

Refugee and Migrant CRISIS IN EUROPE

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Improving children's future through access to education

General context

More than a quarter of a million children sought asylum in Europe during 2015. In 2016, some 85,000 more children have arrived in Europe through the Mediterranean.¹ Most of the children had travelled in hazardous conditions for weeks or even months, with no access to health, education or welfare services during that time. With such an unprecedented increase in the number of vulnerable children within Europe, frequently concentrated in specific countries and locations, it is vital that the legal, policy and service frameworks are in place to respond to their needs and support their inclusion.

Education is one of the core rights for children under the Convention on the Rights of the Child (CRC), and school is often the place where refugee and migrant children learn most about the norms and values of their host society. The EC Action Plan² on the integration of third country nationals recognises the importance of education and training noting that access to them should be ensured and promoted as early as possible. This requires upgrade of national legislative and policy frameworks, provision of practical support to local education authorities, and potentially the development of new models of schooling, that draw on the skills, knowledge and experience available in the refugee and migrant population.

Legal entitlements to education

Article 28 of the CRC, which has been ratified by every European State, provides that all children have the right to free compulsory education; Article 29 defines the scope and quality of education to which all children are entitled. Migrant children's equality of access to education is also supported by the International Convention on the Protection of the Rights of all Migrant Workers and Members



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of Their Families (ICRMW)³ and by the European Convention on the Legal Status of Migrant Workers (ECLSMW)⁴ which endorses migrant children's right to access general education and vocational training in the host State "on the same basis and under the same conditions as nationals" (Article 14.1). However there is a need for wider endorsement of both these Conventions as no EU State to date has ratified the ICRMW and only six have signed the ECLSMW. The European Social Charter (ESC) also protects migrant children's educational rights both directly (Article 17.2) and indirectly by imposing restrictions on children's access to labour market with a view to enabling them to obtain the full benefits of compulsory education (Article 7).

3 Unfortunately no EU Member State has actually ratified the ICRMW to date. Albania, Bosnia, Serbia and Turkey have ratified the ICRMW and Montenegro has signed it and these may provide impetus for wider ratification after their full accession. See <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en>

4 Unfortunately only six EU Member States have ratified this treaty - France, Italy, the Netherlands, Portugal, Spain and Sweden. See Annex II of D'Auchamp M. et al Migrant Workers Rights in Europe OHCHR (2011) Geneva for a full list of ratifications of relevant international and regional Conventions by EU Member States.

1 UNHCR Refugees/Migrants Emergency Response – Mediterranean accessed 8 November at <<http://data.unhcr.org/mediterranean/regional.php>>

2 Action Plan on the integration of third country nationals EC (07 June 2016) Brussels



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Under Council of Europe (CoE) law, Article 2 of Protocol No. 1 to the European Convention on Human Rights (ECHR) guarantees the right to education, although the European Court of Human Rights (ECtHR)⁵ has clarified that this article simply obliges States to allow access to the schools available. Article 14.2 of the EU Charter of Fundamental Rights guarantees the right to education, including *“the possibility to receive free compulsory education”* and Article 17.2 of the revised ESC obliges States *“to take all appropriate and necessary measures designed [...] to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools”*⁶. In general, compulsory education encompasses at least nine years of basic education; ten years in twelve countries; and up to thirteen years in Hungary, Malta and former Yugoslav Republic of Macedonia (fYROM). Basic education includes the full course of primary schooling and at least two to three years of secondary education.

More and more countries are also extending the age range of compulsory education by including a year of pre-primary school education. The almost universal participation in Early Childhood Education and Care (ECEC) of children between 4 years and the age of starting primary education, as well as the increasing inclusion by European governments of one year ECEC within the framework of compulsory education are a strong recognition of its value in laying the foundation for success in school and beyond; supporting vulnerable families; and facilitating social inclusion. There is an extremely strong case that refugee and migrant children under the age of 6 should have the same “full and rapid” access to early childhood education and care programmes. A recent study refers to lack of opportunities for early childhood education as one of the possible factors behind the weak education results achieved later on by some children from migrant households.⁷ The EC has clearly articulated in its 2016 Action Plan⁸ the vital role that ECEC can play in helping migrant and refugee children to learn to live together in heterogeneous societies and to acquire linguistic competences. The Action Plan recommends investing in ECEC in order to tackle migrant poverty and social exclusion, and make sure that all children are given the chance to realise their full potential.

All children’s fundamental right to basic education, regardless of their migration/asylum status, is recognised under EU migration law⁹ and migrant children’s access to education should be on the same or similar basis as nationals. The difference between

“same” and “similar” can be significant and is usually determined by the child’s legal status. At the top end of the scale, the children of EU migrants who move to another EU State benefit from the most favourable entitlement. They have a right to be admitted to their host State’s general educational, apprenticeship and vocational training courses under the same conditions as nationals¹⁰, including admission to public, private, compulsory and non compulsory education. The Court of Justice of the European Union (CJEU) has interpreted this entitlement broadly to ensure equal access, not just to education, but also to broader, education related social benefits, as well as to any benefits intended to facilitate educational attendance.¹¹

Non EU-migrant children residing regularly within EU and beneficiaries of international protection are also entitled to access education under the same conditions as nationals¹². However, while children of non-EU families are legally entitled to access publicly funded education under the same conditions as nationals, they are not automatically entitled to associated benefits such as maintenance grants¹³ and this could restrict their capacity to access quality education.

The Reception Conditions Directive holds that, in EU States, asylum seeking children are entitled to access the host State’s education system on similar, but not the same, terms as those that apply to nationals¹⁴. Education may be provided in accommodation centres rather than schools, and the Member States may postpone asylum seeking children’s full access to a school for up to three months from the date of application for asylum.¹⁵ A three months delay in accessing school, especially when combined with travel time, can mean significant gaps in children’s education. Moreover, education arrangements in accommodation centres do not meet the same standards as in schools. NGOs, which usually provide the preparatory classes in reception or accommodation centers during the preliminary stages of the asylum process do a remarkable job. However, often the classes lack any connection with local schools. They focus mainly on teaching local language, while other curricula areas are not covered. Such non-formal or informal education is found to be very useful in bridging temporary the gap, but cannot and should not replace access to formal education.

Although recent research¹⁶ claims to have observed greater access to education for children for children with irregular immigration status, their entitlement to receive primary and secondary education has been made explicit (through legislation, regulations or case law) in

5 ECtHR, Case “Relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium, Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, 23 July 1968, para. 4.

6 The ESC of 1961 does not contain a provision on the right to education.

7 <<http://politikon.es/2016/05/31/los-hijos-de-inmigrantes-en-la-educacion-primaria-y-secundaria>>

8 EC Action Plan (June 2016) op cit pp7/8

9 E.g. Art. 27 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Recast) (Qualification Directive), OJ 2011 L 337/9 pp9–268.

10 Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ 2011 L 141/1, pp. 1–12, Art. 10; and Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Free Movement Directive), OJ 2004 L 158, pp. 77–123, Art. 24 (1).

11 See for instance CJEU, C-9/74, Donato Casagrande v. Landeshauptstadt München, 3 July 1974. Subsequently confirmed in cases such as CJEU, C-3/90, M.J.E. Bernini v. Minister van Onderwijs en Wetenschappen, 26 February 1992.

12 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Recast) (Reception Directive), OJ 2013 L 180/96, pp. 96–116.

13 Refugee Qualification Directive 2011/95/EU, Art. 11; Long Term Residents Directive (Directive 2003/109/EC), Art. 14; Directive 2003/86/EC on the right to family reunification, Art. 14; Temporary Protection Directive (2001/55/EC); Reception Directive (2013/33/EU), Art 14(c); and Return Directive (2008/115/EC) cited in Handbook on European law relating to the rights of the child FRA (2015) Brussels p147

14 Reception Conditions Directive (2013/33/EU). Note that, under the Refugee Qualification Directive (2011/95/EU, Art. 27), only child refugees (who have acquired longer term residence rights) can access education under the same conditions as nationals.

15 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Recast) (Reception Directive), OJ 2013 L 180/96, pp. 96–116 cited in Handbook on European law relating to the rights of the child FRA (2015) Brussels p147.

16 See Keith L. and LeVoY M Protecting undocumented children: Promising policies and practices from governments PICUM (February 2015) Brussels and Spencer S. and Hughes V. Outside and In: Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe COMPAS (July 2015) Oxford.



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only ten EU Member States, - Belgium, Croatia, Czech Republic, France, Greece, Italy, Netherlands, Romania, Spain and Sweden. This is also the case for primary education only in Slovenia and in some German Länders. However, there are also five EU States that do not accept the interpretation that migrant children in irregular situation have access to education under wider constitutional or legislative guarantees.¹⁷ In Bulgaria, Finland, Hungary, Latvia and Lithuania, the law does not entitle undocumented migrant children to attend school¹⁸, despite a constitutional provision establishing a right to education and/or that education for children is compulsory. In the rest of the EU, undocumented migrant children's entitlement to education is implicit rather than explicit,¹⁹ i.e. the entitlement applies only because all children are entitled to education. This might not always give sufficient guarantees when it comes to implementation. The absence of a clear legislative and policy framework also contributes to confusion on the part of families with irregular or uncertain migration or asylum status about their child's right to education, and raises concerns about denunciation to immigration authorities.

In most States, children's educational needs are not usually given much weight in return decisions and orders to return are usually enforced as rapidly as possible, with little consideration given to the children's school or examination schedules, or the difficulties they may face accessing education in the country of return.²⁰ Unaccompanied and separated children are in many cases offered temporary protection status, which comes to an end once the person reaches 18 years old. In most of the cases, even though this person might still be attending school or vocational training, no other residence status is offered to him/her.

UNICEF recommends:

- EU and Member States legislation should guarantee full and equal access to education for all children on the territory and regardless of their migration status. This right needs to be clearly and explicitly recognised in legislation and any limitation should be removed.
- States should support non-formal or informal education on temporary basis, in providing additional support or bridging education gaps, but non-formal and informal education cannot and should not be considered as replacement to access to formal education.
- Education authorities should not be required to refer children and/or their family members for migration control purposes.
- Decisions on return of a child should be guided by the best interests of the child and access to quality education should be duly considered when determining the child's best interests.
- Young people provided with temporary protection status should be allowed to continue residence in the country to finish the education programs they have started, even after reaching 18 years old. UNICEF calls for long-term durable solutions, which guarantee the right of education.

¹⁷ Spencer S. and Hughes V. *Outside and In: Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe COMPAS* (July 2015) Oxford

¹⁸ Except, as in Latvia, when children are in the Returns Procedure.

¹⁹ FRA *Fundamental rights of migrants in an irregular situation in the European Union* (2011).

²⁰ See for instance Knaus V. Widman P et al, *Integration Subject to Conditions- A report on the situation of Kosovan Roma, Ashkali and Egyptian children in Germany and after their repatriation to Kosovo*, German Committee for UNICEF (2010) Cologne.



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Practical Barriers to access

In addition to legal obstacles, there are numerous practical barriers that currently prevent refugee and migrant children from accessing education. Functional responsibility for delivery of education services is generally delegated down to the local level, so the parameters of children's educational entitlements need to be explicitly outlined in national policies and strategies to ensure a consistent and coherent approach by local education authorities.

In the first place, resources are needed to ensure that those schools that face an increased number of children attending, have the human, material and financial resources as well as the framework to provide an appropriate quality response. Educational infrastructure will need significant investment in all destination countries. This situation is clearly most urgent in countries that are already hosting significant numbers – Germany, Greece, Italy, Sweden and Turkey, where despite improvements, further investments are needed in physical infrastructure, teacher training and support services. On mid and long term perspective, such investments will not benefit only refugee and migrant children but all the children on the territory and will pay back in economic and social gains.

Schools and teachers will also need to support refugee and migrant children overcome language barriers. The EC Action Plan²¹ recommends that language integration programmes should be provided at the earliest stage possible after arrival, adapted to each person's linguistic competence and needs, and combining language learning with learning other skills and/or with work experience. It also notes that a special effort should be made to ensure that these courses reach women as well as men.

While ensuring access to formal education needs to be an integral element of all national integration strategies, it should

be recognised that refugee and migrant children have had a break in their education and will need tailored support including catch-up classes. Such support needs to be provided in a manner that ensures that consistent, coherent quality and inclusion standards are met in any and all national refugee/migrant education programmes, and that refugee support programmes and emergency provision do not inadvertently evolve into separate, segregated or second rate schooling. Teachers also need the necessary skills to assist them and should be supported in their work in increasingly diverse classrooms, in order to prevent school failure and educational segregation.

Schools need thus to integrate psycho-social support and referral services into their structures, to assist both the children and the teachers. Integration of refugee and migrant children into mainstream schooling will require provision of practical support services, perhaps drawing on skills, knowledge and experience available in the refugee population, or in local migrant communities. Unfortunately, a recent study²² indicates that teaching staff with a migrant background are generally under-represented in most EU States compared to the actual diversity of the learners, although it is interesting to note that there seems to be a greater diversity of teaching staff at pre-primary level than at other levels of education. In addition, available data indicated that, compared to practising teachers, there is a slightly higher proportion of students with a migrant/minority background in initial teacher education (ITE). The barriers to refugees and migrants entering the teaching profession identified by the study include: high levels of competition; a lack of targeted and affirmative recruitment practices; a risk of discriminatory recruitment practices; and, prolonged or complicated processes for recognising foreign teacher qualifications. However, it also identified the value of

22 Donlevy V. et al Study on the Diversity within the Teaching Profession with particular Focus on Migrant and/or Minority Background ECORYS (2016) Brussels accessed September 2016 at file:///C:/Users/sony/Documents/MIGRATION/teacher-diversity.%20EC.%202016.pdf

affirmative action measures undertaken in countries with large refugee and migrant populations (e.g. Germany, the UK, etc.) and recommended their replication in other countries.

Other potential obstacles to accessing education that could benefit from a common approach include: transferability of foreign qualifications and matching equivalent school grades; approving examination conditions and procedures; awarding national certificates; and above all setting a common framework for programmes of pre- and post- enrolment support. The International Standard Classification for Education, while not explicitly designed to make equivalencies for education systems in different countries, can be a good start for comparing overall systems.²³ UNICEF has already made available analysis of the Syrian education system and curriculum²⁴, which would enable European educators to best adapt and amend existing structures and systems in order to meet Syrian refugee and migrant children's needs. Similar exercises can be undertaken for the education systems of other countries of origin.

For younger children, there are also practical barriers to accessing quality care and early learning opportunities. Places in existing kindergartens are frequently not readily available and, although early learning opportunities are made available in some reception centres, these are only a transition arrangement. They are not a substitute for participation in well-structured, child-centred and developmentally appropriate formal preschool settings. In such settings structured activities aim among others to bolster the development of resilience, self-regulation, creativity, curiosity, language skills and basic literacy and numeracy. Frequenting them, help refugee and migrant children learn the language, socialize and successfully prepare for schooling.

Good practices in support of Early Child Education and Care for refugee and migrant children

In Belgium, the Flemish Ministry of Education conducted an information campaign²⁵ aimed at improving participation in early- age education and care (ages 3-6) by new migrants and children with foreign language mother tongues. Parents with insecure residence were a particular target group for this campaign, although subsidy is available only to parents with legal status. In France, the law allows all children to be enrolled in a pre-school near their residence from the age of three and a circular of the Minister for National Education clarifies that there can be no discrimination regarding admission of foreign children²⁶. In March 2010, the municipality of Florence acknowledged the right of undocumented children to attend nursery school²⁷ and other Italian cities have followed suit²⁸. Replication of these initiatives across Europe could contribute significantly to social integration and protection of refugee and migrant children.

UNICEF recommends:

- States should allocate resources from central and local budgets in line with national education, integration and/or dispersal strategies, so that schools have the human, material and financial resources to ensure access to education for refugee and migrant children.
- Experts should develop effective common approaches to language integration, including welcome classes, and States should put in place a strategy as a "soft landing" in schools to help learn language, get accustomed to the school, and assess learning level for placement into classrooms.
- Schools should be assisted to develop support services before and beyond the enrolments stage. Teachers and education staff need support in building skills to work in diverse cultural environments.
- Ministries of Education should adapt specific standards and guidance for schools in relation to accessibility, quality and inclusion of refugee and migrant children. These standards should apply to, and for, the full range of primary, secondary and tertiary education services and not just to basic or compulsory education. Actions need also to be undertaken to encourage recruitment of teaching staff from among the refugee and migrant communities.
- Young refugee and migrant children should be able to access kindergarten and pre-school education services in the host community. Such services should be supported to expand and welcome all refugee and migrant young children.
- Accommodation centres for refugee and migrant families should provide safe spaces offering play opportunities for all children. Daily activities corresponding to the age and needs of children should be run by qualified staff, and parental involvement should be promoted.

23 See <<http://www.uis.unesco.org/Education/Pages/international-standard-classification-of-education.aspx>>

24 See: <http://www.oosci-mena.org/uploads/1/wysiwyg/150527_CAC_for_Syrian_children_report_final.pdf>

25 See: <www.kleuterparticipatie.be>

26 Article L-113-1 of the National Education Code, op cit.; Circular letter of 6 June 1991 concerning general guidelines for the establishment of regulations for departmental pre-schools and elementary schools (Cirulaire 91-124 du 6 juin 1991 "Directives générales pour l'établissement du règlement type départemental des écoles maternelles et élémentaires" quoted by PICUM op cit

27 La Repubblica, "Maternecomunali per baby clandestini", 12 March 2010. See PICUM Newsletter, March-April 2010, p13

28 La Stampa, Padoin: "Siaifiglideiclandestini al nido, lo dice la legge", 1 April 2010 and Elvio Pasca, "Bologna. Asili nido vietati ai clandestine", 8 April 2010

Vocational education and training:

IMF sources²⁹ indicate that the macroeconomic effect from the current arrivals is likely to be a modest increase in GDP growth, reflecting the fiscal expansion associated with support to asylum seekers and an expansion in the labour supply as newcomers begin to enter the labour force. The rate of refugees' and migrants' integration into the labour force has a significant impact on the scale, scope and speed of medium and long-term economic growth in the host countries. The EC has likewise acknowledged³⁰ that integration of migrants and refugees into employment is usually the single most important determinant of their overall net fiscal contribution to the host country. Rapid labour market integration helps to meet the growing needs for specific skills in the EU. It also facilitates social integration of refugee and migrant families and strengthens their children's protective environment by expanding their access to services. Increased migrant employment also enhances the sustainability of national welfare systems in host countries. For all these reasons, the EC recommends early integration of refugees into vocational education and training initiatives and programmes.³¹ This is particularly important for young people given the high rates of youth unemployment in most European countries.

29 Aiyar S et al The Refugee Surge in Europe: Economic Challenges IMF (January 2016)

30 See document published by the European Commission Directorate-General for Economic and Financial Affairs: "An Economic Take on the Refugee Crisis quoted in EC Action Plan (2015) op cit.

31 E.g. European Alliance for Apprenticeships, European Pact for Youth, Erasmus+, Education and Training 2020

In this context it is particularly important to consider early intervention to support all vulnerable young people Not in Employment, Education or Training (NEETs), whether nationals, refugees or migrants, in order to ensure their swift integration into education, apprenticeships, traineeships or the labour market. One serious obstacle to employment and training for both migrants and refugees is the lack of formal recognition by employers of their school/college certificates and vocational qualifications. This can also act to restrict their access to training opportunities and employment support services in country. In other cases, vocational training opportunities are denied to youths on the basis that this constitutes work rather than education and because of their migration status they are not entitled to work.

UNICEF recommends:

- States should explicitly promote integration of refugee and migrant young people into vocational education and training schemes in line with Article 28 of the CRC and of the EC Action Plan (2015).
- States' regulations and policies should explicitly recognise and refer to vocational training as a formative part of a young person's education.

