to education are Article 43, in relation to migrant workers themselves; and Article 45, in connection with the families of these workers. What is common to these two articles is that they grant these people, as already recognized in Article 30 above mentioned, equality of treatment with respect to nationals of the State where they are found (*art. 43.1 and art. 45.1*). To show this, the two articles are set below:

" (art. 43.1) Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: / (art. 45.1) Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:"

The rights that, according to these articles, must be enjoyed equally with the natives of the country are, in terms of education, similar in both cases. As follows:

"43.1.a)/45.1.a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;"

"(43.1. b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

⁸² See article 30 of the International Convention on the protection of the rights of all migrant workers and members of their families, 1990.

(45.1. b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met; "

"(43.1.g/45.1. d) Access to and participation in cultural life."

In the above mentioned paragraphs particular attention should be paid to the mention of unspecified requirements that would secure the enjoyment of these rights, since they could eventually place an undue limitation on them. Of course, these requirements should be equal to those demanded by nationals of the country where the migrant workers reside, perhaps merely administrative and organizational, but in no case relating to their immigration status, much less to their irregular resident status in the country, as provided expressly in Article 30, cited above, for the children of migrant workers. As M. Á. Cano underlines: *"persons considered as migrant workers in accordance with the provisions of the Convention are still holders of rights and, therefore, should be able to continue to enjoy their fundamental rights, irrespective of their legal status, i.e. the legality or otherwise of their situation in a State of which they are not nationals. Possible irregularities in this respect do not deprive such persons of their status as human beings."*⁸³

The Convention, however, would seem to contradict the above, even though in the case of the children of migrant workers the above cited Article 30, excludes irregular legal residence status in the country as being an unacceptable restriction for migrant workers. This could be deduced from the wording of Article 43.2., which establishes that "States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements." Here is required, for the recognition and guarantee of rights by the State, the existence of an employment authorization that satisfies the relevant requirements. An authorization which the irregular migrant worker lacks, and without which, therefore would be denied access to education.

⁸³ Cano, M.A.,2010, p. 148.

However, it must be considered that the body that monitors the implementation of this Convention intends this human right to be extendable to all. For this reason, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, establishes in its General Comment n° 2, point 77, the following: *"States parties shall not require schools to report or share data on the regular or irregular status of pupils or their parents to immigration authorities or conduct immigration enforcement operations on or near school premises, as this would limit access to education by children of migrant workers."*⁸⁴

It can be noted that although the point finishes referring to children, it also refers to students in general, which could encompass adult migrant workers who take part in primary or secondary education for adults or vocational training. In any case, the direct aim of this provision is to avoid withdrawal of pupils from school for fear of interference by immigration authorities in schools, or by the presence of their investigators in their vicinity.

On the other hand, there is another warning to States from the aforementioned Committee, in its General Comment number 1, dealing with the situation of migrant domestic workers, in its point 14, considering that when the latter are children, which it says occurs in *"a considerable proportion"*, they *"are at greater risk of ill-treatment. Their young age, their isolation and their separation from family and peers as well as their almost total dependence on their employers, aggravate their vulnerability to violations of their rights recognized in the Convention, including the fundamental right of access to education."*⁸⁵

Article 45.2 of the Convention⁸⁶, is a recommendation to States aimed at facilitating the integration of migrant children into the local system in which they are immersed. The Committee supervising this Convention rejects all segregation (point 76 of its observation General No. 2). This, logically would happen if migrant children speak a different language, preventing any relationship and coexistence with the

⁸⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2. 2013, Point 77.

⁸⁵ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families General comment No. 1. 2013, Point 14.

⁸⁶ See article 45.2 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

children of the country where they live and their effective integration as the treaty demands.

Finally, the last two points of Article 45 (3 and 4), both touch on education in mother tongue, whose importance has been highlighted by the Special Rapporteur on the right to education, the lack of which has come to be considered as a barrier to education, going so far as to say that *"The lack of education in mother-tongue or native languages is often a source of exclusion. This is particularly relevant for minorities and migrants. Estimates indicate that around 221 million children speak a different language at home from the language of instruction in school, limiting their ability to develop foundations for later learning."*⁸⁷

With regard to this Convention, E. La Spina concludes *"that most of the rights that are collected regardless of where, reiterated what is already established in conventions and recommendations of the ILO, the European Social Charter and the European Convention on the legal status of the migrant worker"*.⁸⁸ This author, therefore, considers *"questionable the terminology of migrant workers, which makes the workplace the enabling title to provide legal guarantees within a legal statute that is stranded in the paradigm of citizenship and not residence."*⁸⁹

3.1.2. SPECIFIC LEGAL PROVISIONS FOR REFUGEES.

The current international legal embodiment of the long-standing universal practice of granting asylum to people who are in danger and at risk, worldwide, consists of two specific legal instruments, which are the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

The Convention, which was created to take care of refugees from the WWII, was limited to the refugees in Europe or elsewhere, prior to 1951. The Protocol eliminated this time limit. Both documents, despite their age –the former is already more than sixty

⁸⁷ Singh, Kishore, 2011. p.16; See also UNESCO, 2017. p. 10.

⁸⁸ La Spina, E. 2013, pp. 115-138.

⁸⁹ *Ibíd.*

years old– have been able to accommodate the changes that the world has undergone to date.

However, with current problems and needs, there are those who advocate its reform or total replacement. Without taking any of these measures, UNHCR is responding to current demands, using the so-called global consultations on international protection.

Article 1.2 of the Convention gives us the definition of a refugee⁹⁰, in addition, the Declaration on Territorial Asylum, adopted by the UN General Assembly in 1967. It expressly indicates in its preamble that "*the grant of asylum (...) is a peaceful and humanitarian act and that, as such, cannot be considered unfriendly by any other State.*" Even more, in its Article 1(1) it states that "*Asylum granted by a State (...) shall be respected by all other States.*" It also specifies that it corresponds to the State granting asylum to qualify the causes that motivate it (Article 1.3). In sum, this section on special provisions for refugees contains two subsections: the first one referring to the Convention relating to the status of refugees (1951) and its protocol (1967) in articles 22 and 4; and the second referring to Article 4 of the Convention against discrimination in Education (1960).

3.1.2.1. THE CONVENTION RELATING TO THE STATUS OF REFUGEES (1951) AND ITS 1967 PROTOCOL (ARTS. 4 AND 22)

For the specific purposes of the right to education, firstly Article 4, while referring to the religion, recognizes the freedom of refugees to the religious instruction of their children. The wording of this article⁹¹ implies that the education plans of the State offering asylum, in their curricula should consider the religious instruction of the children of refugees. Article 4 is the most. Religious education has to be provided by States under their jurisdiction in equal manner than is guarantee to their own nationals. In this regard, Article 4 also allows the refugee parents to refuse such education.

In relation with this provision it should be remarked that Article 22 stated that "*art.4 does not entail positive obligations of the State party to provide for religious*

⁹⁰ See article 1.2 Convention relating to the status of refugees, 1951.

⁹¹ See article 4 Convention relating to the status of refugees, 1951.

education of refugee children where such education generally is not made available. Nor does it create an obligation to establish religious education for religions for which it is not provided in the existing national system.”⁹²

Article 22 refers more directly to the right to education of refugees. This article in its paragraph 1, establishes non-discrimination in elementary education of refugees with regard to nationals of the country of asylum. *“Therefore, it does not involve, at least in itself, any material obligations as to the substance and extent of the education to be accorded to refugees. In particular, refugees are not entitled to any greater degree of access to elementary education as compared to national of the host State”*⁹³

In point 2, and with regard to the remaining educational levels, access, recognition of foreign certificates of studies, remission of fees and granting of scholarships, provides that States parties must grant refugees the most favorable treatment possible, and in no case less favorable than it grants to foreigners in general in the same circumstances. In this respect, States *“(…) may therefore require certain minimum lengths of stay or lawful residence in their country of refuge before refugees are granted any of the rights enumerated, art 22 para. 2 which they grant to other similarly situated aliens present on the territory.”*⁹⁴ Beyond all international regulations, this convention is the most specific one establishing the right to education of refugees, which led the later policy and law development to guarantee the right to education of refugees, carried out by international organisations or agencies, mainly the UNHCR.

3.1.2.2. THE CONVENTION AGAINST DISCRIMINATION IN EDUCATION (1960, ART. 4).

The main article of the Convention against Discrimination in Education, considered here, is Article 4.⁹⁵ It is described as a *“framework text”*, *defines the goals and the different stages of national policy-making as a function of the level of education*

⁹² Zimmermann, A. 2011. p. 660.

⁹³ *Ibid.* p.1032.

⁹⁴ *Ibid.* p. 1038.

⁹⁵ See article 4 of the Convention against Discrimination in Education (1960).

(primary, secondary and higher).’’⁹⁶ All these policies must guarantee equal opportunity and treatment in education.

This Article 4 specifies in paragraph a), that States must provide free and compulsory primary education. While in higher levels, States must ensure lesser obligations. In secondary, ensuring availability and accessibility to all and in higher education, accessibility but depending on the capabilities of the individual. The types of education referred to in this article differ in their denomination from Article 26 of the UDHR, which includes elementary, technical and higher education. It is understood that, having in common its obligatory nature, what is here called primary is the same as elemental, while technical is included within secondary. The end of paragraph a) of this Article 4, adds the obligation of States to “assure compliance by all with the obligation to attend school prescribed by law”. Thus, the States Parties to this convention also have to “*encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity*”.⁹⁷ In this regard, States have an obligation with all the individuals under its jurisdiction who are deprived of primary education to provide them with educational opportunities. Therefore, The Convention ensures the protection of national minorities in their educational rights, concerning the variety of national educational systems.

Turning to Article 4 of the Convention against discrimination in its subparagraph (b) it refers to the obligation of State parties to ensure that the education is equivalent at the same level as well as in terms of quality. This would of course be applicable without any restriction to the children of refugees and persons in an irregular or vulnerable situation. But, equal level of quality of education, does not mean that all the teaching content given to refugees is the same as that given to the nationals of the host country since the differences in culture, language or religion of refugees, must be taken into account. For this reason, Article 2 of this Convention, does not consider inequality or discrimination: “*b. The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in*

⁹⁶ Singh, Kishore & UNESCO, 2006, p. 19.

⁹⁷ *Ibid.* p. 21-22.

such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level."

According to the above it could be fully legal, provided that there is an identical quality of teaching, if refugees were separated in different establishments that satisfied their specific requirements. However, this would only be ideal in case of refugees with high probability of return quickly to their home countries. In other cases, for greater integration in the host country, the best practice would be inclusive education of refugees within the national education system, with all the appropriate special cultural, religious, and linguistic reinforcements.

This Article 4 ends with two sections c) and d). The former urges State parties to encourage and take measures in relation with the education of those people who were deprived or have not completed primary education. This also tries to facilitate them the access to higher levels according to their capacities. The second, urges States to provide training for teachers in basis of equality. Both sections could be applied in the case of refugees, either adults who have entered the country without elementary instruction, or refugees that can access the teaching profession through their knowledge and qualifications from their country of origin. Refugees cannot be denied this right alleging the non-ratification of international instruments. Their right to education as part of international customary law has to be the concern of all States.⁹⁸

3.2. CUSTOMARY NATURE OF THE RIGHT TO EDUCATION FOR REFUGEES

The right to education also benefits from a customary nature as it is reflected in the (legal) practice and behaviour of all States (*usus*) and above all States acceptance (*opinio iuris*) to apply it as integrated part of (international and domestic) law (customary human rights).⁹⁹ The main point of this affirmation is to underline the authoritative nature of the right to education beyond the text of international treaties.

⁹⁸ See Article 38 Statutes of the ICJ; and, Jordan J. Paust, 'The Complex Nature, Sources and Evidences of Customary Human Rights', GA. J. Int'l & Comp. L., Vol. 25:147, p. 152

⁹⁹ Jordan J. Paust, *ibid*, p. 148

The continuous behaviour of States (e.g.: starting from adoption of the UDHR in 1948 and insertion of right to education in regional instruments as well as in domestic legislations) is an eloquent evidence of their acceptance in applying human rights (especially the right to education without any discrimination) as expression of (international human rights) law. Differences in practice (e.g.: with regards to granting recognition of refugee status in each region or country as well as in specific jurisprudence) cannot be regarded as affecting the authoritative customary nature of the right of to education for refugees.¹⁰⁰

Illustration of all States practice and acceptance of the right to education for refugees can be demonstrated enumerating numberless of the international regional conventions (Article 2 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1996 European Social Charter (revised) in its Article 17.2).¹⁰¹ . Reference to the following jurisprudence cases all from the European Court of Human Rights (ECtHR) are also relevant evidences: The *Campbell and Cosans v. the United Kingdom*;¹⁰² the *Kjeldsen, Busk Madsen and Pedersen v. Denmark*,¹⁰³ in relation to sex education; the case of *Appel-Irrgang v. Germany*¹⁰⁴ in mandatory subject of ethics which confronted the religious values of several parents; and *Konrad and Others v. Germany*¹⁰⁵ “stressed that this does not prevent the State from establishing compulsory schooling, be it in State schools or through private tuition of a satisfactory standard.”¹⁰⁶

Further analysis can be also conducted, in accordance with the above Article 38 of the ICJ Statutes, in order to recognize the right to education for refugees as part of general principles of law recognized by all nations (Article 38 (c), ICJ Statutes), and as admitted by judicial decisions and legal doctrine (Article 38 (d), ICJ Statutes), as well

¹⁰⁰ See also Jordan J. Paust, *ibid*, p. 148

¹⁰¹ This reference to the examples from different regions of the world can be extended such as in America with the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Articles 13 and 16) and African context with the African Charter on the Rights and Welfare of the Child (Article 11).

¹⁰² *Campbell and Cosans v. the United Kingdom*, 1982, § 33, Series A no. 48.

¹⁰³ *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 1976 Series A no. 23.

¹⁰⁴ *Appel-Irrgang v. Germany*, no. 45216/07, 2009.

¹⁰⁵ *Konrad and Others v. Germany*, no. 35504/03, 2006.

¹⁰⁶ ECtHR 2011. p.19. In relation to compulsory education (*education up to the age of 18 years*), see also Council of Europe, European Social Charter: Collected Texts France, 1997. p. 218.

as benefiting from equity (*ex aequo et bono*) value (Article 38, paragraph 2, ICJ Statutes).

3.3. MAIN PRINCIPLES OF THE RIGHT TO EDUCATION FOR REFUGEES.

The UNESCO Constitution establishes certain fundamental principles specifying the elements which are required when talking about education. This analyses will move into later developments of these elements and compare them with those which are particularly relevant in the case of the vulnerable groups of refugees and asylum-seekers.

Firstly, the **Principle of Universality** is the basis of the international law of human rights. This principle from the UDHR is subsequently reiterated in the various international conventions, resolutions and declarations. Thus, this principle is reflected in the World Conference on Human Rights held in Vienna in 1993, which stipulated that *"All States should, regardless of their political, economic and cultural systems, promote and protect all fundamental human rights and freedoms."*¹⁰⁷

Similarly, the **principle of universal access to education** is the central axis of the right to education, which has resulted in the creation of a number of international instruments and the adoption of various international regulatory texts. For example, "The Convention against Discrimination in Education" adopted by the General Conference of UNESCO in 1960; "The World Declaration on Education for all and the framework for action to meet basic learning needs" adopted by the World Conference on Education for All (EFA) in 1990.

A further General Principle is that of **Interdependence**. Based on this principle it must be emphasize that all human rights, *"be they civil and political rights, including the right to life, equality before the law and freedom of expression; economic, social and cultural rights such as the right to work, social security and **education**; or collective rights such as the rights to development and self-determination, are all indivisible, interrelated and interdependent rights. The advancement of one facilitates*

¹⁰⁷ See Vienna Declaration and program for action, 1993. Point 5.

the advancement of others. In the same way, the deprivation of one right negatively affects others."¹⁰⁸ Thus, a clear connection between the right to education and other human rights can be found.

Important principles for education are those of **Equality and non-discrimination**, these principles are fed from each other, i.e. they complement each other, this is reflected in article 1 of the UDHR when it states that: *"all human beings are born free and equal in dignity and rights"*. Article 2 of the UDHR (non-discrimination) has to be mentioned to. With regard to the right to education, this principle of non-discrimination and **equality** highlights that: *"all human beings should have access to education, in law as in fact."*¹⁰⁹ Thus, with exclusive reference to the right to education, the two articles of the UDHR mentioned above will be completed first through the preamble of UNESCO's Constitution: *"the States that are parties to this Constitution, persuaded of the need to ensure full and equal access to education to all..."* Moreover, the second paragraph, subparagraph b) of article 1 of the cited text adds to its purpose of achieving *"...the ideal of equality of educational opportunity for all, without distinction as to race, sex, or any social or economic condition (...)"*.

In addition, to these articles there are those belonging to other international regulatory bodies that also reflect this principle of equality and non-discrimination in the field of the right to education, for example states: *"access to higher education will be the same for everyone, depending on the respective merits"*.¹¹⁰ This ensures an equal and non-discriminatory way although similar or different from those mentioned above. Also, article 1 of the Convention on the Fight against Discrimination in the sphere of education, is concerned that: *"the concept of 'discrimination' includes any distinction, exclusion, limitation or preference, founded on race, colour, sex, language, religion, political views or other opinion, national or social origin, economic status or birth, that has the aim or effect of destroying or impairing equality of treatment in the field of education."*¹¹¹

¹⁰⁸ Office of the High Commissioner for human rights, 1996-2016 available at <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

¹⁰⁹ UNESCO, 2016, available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/normative-action/fundamental-principles/>

¹¹⁰ Article 26 of the UDHR.

¹¹¹ *Ibid.*

At this point, it is important to mention the first international treaty adopted exclusively on education: the "Convention against Discrimination in Education", adopted by UNESCO in 1960, adopted with the aim of developing and promoting these principles by giving a legal basis for education based on the principle of equality of opportunities and treatment for all persons (Article 4).

Finally, the general **Principle of Solidarity** is the channel by which all States create and jointly develop guidelines of public international law, various international treaties and other instruments arise from their collaboration, giving rise to a world that is increasingly global and developed for all human beings. In this way, the fulfillment by each State of its objectives in the field of human rights can be reached. This delegation to the States is a source of both strength and weakness. On one hand, States are responsible to fulfil it in a spirit of solidarity by all. But, in another hand, is a source of weakness is that States are also responsible for implementing it and it may occur that not all of them implement it, or not at the same extent.

The right to education is recorded in the UNESCO Constitution mentioning it as "intellectual and moral solidarity" of all human beings. Thus, *"it is a source of inspiration in the task of realizing the right of everyone to education"*.¹¹² This principle is also contained in the World Declaration on EFA (1990). During the celebration of the World Education Forum, the international community said that "no country that is seriously committed to education for all will be thwarted by a lack of resources in their efforts to achieve that goal".

Moving beyond the UNESCO Constitution, reference will be made in this last part to two further publications which develop further the principles relating to education from a Human's rights based approach¹¹³ which provides a framework for the realization of children's right to education and their rights within education. The second expression of these principles is in relation to the specific case of refugees and asylum seekers. These principles are foundations where to build the protection to these vulnerable groups and their rights to an adequate system of education.

¹¹² UNESCO, 2016, available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/normative-action/fundamental-principles/>

¹¹³ UNESCO & UNICEF, 2007, pp. 10-11.

This is the case with the principle of the universal access to education which is particularly relevant in this context of refugees and asylum seekers. UNHCR has provided a major study on the Ensuring Access to Education Operational Guidance on Refugee Protection and Solutions in Urban Areas.¹¹⁴ A detailed analysis of these two texts will offer the following important elements:

A number of comments need to be made before entering into the principles as such: First, the UNHCR contribution are considered guidelines for action and focus on three major education **objectives**: “to increase access, improve quality and enhance protection”, objectives which apply to all types of refugee populations, although in the case of this report, with specific emphasis on those who have settled in urban areas. The second element, is the **nature** of this document. There are a number of principles which are derived from the policy of protection that this UN specialized Agency sees as the main elements. These guiding principles go beyond the principles from which they initiate to offer a full operational guide. All the principles are followed by a number of practical steps for its implementation.

Seven principles are selected and developed both from the theoretical to the very concrete steps to implement them into specific contexts. These are: access, integration, quality, protection, partnership, participation, monitoring and evaluation. A comparison with the earlier UNESCO-UNICEF framework offered a very close comparative analysis in this respect.¹¹⁵

The access principle is expressed in different forms and with varying emphasis is “*the right of every child to education on the basis of equality of opportunity and without discrimination on any grounds. To achieve this goal, education must be available for, accessible to and inclusive of all children*”¹¹⁶ or in a more specific version, it “*ensures that refugees have access to all education services in the same way and at similar cost to that of nationals*”¹¹⁷.

¹¹⁴ UNHCR, 2011, pp.6-8.

¹¹⁵ UNESCO & UNICEF, 2007, pp. 10-11.

¹¹⁶ *Ibid.* p.29.

¹¹⁷ UNHCR, 2011, p.8.

The principle of **Integration** advocates “*for sustainable education services for refugees integrated within the national public system when and wherever feasible*”;¹¹⁸ responds to the general principle of equity and non-discrimination. It focuses on supporting refugees and the local community alike. This principle can be connected with “inclusion.” The principle of integration cuts across duplicities and tendencies of marginalization and has a strong content of equality and justice for all. Measures such as mainstreaming into government services, alleviating the burden on government services while encouraging integration in national school systems or pro-actively support of refugee acceptance within the local community are examples of policies to support this principle.

The principle of **Quality** refers to the capacity “*to ensure that the education offered to refugees conforms to national and international standards and provides a safe and child-friendly learning environment, well-educated teachers with a sound knowledge of child-centred pedagogy and sufficient well-equipped infrastructure and facilities*”¹¹⁹. Quality education is identified with providing students “*with the level of competence for their age and grade, develops their confidence and enables them to move forward in their lives*”.¹²⁰ In practical terms, it may demand a broad, relevant and inclusive education, right’s based learning and assurance of a friendly environment, the follow up of the quality of teaching, learning and assessment. It may call for attention from early childhood to the appropriate support in all the ages of the person.

The principle of **protection** provides “*protection and special assistance to the most vulnerable groups and individuals among refugee communities so they can access education equitably, including separated and orphaned children, girls and women at risk, the elderly, persons with disabilities and refugees in need of special education. It also ensures education is free from protection risks, with a particular focus on gender and protection*”.¹²¹ There is here a discrepancy as the case of the human rights based education for all. Protection is in this case less specific and is addressed from the right **to respect within the learning environment** –*human rights, including equal respect for every child, opportunities for meaningful participation, freedom from all forms of*

¹¹⁸ UNHCR, 2011, p.15

¹¹⁹ UNHCR, 2011, p. 18.

¹²⁰ *Ibid.*

¹²¹ UNHCR, 2011, p. 20

*violence, and respect for language*¹²² Protection also relates to the creation of gender equality, monitoring of practices leading to school abandonment or negative behaviour as well as the identification of vulnerable individuals and groups.

The principle of **Participation** refers to “*ensure that community members participate actively, transparently and without discrimination in assessment, planning, implementation, monitoring and evaluation of education programmes in urban settings*”¹²³. It supports the belief that every person and in this case, specifically the refugees should participate actively and transparently in their own formation and be the agents of their own development and growth. In the case of human rights based approach the principle is again broadened to **participation and inclusion**.¹²⁴

In the case of the refugees the partnership with all types of stakeholders and organisations is of a great relevance. Coordination and collaboration within the education sector and with other sectors is crucial in maximizing the quality, comprehensiveness and usefulness of education programming. Different types of collaboration and agencies are called to build together in favour of a more comprehensive reach of necessities and potential. This goes from National Governments to Learning Institutions, to Donor Communities, UN Agencies, NGO partners, Refugee Communities, Private Sector or Educational Committees.

Finally, the principle of **monitoring and evaluation** which is explained in the UNESCO document as the **Principle of accountability** and is, in this respect more encompassing and perhaps more understandable. This calls for the establishment and utilization of efficient monitoring and evaluation systems to improve programme implementation, prioritization and impact. This principle is very relevant as for refugees and asylum seekers, contexts are very changeable and it is relevant to follow-up and adapt necessary interventions accordingly. Monitoring and evaluation is important in order to achieve the best quality possible. The steps into real implementation include identification of the items to monitor, to systems used, the collection of data and its analysis, the monitoring of the learner and the implementation plan, and the use of

¹²² UNICEF & UNESCO, 2007, p. 35.

¹²³ UNHCR, 2011, p. 24

¹²⁴ *Ibid.* p. 35.

indicator to measure access, quality and protection. Of particular importance is the evaluation criteria suggested for actions with these vulnerable populations. These refer to: relevance, effectiveness, efficiency, impact, coherence, coordination and sustainability.

An additional principle which appears specifically in the UNESCO-UNICEF frame and which is also of greatest importance is the **Empowerment**: *Empowerment is the process by which people's capabilities to demand and use their human rights grow.*¹²⁵ The characteristic of an education whose quality is measured by the capacity to empower the vulnerable groups is a very relevant element in the frame of the right to education for refugees. They, more than anybody else, needs this type of education to be able to overcome the many difficulties they have to endure and be able to achieve their full potential and their effective citizenship.

4. IMPLEMENTATION OF THE RIGHT TO EDUCATION FOR REFUGEES

The UN constitutes the cornerstone where organizations such as UNESCO¹²⁶ or UNHCR enhance implementation of international legal obligations related to the right to education: *"It is for governments to fulfil their obligations both legal and political in regard to providing education for all of good quality and to implement and monitor more effectively education strategies."*¹²⁷

Main obligations correspond to State Governments. These latter have to take necessary measures, both legal and policy, actions or refrain from acting in contradictory ways in order to promote and protect the right to education of individuals or groups. This is embodied in the issues relating to the provision of a quality education for all and the creation, application and control of educational strategies that are efficient and accessible for all.

¹²⁵ UNICEF & UNESCO, 2007, p. 35.

¹²⁶ UNESCO, 1947. Available at <http://unesdoc.unesco.org/images/0016/001615/161507eb.pdf>

¹²⁷ UNESCO, 2016 available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/>

4.1. OBLIGATIONS OF STATES

Obligations of States is a corollary of the right of refugees to request and receive education. Refugees are right-holders based on own States acceptance of international human rights law. States have legal responsibilities regarding their right to education. Therefore, when a State ratifies an international human rights instrument, it engages to assume liabilities arising from. Since then, from the principle of continuity, the change of government does not affect States commitments with regard to the protection of the right to education under international law. In this sense, States remain responsible and accountable to make effective the implementation of the right to education for refugees. Therefore, the “*State obligations regarding the right to education have been interpreted under international human rights law, establishing the right as justiciable.*”¹²⁸

The responsibilities of States with respect to the implementation of this right extend to all persons who live in its territory, whether citizens or not, or whether they are legally in the country or not. It must be said, however, that with respect to the right to education of the refugees and asylum seekers (including unaccompanied minors and those separated from their families, within these groups), the obligations of States should be the same as those they have with respect to their own citizens and legal residents.

In this regard, the right to education under the international human rights system is understood as an inclusive system of education. This means that it includes all learners, taking into consideration individually their specific necessities, characteristics, aptitudes or capabilities and preventing any form of discrimination in the educational sphere. In this sense, it is fundamental for the international community to ensure the right to education as a reality for all, to achieve that States must provide a wide range of educational opportunities in particular with vulnerable groups, such as refugees or asylum seekers who are in a post-conflict circumstances and where education could not be effective. Thus, States may create an alternative educational system more flexible that provide education to those learners that are not able to access or remain in a regular educational system and adjust it to their specific educational necessities. Thus,

¹²⁸ Singh, K. 2013. p. 7

obligations of States such as the adequate funding of education, providing quality education, ensuring the enjoyment of this right without discrimination or exclusion and with equal opportunities, should be also extended to these groups which are certainly in delicate situations and of maximum vulnerability.

When there is a conflict between international and national laws or common practices, the former must prevail over the seconds, in monist countries. In dualist countries, international law may prevail when its primacy is recognized at domestic level, in addition to the ratification. Everything being equal, *“In case of any conflict between national legislation and treaties, predominance should always be given to international obligations, in the light of article 27 of the Vienna Convention on the Law of Treaties.”*¹²⁹

The rights granted by international instruments can be directly invoked before domestic courts and implemented by national authorities. Refugees benefits from the "right of action" as that they can undertake necessary administrative and judicial procedures including appeals to national courts when their rights to education are not fully respected (Article 13, ICESCR). In this respect, a set of effective remedies to redress violations of this right is required, in dealing with independent judicial bodies of free access and with the necessary legal assistance to achieve an appropriate service, including compensation.

4.2. STATE RESPONSIBILITY ON THE RIGHT TO EDUCATION UNDER INTERNATIONAL HUMAN RIGHTS LAW FOR REFUGEES

According to General Comment No. 13 (21st Session, 1999) on the Right to Education (Article 13 of the ICESCR) of the Committee on Economic, Social and Cultural Rights, all States have three levels of obligations under international human rights law to ensure the implementation of the right to education. These are, the obligations on States to **respect, protect and fulfil** the right to education.¹³⁰

¹²⁹ Singh, Kishore, 2013. p. 7

¹³⁰ UNESCO, 2014. p. 12.

Firstly, **the obligation to respect** implies that States (including national and regional or local entities) must refrain from any action or failure that avoids or hinders the enjoyment and access to the right education. For instance, a legislation enacted by the State's government that excludes some vulnerable communities, such as refugees or asylum-seekers as holders of the right to education.

Secondly, the **obligation to protect** entails that States must provide all the required measures to implement the right to education removing all the social, economic, legal and cultural barriers specially with respect to these individuals or groups most vulnerable. For instance, cultural barriers to education may be seen in the host country schools with regard to the different language of those refugees or asylum seekers.

In this respect, a vast number of cases addressing the rights of minorities and their language rights can be found. For example, the *Belgian linguistic case* ruled by the ECtHR stated that: “*the right to education did not guarantee the right to education in a particular language, or for the State to subsidize education of a particular type.*”¹³¹ However, reading Article 14 together with the Article 2 of Protocol N° 1, both articles were “*violated because the legislation prevented children from having access to French-language schools in certain areas solely on the basis of their parents' residence.*”¹³² In this regard, in the case *Doucet-Boudreau v. Nova Scotia*, the Supreme Court of Canada has stated that: “*minority language educational rights under section 23 of the Canadian Charter of Rights and Freedoms, which provides guarantees for French-speaking communities, were considered justiciable.*”¹³³ Furthermore, the “obligation to protect requires States Parties to take measures that prevent third parties from interfering with the enjoyment of the right to education.”¹³⁴

Thirdly, **the obligation to fulfil** means that States must take all the positive measures which allow to benefit from it. For instance: “*by tackling poverty, adapting the curricula to the needs of all children or engaging parents to enable them to provide*

¹³¹ *Belgian Linguistic Case (No. 2)*, (1968) 1 EHRR 252. See also Singh, Kishore, 2013. p.15.

¹³² See *ibid.*

¹³³ *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2096/index.do>, accessed February 23, 2013. See also Singh, Kishore, 2013. p. 15.

¹³⁴ UNESCO, 2014. p.12

effective support to their children's education."¹³⁵ In this regard, the obligation to fulfil implies, on the one hand, the State's obligation to ensure and provide universal access to education and on the other hand, the obligation to develop positive measures to make possible and support every human being in the enjoyment of this right.

States must achieve these above three obligations: firstly, guarantying the access to education to all, secondly, providing an education of quality without discrimination and thirdly, respecting all others human rights in relation with education. The essential and common obligation behind all these three is the need to ensure the best interest of every citizen.

Besides, other important States obligations to deal with, are the below obligations derived from international human rights law, firstly in the field of the right to education in general and secondly with relation to refugee concerns deduced: as the Supreme Court of the United States of America stated in the historic judgement in *Brown v. Board of Education* (1954), "*Providing public schools ranks at the very apex of the function of a State,*" and "*education is perhaps the most important function of State and local governments*".¹³⁶ This appears true in all countries, beyond this specific US case.

Thus, a primary obligation or responsibility for all the States is make **real and effective** the realization of the right to education for all individuals living in their territory and subject to their jurisdiction, independently of their administrative or legal situation. States must provide an educational system that guarantees and respects the right to education, avoiding every action or failure which may put at risk, ban or restrict the access to education. Therefore, "*States must guarantee that the right to education is provided and promoted; they must also ensure that it is respected and fulfilled, both as entitlement in terms of universal access to basic education as well as empowerment in terms of acquisition of knowledge, skills and competencies and their quality and standard.*"¹³⁷

¹³⁵ UNESCO & UNICEF, 2007. p.39.

¹³⁶ Singh, Kishore, 2013. p. 6.

¹³⁷ *Ibid.*

In the case, *Km. Chitra Ghosh and Another vs. Union of India and Others*, the Supreme Court of India has held that “*what is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality*”.¹³⁸ Thus, the article on equality before the law recognizes in article 14 of India’s Constitution that ensure equality in both law and fact was reaffirmed. Other cases that deal with the equality of opportunity in education were brought into the different courts to ensure its protection.

Moreover, the right to education implies that States’ obligation must ensure **quality** in their educational systems for all individuals, be they local government. For instance, the state of New York, extended the scope of the constitutional provision to include the high quality education as a constitutional obligation of state government, in the case *Campaign for Fiscal Equity, Inc. v. State of New York*, stating that: “must provide a “sound basic education”¹³⁹, and a “meaningful high school education”¹⁴⁰. The court found that the teaching quality was inadequate, and that the large class sizes in New York City negatively affected student performance.¹⁴¹

In the same terms, in the case *Philippine Association of Colleges and Universities v. Secretary of Education*, the Supreme Court of the Philippines, guaranteed the right to a quality education, imposed the obligation for the State to regulate the public welfare in relation to “*ensure that curriculum meets essential objectives of education,*” and that in “*private education, there was no undue exercise of power by the Secretary of Education in setting of school curricula, calendars, and examination procedures.*”¹⁴²

In this regard, the obligation of quality carries along that States are also responsible to ensure and they provide all required facilities and resources for its effective realization and implementation. For instance, it must include funding of educational system. In the case *Rose v. Council for Better Education* “providing equal

¹³⁸ *Km. Chitra Ghosh and Another vs. Union of India and Others* (1969) 2 SCC 228.

¹³⁹ Board of Education, *Levittown Union Free Speech District v. Nyquist*, 57 N.Y.S.2d 27, 48 (N.Y. 1982.)

¹⁴⁰ *Campaign for Fiscal Equity, Inc. v. State of New York*, 801 N.E.2d 326, 332 (N.Y. 2003).

¹⁴¹ See *Campaign for Fiscal Equity*, 100 N.Y.2d at 912.

¹⁴² See *ibid.*

funding to all schools was litigated in the Supreme Court of Kentucky”.¹⁴³ “Addressing a constitutional challenge to the school finance system, the State financing of education was held to be unconstitutional because it did not provide substantially equal funding among all schools in the State.”¹⁴⁴

In the same approach, the case *Society for Unaided Private Schools of Rajasthan v. Union of India* empowered the social interest in education in regard to the constitutional validity of the articles of the Right of Children to Free and Compulsory Education Act, 2009, which states that the “25 per cent of seats in private schools in the country should be reserved for the socially and economically weaker sections of the society.”¹⁴⁵

Therefore, States providing and promoting the enjoyment of the right to education without **any kind of discrimination or exclusion** is the basis underlying the legal protection and the responsibilities of States with relation to the right to education. The General Comment 13 on the right to education stated that: “States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind.”¹⁴⁶ In this respect, decisions given by judicial and quasi-judicial mechanisms in relation to the right to education also have to encompass the recognition and protection of this right for marginalized and vulnerable groups. Thus, in the case of *International Association Autism Europe vs. France*, the European Committee on Social Rights ruled that the French Government's overall lack of progress in this area constituted a violation of the European Social Charter.¹⁴⁷

Also, in the case, *Horvath and Kiss v. Hungary* ¹⁴⁸ the ECtHR stated that the right to education of Roma people with mental disabilities was violated in relation to the

¹⁴³ *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989).

¹⁴⁴ *Ibid.*, p. 216.

¹⁴⁵ *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1.

¹⁴⁶ General Comment 13 on the right to education (article 13 of the Covenant), E/C.12/1999/10, 2, December 1999, point 43.

¹⁴⁷ *International Association Autism Europe vs. France*, Complaint No. 13/2002. European Committee on Social Rights, 2003. Available at http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC13Merits_en.pdf.

¹⁴⁸ *Horvath and Kiss v. Hungary*, Application no. 11146/11, 2013, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124>.

discriminatory practices performed. And in the case *Orsus and Others v. Croatia* in which the “right to education was violated by the placement of a Croatian national of Roma origin in Roma-only classes rather than ethnically “mixed classes.”¹⁴⁹ The same court established the right to education of Roma children to be integrated into ordinary classes.

Finally, the right to education cannot be effective except by giving the residents of its territory the necessary resources to claim them, either by using administrative resources to deal with the agencies of public administration, or before the judges and courts of the State. These are resources reacting against failures to recognize the right to education or violations of the same. For this cause, if necessary, full compensation may be required from the State for the responsibilities that it has incurred in this area. Thus, it may be said that the right to education and the demand upon the State for the obligations that it entails, is a justiciable right, that is, one that can be claimed by those affected through the courts (internal to States or international). For those groups living in particularly fragile and vulnerable situations, this ability to appeal to the courts is even more necessary.

4.3. SPECIFIC OBLIGATIONS OF STATES WITH REGARDS TO REFUGEES EDUCATION

The States have some individual obligations derived mainly from the 1951 Refugee Convention, the Convention on the Rights of the Child and the Sustainable Development Goal 4 to “ensure inclusive, equitable quality education for all.” State shall establish suitable mechanisms that, take full consideration of their circumstances of poverty and marginalization, and secures that they can access the education system on equal terms with the rest of the population of the country. They should not suffer any type of discrimination in terms of access in terms of recognition of studies (diplomas and certificates) or in their financial rights in terms of scholarships and free possibilities to free education. “(...) As a priority, the public powers of the State must be sensitized and raise awareness within the State educational community itself that therein the right to education of these vulnerable groups must not be restricted. In this regard, the

¹⁴⁹ *Orsus and Others v. Croatia*, 2010.

*educational system of a State must guarantee the access to accountable education services and opportunities to promote social cohesion between refugee and national children.” (...)*¹⁵⁰

The obligation of avoiding **any kind of discrimination or exclusion** have to be used to prevent any kind of segregation of classes between students of different origin. Equal access should be translated into States providing a system of sufficient funding to meet the costs of accommodation, transport and support that these groups may have and cannot overcome to attend school. One of the critical points which connects clearly with the enabling nature of the right to education is the provision for the learning of the language of the host country because this element is key to their learning and their social integration, State educational programs must permit the preservation of the mother tongue, at the same time, as they achieve the necessary training and skills in the language of the host country.

Following the obligation of **quality**, the State has also to take appropriate measures to secure that the teachers who work with migrant and refugee populations have the suitability and the support required to deliver their work effectively. The State has to ensure that measures are taken to count on and to be able to increase, when necessary the recruitment of professionals able to show that they are highly-qualified teachers, that they have had or are having intercultural teacher training, capacity to practice inclusive education and with an empowering approach to education, as well as the support for them in psychosocial plans and with experts to deal with traumatized refugee pupils. It is very relevant that as many as possible of these professionals come from the migrant communities themselves particularly those dealing with the early stages of learning (nurseries, kindergartens and primary). The State has to realise that all vulnerable groups have a great potential to achieve and become an enriching component of the society and not a source of risk. It is this challenge that the right of education is called to face.

¹⁵⁰ UNHCR, 2015.

5. SOCIO-POLITICAL DEVELOPMENTS IN THE IMPLEMENTATION OF THE RIGHT OF REFUGEES TO EDUCATION

It would be of great interest to analyse how the right of education becomes more advanced, more mature, more elaborated and the interactions of law and society as it changes and it is created through time. It would be revealing to analyse the elements that made it to grow, the actors who intervened and the drivers which pushed it forward and above all how this development affected this vulnerable group in society. These are very meaningful questions which would give way to further research and which go beyond the limitations of this work.

Every process requires a period of time where it takes place. Here there will be a limitation in the analysis of a particular period, that of 1990 to 2017 for the development of the right to education, briefly as a frame and then the impact on the refugees where we will extend more. On the second part of the section, the focal point will be that of the challenges; first to education as a frame and then more specifically about the refugees. A chronological approach will be used in the first part of the section, looking at the landmarks, the milestones of the period. Despite of the gap between ratification and implementation, they are focal points of reference and at least achievements that have been reached at a particular level or region, although it may appear as achieved by all.

5.1. DEVELOPMENTS IN REFUGEE EDUCATION

There have been attempts before WWII to create schools for refugees. These were done by non-governmental organisations (NGOs) and other private organisations who set up solutions and isolated experiences in the context of emergencies. However, the provision for education really started after the WWII. It was at that time that the international community initiated, in a systematic manner an answer to education of refugees.

UNESCO was created in 1945 in order to primarily carry the global mandate for education. At this point refugees and displaced populations were included in the Mandate of UNESCO. It was not until mid-ninety sixties that it became clear that it was

not possible for UNESCO to carry out this responsibility and that UNHCR took over the mandate and built capacity to carry it through. -1967 Memorandum of Understanding to act in the field. However, the allocation of resources will take some time to come and this period characterised by the capacity of the refugees to set up their own schools at primary level as well as other learning programmes. The backing of UNHCR concentrated on developing financial resources, often scholarships for the post primary school level first and post-secondary at later stages. This often facilitated the integration of refugees in larger local groups.

The system of scholarships, which was a central element in the UNHCR educational programme, was later questioned in the 1980s as a system of employing large resources for very small number of refugees. This was good for developing elites but left masses of refugees unattended. This ended with a shift, from individual scholarships to the development of educational systems at primary level.

5.1.1. THE IMPACT OF THE 1990 WORLD DECLARATION ON EDUCATION FOR ALL ON EDUCATION FOR THE REFUGEES.

From the World Declaration on EFA and its companion Framework for Action to Meet Basic Learning Needs, many significances could be drawn but four were selected as the critical elements where development can be seen:

The first was that it actually took place and the extent of the answer to the call. There was a large participation representatives of governments (155), inter-governmental bodies and NGOs (150) with specialists and policy makers from different parts of the world. This Conference marked a landmark in the international exchange and dialogue in the role of education in relation to human development. **Second**, it marked the beginning of a systematic process of consultation that led to further milestones. **The third** was the reference made to the vision of education as having a central place in development and its vital role for growth and social progress. Its role in designing and carrying out policies and strategies to improve basic education services focalising in provide universal primary education and eliminate adult illiteracy. **The Fourth**, beyond inspiring a movement to improve the quality of basic education, it carried out a commitment and a Plan for action and that meant a significant novelty It

marked the beginning of a joint world Plan for Action which will be the beginning of other world action plans. It started with a state of the art of the world situation.

Pressed by the vast numbers of refugees UNHCR published in 1995 The *Revised Guidelines for Educational Assistance to Refugees*. This document recognises four major developments which show a shift towards education:

The **first** development related to the creation of the refugees' camps. This measures were considered the most adequate both by host States and by UNHCR in order to best be able to protect them from the risks and have visibility they needed. This development ended with the situation whereby refugee children attended school at the camp rather than using the previous scholarship system.

The **second** development corresponds to the change which took place in the approach of UNHCR. This could be specified as a change from considering it only as a field of practice to be also a field of policy. This was a consequence of the 1989 Convention on the Rights of the Child which resulted in the articulation of a universal rights based framework for education, including refugee education.

The **third** development has its origin in the new awakening brought about by the 1990 World Declaration on Education for All. Before this event the expectations in relation to education were limited, but the Declaration changed the perspectives and was followed by a massive demand on education not only among refugees but also among large population in sending and receiving countries.

The **fourth** development emerged out of the nature of the conflicts which increasingly centred within national borders due to issues such as ethnicity, religion or borders. It is at this point that a new dimension of education emerges with strength. It relates to the healing aspect of education as a mitigating force for situations of conflict. In this context a broad approach to education was more efficient and beneficial since it reached full populations, often in the process of reconstruction, rather than concrete individuals. This beneficial effect was particularly important in the case of refugee children where the role of education was highlighted as a crucial element in the psychological recovery of children affected by war. This was further recognised by the

EFA meeting in Jordan in 1996, where education was recognised as crucial to humanitarian response: *“Given escalating violence caused by growing ethnic tensions and other sources of conflict, (...) We must learn how to use education to prevent conflict and, where crises do occur, ensure that education is among the first responses, thereby contributing to hope, stability and the healing of the wounds of conflict”*¹⁵¹.

In 1996 a Memorandum of Understanding was signed between UNHCR and UNICEF. This resulted in a new search for quality in the service of children in emergencies and particularly in the quality of the education. Further the MoU incorporated the need for assessment and analysis of the needs of refugees, returnees and other children in the host countries assisting national Governments in finding the state of the art and in the distribution of the well-known educational kids.

Following data based on programmes, in 1997 an evaluation of the educational activities for the refugees showed that the programmes for refugee education were “plagued by inconsistencies,” having been “seriously affected by the financial constraints of the past few years”¹⁵². This evaluation also affirmed that these education guidelines provided “limited guidance to managers, and allow for differences in interpretation of policies, determination of methods, and implementation”¹⁵³. An analysis of this evaluation threw significant doubts on the quality and efficiency of the education for refugees during this period.

5.1.2. THE 2000 DAKAR DECLARATION

The Dakar Declaration was again full of meaning and rich in developments. The analysis below selected seven **developments to mark**, what can be seen as a contribution to the **developments forward**:

- 1- The **importance of reaffirming** what was said in EFA for all agreements and consensus. The vision of the World Declaration on Education for All should be re-affirmed (Jomtien 1990), supported by the Universal Declaration of Human

¹⁵¹ Mundy.K. & others, 2016, p.197; See also Van Esveld, Bill, Martinez, Elin & Khawaja, Bassam. New York: Human Rights Watch, 2017. Available at <https://www.hrw.org/world-report/2017/country-chapters/global-0>.

¹⁵² UNHCR, 1997, p. 1.

¹⁵³ *Ibid.*

Rights and the Convention on the Rights of the Child, that all children, young people and adults have the human right to benefit from an education. It is not an isolated vent but a chain marking a progression. The vision of Jomtien remains pertinent and powerful.

- 2- The Dakar Framework for Action was based on the most **extensive evaluation of education ever undertaken**, the EFA 2000 Assessment. Called for by the World Conference of Education for All, the Assessment produced a detailed analysis of the state of basic education around the world. Each country assessed its progress towards the goals of Jomtien and reported its findings at six regional conferences in 1999 and 2000: Each region 6 with a plan for action
- 3- **The visualisation, the clarification and the extension of the Collective commitment (to six goals).** The Dakar Framework was a collective commitment to action. Governments have an obligation to ensure that EFA goals and targets were reached and sustained. A responsibility met most effectively through broad-based partnerships within countries, supported by co-operation with regional and international agencies and institutions. It spoke about obligations and responsibilities.
- 4- **Further organization:** To complement the efforts of national governments, UNESCO, as the lead agency in education, proposed to co-ordinate and mobilize all partners at national, regional and international levels, multilateral and bilateral funding agencies, non-governmental organizations and the private sector as well as **broad-based civil society organizations**. Marking plans for 2002 and achieve EFA goals and targets no later than 2015.
- 5- The development of **key areas of concern** identified at Dakar, early childhood education, school health, education of girls and women, adult literacy and education in situations of crisis and emergency. A concept of education considered sustainable, meeting basic learning needs in the best and fullest sense of the term. It is an education geared to tapping each individual's talents and potential, and developing learners' personalities, so that they can improve their lives and transform their societies.
- 6- A new commitment **to assessment** the EFA 2000 Assessment demonstrated that there has been significant progress in many countries. An assessment which has taken place and which has a new commitment.

- 7- In the judgement of the Declaration, there were clear achievements and lessons learnt- Clear developments forwards of which they pride themselves: “*The EFA 2000 Assessment conducted at national, regional and global levels shows that progress has been made over the past decade towards the vision reflected in the Jomtien Declaration*”¹⁵⁴. There is a clear consideration that progress has been significant in many aspects (see points 11 -14). Progress which relates to both quantitative and qualitative aspects. The documents speak of rising of the percentages of enrolment of children, with special reference to girls, taking place even in contexts of economic constraints and a rising population. It shows a decline in repetition and school drop- out rates, of a larger number of countries ratifying the Convention on the Rights of the Child. It speaks of aspects which are still pending: the millions still outside school, the high figures of illiteracy. However, there is an undeniable step forward: There is a clear knowledge of the situation and a higher understanding of the role played by the lack of well trained teachers, the scarcity of relevant materials, the difficulties specific of the different areas, the place of language and community as well as the capacity for impact of tried policies and strategies.

5.1.3. THE MILLENNIUM DECLARATION

“*In September of the year 2000, leaders of 189 countries met at the United Nations in New York and endorsed the Millennium Declaration, a commitment to work together to build a safer, more prosperous and equitable world.*”¹⁵⁵ The millennium Declaration, together with the 2005 world summit outcome and the Millennium Report initiated 15 years of intense collective work with a number of developments along the road to a more complete achievement of the right to education. The following steps forward can be considering as major developments:

1-The Declaration was made operational by preparing a roadmap singling out eight goals (the Millennium Development Goals (MDGs)) which had to be achieved by a concrete moment in time, offering also ways to measure them.

¹⁵⁴ The World Education Forum 2000, p.13.

¹⁵⁵ UNITED NATIONS. 2000. p.1.

2- The level of concreteness and focalisation of each of the goals and how the indicators were set to be measured. Thus goal number 2 relates to education and the formulation centres in primary education: “*Achieve universal primary education. Ensure that boys and girls complete a full course of primary schooling*”¹⁵⁶ the concentration in primary education was a measure of focalisation the efforts and visualising an important and undeniable aspect of reality which needed urgent action: The percentages of children having their right of access to education denied, even at the lowest level.

3- Gender consideration in education plays a significant role: Goal number 3: “*Promote gender equality and empower women. Eliminate gender disparity in primary and secondary education preferably by 2005, and in all levels of education no later than 2015*”¹⁵⁷ With a resolution which links them together: “*We resolve: To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.*”¹⁵⁸ The specification on girls is a clear step forward.

5.1.4. THE 2005 WORLD SUMMIT OUTCOME

This period related to the 15 years of very intense work which goes from the Millennium Declaration to the 2015 Report and includes the 2005 World Summit Outcome where the commitment to the MDGs in relation to education, more in concrete points 43-45,¹⁵⁹ were reiterated and emphasis was placed in the long term strategies at country level backed international support.

The UN MDGs Report 2015 offers a broad and rich panoramic view, with indicators, of all the important achievements accomplished after enormous efforts by the different regions of the world¹⁶⁰. In the words of Ban Ki-Moon “*The global mobilization behind the [MDGs] has produced the most successful anti-poverty*

¹⁵⁶ UNITED NATIONS. 2000. p.1.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.* p 5.

¹⁵⁹ UN GENERAL ASSEMBLY, 2005. p. 10-11.

¹⁶⁰ UNITED NATIONS, 2015. p 24-27.

movement in history. The landmark commitment entered into by world leaders in the year 2000."¹⁶¹

The main developments in relation to education could be summed up as¹⁶²:

In relation to Primary education:

- a) The central issue of school enrolment witnessed a significant increase-from 83% in 2000 to 91% in 2015 in developing countries, with many more girls attending school compared with 15 years ago.
- b) In parallel the number of out of school children in the world has dropped by almost a half from 100 million in 2000 to 57 million in 2015
- c) The comparatively best record of achievement in the field of school enrolment rate has taken place in the most difficult region that of Sub-Saharan Africa with a 20%-point increase during these 15 years from a former 8% during the previous period 1990-2000.

In relation to literacy:

During the entire period 1990-2015, the literacy rate has dropped in the world from 83% to 91% in the age of 15 to 24, with a closer performance between men and women.

5.1.5. THE SDGS

In September 2015, UN member States have adopted the 17 SDGs, to succeed to the MDGs, as the universal development transformative agenda for the period 2016 to 2030. Each respective goal is linked to the attainment of determined targets and indicators. The Goal 4 is related to "*Ensure inclusive and quality education for all and promote lifelong learning*". More particularly, the targets 4.5 intends to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations. Refugees and asylum-seekers' education enters in the group of vulnerable people and their full education should be ensured as also part of SDG 4.¹⁶³ At present, two years after the adoption of SDGs, States have

¹⁶¹ UNITED NATIONS, 2015. p.3.

¹⁶² *Ibid.*, p.4.

¹⁶³ UNESCO. 2017. p. 6.

embarked in implementing the SDGs. Developments and results with regards to improvements of refugees' education are yet to be observed.

5.1.6. THE NEW YORK DECLARATION FOR REFUGEES AND MIGRANTS

In September 2016, the UN General Assembly adopted a resolution (A/RES/71/1) under the title of New York Declaration for Refugees and Migrants. UN member States have reaffirmed their commitments enhance the protection of refugees and migrants. States are aware that current refugees' crises need a strong response from them. They therefore *“declare profound solidarity with persons who are forced to flee, reaffirm their obligations to fully respect the human rights of refugees and migrants, and pledge robust support to those countries affected by large movements of refugees and migrants.”*¹⁶⁴

The New York Declaration afford to Education (access, facilitation and safe environment) a substantial consideration as part of fundamental protection and basic services to provide to (children and adolescents) refugees and migrants. Several paragraphs of the Declaration are related to Education. States are committed in ensure concrete global measures to be adapted in countries-specific cases to address all refugees needs. Therefore, Annex I to the declaration contains a Comprehensive Refugee Response Framework (CRRF) that the UNCHR is preparing and shall report to States in 2018.

5.2. MAJOR DEVELOPMENT IN RELATION TO EDUCATION AND REFUGEES

The New York Declaration constitutes a global milestone that will further develop the right to education for refugees. From 2018, concrete results can be expected once CRRF is presented. Also, countries report on SDG 4 will be relevant. Meanwhile, these are yet to come, the World Education in Dakar gave significant impetus to the issue of refugee education and resulted in legitimating the importance of this issue

¹⁶⁴ UNHCR. 2017, p. 5.

within UNHCR. A number of measures were taken within the organisation including the restoration of the position of the Senior Education Officer, a post which will prove of importance for later developments. The relevance of the theme could be judged by three elements: The Forum included both a thematic study on *Education in Situations of Emergency and Crisis* as well as a specific session on the strategy on education to be considered for the cases of emergency. Besides, the Framework for Action counted on a consideration on how education mitigated the effects of conflict.

Analysing the World Education Conference background thematic study there is a new definition of needs, “*the need not only for basic education in the classical sense of traditional schooling but also for education for human rights, education for peace, democracy and tolerance as well as pedagogical methods that promote participation and conflict resolution*”¹⁶⁵

An important change was that since 2000, the field of refugee education became a part of the broader field of education in emergencies, which included not only education for refugees. This larger field of education in emergencies, which became one of the flagships of Education for All witnessed a broadening of the field. It would not only be comprised by refugees who were diminishing in numbers while the internally displaced population continued to grow. It included also the conflict affected children in all settings from all countries as well as those affected by natural disasters.

By bringing all the groups together, another important problem could also be tackled. The problem of coordination between a large number of actors and agencies.

A number of actions marked the new development:

- Education for emergencies became part of the World Education Agenda
- The Inter-Agency Network for Education Emergencies was created
- Impact of research publications on refugee education
- Cooperation between UNESCO and UNICEF
- Publication in 2004 of *INEE Minimum Standards*, normative framework for practice and the Sphere Project Humanitarian Charter and Minimum Standards and revision in 2010

¹⁶⁵Lubbers, R. 2001, pp. 34-35

- The emerging role of the Global Education Cluster as a further element of coordination, legitimacy and accountability.

All these elements played an important role for the developments in the major revision which meant the 2015 Millennium Goals Report. One of the clearest revelations in this Report is the impact of war and conflict in the education. The report considers that in countries affected by conflict, the proportion of out of school children increased. This worrying trend is particularly strong in Northern Africa where the share increased from 28 per cent to 49% and Southern Asia from 21% to 42 per cent.¹⁶⁶ It is difficult to relate and capture the situation in such situations. For example, in Western Asia the ongoing conflict in the Syrian Arab Republic has had a devastating impact on children's education. Data from the Syrian Ministry of Education¹⁶⁷ indicate that enrolment rates fell by 34 percentage points for grades 1 to 12 in the school year ending in 2013. Among Syrian refugee children of primary and lower secondary school age -6 to 14 years- in Lebanon, the enrolment rate is estimated to be around 12 per cent.

6. CHALLENGES AND PERSPECTIVES ON THE IMPLEMENTATION OF THE RIGHT TO EDUCATION FOR REFUGEES

The first challenge to be considered is that of the increased number of concerned people. According to the recently published UNESCO Working Paper 04 on Educational Policy, "An estimated 65.3 million people are today asylum seekers, internally displaced persons or refugees, and every minute 24 people are displaced from their homes. Half of the world's refugees are children under 18 years of age² and more than half of these girls and boys have fled violence and insecurity. The average length of time a refugee spends in exile is about 20 years, which is more than an entire childhood, and represents a significant portion of a person's productive working years."¹⁶⁸ There are many others challenges.

Challenges may affect different populations in different ways. Refugees attain the end of a complicated and often exhausting experience arrive at a new setting with

¹⁶⁶ UNITED NATIONS, 2015. p.25.

¹⁶⁷ *Ibid*, p.26.

¹⁶⁸ UNESCO. 2017. p 6.

difficulties to overcome and goals to achieve. Challenge also affects the receiving populations, sometimes with a situation which was not predicted and which is often handle or mishandle by the political parties and the media, particularly social the networks. It is a challenge to the community of origin lost in the uncertainty about the future and the loss of normally a strong generation. When the great mental and physical effort is not of a test for an individual person, not even for a community but rather for the entire International Community, the challenge -of the challenge becomes overwhelming. This is the case with the current and future of education for refugees.

A great deal of activity occurred round the 2015 target year. Several interlinked processes have been set at work for the EFA goals and the Millennium Development Goals (MDGs), several inter-linked processes have been launched aiming at shaping the post-2015 development agenda. The post 2015 Agenda which was developed under the leadership of UNESCO in the Education Agenda, the meeting with States at Muscat for support and enrichment and the Incheon Declaration on Education with broad support and reaffirmation were interconnected documents trying to converge into the most appropriate decisions in relation to educational targets and goals.

Analysing these documents as well as reflecting on the media and the experience at current times many are the challenges in relation to the education of the refugees. Ten were selected, as considered of the greatest importance, with others which are included in these main themes. The majority of them are highly present in the literature, others are less present but they are also considered very important. The major challenges selected are:

Further challenges- to meet the SDG 4 are:

1. Languages
2. Culture and social issues
3. Quality: Teachers, methods and materials
4. Education at each of the stages: primary, secondary, tertiary, lifelong learning
5. Accreditation and administrative barriers
6. Other Challenges: Resources and accountability

There is an overall challenge clearly defined in 2015 as Global Challenge- the SDG 4.”¹⁶⁹ This challenge defines the direction of all the efforts and channels all the activity. All the other challenges are specifications or consequences of this search for a type of education which could create inclusion, equity and quality which could also extend throughout the entire life. The period leading to the agreement of the post 2015 Agenda were rich in consultations, in debates, in exchanges over visions of education and perceptions of what could most make an impact for the future. There are two transversal dimensions one about quality and the other one the consideration that the challenge is throughout life. Inclusion and equity have three imperatives: access to all, gender equality and attention to the vulnerable populations. The overall, powerful challenge is to reach this goal completely and for these marginalised groups out of which refugees are a critical group.

6.1. LANGUAGE AS A CHALLENGE

Language is a well-recognized challenge.¹⁷⁰ In fact, in relation to language a number of important issues can be identified:

It is the entrance door to a new culture and the first frontier that refugees find, in many cases as they try to settle into a new environment, the way how they face and resolve this first issue will mark definitely their stay in the country, their capacity to understand and to communicate, their comprehension of the words and the meanings behind the words. Educational performance is closely linked to a good use of the language, school abandonment, insecurity and incapacity to move forward run parallel to the use of the language. From this perspective, early childhood learning and the attainment of good levels are important challenges to meet in the first period of mobility into a new setting. In this way one of the key issues is the early, solid command of the language on the country where they will intend to stay as this has an impact on the level of success of their training, the quality of the job they will be able to access the degrees of inclusion and the quality of citizenship they will be able to develop.

The Special Rapporteur is convinced of the importance of language training for the refugees later performance and success but he also enters another levels of their

¹⁶⁹ UNITED NATIONS, 2015. p.25.

¹⁷⁰ UNESCO, 2017. p. 10.

rights in relation to the language, such as the preservation of the mother tongue.¹⁷¹ He, in fact, offers examples of good practice in countries in Northern Europe where bilingual free education is offered in both languages: mother tongue and country of reception. The richness and the facility of this type of policies are clearly a contribution to an image of multilingual societies where variety could turn into an important capital to invest.

The early stimulation of language learning is a critical element of further success. Besides, Language is often connected with curricula. Which curricula will be best for the refugee? Which one should be more relevant and better for the future performance? The Special Rapporteur mentioned three guiding principles which can speak of the relevance of the quality of curricula. Namely curricula should be: a) human rights based, b) subject to consultation to the parents and communities of the refugees and c) “inclusive mutual and collective learning with minimal segregated adaptation groups and classes”¹⁷²

There is another angle to the issue of languages namely the multilingual- for instance in Belgium, Switzerland, regions of Spain or Finland and where the refugee will need to understand and manage more than one language. The challenge expanded to the need to master a second local language. This is an important issue which has the potential for opening for them a new culture and of course a new way of thinking and living, but, it could be another weight in their already fragile shoulders. In countries where this is not assumed or not yet assumed by the State, the issue is clearly ambivalent and the challenge critical to take up from the start. This means an extra difficulty for the children in relation to schooling and to the integration and job possibilities in the future developments for the refugee community.

In terms of policy actions, it is interesting to read in the New Skills Agenda that in order to attempt a more rapid integration of third country nationals the Commission will (on the third point in relation to refugees and migrants: “*make available online language learning for newly arrived migrants, including refugees, through Erasmus +*

¹⁷¹ Muñoz Villalobos, V. 2010. p.11-13.

¹⁷² *Ibid.* p.12.

online linguistic support (100.000 licenses for online language courses will be made available to refugees over three years). ”¹⁷³

6.2. THE CHALLENGE OF THE DIALOGUE OF CULTURES AND SOCIETIES.

Refugees have their own culture behind, a society and a culture, to which they may be able to return, but that it is part of their identity and of the patrimony of the world. The issue of culture is often related to that of being able to understand a society and the elements that go with it. It is the enabling capacity of been able to understand the entrance keys in a society, the capacity for the refugees to be able to understand and take part in the common projects in order to become first class citizens.

In respect to cultural and social dimensions a number of considerations need to be made:

The first could respond to the view that a human rights approach to refugee's mobility has different sides positive and negative. On the positive side there is the consideration that cultural diversity has many positive elements in it and societies which are able to take advantage of these moves can become richer in cultural dimensions and stronger in their capacity to move towards a new horizon. It may also be said that: “Movement across national borders is only one of the many causal factors and mechanisms (social, economic, cultural, physical and psychological) that impact upon migrants, refugees and asylum-seekers in the exercise of their right to education”¹⁷⁴.

But, unfortunately, the situations tend to resort in segregation and division, with potential tensions between groups, with xenophobia and violence, particularly as resources become scarce or limited. The situations of low socio-economic status, urban areas of segregation end up with lack of access to good quality education. In fact, it is difficult to think of education when the primary needs of food and shelter are not properly covered. The lack of cultural and social empowerment reaches even the point of not been able to access information in an adequate way. “Some replies to the

¹⁷³ EU Commission. 2016, p.9.

¹⁷⁴ Muñoz Villalobos,V, 2010, Point 34.

questionnaire indicated that there is a lack of information and awareness among migrant, refugee and asylum-seeker populations about their rights, specifically those that safeguard their right to education. Implicit in this is what it means to make informed school and educational decisions. It is essential, therefore, to provide information and logistical support to migrant, refugee and asylum-seeking populations to strengthen their capacity in this regard”¹⁷⁵

A further element to be considered is that the lack of cultural and social resources tends to affect certain groups in particularly strong manner. This is the case with the children going to school, exposed to the constant comparisons with the hosting populations, ignoring basic facts and codes of behavior. In the confrontation between cultural habits a further group which could potentially may be suffering a high level of impact may be girls as one of the fields which is at present more sensitive and less consolidated in terms of cultural patterns.

There is still a more extreme element to be considered in the report of the University of Macedonia, the barriers to education for migrant children in relation to clash of cultural backgrounds are clearly portrait: “The consecutive arising barriers towards the access to education, for irregular migrants in countries of destination could be explained also by the wider situation in those countries. Incidents like the fear of xenophobic violence, hate crimes, hate speech, exclusion and other manifestations of racist behavior often force the migrants in an irregular situation to shut themselves off from the community or to keep their children away from attending mainstream educational institutions”¹⁷⁶

This is confirmed by a study that examined how students from refugee backgrounds cope with victimization and bullying in three urban high schools in the United States “Students reported a wide range of victimization and bullying experiences from verbal to physical assaults. Further, students reported multiple ways of coping with victimization and bullying.”¹⁷⁷

¹⁷⁵ Muñoz Villalobos, V, 2010, Point 39

¹⁷⁶ UNESCO Executive Board Presidency. 2017. p. 10.

¹⁷⁷ Mthethwa-Sommers, Shirley & Kisiara, Otieno. 2015. p. 1.

This study “showed various models of resisting and coping with bullying which students, from refugee backgrounds employed, including push-back bullying, dignity preservation, self-punishment, and external validation models. The participants in the study proffered suggestions on how school teachers and administrators can mitigate bullying of refugee students, which range from assuming that bullying is not occurring if it is not reported, to holding perpetrators of bullying accountable by using the restorative justice approach that puts an onus on the perpetrator to change his or her behavior, and to using the symbolic curriculum in tandem with assemblies and continued discussions on bullying.”¹⁷⁸

6.3. QUALITY: TEACHERS, METHODS AND MATERIALS

From point 49 to 56¹⁷⁹ the Special Rapporteur describes with clarity and realism the opposite side to the right of education for refugees. If quality of education is in the center of the picture, the narrative of his observations and “the normality” of the situation speaks clearly of how far off the target normal situations of schools with refugees can be. There are, indeed, certain examples of good practice in different countries (The Philippines, Denmark, Latvia, Korea or Portugal) who have taken a lead in relation to quality in migrant and refugee education. The Rapporteur relates to it as *Inadequate quality of instruction RR- teachers*. In this challenge there is a reference to quality: teachers, methods and materials, knowing that the person of the teacher is of the greatest importance.

There is a central affirmation: “*Special Rapporteur recognizes that the meso-level processes linking the individual and society matter tremendously for student performance, and thus the right to education for migrants, refugees and asylum-seekers*”¹⁸⁰ However, the problem of teachers has three major dimensions according to the Report: 1) the shortage of teachers 2) the lack of educational training to deal adequately with the specificity of the learners 3) the lack of training in intercultural competence. In the observation of reality, the following picture emerges:

¹⁷⁸ Mthethwa-Sommers, Shirley & Kisiara, Otieno. 2015. p. 7.

¹⁷⁹ Muñoz Villalobos, V. 2010. Points. 49- 56.

¹⁸⁰ *Ibid.* Point 49.

a) The shortage of teachers is a classical in difficult schools in difficult areas and it is a problem which feeds back on itself. This can have basically two versions: the first is when attending schools at the local level, often in urban areas. Crowded classrooms are difficult to handle and teachers prefer small classes, where their impact is highest. Children will have less possibilities of being at their appropriate level, of advancing at the maximum speed, of enjoying the attention they need to develop. Discipline problems are also easier to appear in these contexts. Far from personalised education, with often disrupting elements, with the difficult background the refugees live, with often difficulties in understanding the language and the social contexts it is difficult for those children to have the attention they would require to have a normal progress and to keep up the pace from the start.

The second version of shortage of teachers relates to teachers in the camps. For the earlier years and for some contexts the integration of refugee teachers is a double solution. Teachers from the camp itself will certainly understand better than anyone else the setting and the needs of the refugee children and will share the high interest in their best performance. At the same time, a well prepared teacher will have the recognition deserved and will feel useful in their professional task. However, as levels advance, the need for specialisation of the teachers becomes more evident and the correspondence between needs and demands may not be corresponding. There could be eminent doctors or engineers or even professors at university level but the matching of needs and possibilities becomes more difficult.

b) In relation to the lack of pedagogical training, in the case of teachers from the camp itself, they would have some of the characteristics which they required: the capacity to understand the situation, to be able to speak the language and to have a clear understanding of the refugee world. This connection with reality is of the highest importance. However, they may, as it is a very broad problem in countries all over the world, not be well prepared pedagogically to deal with the situation, particularly in a context where resources and material may be scarce or not existent.

A report from the EU Commission on early leaving from education, speaks of how some countries " *have targeted policies focused on strengthening teachers' competences to provide a person-centred and need-centred learning path for*

disadvantaged students.”¹⁸¹ This is related to the awareness which is evident through the report that: “*Statistics also show that foreign-born students are more likely to leave education and training early. Indeed, students with a migrant background generally face greater challenges in accessing and participating in education than those born in the country of residence. This can be due to language and/or cultural barriers, socio-economic segregation, limited access to sufficient learning support, etc.*”¹⁸² This report speaks clearly of the role of teachers, not only in their role to foster learning but also specializing in guidance and counseling to the students, a task which would be difficult to provide in the present circumstance but that would be of the greatest importance.

C)The lack of training in intercultural competence. Again this is not specifically of the refugee teachers because the lack of teachers lacking intercultural training is a well-recognised need. In this context and relating to Intercultural competences, the need is recognised to “*Provide expertise to existing pedagogical centers/teacher training institutes on intercultural competences, so to equip teachers with supportive content and relevant techniques. Current teacher education must be expanded to prepare the students for life as active, responsible citizens in democratic societies as well as citizens of the world, aware and available to address global issues*”¹⁸³ The need of intercultural competence in the teachers who could come from the hosting country or from International Organizations who may be drawn to assist can be of the greatest importance.

The challenge of counting on the appropriate number of teachers and with a training both in pedagogical aspects as well as in intercultural awareness may be complemented by the possibility of the use of good material and the provisions for that to happen in refugee settings. But the critical issue seems to refer to the teacher. This is also recognized by UNHCR among the challenges mentioned in their Educational Review: “*Challenge 3: There is a shortage of quality teachers and lack of structures, including remuneration and training, to retain them.*”¹⁸⁴

¹⁸¹ EU COMMISSION 2014, p.66

¹⁸² *Ibid.* p.11

¹⁸³ UNESCO, 2013, p.29

¹⁸⁴ UNHCR, 2011, p. 4.

Even in the 2015 report the quality of teachers emerges as a difficulty to have achieved the MDGs in the field of education since while a higher level of children has attended school but the level of improvement has not reached what was expected due to the quality of teachers.

The quality of teachers emerges as the key element in all the analysis of the how to move forward, however materials and curricula are also considered of relevance, work has been done and initiatives have been taken by the European Commission to provide exchange of good practices on the integration of migrants and refugees and funds relevant projects across the different levels of education: Erasmus+ helping refugees through Higher Education European School, VET and Adult Education_Schools education and migrants; multilingual classrooms Vocational education and Training Adult education Dealing with multilingualism¹⁸⁵

The inadequate quality of instruction becomes clear in a study built on UNHCR data, interviews carried out in 14 countries of first asylum and field case studies. This work speaks clearly of the low performance of the children of refugees due to a number of factors related to the quality of their education: “resources for teaching in refugee settings are limited as reflected in high student teacher ratios and low teacher training and qualifications.”¹⁸⁶

Particularly concrete and revealing is the reference made to an indication of concrete objectives to attain given by UNHCR where a number of references were given as goals to reach: “40 children per teacher and 80% of teachers trained” specifying this training “with a training of 10 days”¹⁸⁷

6.4 PROVIDING EDUCATION AT EACH OF THE STAGES OF LIFE

In the UNHCR Education Strategy 2012-2016 the reality of refugees is clearly recognized: “many *refugees do not have access to quality education that provides physical protection and personal capacity development. This is particularly true for marginalized groups, including children and young people with physical and cognitive*

¹⁸⁵ EU Commission, 2016 available at http://ec.europa.eu/education/policy/migration/index_en.htm

¹⁸⁶ Dryden- Peterson, Sarah. 2015. p. 10.

¹⁸⁷ *Ibid.*

*disabilities; over-aged learners who have missed out on years of schooling; and children associated with armed forces. Refugees can also be marginalized on the basis of gender, ethnicity, language, and poverty. Girls continue to be left out of mainstream education”*¹⁸⁸

It is against this background that the Strategy is built. This strategy is particularly broad and comprehensive through all life stages. It also presents targets and quantifiable indicators for each period. It is indeed a lifelong learning plan.

However, beyond the strategy a recently published UNHCR Report gives very concrete and real dimensions to the obstacles and challenges lived at different moments where refugees could and should be able to enjoy the right to education. This report tells the stories of some of the world’s six million refugee children and adolescents under UNHCR’s mandate who are of primary and secondary school-going age between 5 and 17.¹⁸⁹ It may be considered as the contrast of the elaborated strategy.

This challenge of lifelong learning could be summed up using the words of the New Skills Agenda for Europe “*Formal education and training should equip everyone with a broad range of skills which opens doors to personal fulfillment and development, social inclusion, active citizenship and employment. These include literacy, numeracy, science and foreign languages, as well as transversal skills and key competences such as digital competences, entrepreneurship, critical thinking, problem solving or learning to learn, and financial literacy*”¹⁹⁰. This presents the target of a lifelong learning provision where skills can be developed with the consequence of high impact on the life of the person and beyond to his or her family and surroundings.

In this context the Special Rapporteur warns that: “*If migrant, refugee and asylum-seeker populations are excluded from opportunities for learning over their lifetime, this might add a cumulative process of marginalization. If learning is viewed in terms of formal credentials and not competences that reflect prior learning, then*

¹⁸⁸ UNHCR. 2012, p.7.

¹⁸⁹ UNHCR, 2016.

¹⁹⁰ EU Commission, 2016, p.1.

considerable pools of knowledge are ignored, talent is wasted and opportunities for social inclusion are jeopardized”¹⁹¹.

There is, therefore a total agreement into the importance and the challenge of the need of providing a comprehensive education throughout the life span. In the UNHCR Strategy this is expressed as follows *“Educated refugees provide leadership in displacement and in rebuilding communities recovering from conflict. With quality education, refugees acquire the knowledge and skills essential to understanding and promoting gender equality and sustainable peaceful coexistence, among other areas of community development. The future security of individuals and societies is inextricably connected to the transferable skills, knowledge, and capacities that are developed through education”*¹⁹². The perspective of the need for education in leadership of the emerging refugee community and the rebuilding of the societies in return gives also an important dimension to the challenge which reaches everyone.

Although in the analysis of the role of education there has been a growth in the extension to reach the entire stent of an individual’s life, the critical relevance of **education at the early ages** is recognized all over the literature. Even the above mention Agenda declares that: *“Early acquisition of these skills is the foundation for the development of higher, more complex skills which are needed to drive creativity and innovation.”*¹⁹³ In quantitative terms, the Education Strategy will identify it with *“Enable early childhood education for 500,000 children aged 3 to 5”*¹⁹⁴ The importance of this period is recognized broadly as the foundation Stone for further developments.

The conviction that the early stage education is determinant as the basis for the future and the crucial role of **primary level of education** is broadly maintained. In fact, the Special Rapporteur speaks of concern: *“is the inconsistency of policy and provision, most notably in refugee camps, the result of a lack of funding in quality and quantity of early childhood education programmes. This inconsistency contributes directly and indirectly to lifelong marginalization”*¹⁹⁵. While, according the mentioned source, at the

¹⁹¹ Muñoz Villalobos,V, 2010, p.15.

¹⁹² UNHCR, 2012, p.7.

¹⁹³ EU Commission., 2016, p.1.

¹⁹⁴ UNHCR, 2012, p.8.

¹⁹⁵ Muñoz Villalobos,V, 2010, point 68

normative level, all the efforts have focused on primary education, leaving the rest of the educational road without been recognised at this level.¹⁹⁶ When this is read in figures and the challenge is addressed in the Educational Strategy two quantitative indicators are given: “*Ensure that 3 million refugee children have access to primary education*” and a second “*Ensure that 70% of refugee girls and boys achieve quality learning in primary school*”¹⁹⁷ It would be interesting to visualize the achievement rate of this challenge

The lack of focalisation into **the secondary, vocational training** and tertiary education has a very negative impact on the life and the real possibilities for a community to acquire higher standards and to integrate. These levels have tended to depend on international cooperation, lacking in infrastructure, learning materials and quality of teachers. “*Systemic and individual barriers to post-primary and tertiary education contribute to the perpetuation and consolidation of disadvantage in education generally, in post-primary*”¹⁹⁸ The link between primary and finding a successful formation, a good job and a participatory citizenship is too long and too weak and post primary education has a decisive role in this process. In terms of **secondary education**, the Strategy speaks of expansion to one million young people while adding a concern for safety at schools and learning environments for all those in secondary education. In fact, equal treatment is given to primary and secondary education as a continuum which relates and call for each other. There is also space for adult literacy and a mention to the non-formal learning with a dimension of gender included, recognizing the need to cover all the circumstance where education can take place in order to capitalize them in the context of the refugees.

As to **higher education** the Education Strategy is more ambitious talking of a 100% of the people to follow higher educational programs. As the SDG 4 put emphasis on “*lifelong learning*”, it can be expected that the gap between emphasis on primary, secondary and vocational training will be filled by the year 2030. Meanwhile, it can be said that many initiatives have been taken by the universities in the field of refugee education. The most recent the 9-10th June 2016 in Amsterdam Spotlight Seminar for

¹⁹⁶ Van Esveld, Bill, Martinez Elin & Khawaja, Bassam. New York: Human Rights Watch, 2017. Available at <https://www.hrw.org/world-report/2017/country-chapters/global-0>.

¹⁹⁷ UNHCR, 2012, p.8.

¹⁹⁸ Muñoz Villalobos, V, 2010, point 70

the major European Association of International Educators dealing with Integrating refugees into higher education: solutions for a generation on the run. The president reiterated at the opening, *“the key role that the higher education community can play in the response to this crisis”*¹⁹⁹ Also in relation to aspects of refugee education, issues connected with Higher education and refugees can be found in Resilience and strength in response to the refugee crisis²⁰⁰ The Seminar also has given way to discuss and present sections on how higher education institutions welcome refugees²⁰¹ Funding available for refugees and exchanging examples of good practice.

Although higher education has a capacity to significantly improve livelihood and ensure level playing field for refugees, there are still significant obstacles preventing refugees from easily accessing higher education. An interesting initiative can be mentioned as a way forward in relation to higher Education explicitly related to refugees. Kiron Open Higher Education is a non-governmental non-profit organization; whose mission is to reduce the barriers refugees face accessing higher education. Its primary goal is to integrate refugees into the higher education system as quickly as possible. This education model is based on blended learning, a combination of offline and online education, as well as live and self-paced courses. Study programs have two major component parts. The students complete up to two years online and afterwards, depending on the number of credits obtained and/or recognized, one or two years at one of Kiron partner universities, where upon graduating they obtain an accredited university degree. This system gives an answer to the major difficulties facing the refugees in relation to Higher Education, according to UNHCR:²⁰² This initiative, based in blended learning tends to give an answer to the four obstacles:

The Legal obstacles relate to the fact that refugees rarely have access to their documentation and these documents are a legal requirement to enroll at the universities - certificates of high school or university attendance, which they would not carry with them in their flight, or passports, permits of residence etc., *-the solution* found by the Kiron model is that students can begin studying during displacement and resettlement processes because they can start to do so while they wait to obtain their legal status.

¹⁹⁹ EAIE 2016 available at <http://www.eaie.org/spotlight-seminar-refugees.html>

²⁰⁰ EAIE 2016 available at <http://www.eaie.org/blog/resilience-strength-response-refugee-crisis/>

²⁰¹ EAIE 2016 available at <http://www.eaie.org/blog/how-higher-education-institutions-welcome-refugees/>

²⁰² KIRON 2016 available at <https://kiron.ngo/about/challenge-solution>

They enroll in approved MOOC courses and began to obtain credits minimum of sixty credits in two years which they will use when they enroll formally. So that by the end of the two years, they would have their document, can enroll in their second year and in that period they have already learn the language of the country. The idea of not wasting time is critical for this situation of life and for not losing momentum of means that dropping out would be less frequent.

Language learning. It is proved that there is a requirement of level in the language of instruction. Universities have certain language requirements; which refugees are often unable to fulfill because they need time to learn the language. This means time and possibility to lose energies, concentration and interest as the initiate a life of search for work, and moving around. The *solution* found by the Kiron model is that students do not have to fulfill any language requirements since they enroll in courses which correspond to the language they know best, the MOOCs are in English and they can study straight away through the online platform. There is a system of language learning through which the refugees obtain the language skills to attend the universities in the host country.

Financial obstacles. The difficulty of finding economic resources for fees either to be paid individually or by the host countries is a clear difficulty *resolved* by a system where education on line lowers the costs significantly and the Kiron model has a system of covering these costs “*via a combination of funding, investments, and donations*²⁰³” and working with independent organizations to achieve financial backing.

University capacity. Normally universities do not have space to cope with a large number of refugees The *solution* is found through the open courses, since students only attend universities for one or two years, less strained is placed in the universities and less demands are made on them.

6.5 ACCREDITATION AND ADMINISTRATIVE BARRIERS

Accreditation is an important challenge as in reference to mobility of people who often belong to educational systems not without academic agreements and outside

²⁰³ KIRON 2016 available at <https://kiron.ngo/about/challenge-solution>

major systems. The Bologna Process has brought with it an important awareness of the needs and also important methodologies for recognition at university levels. In the case of accreditation, the most significant work has been done at tertiary level because there is a history of mobility at this particular level. In respect to accreditation at tertiary level, the work carried out by NOKUT²⁰⁴ needs to be recognized, several reports show the progression from its foundation to 2016 where it offered the NOKUT qualification Passport for refugees²⁰⁵

But this need does not take place at university level only. The need to understand and recognize the level of schooling and the development which is more appropriate goes into all levels of learning and conditions significantly the possibilities of a good performance for the learners whatever their age. But there is another aspect which is fortunately well recognized and clearly explained in the very recent communication from the Commission to Parliament on the 2016 New Skills Agenda for Europe. There are two clear measures adopted by the Commission to “rapidly integrate third country nationals” These are:

- *“launch a 'Skills Profile Tool for Third Country Nationals'. The tool will assist services in receiving and host countries to identify and document skills, qualifications and experience of newly-arrived Third Country Nationals.”*
- *“work with national authorities to support recognition of migrants' skills and qualifications, including refugees', support the training of staff in reception facilities to speed up recognition procedures, and promote the sharing of information and best practices on understanding and recognition of skills and qualifications”²⁰⁶.*

The level of advance that these affirmations show is high and the capacity of policy objectives demonstrated speak of a process which has been of great significance at normative level. The proposal of creating a Special profile to recognize skills proves an important awareness and intentionality in the potential of the groups of new comers and recognize in them potential rather than difficulties in relation to the hosting country.

²⁰⁴ NOKUT 2016 available at https://www.daad.de/medien/.../11.05.2016_daad_malgina__I_

²⁰⁵ *Ibid.*

²⁰⁶ EU Commission. 2016, point 6.

It would be also important to take into consideration that while the norms may be clear the level of practice may be far from the written desired outcome. So, an analysis of every day cases shows that it is often **administrative** constraints that are at stake in the arrival, for example looking for a school for a child when the administrative requirement is that a document shows the child is actually a son or a daughter and there is no way of proving this due to the lack of documents. That could take days and months. Children can be asked by their identity at particular moments, not to mention social security. The administrative requirements keep weighing heavy in day to day procedures and are often the real difficulties beyond the norms, the objectives and the agreements made.

6.6. OTHER CHALLENGES

There are other challenges which are considered both in the literature and in the action plan of UNHCR, the SDGs, the Special Rapporteur to the right of education as well as in the education Strategy. These relate to counting on enough resources for achieving that which is collectively set as a target or the need for accountability, coordination and leadership. In this sense the New Skills Agenda recognises the importance of **resources**: *“Given the immense challenges (...) the augmentation of educational expertise at field level is critical to the productive use of existing and additional resources”*²⁰⁷ while in their Educational review of 2011, UNHCR considered already as challenge 6 *“Lack of financial resources, and their inconsistency, as well as a shortage of educational expertise both within UNHCR and among Implementing Partners (IPs), limits progress in refugee education”*²⁰⁸

The following challenge recognised is that of **coordination** *“in refugee education, including complex power dynamics, which limit the productivity of partnerships”*²⁰⁹. In fact, the lack of coordination and the dynamics of power among the actors in the field is highly required given the nature of the situations with local governments and international actors playing a part in the context. Beyond the need to collect data and engage in full **monitoring** of the process to reach quality, efficiency

²⁰⁷ UNHCR, 2012, p. 34.

²⁰⁸ UNHCR, 2011, pp. 69- 75.

²⁰⁹ *Ibid*, p. 40.

and continuous improvement, the Educational Strategy goes back to the same need: *“This work includes **coordination** with existing Education Clusters in the context of complex emergencies to harmonize education approaches where benefits*²¹⁰

For the Special Rapporteur, the need to cooperate is paramount. He perceives: *“a crucial need for States, donors, international agencies and civil society to work collaboratively together, as substantial movement and migration across national borders will continue to define our globalized world.”*²¹¹

Other challenges relate to “displaced people, for instance, are sometimes detained for extended periods and without legitimate reasons. The hesitation and resistance of some countries to allocating financial resources or promising resettlement for refugees seem too often linked to the perception that the influx of people might threaten their national security.”²¹²

Many are the challenges that the issue of refugees has at the present time. Perhaps the biggest of all the challenges is that of understanding what the whole situation means. In a recent report UN’s Michael Møller²¹³ questions the current interpretation of the refugee crisis as it is interpreted by the politicians and the media. But the importance of meeting them is critical at this particular time of history for the refugee communities, for Europe and for the world.

7. CONCLUSION OF THE THESIS

Many conclusions may be drawn from the analysis of the situation, but they have been summed up into six main conclusions:

The **first conclusion** relates to a significant advancement of the framework of the right to education and its possibility to be used in the context of irregular migrants, asylum-seekers and refugees. There seem to be a high level of agreement in the role and

²¹⁰ UNHCR 2012, p.29.

²¹¹ Muñoz Villalobos, V. 2010. p.20.

²¹² UNESCO. 2017. p 7.

²¹³ Ridley, Louise. 2016, available at http://www.huffingtonpost.co.uk/entry/refugee-crisis-facts-un-michael-moller_uk_5734277

the need to protect the right to education particularly for populations which need it most. It is considered as an enabling right and there is a growing consensus at global level that this right is for all and that it is even more important for marginalized and displaced populations in order to be able to gain space and recover from the difficulties as a means to recover, to advance, to reconstruct and to go beyond the conflict and the violence. The Declarations are more accepted and the decisions are more global. UN has developed specialized Agencies to prepare agendas and to monitor performances. The developments of the laws continue to advance and links between many actors are taking place. A number of principles, agendas and operational lines are being prepared and launched. Different indicators are agreed and methodologies for accountancy are carried through. The Conventions are bearing fruits and the countries show a greater sensitivity to them, so that it may be considered that the international normative framework is increasingly of greater acceptance by the States.

Conclusion 2. The refugees continue to be at the center of the picture both at world level as well as in the European scene. They are present in the media and in politics, however, there have been claims that the reality has not been understood with clarity and that the situation is quite comparable with situations lived before. The countries seem to be highly polarized on the issue and so the political forces which spread very different messages about the impact and the dimension of the situation as well as the solutions. The only thing where there seems to be consensus is in the importance of the theme and the centrality not only for the present but for the future.

Conclusion 3. There have been a number of changes in the process and in the type of developments which have taken place. One of these changes is in the extent of education. While continuing with the concept of primary education as the core element to protect, due to the very basic role as a foundation for the rest of life development, the protection of the right of education has expanded to cover the complete extent of life: not only primary but early childhood and then secondary, vocational, tertiary and lifelong learning which in the case of the migrants is particularly necessary to be adapted to the new situation and be able to find the ropes for the new setting. In this context, the advancement taken place at the university level by the institutions themselves is quite remarkable. So is the motivation revealed in relation to new ways of finding solutions for the problems of length of studies, recognition and accreditation.

Another change which has taken place is the move from education in the camps to urban educational settings. This has meant a completely change in the perception and the development of the methodologies and the difficulties experimented. Thirdly, there has been a change from a system of scholarships to a more collective development of education solutions according to the different contexts and with the possibilities at hand. By 2030, substantive improvements shall be expected as States have renewed their commitment to ensure sustainable development, particularly SDG 4 related to “*inclusive and quality education for all and promotion of lifelong learning*”.

Conclusion 4. The major difficulties, however, do not seem to lie in the development of the law, although this should continue to grow further, but in the implementation. Difficulties in adapting educational centers to learners who do not have documents, certificates that cannot be provided, endless administrative procedures, bureaucratic barriers, barriers of language and understanding beyond the language or the words.

Conclusion 5. Despite the advancement which has taken place, there seems to have long way ahead. There are many challenges still ahead: the lack of real understanding between cultures and languages, the plight of the unemployment which hits particularly some of the regions where the refugees are landing.

The last conclusion could be the consideration that the right to education for refugees could be seen as a symbol of the world situation and in a very concrete way of the situation in Europe. This seems to be divided between the principles agreed and maintained and the way these principles have gone down into the civilians. While the direction is somehow agreed and the roadmap made, there seems to be very little direction, vision and leadership.

While the human rights develop further and more positively in the treaties, the agreements and in the laws of States, societies seemed have grown into different directions and poles: very active and militant on one side and insensitive to the values inherent in human rights. Some see the solution to an aging population, others build walls to get protection from the refugees. In the meantime, leadership seems to have gone and the sense of lack of direction prevails. From a human rights’ approach the

direction will always be to look for ways of protecting the right to education of the irregular migrants, asylum-seekers and refugees as a way of reinforcing their dignity of human beings, as a road to the development for their full potential, the importance of their contribution and as a believe that the human rights principles are strong pillars for societies to grow and become strong.

There is, however, a belief that is shared by people on both sides: it is the conviction of the relevance of giving an appropriate answer to the problems of the refugees and their education. This is considered as perhaps the most critical issue for Europe and the world both in terms of present and of future.

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