

Article

A Will and a Way: Making Displaced Children's Right to Education Enforceable

Bill Van Esveld

Children's Rights Division, Human Rights Watch, New York, NY 10118, USA; vanesvb@hrw.org

Abstract: All children have the right to education without discrimination, but half of refugee children are out of school, far worse than global averages. Obstacles to education for refugee and migrant children include poverty and overstretched resources in host countries, and humanitarian donors and agencies have important roles and should ensure the right to education. However, policy barriers to education are key drivers of the education crisis facing displaced children. These policy barriers are internationally unlawful, but the children affected often lack standing under domestic law to demand a remedy. Countries with laws enshrining migrant, asylum-seeking, and refugee children's rights to education and the European Union's response to Ukrainian refugee learners provide examples that advocates can use to help raise the global floor for displaced children's right to education. Advocates should press all countries to grant all children, including migrants and refugees, the enforceable right to education in domestic law.

Keywords: refugee children; right to education; education in emergencies; humanitarian aid; Global Refugee Forum; human rights law; enforceability; migration; displacement

1. Introduction

Nur N. was expelled from his final year of secondary school in Bangladesh at age 17 because he is a Rohingya refugee. Bangladesh has provided no legal pathway for Rohingya refugee children to attend schools, and it prohibits them from receiving formal education in the camps or enrolling in schools outside (HRW 2019a). Several hundred Rohingya children, including Nur, managed to obtain a Bangladesh birth certificate in order to enroll in semi-private and private schools near the camps.¹ However, in late 2018, the government directed a national intelligence agency investigation that identified dozens of Rohingya students enrolled in these schools, and the authorities instructed principals to expel these children or their school's accreditation would be revoked. Nur and other students described how school staff entered classrooms, read out the names of Rohingya children, told them to put their books and backpacks on their desks, and escorted the children out the school gates. The day after Nur was expelled, in early 2019, he said, "I was thinking, my father and mother lost many years. They gave me the opportunity to learn even though my father earns only 2000 taka (US\$24) a month. I have wanted to be a doctor since I was very small. I don't know what I will do now. I couldn't sleep last night. This may have been the last class of my life". Another expelled Rohingya student said, "If education is for all, education should be for Rohingya".

International human rights law guarantees all children, including undocumented migrants, asylum seekers, and refugees, the right to quality, formal education without discrimination.² States are obliged to provide all children free and compulsory primary



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¹ Another Rohingya student pretended his parents were dead so he could avoid listing their "address" in a refugee camp on his school application and gave a Bangladesh teacher fruit worth US \$12 so the teacher would pretend he was the boy's uncle (HRW 2019b).

² Treaties that protect the right to education for refugee children include the Convention on the Rights of the Child (Articles 28, 29), the International Covenant on Economic, Social and Cultural Rights (ICESCR,

education and to make secondary education available and accessible to them.³ (My organization, Human Rights Watch (HRW), believes states should also make at least one year of pre-primary education free and compulsory for all, and secondary education immediately free for all (Sheppard 2022) Human rights treaty bodies affirm that “all children in the context of international migration, irrespective of status, shall have full access to all levels and all aspects of education . . . on the basis of equality with nationals of the country where those children are living”.⁴ Governments collectively pledged in 2015 to ensure education for all children by 2030, explicitly including migrant and refugee children.⁵

Yet displaced children are facing an education crisis. Education data are not available for all forcibly displaced children, who number more than 41 million,⁶ but half of the 8 million children whom the UN refugee agency (UNHCR) classifies as refugees are out of school (UNHCR 2022a). During the 2020–2021 academic year, the gross enrollment rate⁷ in primary education was more than 100% globally but just 68% for refugee children, UNHCR reports.⁸ Gross secondary-school enrollment was more than 100% in lower-middle income to high-income countries, but plummeted to 37% for refugees. Secondary-education completion rates are not reported for refugees but are undoubtedly far lower than the global rate of 45%.⁹ More than three quarters of refugees have been displaced for longer than five years,¹⁰ and in these protracted situations, “the average length of time that a refugee spends in exile is around 20 years”, longer than childhood, as the UN Educational, Scientific and Cultural Organization (UNESCO) notes (UNESCO 2019).

Grim as these statistics are, the situation is even worse in countries like Bangladesh that bar all formal, accredited education to refugee children, and for refugee children with disabilities who are often excluded from education.¹¹ Refugees in many contexts have said that the deprivation of education to themselves or their children was a significant factor

Article 13), the International Convention on the Elimination of all Forms of Racial Discrimination (Article 5), the Convention against Discrimination in Education, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. The 1951 Refugee Convention and its 1967 Protocol protect the right to primary education for refugees fleeing persecution, but not asylum seekers (Horsch Carsley and Russell 2020).

³ E.g., ICESCR, Article 13.

⁴ UN Committee on the Rights of the Child and UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Joint General Comment No. 4 (2017), paragraph 23. The 1960 UNESCO Convention against Discrimination in Education, Article 3(e), likewise obliges the 42 states parties “to give foreign nationals resident within their territory the same access to education as that given to their own nationals”.

⁵ Sustainable Development Goal 4 on Education. The related Incheon Declaration refers to the “principles” included in various human rights treaties. “Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”, November 2015, p. 27, <https://unesdoc.unesco.org/ark:/48223/pf0000245656> (accessed on 20 December 2022).

⁶ (UNHCR 2022b). The total includes 60.1 million internally displaced persons, 26.3 million refugees under UNHCR’s mandate, 5.8 million Palestine refugees under UNRWA’s mandate, 4.4 million displaced Venezuelans, and 4 million asylum-seekers. The number of internally-displaced children who are out of school may be higher than the number of refugee children. See (UNHCR 2021, p. 3).

⁷ Gross enrollment refers to the total number of students enrolled in a certain level of education (e.g., primary) including students older than the normal age range, as a percentage of the school-age population. Gross enrollment rates may exceed 100 percent.

⁸ For brevity, this paper sometimes uses “refugee” as shorthand for “asylum seekers and refugees” (Sheppard 2022).

⁹ UNICEF, “Secondary education”, “completion rates”, <https://data.unicef.org/topic/education/secondary-education/#status> (accessed on 20 December 2022). Six percent of refugee youth are in higher education. See (UNHCR 2022a, p. 8).

¹⁰ See (World Bank 2022). The number does not include more than 750,000 Rohingya refugees displaced for 5 years as of 25 August 2022.

¹¹ Human Rights Watch has documented cases of Syrian refugee children with disabilities denied education in Turkey, Lebanon, and Jordan, as well as displaced children with disabilities within Syria. See (HRW 2015, 2016a, 2016b, 2022c). For cases from Malaysia, Indonesia, Uganda, and discussion of a large 2011 survey of Afghan refugee children in Pakistan, see (Smith-Khan and Crock 2018). None of the roughly 375 Rohingya refugee children had a visible disability or impairment in classes at 25 “learning centers” that Human Rights Watch visited in the Cox’s Bazar camps in Bangladesh in 2021.

in the perilous choice to flee abroad.¹² Such abuse should not continue to be perpetuated against people seeking international protection. “We have a saying: if you want to destroy a community you don’t have to kill the people, just prevent them from studying”, said Mohamed A., a Rohingya teacher living in the Bangladesh refugee camps (HRW 2019a).

What can be done to close the gap between the human right to education for all and the reality that displaced children are missing out? This paper describes displaced children’s lack of enforceable rights against humanitarian donors and agencies, and reviews host-country policy barriers to education for displaced children in Asia and Europe, to argue that advocacy efforts to realize these children’s right to education must address the policy choices of host country governments. As a positive example of what is possible where there is political will to ensure displaced children’s access to education, the paper describes the European Union’s treatment of Ukrainian refugee children. However, the support shown for the rights of Ukrainian refugees fleeing Russia’s invasion is exceptional, and in other contexts, host-country governments have carried out pushbacks, deportations, and refoulement of migrants, including asylum seekers and refugees fleeing persecution. In order to transform the Ukrainian exception into a global rule of human rights compliance, this paper argues that it is important to establish enforceable guarantees of access to education for displaced children in domestic law. This paper argues that human rights and humanitarian actors should advocate for host countries to adopt laws that grant the right to education to displaced children and grant legal standing to asylum seekers and refugees to demand enforcement of the right to education.

2. Human Rights and Humanitarian Realities

States are required to allocate the maximum level of available resources to realize economic, social, and cultural rights, including education,¹³ but eight in ten refugees are hosted in countries classified as lower or middle-income¹⁴ where education systems may strain to fulfill the right to education of citizens (Dryden-Peterson 2022) and be under-funded as a percentage of global education spending as well as of national GDP.¹⁵ Displaced children who do manage to access schools may receive low-quality instruction in overcrowded classrooms, with student-to-teacher ratios sometimes exceeding 80 to 1.¹⁶ Many displaced children cannot afford school due to the costs, e.g., transportation, uniforms, and materials, and the global COVID-19 pandemic worsened inequities in access to education for refugee children who could not afford devices and connectivity.¹⁷

Poverty-related obstacles to education are often difficult to address. Schemes to grant Syrian refugees access to the official labor market, which could help avoid exploitation and enable families to afford for their children to go to school, have had a positive but

¹² Education was the most important factor behind the decision to come to Europe for 38 percent of unaccompanied children in Italy surveyed in 2017. In Greece, one in three parents reported that education was the key reason for travel to Europe and eight in ten children listed going to school as one of their top priorities. (UNHCR et al. 2019).

¹³ ICESCR, Article 2.

¹⁴ See (UNHCR 2021), Global Trends: Forced Displacement in 2021, p. 2, <https://www.unhcr.org/en-us/publications/brochures/62a9d1494/global-trends-report-2021.html> (accessed 20 December 2022).

¹⁵ Only 0.5 percent of annual global education funding is spent in low-income countries. The 2030 Education Framework for Action, endorsed by 184 states, sets a minimum education budget of 4 percent of GDP, but one-third of states are not meeting that target. UNESCO, Global Education Monitoring Report, “Finance”, <https://www.education-progress.org/en/articles/finance> (accessed on 20 December 2022).

¹⁶ (UNESCO 2019), p. 16. The 80:1 ratio was the average for refugee camps in Ethiopia. The UNHCR student-to-teacher minimum standard is 40:1 but is seldom monitored outside refugee camp settings, though most refugees live in “urban”, non-camp settings. Ibid. The 2030 Education Framework for Action, endorsed by 184 countries, sets a minimum education budget of 4 percent of GDP. UNESCO, Global Education Monitoring Report, <https://www.education-progress.org/en/articles/finance> (accessed on 20 December 2022).

¹⁷ (HRW 2021c). INEE and The Alliance for Child Protection in Humanitarian Action “Evidence Paper: No Education, No Protection. What school closures under COVID-19 mean for children and young people in crisis-affected contexts”, 2021, p. 9. In the wake of the COVID-19 pandemic, the UN Human Rights Council in July 2021 called on “all states” to eliminate gaps in access to online learning, including those based on “migration or refugee status”, and “to ensure accessible and quality education at all levels” (Human Rights Council 2021).

limited impact. Turkey allows Syrian refugees to obtain work permits, but few have been able to because they must be sponsored by their employers, who are dissuaded by complicated procedures, costs, and delays (Danish Refugee Council 2021). Turkish law sets 15 as the minimum age of employment, but family poverty had pushed refugees as young as eight into child labor (HRW 2015). With the “Jordan Compact”, the EU granted tariff free treatment to exports from certain manufacturers in Jordan on condition that they employ Syrian refugees, but the number of work permits issued remains low.¹⁸ The COVID-19 pandemic, the global impact of the war in Ukraine, and financial crises and rapid inflation in Syria, Lebanon, and Turkey have all exacerbated these obstacles to education for refugee children.

The international community shares responsibility for supporting host countries to ensure access to education for displaced children.¹⁹ Yet only 2–3% of all humanitarian funding is spent on education in emergencies (Zubairi and Rose 2020). United Nations humanitarian appeals to respond to crises around the world were 51% funded overall in 2021, but the appeals’ budgets for education were only 22% funded, and the trend is sharply downward from 2018, when education budgets was 48% funded.²⁰ Efforts to pressure donor governments to live up to their education funding pledges depend on timely and accurate information about funding, but donors’ reporting of their humanitarian education funding is often so opaque that it can be impossible to trace how much money is actually spent on refugee education in a particular country in a given year (see, e.g., HRW 2017a).

Refugees and asylum seekers have little leverage to demand greater funding and support for their children’s education from humanitarian donors and agencies. The main humanitarian actors involved in education-in-emergencies include UNICEF, which has a global mandate for children’s rights and is guided by the Convention on the Rights of the Child,²¹ and UNHCR, which follows internal guidelines on refugee education (UNHCR 2003). However, international law does not grant forcibly displaced children the right to demand education assistance from third states, or from UN agencies and NGOs (whose education programs rely on third-state funding) (Schindler 1995). As “beneficiaries” of humanitarian aid, refugees cannot enforce the education goals and targets that the international community voluntarily sets for itself.

International humanitarian summits, outcome documents, and other statements have pledged to improve “accountability to affected populations”, e.g., with the “Participation Revolution”, whereby aid agencies would include aid recipients in the design of aid programs, foreseen by “The Grand Bargain” of 2016.²² Some donor countries, such as Canada, have consultative bodies comprised of former refugees (who are now citizens) to advise on refugee policy,²³ but much more work is needed. The “foundational” minimum

¹⁸ Human Rights Watch, World Report 2022, “Jordan: Events of 2021”, <https://www.hrw.org/world-report/2022/country-chapters/jordan> (accessed on 20 December 2022).

¹⁹ UN General Assembly resolution, “The right to education in emergency situations”, A/RES/64/290, July 9, 2010, para. 20 (“Calls upon all Member States, including donors . . . to continue to support diverse humanitarian funding channels and to consider increasing their contributions to education programmes defined in humanitarian appeals . . . ”); UN Convention on the Rights of the Child, Article 28 (3) (“States Parties shall promote and encourage international cooperation in matters relating to education . . . In this regard, particular account shall be taken of the needs of developing countries”).

²⁰ The education-in-emergencies budgets in UN appeals have increased dramatically since 2000, but less so since 2018. See (Zubairi and Rose 2022).

²¹ “UNICEF’s role in promoting and supporting the Convention on the Rights of the Child”, <https://www.unicef.org/child-rights-convention/unicef-role> (accessed on 20 December 2022).

²² Interagency Standing Committee, “The Grand Bargain (official website)”, <https://interagencystandingcommittee.org/grand-bargain>; “A participation revolution: include people receiving aid in making the decisions which affect their lives”, <https://interagencystandingcommittee.org/a-participation-revolution-include-people-receiving-aid-in-making-the-decisions-which-affect-their-lives> (accessed on 20 December 2022).

²³ Canada has pledged that all its delegations to a “meeting of the international refugee regime” now include a refugee and supports an initiative that aims for 20 member states of the UNHCR Executive Committee to pledge to do the same (UNHCR et al. 2022); see refugeesseat.org (accessed on 20 December 2022).

standard set out by the Inter-agency Network for Education in Emergencies²⁴ is that humanitarian actors should ensure the refugee community's participation at all phases of education programs, from planning to implementation to monitoring and evaluation.²⁵ In practice, education programs for displaced children are often negotiated with host country governments by UN officials. Refugees and asylum seekers are seldom at the table and may not have been meaningfully consulted.²⁶ Even if senior humanitarian officials began to treat refugee community representatives as equal partners in education programming,²⁷ humanitarian agencies cannot dictate terms to host country governments and will want to avoid antagonizing officials.²⁸ Humanitarian actors may reasonably fear that pressuring host governments could jeopardize education as well as other humanitarian priorities. In host countries where the political environment is characterized by hostility towards migrants and asylum seekers, humanitarian advocacy may focus instead on ending violent pushbacks (see, e.g., [HRW 2021b](#), [HRW 2022f](#)) and forced returns (see, e.g., [HRW 2022d](#)). Even where host-countries have opened their borders to refugees, the best education programs that humanitarian officials are able to negotiate with host country officials may fall far short of refugee children's right to quality education without discrimination.²⁹

Advocates should press the international donor community and humanitarian agencies to live up to their promises of accountability to displaced children. However, a strategic goal for education advocates should be for states to grant displaced children the right to education and standing to compel state authorities to fulfill that right. Under international law, the obligation to ensure displaced children's right to education falls on the host country. Many countries' domestic laws do not guarantee the right to education for all, or if they do, access to education may be barred by other requirements, such as documentation of legal identity, residency, or former schooling ([Norwegian Refugee Council 2021](#)), that many displaced children cannot meet. Refugees often have no ability to enforce the right to education vis-à-vis host country authorities, most obviously in countries with policies that bar or restrict refugee education. The third optional protocol to the UN Convention on the Rights of the Child established an individual communications procedure³⁰ that has

²⁴ Thousands of government, UN and NGO representatives are members of the INEE, and many contributed to the minimum standards on education in emergencies. See inee.org (accessed on 20 December 2022).

²⁵ The first, "foundational" minimum standard set out by the International Network on Education in Emergencies (INEE)—which comprises governments, UN agencies and civil society groups—requires humanitarian actors to ensure the participation of refugee communities in education-in-emergencies programs. INEE Minimum Standards for Education: Preparedness, Response, Recovery, 2010, https://inee.org/sites/default/files/resources/INEE_Minimum_Standards_Handbook_2010%28HSP%29_EN.pdf (accessed on 20 December 2022).

²⁶ See, e.g., "Lack of Consultation with Rohingya on Myanmar Curriculum", in ([HRW 2019a](#)).

²⁷ For an analysis of relevant dynamics in one historical context, see ([Crisp 2018](#)).

²⁸ UNHCR education guidelines set out "scenarios" that hinge on host-governments' willingness to accommodate refugee children in schools. Education Field Guidelines, Annex 2: Education Scenarios, pp. 65–66. For example, in August 2019, the UNICEF representative in Bangladesh stated, "we are trying to provide education within tight restrictions . . . but we simply cannot wait until conditions are perfect . . . What we ask of both governments is flexibility to allow the use of their educational resources—for example, curriculum, assessments and training manuals—in order to offer the best possible quality learning for Rohingya children". Cited in ([HRW 2019a](#)), at footnote 111.

²⁹ For example, an August 2019 UNICEF report quoted the agency's representative in Bangladesh discussing policy restrictions on education: "we are trying to provide education within tight restrictions . . . but we simply cannot wait until conditions are perfect . . .". UNICEF, "Beyond Survival: Rohingya Refugee Children in Bangladesh Want to Learn", p. 13, <https://www.unicef.org/reports/rohingya-refugee-children-in-bangladesh-want-to-learn-2019> (accessed on 20 December 2022).

³⁰ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, New York, 19 December 2011, A/RES/66/138.

been used to enforce the right to education of non-citizen children,³¹ but only 50 states are parties to the protocol.³²

Despite the dire global status of education for displaced children, there are positive examples of countries that do guarantee the right.³³ In France, the Education Code provides that school attendance is compulsory for foreign nationals ages 6–16, without discrimination, and a 2016 circular provides that “each child and teenager has the right to education, regardless of his or her administrative situation”.³⁴ In Spain, the constitution guarantees free and compulsory education to every child regardless of immigration status, and Law 2/2009 extends the right to education explicitly to all asylum seekers, refugees, and irregular migrants.³⁵ Sweden allows children to complete their schooling even if their asylum claim is rejected and there is a deportation order against them. (UNHCR et al. 2019, p. 12) In Turkmenistan, laws guarantee primary education to all children “regardless of their legal status”³⁶ and preschool and secondary education on an equal basis as nationals to asylum-seekers, refugees, and persons granted complementary or temporary protection.³⁷ In Uruguay, the Constitution, the General Law of Education, the Immigration Act and the Refugees Act extend migrants and refugees the same right to education as any other resident.³⁸ In numerous cases, refugees have won legal cases demanding their right to education.³⁹

Education advocates have yet to translate these positive individual examples into a global norm whereby host countries are expected to guarantee the right to education for displaced children. A forum in which to press this agenda is the UNHCR-led Global Refugee Forum, which solicits pledges from governments toward fulfilling the Global Refugee Compact, endorsed by all UN Member States in December 2018. The Compact provides that “more direct financial support and special efforts will be mobilized to minimize the time refugee boys and girls spend out of education, ideally a maximum of three months after arrival”. This provision is not enforceable, but UNHCR has suggested “pledging areas” on education for host countries, such as to “develop explicit policy or protocols for the inclusion of refugees, stateless and other displaced people in national education systems” and to “ensure meaningful participation of affected communities in planning, review and decision making” (UNHCR 2019).

3. Policy Barriers to Refugee Education

Advocacy directed at host countries to provide refugees with an enforceable right to education must confront political realities where host country governments bar their education. While donor conferences, high-level meetings, and reports by humanitarian agencies often focus on the need for greater funding to “support” refugee hosting countries’ efforts to provide education to refugee children, in many cases refugee children are denied education not because of poverty, but by policy.

³¹ In one case, a communication led Spanish authorities to reverse a decision banning N.S., a 12-year-old Moroccan girl, from attending school in the enclave of Melilla because she was deemed an irregular migrant. “UN Committee welcomes Spain’s decision to allow Moroccan child to attend public school”, 28 May 2020, <https://www.ohchr.org/en/press-releases/2020/05/un-committee-welcomes-spains-decision-allow-moroccan-child-attend-public?LangID=E&NewsID=25908> (accessed on 20 December 2022).

³² Ratifications as of 3 January 2022 (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=_en (accessed on 20 December 2022)).

³³ See (UNESCO 2019, p. 26 ff). Bulgaria, Latvia, and Sweden explicitly guarantee education for refugees under the same conditions as nationals.

³⁴ (UNESCO 2019), citing Articles L. 111-1, 131-1.

³⁵ (UNESCO 2019, p. 26), citing the Spanish Constitution of 1978, Articles 10, 13 and 27, and Law 2/2009.

³⁶ See (UNESCO 2019, p. 26), citing Turkmenistan, Law on State Guarantee of the Rights of the Child, as amended in 2016.

³⁷ Ibid., citing Turkmenistan, Law on Refugees, 3 June 2017, Articles 8, 15, 16, 17.

³⁸ Ibid., p. 27, citing the Constitution of the Republic of Ecuador, 2008, Article 11(2).

³⁹ See, e.g., US Department of Justice, “Educational opportunities cases, National origin”, <https://www.justice.gov/crt/educational-opportunities-cases#origin>; and European Database of Asylum Law, EDAL case summaries, “Education (right to)”, https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=file_id_keywords%3A2493 (accessed on 20 December 2022).

In Asia, where two-thirds of refugee children are not attending formal primary education,⁴⁰ refugee enrollment rates often appear related less to the availability of resources than to government decisions variously to support or block refugee education. Malaysia, with a population of 32 million and GDP per capita of US \$11,371, boasts 100% primary school enrollment overall (World Bank 2017). Malaysia hosts only 180,000 refugees, but refugee primary school enrollment is a dismal 13%,⁴¹ as the government bars their enrollment in government schools (Malaymail 2022).

Iran provides a positive contrast. With a population of 84 million, a GDP per capita of \$2757, and 980,000 refugees, Iran allows refugee students to enroll in the national education system and exempts them from school fees (UN 2022), and 87% of refugee children were enrolled in formal primary education.⁴² However, Bangladesh, with twice Iran's population (165 million), a similar GDP per capita (\$2503),⁴³ and 91% primary enrollment rates, hosts fewer refugees than Iran (850,000), but none was in formal education, UNHCR reported in 2020.⁴⁴ Bangladesh has lifted its ban on any formal instruction for refugee children, and now permits instruction in the Myanmar curriculum, but continues to ban accredited or certified education (HRW 2022e). In Thailand, with a GDP per capita of \$7213, primary school enrollment is 98%⁴⁵ but just 2% for refugee children,⁴⁶ as the government limits education for thousands of children in camps to a curriculum that is not recognized by any government (UNESCO 2019, p. 17).

In many countries, education is ostensibly open to refugee children but is in fact blocked by other policies.⁴⁷ Jordan bars school enrollment to children who have been out of school for three or more years, without alternatives that would ensure all refugee children who were out of school due to conflict and displacement have pathways back to formal education.⁴⁸ Jordan also required Syrian children to present "service cards" issued by the interior ministry to enroll in school, at a time when other policies made families ineligible for these cards if they had left refugee camps unofficially, without meeting onerous requirements.⁴⁹ The camp-leaving problem is now less acute for Syrian children, but non-Syrian refugee children in Jordan continue to face barriers to school enrollment due to requirements to provide proof of residency and other documents they cannot obtain.⁵⁰

In Lebanon, the Education Ministry requires children to prove they have legal residency in Lebanon, which costs \$200 per year, and which nearly nine in 10 refugees have been unable to obtain, in order to enroll in secondary school or sit for national examinations

⁴⁰ UNHCR, "Asia Education Update—October 2020", p. 2, <https://www.unhcr.org/asia/5f97afcb4> (accessed on 20 December 2022).

⁴¹ UNHCR, "Asia Education Update—October 2020", p. 6. Refugee children can attend private schools and informal, community-based learning facilities. UNHCR, "Education in Malaysia", <https://www.unhcr.org/education-in-malaysia.html>; Refugeemalaysia.org (a UNHCR website) (accessed on 20 December 2022), "Education".

⁴² UNHCR, "Asia Education Update—October 2020", p. 6. In Iran, primary enrollment is 100 percent. World Bank, "School enrollment, primary (%—net), Islamic Republic of Iran", <data.worldbank.org> (accessed on 20 December 2022).

⁴³ World Bank, GDP per capita (current US \$), 2021 (except for Iran, 2020 data), <data.worldbank.org> (accessed on 20 December 2022).

⁴⁴ World Bank, "School enrollment, primary (% net), Bangladesh", 2010 data, <data.worldbank.org> (accessed on 20 December 2022).

⁴⁵ Data are from 2009. World Bank, "School enrollment, primary (% net), Thailand", <data.worldbank.org> (accessed on 20 December 2022).

⁴⁶ "UNHCR Asia Education Update—October 2020", p. 6.

⁴⁷ A UNHCR assessment of 81 refugee-hosting countries found that 64 do not place formal legal or administrative barriers to refugees accessing national education systems, but that refugees still face restrictions to enrolment and often have access only to unregistered schools. Cited in (UNESCO 2019), p. 12.

⁴⁸ The Jordanian "three-year rule" may have barred 77,000 refugee children from enrolling, the UN reported in 2014. Ibid.

⁴⁹ The Jordanian education minister at the time waived the "service card" requirement, which has subsequently been re-imposed. (HRW 2016b).

⁵⁰ One Refugee Approach Working Group, "Education Barriers in Jordan for non-Syrian Refugees", Education Sector Working Group, Jordan, May 2021, <https://data.unhcr.org/en/documents/download/86982> (accessed on 20 December 2022).

and receive their results (Human Rights Watch and the Center for Lebanese Studies 2022). Lebanese primary school directors have repeatedly, arbitrarily rejected Syrian children from enrolling because they cannot produce various documents that are not officially required to enroll (HRW 2016a). In Lebanon, Syrian parents have complained for years that school directors refuse to register their children due to a lack of required identification documents and academic records. Some parents even took the perilous decision to smuggle themselves illegally back into Syria to obtain the required documents, and then back to Lebanon (HRW 2016a).

Turkey allows Afghan refugee children to enroll in school, but they must first travel to Ankara to obtain temporary protection status, and then travel to the towns and cities where they have been assigned to live, regardless of the availability of jobs, or of support to learn the Turkish language, without which children cannot succeed in school (HRW 2017b). As a result of these obstacles and barriers to school, refugee enrollment rates suffer a calamitous drop-off before secondary education in Turkey and Jordan. In Lebanon, secondary enrollment rates are as low as 2% for Syrian refugees (HRW 2020b).

Governments are blocking education for migrant children even in high-income European countries,⁵¹ where overall only 4% of 83 million school-age children were born outside of Europe (UNHCR et al. 2019, p. 2). Three of the EU's 27 member states, Hungary, Latvia, and Lithuania, explicitly exclude or limit schooling for undocumented migrant children, and only seven explicitly recognize their entitlement to basic formal education (UNHCR et al. 2019, p. 4). In some EU member states, schools may demand birth certificates, education credentials, identification papers or proof of residency for children to enroll (UNHCR et al. 2019, p. 4). Enrollment can also be risky: UNHCR notes that in Cyprus and Slovakia, schools may be obliged to report families without valid documents to immigration authorities.⁵² Access to pre-primary and upper secondary education may be "highly constrained" in member states where they are not compulsory, the UN reports. In three EU member states, "extensive gaps" in data collection make it impossible to determine primary and secondary enrollment rates for refugee children, but overall, children born outside the EU are more than twice as likely as those born in Europe to leave school prematurely (UNHCR et al. 2019, pp. 5–6, 9)

These governments are blocking displaced children's education despite a European Commission directive⁵³ that entitles asylum-seeking children to access education on the same terms as nationals within three months from the date of their asylum claim, first issued in 2003 and revised in 2013.⁵⁴ "In practice, it could take longer", a UNHCR report drily notes (UNHCR et al. 2019, p. 2). In the German state of Saxony, for instance, the guarantee of compulsory education stops at the gates of reception centers, where families with children under 18 may be required to stay for up to nine months (Korntheuer and Damm 2022). The UNHCR report cites additional restrictions on education in Germany, Greece, and Hungary, as well as lengthy stays in Greek and Italian reception centers that do not provide formal education or "meet the same standards as local schools" (Korntheuer and Damm 2022).

⁵¹ "World Bank Country and Lending Groups", section on "High Income Economies", <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (accessed on 20 December 2022).

⁵² (UNHCR et al. 2019), see above footnote 17.

⁵³ A directive is a legislative act setting out a goal that all EU member states must achieve through their own laws. EU, "Types of Legislation", https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en.

⁵⁴ Council Directive 2003/9/EC of 27 January 2003, revised in 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, Article 10. Education shall be granted "for so long as an expulsion measure against [the child] or their parents is not actually enforced". The 2013 directive required that "preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system". Member states must grant children whose asylum application has been rejected access to basic education during the period for voluntary departure and when removal has been postponed. See (UNHCR et al. 2019).

Greece's policy of containing people seeking asylum in reception centers on Aegean islands for prolonged periods, often in miserable conditions with no shelter, electricity, or running water, as crowded camps overflowed into informal "jungle" settlements, has kept children out of formal education for months, and often more than a year (HRW 2018). Human Rights Watch reported in 2018 that none of the children in government-run camps on the islands was in school. In 2021, Greece opened EU-funded "closed controlled centers" for asylum seekers on three Aegean islands, where at least shelter is provided, but there is still no formal education, despite Greek laws that make formal education compulsory for all 5–15-year-old children.⁵⁵ In 2017, a former Greek migration minister justified the island containment policy as necessary to dissuade asylum seekers and migrants from arriving from Turkey,⁵⁶ but Greek authorities have also failed to provide education to children even after they were transferred from the islands to camps on the mainland (HRW 2021a).

Greece's denial of education to asylum seeking children on the Aegean islands formed part of a 2020 complaint⁵⁷ asking the European Commission to launch an "infringement proceeding" into Greece's violation of EU laws on asylum. The Commission has taken no action. The passivity of EU institutions in the face of member state violations of EU laws on migration and asylum means that, in effect, many asylum-seeking children are unable to enforce their right to education.

4. Education for Ukrainian Refugee Children in Europe

The European Union's and its member states' response to Russia's full-scale invasion of Ukraine on 24 February 2022 provides a positive example of efforts to realize displaced children's right to education and momentum for civil society advocacy to improve practices in Europe and globally.⁵⁸ The measures taken on behalf of Ukrainian children by EU member states represent a striking contrast to common barriers to education for displaced children, including in the EU. All too often, rather than demonstrating solidarity with displaced populations, governments seek to dissuade migrants and asylum seekers by pursuing draconian policies that violate their basic rights, including to education. The EU's measures for Ukrainian children should be seized on by advocates to demonstrate the feasibility of compliance with the human right to education for all, even in "mass influx" situations.

The EU directs member states to meet minimum standards for the treatment of displaced persons, including that "member states shall grant [children] access to the education system under the same conditions as nationals", in cases where the European Council determines there is a "mass influx" of displaced persons.⁵⁹ The Council first triggered the directive, which has been in force since July 2001, in response to Ukrainians fleeing Russia's

⁵⁵ Greece, Law 2910/2001, Article 40, and Presidential Decree 220/2007, Article 9(1), transposing European Directive 2003/9/EC into Greek law.

⁵⁶ Former Minister of Migration Policy Ioannis Mouzalas, quoted in Human Rights Watch, "Without Education They Lose Their Future".

⁵⁷ The complaint by Oxfam and WeMove Europe is available at, "Rights groups press European Commission to investigate violations of EU law in Greece over treatment of migrants", Oxfam, 22 September 2020, <https://www.oxfam.org/en/press-releases/rights-groups-press-european-commission-investigate-violations-eu-law-greece-over> (accessed on 20 December 2022).

⁵⁸ Ukraine's own laws support migrant children's right to education. The Constitution states that "foreigners and stateless persons staying in Ukraine on legal grounds shall enjoy the same rights and freedoms and bear the same duties as citizens . . . including the right to education". The Law on Education states: "No one can be restricted in their right to obtain education. The right to education is guaranteed regardless of . . . citizenship, ethnic origin . . . language, origin . . . [or] other circumstances". Constitution of Ukraine, dated 28 June 1996, No. 254к/96-BP, Articles 26 and 53; Law on Education No. 2145-VIII of 5 September 2017, and Article 3(1)(2). Cited in (UNESCO 2019), p. 27.

⁵⁹ Council of Europe, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, Articles 5, 13, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0055> (accessed on 20 December 2022).

invasion.⁶⁰ The EU has also recognized that “access to education” is “an immediate priority for the integration and well-being of Ukrainian [refugee] children and young people”.⁶¹

European countries have not subjected displaced Ukrainian children to prolonged stays in reception centers and camps.⁶² Ukrainian children have thus avoided the legislative carve-outs governments have made around the right to education in these facilities, to which child asylum seekers from Africa, the Middle East and Asia are subjected. In June 2022, for example, the UN Committee on the Rights of the Child found that “persisting discrimination” against asylum-seeking, refugee, and migrant children in Greece impacted their access to education; noted its serious concern at Greece’s “two-tier refugee response, one for Ukrainians and one for all other refugees”; and called on Greece to “remove barriers to school enrollment” for asylum-seeking and refugee children and ensure their access to education “regardless of their place of residence”.⁶³

Documentation requirements are a common barrier to education for displaced children,⁶⁴ including in the EU (UNHCR et al. 2019, pp. 4, 7), but Ukrainian children in Europe have been welcomed into schools. In Poland, Ukrainian refugee parents described going to schools to enroll their children, who often lacked passports and even birth certificates, and being able to send the child to classes the following day.⁶⁵

Language barriers often bedevil displaced children’s access to education. In Turkey, Iranian and Afghan children can seldom access the specialized Turkish language instruction needed to succeed in school,⁶⁶ while in Bangladesh, instruction in the Bangla language is prohibited to Rohingya refugee children. By contrast, in Czechia, where the Education Act guarantees up to 200 h of language instruction for all new learners in basic education, with a maximum of 10 students per group, the Education Ministry established additional intensive language courses for Ukrainian children ages 14–18 years to reduce their risk of dropping out of school. In Spain, where displaced students are generally placed in language immersion classes in small groups, a “national contingency plan for the comprehensive educational care of displaced Ukrainian students” provides extraordinary quotas of the necessary teaching, support, and reception staff.⁶⁷

In response to the COVID-19 pandemic, in 2020 and 2021, Greek authorities repeatedly subjected refugee camps on the mainland to prolonged lockdowns and prohibited children

⁶⁰ Council Implementing Decision (EU) 2022/382 of 4 March 2022; and see European Commission, Migration and Home Affairs, “Temporary Protection”, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en#:~:text=The%20Temporary%20Protection%20Directive%2C%20which,fleeing%20the%20war%20in%20Ukraine (accessed on 20 December 2022).

⁶¹ European Commission/Eurydice, Supporting refugee learners from Ukraine in schools in Europe, July 2022, https://eurydice.eacea.ec.europa.eu/sites/default/files/2022-07/Supporting_refugee_learners_from_Ukraine_in_schools_in_Europe_0.pdf (accessed on 20 December 2022).

⁶² Poland opened a registration “hub” for unaccompanied Ukrainian children in Stalowa Wola, where one child had been kept for a month until the authorities could contact his parent in Ukraine, but has since closed the facility. Government of Ukraine, “Report on sending a Monitoring Group which includes the members of the Coordination Headquarters for the Protection of the Rights of the Child under Martial Law to the Republic of Poland, the Federal Republic of Germany, and the Italian Republic (18–27 April 2022)”, p. 9.

⁶³ UN Committee on the Rights of the Child, Concluding Observations on the combined fourth to sixth periodic reports of Greece, CRC/C/GRC/CO/4-6, June 28, 2022, paragraphs 17(a), 39(h), 38(a). Similarly, the Committee “commend[ed Germany] for hosting . . . refugee children from Ukraine and for taking measures to guarantee their rights, including education”, but also expressed concern about “lengthy stays by some asylum-seeking and refugee children in reception centers” that “limit their access to education”. Concluding Observations on the combined fifth and sixth periodic reports of Germany, CRC/C/DEU/CO/5-6, October 13, 2022, paragraphs 39, 39(c).

⁶⁴ Norwegian Refugee Council, “Documentation for Education: Addressing Documentation Requirements for Displaced Children and Youth to Access Education”, March 2021.

⁶⁵ Human Rights Watch interviews in Warsaw and Łódź, Poland, March 2022. See Act (Law) of 12 March 2022 on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of that Country. Months before the conflict in Ukraine, the UN Children’s Rights Committee had called on Polish authorities to stop placing asylum-seeking, refugee and migrant children in “guarded detention centers” and to ensure their access to education. Concluding Observations on the combined fifth and sixth reports of Poland, December 6, 2021, CRC/C/POL/CO/5-6, paragraph 41(b, g).

⁶⁶ Human Rights Watch, “Turkey: Education Barriers for Asylum Seekers”, 31 May 2017.

⁶⁷ European Commission/Eurydice, Supporting refugee learners from Ukraine in schools in Europe, July 2022, pp. 13–16.

from attending local schools during periods when schools were open for children in local communities, and did not provide children in camps with WIFI connections or devices to allow them to participate in distance learning.⁶⁸ In Austria, by contrast, the Education Ministry refurbishes computers donated by companies and gives them to Ukrainian children free of charge, and Ukrainian students can also obtain a mobile device under the same conditions as Austrian students.⁶⁹

A problem common to mass-influx situations is the lack of enough trained teachers to teach the increased number of students, even as refugee teachers are barred from teaching or cannot have their qualifications recognized. In Lebanon and Jordan, Syrian refugee teachers are ineligible to teach in public or private schools,⁷⁰ while in Bangladesh, the authorities violently closed community-led schools established by Rohingya refugee teachers (HRW 2022a). However, many European countries have introduced special training for teachers to address the mental health needs of refugee children from Ukraine,⁷¹ and passed special laws that make it possible for schools to employ Ukrainian teachers as teachers or teaching assistants, especially in separate classes or groups gathering learners from Ukraine.⁷² The EU Temporary Protection Directive also provides simplified procedures for teachers to have their qualifications recognized. In Lithuania and the Netherlands, teachers from Ukraine can be employed without speaking the language of instruction, at least temporarily. Poland set up intensive language courses for 1000 incoming teachers from Ukraine to enable them to be employed as support teachers for Ukrainian children.⁷³ In Estonia, Ukrainian teachers can teach students using the Ukrainian curriculum and textbooks until the children are integrated into the local school system.⁷⁴

Other common obstacles to education include a lack of catch-up or accelerated classes, which means that displaced children who have been out of school may be placed either in lower grades with young children, or along with their age peers in classes that are difficult to understand, increasing the chances they will leave school.⁷⁵ In Poland, children from Ukraine may participate in preparatory classes, additional language, or remedial classes, or be assisted by a Ukrainian-speaking teaching assistant, as decided by the school head in agreement with the school managing body, based on the needs of each learner.⁷⁶

Refugee students' demand for education is often suppressed by a lack of opportunities for higher education and skilled employment. In Jordan, the fact that Syrian refugee students are required to pay foreign-student fees for higher education places university out of reach for most, even children who scored extremely well on their high-school leaving *tawjihi* examinations.⁷⁷ Other students were unable to continue with their university education in Jordan because they did not have proof they had been enrolled in Syria. In addition, 24 occupations in Jordan are restricted or require special permission for non-nationals, and 12 are completely closed.⁷⁸ In these circumstances, a UN survey of Syrian children

⁶⁸ Human Rights Watch, "Greece: Stop Denying Refugee Children Education", 29 July 2021.

⁶⁹ European Commission/Eurydice, Supporting refugee learners from Ukraine in schools in Europe, July 2022, p. 18.

⁷⁰ "Barriers for Syrian Teachers", in (HRW 2016a); "Poor quality of education", in (HRW 2020a).

⁷¹ Ireland, Spain, France, Latvia, Poland, Slovenia and Switzerland have teacher training on the mental health needs of refugees from Ukraine. Slovakia set up 62 intervention teams for schools with Ukrainian students. Each team consists of up to eight psychologists and special educators with crisis experience, as well as Ukrainian-speaking experts. European Commission/Eurydice, Supporting refugee learners from Ukraine in schools in Europe, July 2022, pp. 23, 25.

⁷² European Commission/Eurydice, Supporting refugee learners from Ukraine in schools in Europe, July 2022, p. 20.

⁷³ Ibid., citing Act (Law) of 12 March 2022 on Assistance to Citizens of Ukraine in Connection with the Armed Conflict in Ukraine.

⁷⁴ Same as above, p. 19.

⁷⁵ "Lack of Flexibility with Grade Placement," in (HRW 2015).

⁷⁶ European Commission/Eurydice, Supporting refugee learners from Ukraine in schools in Europe, July 2022, p. 16.

⁷⁷ "Limited Access to University", in (HRW 2016b).

⁷⁸ "Adolescents and Youth Barred from Higher Education and Professions", in (HRW 2020a).

in the Zaatari refugee camp found “a sense of the pointlessness of education as they had limited hope for their future prospects” (UNICEF (United Nations Children’s Fund) 2015). By contrast, EU and member states have ensured that Ukrainian university students can continue their education, and opened up professions from teaching to medicine to dentistry for displaced Ukrainians, streamlining processes to recognize the equivalence of their qualifications.⁷⁹ Third-country and stateless university students who had been studying in Ukraine and are now displaced to the EU are demanding these rights be extended equitably to them, including the ability to apply for residency, recognition of their previous academic study and certification, and exemption from high fees to apply to universities.⁸⁰ In addition to expanding policies that facilitate education for Ukrainian university students in states across Europe, advocates for higher education for all refugees could call for the use of higher education as a “complementary pathway” for protection in third countries, endorsed by signatories to the Global Refugee Compact and UNHCR,⁸¹ and point to the Lisbon Recognition Convention on recognizing refugees’ academic certifications.⁸²

5. Conclusions

Focusing on policy barriers and host country obligations does not mean education advocates can ignore the importance of economic barriers or the responsibility of third states to support the global good of education for displaced children. However, ensuring that all displaced children have enforceable rights to education could help drive the holistic policy changes required to overcome these obstacles, including greater budget allocations for education generally.

Third country donors should do more to provide host countries with structural incentives to grant refugees actionable rights to education. Experience has shown that humanitarian agency tactics, e.g., offering to build new classrooms in host communities or to allocate a percentage of all aid to those communities, are not sufficient to persuade governments to fully integrate displaced children into national education systems.⁸³ Development and humanitarian officials should take on board Dryden-Peterson’s assessment that refugee education “sits at the nexus” of tensions between the global promise of universal human rights and “persistently national” education institutions (Dryden-Peterson 2016). Education systems are driven by politics inside countries “with concerns about the making of future citizens”, while refugee education is “also embedded in global politics and power structures and concerned with the education of non-citizens, likely never-citizens. It is in most cases a situation of education by the state but not for the state” (Dryden-Peterson 2022).

Governments that are in breach of the human rights obligation to educate all children, regardless of migration status, will not be among the first to incorporate that obligation as an enforceable right in domestic law. However, as more countries do so, the pressure will increase on the holdouts to follow suit. Advocates may first need to work with domestic constituencies and governments where there is already support for displaced children’s rights, while also identifying how best to leverage each country’s domestic progress internationally.

⁷⁹ Commission Recommendation (EU) 2022/554 of 5 April 2022 on the recognition of qualifications for people fleeing Russia’s invasion of Ukraine, <https://eur-lex.europa.eu/eli/reco/2022/554/oj> (accessed on 20 December 2022).

⁸⁰ See BIPoC Ukraine, <https://bipocukraine.org> (accessed on 20 December 2022), and Student Coalition for Equal Rights, <https://www.studentcoalitionforequalrights.org> (accessed on 20 December 2022).

⁸¹ UNHCR, “Complementary pathways”, <https://www.unhcr.org/education-pathways.html> (accessed on 20 December 2022).

⁸² Council of Europe, Treaty No. 165, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=165> (accessed on 20 December 2022); and Recommendation on the Recognition of Refugees’ Qualifications, November 14, 2017, https://ec.europa.eu/migrant-integration/library-document/council-europe-recommendation-recognition-refugees-qualifications_en (accessed on 20 December 2022).

⁸³ The examples are drawn from Bangladesh following the Rohingya refugee influx that began in August 2017.

Education is among the best investments a government can make—one dollar invested in an additional year of schooling, particularly for girls, generates earnings and health benefits of \$10 in low-income countries.⁸⁴ However, the truth that humanitarian actors dare not speak to some host countries is that to achieve these benefits, their policies must allow refugee children to access education and integration.

On the flip side are the dangers of denying refugee education: “while inequality in education persists, the implications for global stability are dire”,⁸⁵ to say nothing of the consequences for individual children. Shaza Barakat, a Syrian democracy activist who fled to Turkey in 2011, told a Human Rights Watch researcher in 2015 that if Syrian children are denied education, they “will end up on the streets, or go back to Syria to die fighting, or be radicalized into extremists, or die in the ocean trying to reach Europe”. Barakat’s son Omar was unable to enroll in schools in Turkey and returned to Syria to fight with opposition groups, where he was killed in 2012 at age 16. Barakat was later able to help open a school for Syrian refugee children (HRW 2015). Yusuf Buyuk, then Turkey’s deputy undersecretary for education, shared a similar argument to Barakat’s in 2015: “If we cannot educate these students, they will fall into the wrong hands, they are going to be exploited by gangs, criminals”, he said (HRW 2015).

However, Buyuk also offered a second rationale for providing displaced children with access to education, one that donors, host country officials, and advocates should keep in mind: “We are trying to improve the standards in our country, which means also improving standards for Syrians”. This rationale goes to the heart of the human right to quality education for all children, without discrimination, including discrimination based on nationality or migration or residency status. If education is for all, governments should guarantee that right under domestic law and enable displaced children to enforce it.

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